# United States Department of Commerce

# Combined Coastal Management Program and Final Environmental Impact Statement for the State of Ohio

**March 1997**

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# ABSTRACT

DESIGNATION: Final Environmental Impact Statement

TITLE: Proposed Federal Approval of the Ohio Coastal Management Program

ABSTRACT: The State of Ohio has submitted its Coastal Management Program to the Office of Ocean and Coastal Resource Management for approval pursuant to section 306 of the Federal Coastal Zone Management Act of 1972 as amended (CZMA), 16 U.S.C. 1451 et seq. Approval would allow program administrative grants to be awarded to the state and would require that Federal actions be consistent with the program. This document includes a copy of the program, which is a comprehensive management program for coastal land and water use activities. It consists of numerous policies on diverse management issues which are administered under Ohio laws and is the culmination of several years of program development. The Ohio Coastal Management Program promotes the beneficial use of coastal resources, prevents their impairment, and manages major activities that substantially affect numerous resources. The program will enhance decision-making processes used for determining the appropriateness of actions in the coastal area.

Approval and implementation of the program will enhance governance of Ohio's coastal land and water uses according to the coastal policies and standards contained in Ohio's statutes, authorities and rules. Federal alternatives to program approval include delaying or denying approval, if certain requirements of the Coastal Zone Management Act have not been met. The state could modify parts of the program or withdraw its application for Federal approval if either of the above Federal alternatives results from circulation of this document. This document includes responses to comments received on the draft EIS published in August 1996.

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COMMENTS: Comments on the Final Environmental Impact Statement may be sent to NOAA at the address noted above. Pursuant to the National Environmental Policy Act, NOAA must wait a minimum of 30 days before making a final decision.

NOTE TO READERS

The National Environmental Policy Act (NEPA) of 1969 requires that an environmental impact statement be prepared as part of the review and approval process by Federal government agencies of major actions which significantly affect the quality of the human environment. The Federal action contemplated is approval of the Ohio Coastal Management Program under section 306 of the Federal Coastal Zone Management Act of 1972, as amended (CZMA). It is the general policy of the Federal Office of Ocean and Coastal Resource Management (OCRM) to issue combined environmental impact statements and program documents.

Part I of this final Environmental Impact Statement (FEIS) was prepared jointly by the Office of Ocean and Coastal Resource Management and the State of Ohio, and provides summary information concerning the Ohio Coastal Management Program (OCMP), including how the state has addressed the requirements of the CZMA. Part II of the FEIS is a description of Ohio's Coastal Management Program and was prepared by the state. It has been reviewed by the OCRM and is relied upon as a description of the proposed action for purposes of NEPA. Part III fulfills the remaining NEPA requirements for an FEIS and was prepared by the Office of Ocean and Coastal Resource Management with assistance from the State of Ohio.

An immediate effect of federal approval of the Ohio program is the qualification of the state for Federal matching funds for use in administering the program. In addition, the CZMA provides a procedure for the state to review Federal actions for consistency with its approved coastal management program.

For purposes of reviewing this proposed action, the key questions are:

- whether the Ohio program is consistent with the objectives and policies of the national legislation;

- whether the award of Federal funds under section 306 of the Federal Act will help Ohio to meet those objectives;

- whether Ohio management policies and authorities are adequate to implement the program; and

- whether there will be a net environmental gain as a result of program approval and implementation.

OCRM has made a preliminary determination that the answers to these questions are affirmative.

OHIO COASTAL MANAGEMENT PROGRAM
AND
FINAL ENVIRONMENTAL IMPACT STATEMENT

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# PART I
# OVERVIEW

## A. Summary of the Ohio Coastal Management Program

The State of Ohio has developed the Ohio Coastal Management Program (OCMP) describing current state coastal legislation and management policies. With the exception of implementation of Ohio's new coastal erosion program mandated by O.R.C. §1506.06-.09 and amendments to Ohio's Coastal Management Act, the OCMP proposes no new state programs, regulations, or laws. It is based on an approach termed "networking," which is a framework and process for linking existing state programs, agencies, and laws into a system that will meet Federal requirements for an effective state coastal management program.

Part II of this document describes the laws, regulations, and programs that are the basis of the OCMP. Chapter 5 includes 41 policy statements and authorities, which set forth the goals of coastal management in Ohio, and various policies and authorities embodied in statute and regulations.

In 1988, the Ohio legislature enacted the Ohio Coastal Management Act, S.B. 70 (O.R.C. Chapter 1506) which provides a comprehensive framework for the OCMP and requires the Ohio Department of Natural Resources (ODNR) to identify and manage Lake Erie coastal erosion areas, implement the Lake Erie Access Plan, and administer the leasing of state submerged land. As a result, having significantly enhanced its management capability and having completed most of the development of the coastal erosion program, the state now seeks Federal approval of its program. This summary briefly describes the key aspects of the program and the benefits of participation in the Federal CZM program.

### 1. Program Authorities and Organization

The OCMP is a "networked" program made up of several Ohio natural resource protection and hazard management programs. The lead agency for implementing the program, as prescribed by the Ohio Coastal Management Act, is the ODNR. Within ODNR the Division of Real Estate and Land Management (REALM) has the lead for coordinating the programs of ODNR and other state agencies into a comprehensive CZM program. The organizational structure of the program and specific means of coordinating the various agencies included in the program are discussed in Chapter 4 of Part II.

State laws and regulations included in the OCMP are summarized in policy statements which are organized into nine issues listed below. Detailed descriptions of each policy, its underlying authority and implementation process are provided in Chapter 5 of Part II of this document.

#### Coastal Erosion and Flooding

The Ohio DNR is responsible for implementing a comprehensive coastal erosion and flood plain management program with the elements listed below. The ODNR is currently completing development of the erosion management program pursuant to changes to Chapter 1506 enacted in May 1994. This program is described in detail in Management Policies, Chapter 5 of Part II of this

document. Maps delineating Lake Erie coastal erosion areas are currently available for public review. State statutory authorities require the DNR to:

- Delineate 30 year coastal erosion areas;
- Enforce rules regulating new structures in coastal erosion areas;
- Allow local authorities to adopt erosion area management regulations in compliance with state policies;
- Administer a permit system for erosion control structures;
- Provide technical assistance for erosion control projects and permit process standardization;
- Coordinate with the Army Corps of Engineers as provided for in the Rivers and Harbors Act of 1899;
- Enforce compliance by local governments with the National Flood Insurance Program (NFIP);
- Require that state agencies, in licensing and permitting, mandate compliance with the NFIP when their regulatory jurisdiction preempts local regulations, and prohibit financial disaster assistance within noncompliant counties and municipalities; and
- Regulate design and construction of dams, dikes and levees.

Water Quality

The Ohio Environmental Protection Agency (Ohio EPA) is responsible for implementing the state's water quality program. The objectives of this program are to:

- Assure attainment of State Water Quality Standards;
- Provide financial support for research and pollution abatement projects;
- Promote soil and water conservation and prevention of agricultural and urban sediment pollution in cooperation with ODNR; and
- Implement the Ohio Nonpoint Source Management program in cooperation with ODNR through a broad matrix of authorities.

Wetlands and other Ecologically Sensitive Resources

The ODNR and Ohio EPA share authority for protecting Ohio's coastal wetlands and other ecologically sensitive resources. The Ohio EPA regulates certain activities in wetlands through its state water quality laws, particularly through certification of federally-permitted and licensed activities pursuant to section 401 of the Clean Water Act. Ohio EPA's certification process includes a sequenced review which requires projects to avoid, minimize, and mitigate for any loss of wetlands. The ODNR also has authority to acquire, manage, and restore coastal wetlands. The programs require the state to:

- Regulate wetland development activities through section 401 certification of compliance with the State's water quality standards, including the antidegradation policy;
- Develop and maintain a statewide wetlands inventory and data base;
- Acquire, protect and restore coastal wetlands;

- Protect habitat of rare and endangered species;
- Restrict the taking and possession of threatened native animal species; and
- Restrict the taking, removal, transportation and sale of endangered or threatened native plant species.

Ports and Shoreline Development

The ODNR has broad authority to protect the public trust in Lake Erie waters and underlying lands through the submerged lands leasing program, submerged lands preserves, and permits for salvage and recovery of submerged abandoned property.

Recreation and Cultural Resources

The ODNR is responsible for implementing a comprehensive plan to improve public access to Lake Erie's shoreline and waters through the following principal programs:

- Protect public access rights through the submerged lands leasing program;
- Provide for public access within the state nature preserve system, state parks system and state wildlife areas;
- Prepare, maintain and update a Lake Erie public access facilities inventory; assess needs and prepare plans and policy recommendations to increase public access;
- Provide grants for public access improvements;
- Protect historically and archaeologically significant resources and abandoned submerged property;
- Regulate watercraft safety; and
- Require licensure of hunters, trappers and anglers and provide hunter and trapper education.

Fish and Wildlife Management

The ODNR is responsible for management of all commercial and non-commercial taking of fish and wildlife as well as the protection of non-game and endangered species. The ODNR is required to:

- Regulate the taking of fish and wildlife;
- Protect all wildlife including nongame and endangered species;
- Investigate water pollution, fish kills and stream litter; and
- Protect fish habitat.

Environmental Quality

The Ohio EPA implements a broad range of air quality, solid waste, and hazardous waste programs to protect Ohio's natural resources so as to:

- Attain and maintain National Ambient Air Quality Standards;
- Regulate hazardous, solid and infectious waste facilities;
- Enforce requirements of the Resource Conservation and Recovery Act (RCRA) and

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); and

- Establish long range solid and hazardous waste management plans and hazardous waste pollution prevention plans.

The Ohio Department of Health regulates marina construction. ODNR, Ohio EPA and other state and local law enforcement officers prohibit the dumping of litter.

Energy and Mineral Resources

The ODNR implements management programs regarding oil and gas, and mineral development for Lake Erie as well as surface mining, while the Ohio Power Siting Board is responsible for the coordinated review of major energy facilities. Key authorities:

- Require certification of major utility facilities;
- Require 10-year demand, resource and site inventory forecasts for energy generation and transmission activities;
- Regulate oil and gas extraction;
- Regulate removal of minerals and other substances from Lake Erie and from under its lake bed; and
- Regulate permit issuance for surface mining.

Water Quantity

The ODNR implements several authorities that affect the withdrawal of waters from Lake Erie. These programs:

- Regulate water diversions from Lake Erie;
- Require large facilities to register capacity and submit annual withdrawal reports; and
- Develop a long-term water resources plan for the Lake Erie basin.

2. Boundary

The Ohio coastal area includes all of the waters of Lake Erie to the international boundary with Canada, the islands in the lake, the bed of the lake, and adjacent shorelands within Ohio. The inland coastal management boundary of the Ohio coastal area, which is described in Chapter 3 of Part II, includes all shorelands subject to erosion or flooding, estuarine areas and wetlands, and other areas the use of which may directly and significantly affect Lake Erie waters. The inland extent of the boundary varies based on the biogeographic features of the area. For example, the boundary extends inland approximately 16 miles along the Maumee River while in urban areas, the coastal boundary generally is less than a half mile from the shore. The inland boundary was developed based on substantial public input.

3. Geographic Areas of Particular Concern

The OCMP, based on a public participation process, has designated the following area as geographic areas of particular concern: critical fish habitat, ports and harbors, state nature preserves and wildlife areas, coastal erosion and flood hazard areas, public parks and access areas, wetlands, historic and archeological sites and those portions of Areas of Concern designated by the International Joint Commission that lie within the proposed OCMP management boundary. Seven specific areas are identified as Areas for Preservation and Restoration - these are primarily state nature preserves of exceptional value. The APR designation helps guide resource managers to restore or preserve the specific ecological, historic, or aesthetic values of these areas. These areas and a process for future designation of special management areas are described in Chapter 6 of Part II.

4. Other Special Planning Requirements of the CZMA

The CZMA requires that states specifically address the issue of shoreline erosion, shorefront access, and energy facility siting as part of program development. The OCMP responses to these requirements are found in Chapters 8, 9, and 10 of Part II.

## B. Changes the Program Will Make

Existing state authorities will be used to implement and enforce the Ohio Coastal Management Program. The program will result in changes in the way coastal resources are managed in the state by requiring the ODNR to monitor all state actions which could affect coastal resources, and to resolve conflicts between state agency decisions and the provisions of the OCMP. The program will also enhance implementation of core programs addressing hazards, wetlands, and access.

Ohio's objective in developing a coastal management program is to establish a comprehensive, coordinated approach for the protection, preservation and orderly development of the state's coastal resources. Specific management activities, including the operation of Ohio's core regulatory programs, are conducted by a variety of individual agencies. This collection of individual activities is tied together into a comprehensive program or "network" by Ohio's coastal management law, O.R.C. §1506.03, which requires that all state agency projects and permits be consistent with the OCMP.

The Coastal Management section of the ODNR's Division of Real Estate and Land Management, is the lead entity for reviewing state and Federal agency actions to ensure consistency with the OCMP. Chapter 4 of Part II of the document describes the procedures that REALM will use to implement state consistency requirements. These procedures include draft Memoranda of Understanding (MOU) between ODNR and several other state agencies. These MOUs, which will be finalized before program approval, provide that disagreements between agencies that cannot be resolved at the agency level will be referred to the governor for resolution. In addition, section 307 of the CZMA requires that Federal agency actions be consistent with the OCMP, once it is approved by OCRM. Chapter 7 of Part II describes how Ohio will implement the federal consistency provisions of the CZMA.

The CZMA provides incentives and a national direction to assist states in addressing coastal issues and problems. The following are the principal anticipated effects of Federal program approval:

- Federal section 306 grants estimated to total $800,000 annually will be made to Ohio to assist in program implementation activities by the state and local entities; and

- State implementation of the Federal consistency provisions of the CZMA will ensure that Federal activities, federally licensed and permitted activities, and Federal assistance to state and local governments are consistent with the OCMP.

A more detailed description of the effects of federal approval of the OCMP is provided in Part III of this document.

## C. The Federal Coastal Zone Management Act

In response to intense pressure on coastal resources, and because of the importance of coastal areas of the United States, Congress passed the Coastal Zone Management Act of 1972 as amended [CZMA], (16 USC 1451). The CZMA authorizes a Federal program to encourage coastal states and territories to develop comprehensive coastal management programs. The CZMA has been reauthorized on several occasions, most recently in 1996 with the enactment of the Coastal Zone Protection Act of 1996 (P.L. 104-150). The program is administered by the Secretary of Commerce, who in turn has delegated this responsibility to the National Oceanic and Atmospheric Administration's (NOAA) National Ocean Service (NOS). Currently, 30 states and territories have coastal programs approved by the Assistant Administrator of the National Ocean Service.

The CZMA affirms the national interest in the effective protection and careful development of the coastal zone by providing assistance and encouragement to coastal states to voluntarily develop and implement management programs for their coastal areas. The CZMA authorizes financial assistance grants under section 305 for program development and section 306 for program implementation to provide coastal states and territories with the means for achieving these objectives. The Section 305 program development section was re-authorized by Congress in the 1990 amendments to the CZMA (P.L. 101-508, November 5, 1990) and in the 1996 amendments to the CZMA (P.L. 104-150, June 3, 1996). OCRM awarded the ODNR a section 305 grant of $135,000 on October 1, 1992 to complete development of the OCMP, with subsequent grants of $138,000 in 1993 and $100,000 in 1995.

Sections 305, 306, and 307 of the CZMA and implementing regulations published on June 28, 1996, as codified at 15 CFR Part 923, provide the requirements and procedures for state management program development and Federal approval. In summary, the requirements for program approval are that a state develop a management program that among other things:

1. Identifies and evaluates those coastal resources recognized in the Act that require management or protection by the state or territorial government;

2. Re-examines existing policies or develops new policies to manage these resources. These policies must be specific, comprehensive, and enforceable, and must provide an adequate degree of predictability as to how coastal resources will be managed;

3. Determines specific uses and special geographic areas that are to be subject to the management program, based on the nature of identified coastal concerns. Uses and areas subject to management should be based on resource capability and suitability analyses and socio-economic considerations;

4. Identifies the inland and seaward areas subject to the management program;

5. Provides for consideration of the national interest in planning for the siting of facilities; and

6. Includes sufficient legal authorities and organizational structure to implement the program and to ensure conformance to it.

In arriving at these substantive aspects of the management program, states are obligated to follow an open process which involves providing information to and considering the interests of the general public, interest groups, local governments, and regional, state, interstate, and federal agencies.

Section 303 of the CZMA provides guidance on specific national objectives that warrant full consideration during the implementation of approved state coastal management programs.

Section 305 of the CZMA authorized four annual grants to states desiring to develop a coastal management program. After its management program receives federal approval, the state is then eligible for annual grants under section 306 to implement the program. Section 306A of the CZMA also provides that states may use a portion of their section 306 awards for low cost construction projects that result in the preservation of important natural areas, improved public access, or renewal of urban waterfronts.

Section 307 contains the Federal consistency provisions of the CZMA to ensure that Federal actions are consistent with the state's federally approved management program. Paragraphs (1) and (2) of section 307(c) require that Federal activities and development projects in or directly affecting the coastal zone be consistent to the maximum extent practicable with a federally approved state management program. Subparagraphs (A) and (B) of section 307(c) require that federally licensed and permitted activities affecting the coastal zone also are consistent with federally approved state management programs. Section 307(d) requires Federal assistance to state and local governments for projects affecting the coastal zone to be consistent with federally approved state management programs. Federal regulations implementing section 307 are found at 15 C.F.R. Part 930.

Section 309 establishes a coastal enhancement grant program. This section provides that a portion of section 306 funds is available to states to develop program changes which strengthen their CZM program's ability to address particular coastal issues. State efforts to seek such improvements are meant to focus on priorities based on a self-assessment of the nine objectives listed in section 309. These objectives include, among others, stronger wetland protection, improved management of coastal hazards and additional public access.

Section 312 directs the Secretary to evaluate the performance of state coastal management programs on a continuing basis. OCRM formally reviews the implementation of each state program on a three year cycle.

Section 315 establishes a National Estuarine Research Reserve System to preserve representative estuarine areas for long-term scientific and educational purposes. The Old Woman Creek National Estuarine Research Reserve, located east of Huron, Ohio, was designated in 1980.

The Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) established a new Coastal Nonpoint Pollution Control Program (CNPC), in addition to updating the CZMA. The State of Ohio has agreed to submit its updated Nonpoint Source Management Program as the basis for an approvable CNPC to NOAA and U.S. EPA within 30 months of program approval (see Appendix J). After Ohio submits its coastal nonpoint program, NOAA and EPA will make a final determination regarding its compliance with section 6217.

## D. Cross Reference to Program Requirements

How the Ohio Coastal Management Program Meets the Requirements of the Coastal Zone Management Act:

| CZMA Section | Requirements | CZMA Approval Regulations (15 C.F.R. Section) | Program Document |
|---|---|---|---|
| 306(d)(1) | Full participation/program adequacy..... | 923.3 | Full document |
| 306(d)(2)(A) | Boundaries..... | 923.31 - 923.34 | Ch. 3, App. A,B |
| 306(d)(2)(B) | Uses subject to management..... | 923.11 | Ch. 4, 5 |
| 306(d)(2)(C) | Areas of particular concern..... | 923.21, 923.22 | Ch. 6 |
| 306(d)(2)(D) | Means of control..... | 923.41 | Ch. 4, 5 |
| 306(d)(2)(E) | Guidelines on priorities of uses... | 923.21 | Ch. 6 |
| 306(d)(2)(F) | Organizational structure..... | 923.46 | Ch. 4 |
| 306(d)(2)(G) | Shorefront planning process..... | 923.24 | Ch. 9 |
| 306(d)(2)(H) | Energy facility planning process... | 923.13 | Ch. 10 |
| 306(d)(2)(I) | Erosion planning process..... | 923.25 | Ch. 8 |
| 306(d)(3)(A) | Plan Coordination..... | 923.56 | Ch. 4, App. Q |
| 306(d)(3)(B) | Continuing consultation mechanisms..... | 923.57 | Ch. 4, App. Q |
| 306(d)(4) | Public Hearings..... | 923.58 | Ch. 2, App. Q |
| 306(d)(5) | Gubernatorial review and approval | 923.48 | Part II (Gubernatorial Letter) |
| 306(d)(6) | Designation of recipient agency.... | 923.47 | Ch. 4 |
| 306(d)(7) | Organization..... | 923.46 | Ch. 4 |
| 306(d)(8) | Adequate consideration of national interests..... | 923.52 | Ch. 10, App. Q |

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| 306(d)(9) | Areas for preservation/restoration... | 923.22 | Ch. 6 |
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| 306(d)(11) | Techniques of control..... | 923.41 - 923.44 | Ch. 4 |
| 306(d)(12) | Uses of regional benefit..... | 923.12 | App. Q |
| 306(d)(13) | Inventory and designation of coastal resources of national significance and enforceable policies to protect such resources..... | No Regulations | Ch. 6 |
| 306(d)(14) | Public participation in permitting consistency and other similar decisions..... | No Regulations | Ch. 4, 7, App.Q |
| 306(d)(15) | State agency adherence to program | No Regulations | Ch. 4 |
| 306(d)(16) | Enforceable policies to implement Coastal Nonpoint Source Program required by CZARA §6217..... | 6217 Guidance issued Jan. 1993 | Ch. 4, App. J |
| 307(b) | Consideration of Federal agency views..... | 923.51 | App. Q |
| 307(c)&(d) | Federal consistency procedures | 923.53 | Ch. 7 |
| 307(f) | Incorporation of Federal air and water quality standards..... | 923.45 | Ch. 5, App. Q |

GEORGE V. VOINOVICH
GOVERNOR

STATE OF OHIO
**OFFICE OF THE GOVERNOR**
COLUMBUS 43266-0601

February 28, 1997

Dr. D. James Baker
Under Secretary and Administrator
National Oceanic and Atmospheric Administration
HCHB Room 5128
14th and Constitution Avenue N.W.
Washington, D.C. 20230

Dear Dr. Baker:

It is with great pleasure that I submit the Ohio Coastal Management Program (OCMP) to the National Oceanic and Atmospheric Administration (NOAA) for approval. This program represents the culmination of many years of commendable effort of numerous state agencies, local communities, advisory councils and citizens dedicated to improved stewardship of our coastal legacy for the benefit of all our citizens. It marks the beginning of a new era of more integrated and balanced resource protection, preservation, restoration and development.

The OCMP, as presented herein, meets the requirements of the Coastal Zone Management Act (CZMA). I have reviewed and certify that the State of Ohio has the authority and the institutional capabilities to implement the OCMP. The Ohio Department of Natural Resources was statutorily charged with the responsibility for developing and administering the OCMP, and I hereby designate that agency to receive and administer grants under the CZMA.

The State of Ohio greets with wholehearted enthusiasm this opportunity to join the national coastal community and looks forward to a continued constructive working relationship with NOAA and with our fellow coastal states. Should you have any questions during the review period, please contact Donald C. Anderson, Director, Ohio Department of Natural Resources, at 614-265-6879.

Sincerely,

George V. Voinovich
Governor

GVV:ag

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# LIST OF ABBREVIATIONS

| | |
|---|---|
| AOC | Area of Concern |
| APC | Area of Particular Concern |
| APR | Area for Preservation and Restoration |
| BUSTR | Bureau of Underground Storage Tank Regulation |
| CAA | Clean Air Act |
| CBRS | Coastal Barrier Resources System |
| CDF | Confined Disposal Facility |
| CERCLA | Comprehensive Environmental Response, Compensation & Liability Act |
| CFR | Code of Federal Regulations |
| CMP | Coastal Management Program |
| COE | U.S. Army Corps of Engineers |
| CZARA | Coastal Zone Act Reauthorization Amendments of 1990 |
| CZMA | Coastal Zone Management Act |
| CWA | Clean Water Act |
| DEIS | Draft Environmental Impact Statement |
| DERR | Division of Emergency and Remedial Response (Ohio EPA) |
| DNAP | Division of Natural Areas and Preserves (ODNR) |
| DOW | Division of Wildlife (ODNR) |
| DPR | Division of Parks and Recreation (ODNR) |
| DSW | Division of Surface Water (Ohio EPA) |
| DSWC | Division of Soil and Water Conservation (ODNR) |
| EDATA | Eastgate Development and Transportation Agency |
| EIS | Environmental Impact Statement |
| ERAC | Environmental Review Appeals Commission |
| FEMA | Federal Emergency Management Agency |
| FONSI | Finding Of No Significant Impact |
| FWPCA | Federal Water Pollution Control Act |
| GAPC | Geographic Areas of Particular Concern |
| GLPC | Great Lakes Protection Fund |
| GLWQA | Great Lakes Water Quality Agreement |
| HWFB | Hazardous Waste Facility Board |
| IJC | International Joint Commission |
| IMT | Integrated Management Team, ODNR |

| | |
|---|---|
| JCARR | Joint Committee on Agency Rule Review |
| LaMP | Lakewide Management Plan |
| LEPC | Local emergency planning committee |
| LEPF | Lake Erie Protection Fund |
| LWCF | Land and Water Conservation Fund |
| MCL | Maximum contaminant level |
| MOU | Memorandum of Understanding |
| NAAQS | National Ambient Air Quality Standards |
| NANPCA | Nonindigenous Aquatic Nuisance Prevention and Control Act |
| NAWMP | North American Waterfowl Management Plan |
| NCP | National Contingency Plan |
| NEPA | National Environmental Policy Act |
| NFIP | National Flood Insurance Program |
| NOACA | Northeast Ohio Areawide Coordinating Agency |
| NOAA | National Oceanic and Atmospheric Administration |
| NPDES | National Pollutant Discharge Elimination System |
| NPS | National Park Service |
| NRTF | National Recreational Trails Fund |
| OAC | Ohio Administrative Code |
| OAQDA | Ohio Air Quality Development Authority |
| OBM | Office of Budget and Management |
| OCAP | Ohio Capability Analysis Program |
| OCDRCM | Ohio Commission on Dispute Resolution and Conflict Management |
| OCMP | Ohio Coastal Management Program |
| OCRM | Office of Ocean and Coastal Resource Management |
| ODA | Ohio Department of Agriculture |
| ODH | Ohio Department of Health |
| ODNR | Ohio Department of Natural Resources |
| ODOD | Ohio Department of Development |
| ODOT | Ohio Department of Transportation |
| Ohio EMA | Ohio Emergency Management Agency |
| Ohio EPA | Ohio Environmental Protection Agency |
| OHPO | Ohio Historic Preservation Office |
| OHS | Ohio Historical Society |
| OHSPB | Ohio Historic Site Preservation Board |
| ORC | Ohio Revised Code |

| | |
|---|---|
| OWC-NERR | Old Woman Creek - National Estuarine Research Reserve |
| OWDA | Ohio Water Development Authority |
| PPCC | Policies and Programs Coordinating Committee |
| PSB | Power Siting Board |
| PL | Public Law |
| PUCO | Public Utilities Commission of Ohio |
| RAP | Remedial Action Plan |
| RCRA | Resource Conservation and Recovery Act |
| REALM | Division of Real Estate and Land Management (ODNR) |
| SERC | State Emergency Response Commission |
| SCORP | Statewide Comprehensive Outdoor Recreation Plan |
| SIP | State Implementation Plan |
| SMA | Special Management Area |
| SWCD | Soil and Water Conservation District |
| TMACOG | Toledo Metropolitan Area Council of Governments |
| TSD | Technical Support Documents |
| USC | United States Code |
| U.S. EPA | United States Environmental Protection Agency |
| WLA | Wasteload Allocations |
| WQBEL | Water Quality Based Effluent Limit |
| WQA | Water Quality Act (1987 amendments to CWA) |

## PROGRAM OVERVIEW

The purpose of the Ohio Coastal Management Program (OCMP) is to integrate management of Ohio's Lake Erie coastal area in order to preserve, protect, develop, restore and enhance its valuable and sometimes vulnerable resources. The OCMP is a cooperative action of the state and its political subdivisions to manage coastal resources, control activities that affect them, and foster their sustainable use for the benefit of all citizens of this state.

This document describes the OCMP for Ohio citizens and for all who benefit from Lake Erie's resources. It sets forth a framework for government action through the establishment of substantive policy statements regarding coastal erosion and flooding, water quality, ecologically sensitive areas, ports and shore area development, recreational and cultural resources, fish and wildlife habitat, environmental quality, energy and mineral resources, and water quantity. The document describes the statutory and regulatory underpinnings of these policies and describes the institutional mechanisms by which improved integrated management will be accomplished.

As a result of passage of the Ohio Coastal Management Law in 1988 and rules and policies since adopted, the state and its political subdivisions possess the authority to adequately manage our coastal resources. However, the 1988 law also recognized that improved coordination through a comprehensive program is necessary. This requires effective networking of state and local agency actions, clear establishment of priority issues and well-focused efforts to meet established goals. While the framework of the OCMP relies upon state and local agencies and their authorities, enhanced coordination and consistency will be achieved through state and federal agency adherence to the policies contained herein. Local governments should be able to rely upon this framework as a guide for planning when coastal waters and resources are affected by land use and development.

As lead agency, the Ohio Department of Natural Resources (ODNR), in a process of strategic planning, has identified six areas of strategic emphasis to guide OCMP initiatives and activities. They are: (1) water resources and watersheds, (2) coastal land use and development, (3) coastal habitat, wetlands and natural areas, (4) coastal flooding and erosion, (5) recreational opportunities, and (6) fisheries and wildlife resources. Public input throughout the process of program development has helped guide the identification and prioritization of the strategies and specific actions that are detailed in a separate OCMP strategic action plan. The department and networked agencies, as described in this document, will focus efforts upon these priority issue areas. Performance of the OCMP will be evaluated based on the outcomes of these actions and whether we are meeting Ohio's long-term goal for coastal management: sustaining a healthy coast.

The proposed OCMP represents the culmination of many years of effort by local, state and federal agencies, with substantial participation of local citizens and interest groups. It marks a significant milestone in the course of Ohio's efforts to develop a coordinated and fully implementable coastal program pursuant to the Federal Coastal Zone Management Act (CZMA) of 1972, as amended. However, the program described in this document is a dynamic process. ODNR will re-assess priorities and goals on an ongoing basis through strategic management, and program enhancements and modifications will be made with continued public participation.

# CHAPTER 1

# INTRODUCTION

In recognition of the intense pressures facing our nation's coastal regions, Congress enacted the Coastal Zone Management Act (CZMA), as amended (16 U.S.C. 1451 et seq.), which was signed into law on October 27, 1972. The Act and subsequent amendments affirm a national commitment to the effective protection and rational development of coastal areas. To effect results, the CZMA authorizes a federal financial assistance program to assist coastal states in the development and implementation of coastal management programs and requires that federal actions be consistent with approved state coastal management programs. Responsibility for the oversight of this program rests with the Office of Ocean and Coastal Resource Management (OCRM), National Oceanic and Atmospheric Administration (NOAA), U. S. Department of Commerce.

Ohio recognizes that the Lake Erie coastal area is one of its most valuable land-water interfaces. It is imperative that this region be properly managed to guarantee the perpetual use and protection of its abundant resources. The Ohio Coastal Management Program (OCMP) is an especially important means of working toward these goals.

The OCMP has been designed to foster the integrated management of the coastal area. It is the framework within which public and private entities will work to preserve, develop and restore the region's unique values. Yet this program does not advocate the abdication of local zoning powers. It does encourage and may assist the establishment of local ordinances or resolutions to manage waterfront uses or to control certain activities in designated flood hazard and coastal erosion areas.

The OCMP is a synthesis of agency responsibilities and regulatory authorities into a comprehensive and functional plan. It establishes a set of coastal management objectives and facilitates intergovernmental cooperation to ensure that these objectives are indeed implemented. Not only does it describe the various policies, standards and criteria that guide land and water uses in the coastal area, but it also cites the statutes and rules under which they will be carried out by different levels of government. Further, the OCMP specifically delineates which coastal activities are subject to management.

## Benefits of a Federally Approved Coastal Management Program

Two major benefits are expected for Ohio following federal approval of the OCMP. First, federal approval of the OCMP will open the door to available federal funds to enhance coastal management in Ohio. This will yield numerous benefits to Ohio's residents, some of which include the following:

- Assistance for erosion and flood hazard area management;
- Consolidation and streamlining of various governmental coastal permit procedures to facilitate the application process for residential, commercial and industrial developments;
- Enhanced protection of coastal natural areas, wetlands and fish and wildlife habitats;

- Improvement of coastal water and air quality;
- Expansion of coastal recreation access;
- Assistance to local governments to develop and implement comprehensive lakeshore master plans;
- Funding for a local assistance grant program designed to implement, enforce or administer any aspect of the OCMP.

Second, the federal consistency requirement of Section 307 of the CZMA becomes effective upon approval of the state's coastal management program. All federal activities and development projects, permitting and licensing, and financial assistance activities affecting any land or water use of the defined coastal area must be consistent with the approved OCMP, subject to federal regulations in 15 C.F.R. Part 930. Federal consistency is a powerful tool to assure federal consideration of the state's coastal management program, maximum state coordination, and oversight of activities in the coastal area.

## MAJOR COMPONENTS OF THE OCMP

Major components of the OCMP, briefly described here, include a coastal area boundary, organizational network for improved governmental coordination in the coastal area, management techniques and policy statements for nine coastal issue areas, and designation of Special Management Areas (SMAs).

### Coastal Area Boundary

Consistent with the CZMA, the Ohio coastal area is statutorily defined as "the waters of Lake Erie, the islands in the lake, and the lands under and adjacent to the lake, including transitional areas, wetlands and beaches. The coastal area extends in Lake Erie to the international boundary line between the United States and Canada and landward only to the extent necessary to include shorelands, the uses of which have a direct and significant impact on coastal waters as determined by the director of natural resources" (O.R.C. § 1506.01(A)). The OCMP will provide for specific management only of those uses with direct and significant impacts on coastal waters within the parameters of this boundary. Included within the boundary are lands subject to lake flooding and erosion, estuaries and wetlands, coastal recreation areas and areas of lake-related uses. The extent of the proposed coastal management boundary and the process by which boundary maps have been developed are described in Chapter 3.

Organization and Authorities

The Ohio Department of Natural Resources (ODNR) will improve coordination among existing agencies and levels of government in a networked manner to carry out the coastal management policies.

First, by state law (O.R.C. § 1506.02), ODNR is the designated lead agency for the development and implementation of the Ohio Coastal Management Program. ODNR will: (1) administer the program and monitor its progress, (2) administer the federal consistency requirement, (3) coordinate and facilitate conflict resolution, (4) consider the national interest in project implementation, and (5) foster comprehensive planning.

Second, numerous state and federal agencies have responsibilities that pertain either directly or indirectly to the coastal area. In these cases, ODNR will assure that agency actions are consistent with OCMP policies. This will be accomplished through memoranda of understanding with state agencies, case-by-case reviews and performance reviews, and conducting formal consistency reviews of federal activities, as outlined in Chapters 4 and 7. ODNR will also promote the OCMP, consulting with relevant state agencies on their respective roles within the program's mandates.

Third, area-wide planning agencies will assist in the review of coastal activities and programs to assure sufficient consideration of regional interests.

Finally, local government has or may assume direct implementation responsibility for certain land use planning and regulatory aspects of the OCMP. For example, local governments have responsibility for floodplain administration. Municipalities or counties may assume responsibility for permitting of new permanent structures in coastal erosion areas, as described in Chapter 5.

A detailed description of the organizational framework, authorities and mechanisms for implementing the OCMP is provided in Chapter 4.

Policy Statements

The OCMP is composed of 41 policy statements within the following nine issue areas:

1. Coastal Erosion and Flooding
2. Water Quality
3. Ecologically Sensitive Areas
4. Ports and Shoreline Development
5. Recreation and Cultural Resources
6. Fish and Wildlife Management
7. Environmental Quality
8. Energy and Mineral Resources
9. Water Quantity

Detailed explanations of these issues and policies are provided in Chapter 5.

Special Management Areas

Several types of environments in the coastal area are designated as Special Management Areas (SMAs). The rare nature, critical importance or precarious existence of many areas requires that they receive priority attention. The OCMP differentiates between two types of SMA. An Area of Particular Concern (APC) is an area, either generic or site-specific, requiring special management. The OCMP establishes use priorities as a framework for decision making with regard to these areas. Initially, the OCMP has selected only generic management areas as APCs, but site-specific areas could be designated in the future. The Area for Preservation and Restoration (APR) designation is applied to specific areas determined to require attention to preserve or restore the recreational, ecological, historic or aesthetic values of an area. A process for establishing new SMAs is also provided. APC and APR designations are discussed and listed in Chapter 6.

# CHAPTER 2

# SETTING: PAST AND PRESENT

## Natural History and Geography

The coasts of the United States are some of the most vital and productive ecosystems on earth. Water dependence of commerce and industry and the desirability of coastal living have attracted nearly half the U.S. population to the nearshore region.

Our nation's "fourth seacoast" extends 4,600 miles along the southern shores of the Great Lakes, the largest and most utilized "inland sea" in the world. Ohio is fortunate to occupy a favored position along this nationally significant lakeshore. The state's citizens, 41 percent of whom live within the Lake Erie basin, are entrusted with the stewardship of 262 miles of mainland and island shores, as well as 3,277 square miles of its waters (Figure 1). Ohio reaps numerous benefits from the wealth of natural, scenic and economic resources found therein.

Approximately 33,000 acres of valuable coastal wetlands in Ohio support at least 250 species of nesting birds, including the nation's symbol, the bald eagle. Shallow waters in the island and bay region provide fish spawning grounds and nurseries, sustaining a commercial and sport fishing industry that provides numerous benefits to citizens of Ohio. Ohio's role as a major mineral producer is rooted in abundant salt, sand, gravel, limestone and gypsum deposits in the coastal area. The lake's waters and many fine sand beaches attract millions of visitors annually for swimming, fishing, boating and camping. The scenic, rocky shores and slow-paced lifestyle of the Lake Erie islands provide a unique respite from mainland cares. Strategically located close to valuable midwest coal fields and grain centers, the lake ports have established their preeminence as transshipment points for regional and worldwide commerce. Abundant fresh water is essential for many manufacturing processes. Consequently, industrial development has thrived on the lakeshore, and urban and residential growth has followed, resulting in a shore that is more than 82 percent developed.

The area's bountiful natural heritage that provides these cultural benefits is partly the result of dynamic geologic processes that transpired over billions of years. The Great Lakes region has been primarily influenced by sedimentation, erosion and glacial activity.

The area's geologic foundation consists of ancient igneous and metamorphic bedrock that was periodically covered by shallow seas and subsequent sediment deposits. These sediments hardened into layers of sandstone, shale, limestone and dolomite that were, in turn, carved into wide valleys by river systems and advancing glacial ice. Varying erosion qualities of these sedimentary rocks account for some of today's picturesque landforms; less resistant shales and fractured limestones were scraped out to form lake areas, leaving more resistant shale cliffs in the east and a chain of limestone and dolomite islands to the west.

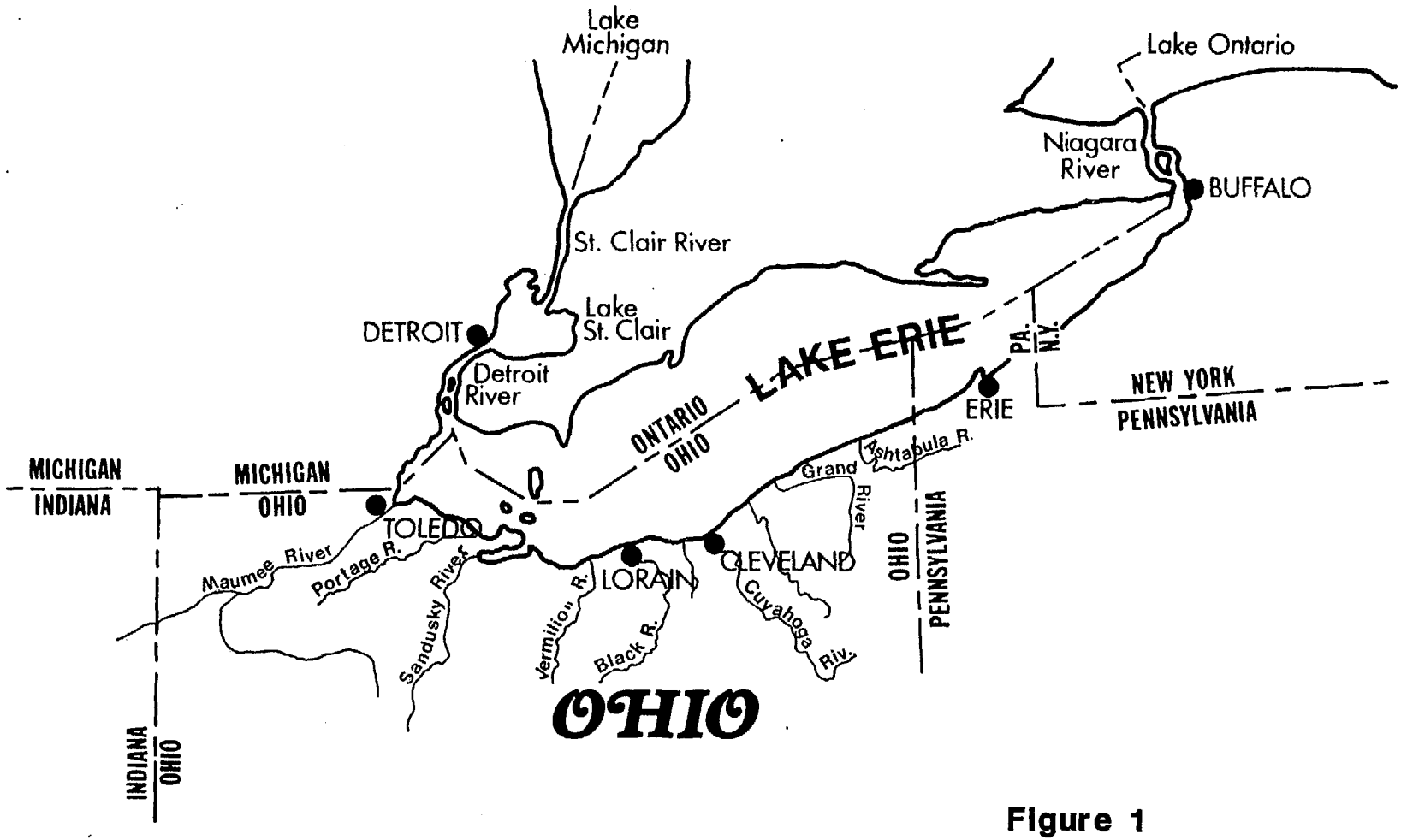


**Figure 1**

# Lake Erie Region

Four major stages of continental glaciation affected the Great Lakes area during the past 1 to 2 million years. Thick ice sheets advanced into the region, eroding soil and bedrock that was then deposited in other locations.

About 14,500 years ago, the last of the ice sheets slowly melted and retreated, releasing large volumes of water. This meltwater and precipitation in the drainage basin collected in pools in the basins created by previous glacial scouring. As the ice margin continued to retreat, these pools enlarged to form a large post-glacial lake in what is now the Lake Erie basin. The elevation of this lake changed as retreat of the ice margin exposed lower outlets or its re-advance blocked outlets. About 4,000 years ago, the upper Great Lakes began to drain through the Lake Erie basin, causing a rise in the lake level.

Impact of Human Activities

Human pressures have left their mark on the Lake Erie environment as well. Early inhabitants were hunters who roamed the region in search of mastodon and caribou nearly 14,000 years ago. Archaeological evidence shows that they eventually adapted to the area's natural abundance by settling into a more sedentary, agricultural lifestyle.

European explorers happened upon Lake Erie in the 17th century on their way to the "Orient." Fur traders led a wave of American colonists who achieved dominance on land with their 1794 victory over the Indians at Fallen Timbers, near the present site of Toledo. But British naval power and economic control of the fur trade continued to exclude Americans from the waters of the Great Lakes. The fiery Battle of Lake Erie was a decisive victory for the Americans, part of a series of events that ultimately allowed them to wrest supremacy from the British.

Indians and Europeans alike stood in awe of the vast resources they found in the Lake Erie region. Lake waters brimmed with sturgeon and whitefish. Seas of grassy savannahs supported wild oats 3 meters high. This deceptive bounty prompted J. Disturnell to remark in 1863 that the fisheries were "so inexhaustible...that were a population of millions to inhabit the lake shore, they would furnish an ample supply...without any sensible diminution." Thus did the region's first settlers establish a precedent, overlooking the need for prudent resource conservation.

By 1900, the population of Ohio's coastal counties had not yet reached 1 million. However, despite Disturnell's rosy optimism, the settlers had already wrought considerable changes in the land, the water and the area's natural resources. In fact, 25 million acres of woodlands were cleared prior to the turn of the century. Savannahs were burned and swamps tiled and drained. The lake soon became the dumping ground for raw sewage from scores of small towns. Effluents from tanneries, breweries, chemical works, oil wells and mines, and sawdust from lumber yards on all the Great Lakes accelerated the normally slow process of the lake's aging.

Settlement of the area has wrought dramatic changes in the Lake Erie wetlands and estuaries. An extensive barrier beach-wetland system originally comprised the shoreline westward from Sandusky to Toledo and northward to Detroit. Wetlands of the original Black Swamp covered nearly 300,000 acres throughout the western Lake Erie watershed. Today, only an estimated 33,000 acres

of coastal wetlands remain in Ohio. Such wetland loss is primarily attributed to drainage practices associated with agriculture, filling and dredging. In particular, urban development during low water periods has blocked the landward extension of wetlands during times of high water.

Institutional and Political Response

Over time, the U.S. and Canada began to recognize the serious threats to the Great Lakes region. It became apparent to both countries that degradation of the lakes by any state, province, or nation could have widespread effects upon the lakes and their shoreline residents. Thus, in 1909 the U.S. and Canada joined to sign the Boundary Waters Treaty, under which the International Joint Commission (IJC) was established in 1912. The Commission became responsible for investigating and making recommendations for resolving transboundary water issues, including Great Lakes problems referred to it by either or both of the governments. The U.S. established its unilateral interest in Great Lakes water quality with pollution investigations conducted from 1910-1912 by the U.S. Public Health Service. The Great Lakes Fishery Commission was established by convention in 1955 to develop and coordinate fishery research and management, to advise governments on measures to improve the fisheries and to develop and implement programs to control the sea lamprey population.

But the problems have not been easily resolved, and new conflicts have arisen frequently. The difficulties inherent in developing critical shorelands peaked as the 1960s came to a close. The public became concerned in Ohio when high coliform bacteria counts resulted in closed beaches and the anoxic (oxygen-deprived) area of the Central Basin extended to more than 1,500 square miles in 1970. The lake had not died, but had been degraded considerably since 1920. Prime farmland and valuable marshes in the coastal area had been lost to urbanization. Utility, navigation, industrial, municipal, recreational and environmental interests all joined to voice their concerns over losses due to the lake's battered condition.

This public outcry stimulated a massive governmental response. Many organizations, task forces, agencies and federal, state, local and provincial laws were created to respond to the multifaceted conflicts. The Great Lakes Basin Commission began developing a comprehensive plan for water resources information on limnology, navigation, shore erosion, recreation and other areas, and included recommendations for improved resource development. The Ohio State University's Stone Laboratory at Put-In-Bay conducted research on Lake Erie's fish and benthic communities and the effects of various land and water uses upon them. The Ohio Department of Natural Resources (ODNR), Division of Wildlife (DOW), developed a Fish Work Group Report that addressed the entire Lake Erie drainage basin through specific biological, social and economic discussions. This 1970 report reviewed historic, current and projected human activities and their impacts upon the Lake Erie fisheries resources. The Division of Geological Survey developed databases on beach and shore erosion, lake sediments, water quality and lake water masses, including currents. The Ohio Environmental Protection Agency (Ohio EPA) developed plans to improve Lake Erie water quality.

The year 1972 saw the initiation of several major Lake Erie protection measures. First, regional agencies (Northeast Ohio Areawide Coordinating Agency [NOACA] and Toledo Metropolitan Area Council of Governments [TMACOG]) developed local water quality management plans mandated

by the Federal Water Pollution Control Act (FWPCA) of 1972 (P.L. 92-500). Second, the U.S. and Canada signed the Great Lakes Water Quality Agreement that established the Water Quality Board and the Science Advisory Board of the IJC. The third measure came into effect when Congress passed the Coastal Zone Management Act (CZMA, P.L. 92-583), which provided financial and technical assistance to states for the development and implementation of comprehensive programs to protect and manage their coastal resources and to establish National Estuarine Research Reserves.

The Governor of Ohio, by Executive Order in 1973, placed responsibility for developing a coastal management program with ODNR. To help the department initiate program planning and development, the federal Office of Coastal Zone Management (now the Office of Ocean and Coastal Resource Management, OCRM) made four grants to Ohio that were matched with state funds.

ODNR's Division of Water had an important coordinating role as the designated lead for coastal management from 1974 to 1988. In 1974, the first program development grant was used to compile resource and institutional databases from existing sources of information. Local individuals, government officials and diverse interest groups helped identify coastal issues by participating in a series of county-wide workshops and by responding to questionnaires. Public concern was especially strong with regard to erosion and flooding, declining wildlife populations, loss of valuable natural and historic sites, air and water quality, mineral development, and recreational issues.

By 1977, ODNR possessed a clearer view of both critical issues and information gaps. Thus, it was able to effectively channel the second year grant money into appropriate areas. One of the first actions was to coordinate research efforts between various agencies. This yielded 11 separate studies concerning critical resources and specific land use inventories.

That same year, ODNR also organized County Advisory Groups. These seven groups ranged from 30 to 50 members and represented a diverse cross section of the population. This innovative approach formed the basis of the public involvement effort and served as a model for similar programs in other states. Meetings revolved around the nomination of special management areas, determination of the coastal area boundary and designation of uses subject to management. The year's work culminated in the compilation of 75 policy alternatives relating to the main public concerns.

To further increase public awareness of lake issues, ODNR implemented an extensive public education campaign. In addition to submitting articles to local newspapers, the agency also published a quarterly newsletter called "The Beacon" and other public information materials. ODNR produced a slide show and financed three public-service announcements for television. Staff members conducted numerous public meetings in coastal communities and encouraged the full participation of county and regional planning commissions. The planning commissions proved especially helpful in assessing the impact of various land uses upon their respective shore areas.

In 1978, recommendations from previous years' work were converted into objectives and proposed policies which, along with a proposed organization and implementation mechanism, were set forth in a recommended Coastal Management Program for Ohio's Lake Erie shoreline.

In 1979, ODNR published a draft document of its proposed coastal management program. Additional efforts focused on formulating legislation based upon the document. This entailed extensive involvement with advisory groups, interest groups and municipalities to develop legislation acceptable to all parties. A coastal bill was introduced in the Ohio House of Representatives, where it was reported out of committee but never voted on by the full House. Unfortunately, political and economic factors discouraged the bill's reintroduction in 1981. This limited ODNR's coastal activities since legislation was needed to establish a coastal management program and provide for erosion and floodplain hazard area management. Efforts to develop a federally approved management program ended in early 1981. Nonetheless, the department remained involved in areas such as wetlands, lake access, erosion, floodplain management and water diversions. ODNR continued to meet with interest groups to promote coastal management and cooperated with other Great Lakes states on regional issues.

The 1980s brought further institutional activity such as the formation of the Council of Great Lakes Governors. The Council's first achievement was the creation of the Great Lakes Charter in 1985. Prompted by the threat of potential water diversion projects, this charter expressed a firm commitment to regional cooperation in Great Lakes management. The Council also opposed oil drilling in U.S. waters and, in the spring of 1986, formulated the Great Lakes Toxic Substances Control Agreement.

In 1987, Canada and the U.S. strengthened the toxic control provisions of the Great Lakes Water Quality Agreement. This re-emphasized the ecosystem approach to Great Lakes management and addressed both air and groundwater pollution. The FWPCA of 1972 was also updated in 1987. The revised version included provisions that address toxic wastes and nonpoint source pollution control. Ohio received federal approval of the Ohio Nonpoint Source Management Program in 1989.

The same year, Ohio's Governor created the Lake Erie Office within ODNR to coordinate existing programs and develop ways to better manage and protect Lake Erie. The state also moved ahead with its Lake Erie Access Program, established the Division of Water Transportation in the Department of Transportation and initiated remedial action plans for Ohio's four "Areas Of Concern" pursuant to the Great Lakes Water Quality Agreement (GLWQA).

Throughout the 1980s, ODNR's Division of Water played a vital role in policy development as the lead entity for coastal program development. The division worked with citizen groups, municipalities and state and local governments to develop an Ohio coastal management program. The division developed, and provided staff to assist in the passage of, the Ohio Coastal Management Law.

In 1987, a bill based on the previous coastal legislation and designed to fill gaps in needed authorities was introduced as Senate Bill 70. Both the House and the Senate unanimously approved S.B. 70 and submitted it to the Governor, who signed it on December 13, 1988. It became effective on March 15, 1989. The Ohio Coastal Management Law establishes a coastal management program within ODNR and creates the mechanisms for improving Lake Erie resource management. Rather than supplant existing ordinances, zoning authorities or government agencies, this program provides a framework to guide public and private activities in the coastal area. Components of the law

include defining the landward boundary of the coastal area, establishing a grant program for local communities, simplifying and consolidating various permitting activities, creating an advisory council to promote public participation in the coastal program and adopting the management program. To improve resource management, ODNR is required to identify coastal erosion areas and administer a permit system for construction within such areas, implement the Lake Erie Access Plan and administer the leasing of submerged lands.

In 1989, reports were published by both the Ohio Lake Erie Shore Area Redevelopment Task Force and the Ohio Coastal Resource Management Project Task Force. These independent groups were formed to provide a balanced perspective regarding the use of the Lake Erie resources, and their suggestions have been incorporated wherever possible within this management plan.

Water quality programs have received a significant boost in Lake Erie and the Great Lakes. On February 26, 1989, the Great Lakes Governors signed a unique environmental agreement to create the Great Lakes Protection Fund, a $100 million endowment for regional action to combat toxic pollution. It is the first regional effort of its kind. The Ohio Legislature created the Lake Erie Commission and the Lake Erie Protection Fund by amending Ohio's coastal management law in 1990. Annually, a portion of the Great Lakes Protection Fund is returned to Ohio and the other participating states. The Lake Erie Commission uses the fund to support water quality and environmental health related research, remedial action projects and other activities to establish a firm base for implementing a basinwide system of water quality management for Lake Erie and its tributaries. The Lake Erie Commission also is charged with advising the directors of Natural Resources and Environmental Protection on policies and programs related to coastal management and long-term, comprehensive protection of Lake Erie water resources and water quality that are consistent with the Great Lakes Water Quality Agreement and the Great Lakes Toxic Substances Control Agreement.

On November 5, 1990, Congress enacted the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA). Several new provisions affect Ohio's coastal management program. CZARA strengthened the CZMA by reaffirming the requirement that federal actions affecting any land or water use or natural resource of the coastal area, regardless of location, be consistent with state coastal management policies and by establishing a new, voluntary coastal zone enhancement grants program to improve the coastal management program in identified areas such as coastal wetlands, hazards, public access improvements and special area management planning. A major finding of Congress was the clear essential connection of water quality and aquatic resources protection to the nation's and the states' economic vitality and the quality of human uses of coastal areas and coastal resources. To address the impacts of nonpoint source pollution on coastal water quality, Section 6217, "Protecting Coastal Waters," provides that each state with an approved coastal management plan must develop and submit to the United States Environmental Protection Agency (USEPA) and NOAA for approval a Coastal Nonpoint Pollution Control Program. This is to serve as an update and expansion of the Ohio Nonpoint Source Management Program as well as to build upon coastal management efforts.

In September 1991, Governor Voinovich announced the establishment of a new Ohio Lake Erie Office, separate from ODNR, to assist the Lake Erie Commission in its Lake Erie protection agenda.

Located in Toledo, the Ohio Lake Erie Office enjoys proximity to organizations such as the Great Lakes Commission in Ann Arbor, Michigan, and the International Joint Commission in Windsor, Ontario. This office assists in administering Lake Erie Protection Fund grants; plays an important role in advising the Governor and the directors of relevant agencies on the development, implementation and coordination of Lake Erie programs and policies; and serves to increase representation of Ohio's interests in regional, national and international forums pertaining to resources of the Great Lakes.

In February 1992, the Ohio Coastal Management Program (OCMP) published a Public Review Draft Document that incorporated findings and policies from the earlier program development process as well as advisory council and other task force suggestions. The OCMP conducted two public hearings during May of that year in Huron and Cleveland and public meetings in Toledo and Ashtabula to provide an opportunity for comments on program policies, authorities, the coastal boundary and other aspects of the proposed program. The 1992 Public Review Draft document was then revised in 1993 to incorporate revisions in response to public and agency review and comment.

Throughout 1993, ODNR held numerous meetings with local officials, coastal area residents and other interested individuals to discuss proposed rules for enforcing a coastal erosion area permit system, preliminary coastal erosion area maps and the broader context of the Coastal Management Program. The dialogue established through these meetings clarified several issues that needed to be addressed by amendments to Ohio's Coastal Management Law. Amendments were enacted in May of 1994, and in the fall of that year ODNR began working with an external ad hoc advisory group to change previously adopted rules for designating coastal erosion areas. Following that process, ODNR filed amendments to those rules as well as the new rules for enforcing the permit system in coastal erosion areas. Work then continued in 1995 to modify this document to incorporate the coastal erosion area policy changes and to update agency authorities and policies. Chapter 11 contains specific responses to public comments received regarding the 1992 draft document and during the public involvement process conducted between 1993 and 1995.

# CHAPTER 3

# EXTENT OF THE COASTAL AREA

Ohio's coastal area is defined in the state coastal management law as "the waters of Lake Erie, the islands in the lake, and the lands under and adjacent to the lake, including transitional areas, wetlands, and beaches. The coastal area extends in Lake Erie to the international boundary line between the United States and Canada and landward only to the extent necessary to include shorelands, the uses of which have a direct and significant impact on coastal waters as determined by the director of natural resources" (O.R.C. § 1506.01(A)).

A narrative description of the boundary is located in Appendix A. Boundary maps are found in Appendix B. The scale of these maps is 1 inch equals 1 mile, except for Maps 3 and 4 for Ottawa County, the scale for which is 1 inch equals 1.13 miles. By comparing these maps to topographic maps and maps of flood hazard areas, it can be seen how the coastal area boundary conforms to natural landforms, surface waters and physical and cultural features.

## Establishing the Coastal Area Boundary

ODNR conducted an extensive examination process to determine which areas along the Lake Erie shoreline should be included within the coastal area boundary. The CZMA provided the basis for determining the coastal boundary. Section 304 of that Act defines the term "coastal zone." For areas of the Great Lakes "the zone extends, in Great Lakes Waters, to the international boundary between the United States and Canada." Further, "the zone extends inward from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact upon coastal waters." The CZMA uses the term "zone," whereas Ohio's coastal management law describes the "coastal area." Coastal area and coastal management area are the terms that will be used throughout the OCMP document.

Federal regulations pursuant to the CZMA (15 C.F.R. § 923.31) require that the inland boundary of Ohio's coastal management area include those areas for which management is necessary to control uses that have direct and significant impacts on coastal waters; special management areas; marshes and wetlands that contain flora typical of the region; beaches; transitional areas, i.e., areas subject to storm surge and areas containing vegetation that survives because of conditions associated with proximity to coastal waters, and dunes and rocky shore areas to the point of upland vegetation; and islands in their entirety, except when uses of interior portions do not cause direct and significant impacts.

In 1974, for purposes of preliminary planning and coordination, ODNR initially defined the coastal area boundary as encompassing Ohio's nine-county coastal area. Although useful for preliminary studies, such a generalization proved inadequate for detailed planning. Furthermore, lands supporting uses with no direct and significant impact on coastal waters would have been included. Coastal management staff conducted a detailed survey of both coastal resources and related issues to refine the boundary.

In 1977, after examining several approaches for inland boundary determination, ODNR proposed as a guide a boundary that would extend 1,000 meters inland from the shoreline. This area would be enlarged around critical coastal resource areas and reduced in urban and developed areas, allowing for consideration of both biophysical and cultural features.

This recommendation was presented in 1977 to county advisory groups as a guide for local determination of the inland boundary. Discussions among ODNR and the county advisory groups led to a consensus that the following uses, resources and features should serve as the basis for establishing the coastal area boundary:

- Lands subject to lake erosion;
- Lands subject to lake flooding;
- Estuaries and coastal wetlands;
- Lake-related recreation areas, including beaches;
- Activities affecting lake water quality; and
- Other areas with lake-related uses.

It was agreed that, where possible, recognizable cultural and political features should determine the boundary rather than a uniform 1,000-meter zone.

Most advisory groups formed subcommittees in 1978 to establish the boundary in their respective areas. Maps were presented for review to the full advisory committees, local government officials and county planning agencies.

In March 1989, the state coastal management law became effective, providing the statutory definition of Ohio's "coastal area" quoted above from O.R.C. § 1506.01(A) and consistent with 15 C.F.R. Subpart D. As broadly illustrated in Figure 2, the coastal area includes the Ohio waters of Lake Erie, the islands in the lake and lands adjacent to Lake Erie. The definition of coastal area in the state coastal management law reflects the consensus view developed among the county advisory groups that lake-related resources and land uses that have an impact on coastal waters should define Ohio's inland coastal area boundary.

ODNR consulted with local government, state agencies and the public after the state coastal management law went into effect in an effort to further refine the proposed coastal area boundary. ODNR prepared boundary maps based upon the above-listed criteria and the specific recommendations developed by the county advisory committees. Note that, by and large, these criteria relate to the potential for projects and activities to have an impact upon coastal waters. Also during this period of time, local water quality planning agencies, Ohio EPA and other agencies were developing Remedial Action Plans (RAPs) for each of four Areas of Concern (AOCs) designated under the 1987 Protocol Amending the Great Lakes Water Quality Agreement. These are severely polluted areas of the lower Maumee, Black, Cuyahoga and Ashtabula Rivers and the corresponding areas contributing to the pollution of coastal waters and sediments. The State of Ohio is committed to restoring and protecting water quality and beneficial uses in these coastal waters (refer to Chapter 6). ODNR included portions of these AOCs within the coastal area boundary, recognizing the poten-

# Boundary of Ohio's Coastal Area

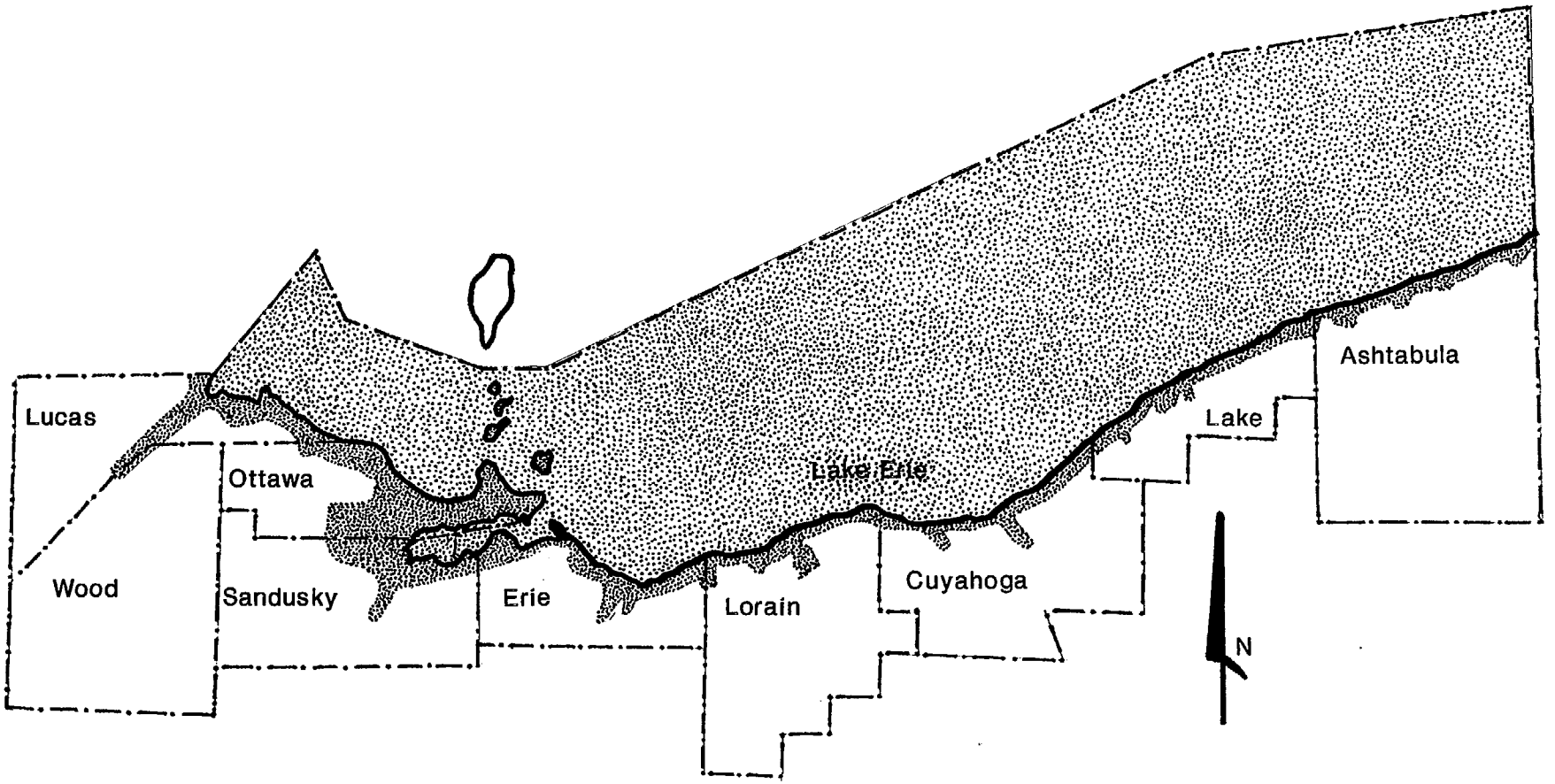


**Figure 2**

tial for direct and significant impacts on coastal waters of present and future activities and remedial actions.

Coastal area boundary maps and a narrative description were published in the Public Review Draft OCMP document in February 1992. Two public hearings and two public meetings and open houses provided additional opportunities to raise questions and make specific recommendations on the proposed boundary. Subsequent to the public review, planning agencies, local governmental officials and others provided assistance and consultation on modifications to the proposed boundary.

The boundary has been expanded to provide additional protection to the Old Woman Creek National Estuarine Research Reserve near Huron and the Mentor Marsh State Nature Preserve. The boundary has been modified where possible to coincide with the area covered under the Port Development Plan adopted by the city of Sandusky. Also, the boundary has been adjusted to include former swamp lowlands that drain to the lower Maumee at Toledo in recognition of the potential for activities to affect coastal water quality and the potential for the enhancement of wetlands in an urban setting. Other refinements to the boundary were made to ensure inclusion of Lake Erie coastal erosion areas, coastal flood hazard areas and certain tributary stream reaches where potential exists for direct and significant impacts to coastal waters.

The boundary also was adjusted to include the Swan Creek seiche area in Lucas County. This modification was made at the request of the Toledo Metropolitan Area Council of Governments (TMACOG) in its written and oral comments on the Draft Environmental Impact Statement published in August 1996.

The management area was developed in coordination with the states of Michigan and Pennsylvania to ensure a continuous coastal area boundary across state lines (15 C.F.R. § 923.34). The states of Michigan and Pennsylvania expressed confidence, following publication of the 1992 Public Review Draft document, that OCMP policies to be applied within the Ohio coastal boundary were compatible with their own state coastal management programs.

Summary Description of the Coastal Area Boundary

The inland boundary of the coastal area must be precise enough to permit a determination of whether a specific property or activity is located within the coastal management area (15 C.F.R. § 923.31(a)(8)). The inland boundary extends north-westward to the Ohio-Michigan state line and eastward to the Ohio-Pennsylvania state line. The lakeward boundary extends to Ohio's borders with Michigan, Ontario and Pennsylvania.

Coastal area maps with precise boundary lines and narrative descriptions have been developed by ODNR in conformance with the definition in state statute and consistent with the federal requirements regarding inland boundaries. The coastal area includes the above-listed uses, features and coastal resources and is defined in terms of political jurisdictions and physical and cultural features (see Appendices A and B).

The coastal area encompasses bays, embayments and tributaries to incorporate lake-influenced transitional zones and includes extensive wetlands of the western basin and other wetlands and estuarine areas of the central basin. It includes the islands and Marblehead Peninsula in their entirety. In the western basin, the coastal area extends many miles upstream on major tributaries to include the lake-influenced waters and adjacent shorelands, the uses of which may result in direct and significant impacts upon these waters. For example, it extends upstream approximately 16 miles from the mouth of the Maumee River into Lucas and Wood counties. It extends approximately 14 miles up the Sandusky River into the city of Fremont in Sandusky County. From the mouth of the Maumee River east into Ottawa and Sandusky Counties, the inland boundary ranges from almost 1 mile to several miles. This area includes extensive coastal wetlands, lands subject to coastal flooding and lands along many major and minor lake-influenced tributaries.

Moving eastward into Erie County, the transition to the central basin becomes evident where the coastal area boundary becomes more constricted. From the mouth of the Huron River in the port city of Huron, it follows several miles of the Huron River and includes adjacent wetlands, floodplain areas and adjacent shorelands. Erie County begins to show higher relief and less expansive lake-influenced areas and areas subject to coastal flooding. The inland boundary ranges from 2 miles to about an eighth of a mile or less, with certain areas extending farther landward along tributary streams and associated shorelands. The coastal area surrounds the Old Woman Creek National Estuarine Research Reserve east of the city of Huron.

Continuing east through the central basin into Lorain, Cuyahoga, Lake and Ashtabula Counties, the coastal area extends inland on average from about one-eighth mile to one-quarter mile, but continues to incorporate lake-influenced tributaries, embayments, wetlands and estuarine areas. Eastward to the Pennsylvania border, the coastal area generally follows the higher bluffs and is extended landward primarily to incorporate coastal erosion and flood hazard areas. The Mentor Marsh wetlands system in Lake County also is incorporated. In urban areas, the coastal boundary is generally less than one-half mile from the shore.

The OCMP management area incorporates all coastal erosion areas as defined in 1996 pursuant to O.R.C. § 1506.06 and O.A.C. 1501-10 through 1501-13 (see Chapter 5, Policy 1). Because the line that defines these areas moves landward as bluff recession occurs, the coastal management boundary likewise will continue to move landward, where necessary, to ensure continued inclusion of coastal erosion areas. Such changes in the coastal boundary will occur in the limited areas where the two boundaries coincide, and the coastal boundary will extend no farther than the coastal erosion area, as adjusted.

The coastal management area is subject to all management policies and federal and state consistency requirements. Federal lands that are owned, leased, held in trust by, or whose use is otherwise subject solely to the discretion of the federal government are excluded from the coastal area boundary as shown in Appendix B. (The federal areas located on the Appendix B maps are not precisely to scale. The maps merely identify the location of such excluded areas and should not be construed to exclude any areas other than those federal lands to be excluded as stated above.) Appendix P provides a list of all such properties in Ohio's coastal area.

# CHAPTER 4
# PROGRAM ORGANIZATION

This chapter contains four sections. Section 1 describes the administrative infrastructure of the State of Ohio, its key departments and the institutional framework within which coastal area activities are regulated and managed.

Section 2 describes the specific authorities through which the OCMP is implemented.

Section 3 details the institutional relationships and coordination mechanisms that ensure effective implementation of the program at the state and local level.

Section 4 describes the mechanisms for achieving state consistency. This discussion follows program implementation in the setting of permits, grants, state development projects and general enforcement of other provisions of O.R.C. § 1506.01 et seq.

## SECTION 1. ADMINISTRATIVE STRUCTURE TO IMPLEMENT THE OHIO COASTAL MANAGEMENT PROGRAM

The State of Ohio has numerous departments that exercise statewide jurisdiction over activities, some of which occur within, or affect resources of, Ohio's coastal area. Coastal area projects are developed, financially assisted or regulated in accordance with the authorities and police powers of the executive agencies. This section describes the general statewide authority exercised by these departments as well as the authority of local governments and special districts.

### The Governor, the Cabinet, and the General Authority of the State

The executive branch of Ohio's government consists of six elected officials: the Governor, Lieutenant Governor, Attorney General, Secretary of State, Auditor of State and Treasurer of State. In addition, the executive branch includes the departments or agencies responsible for administering state law and policy in major areas such as Ohio's natural resources.

As head of the executive branch, the Governor coordinates all of the agencies in the state's executive department, oversees preparation of the budget and supervises state programs. The composition of the Governor's Cabinet varies from administration to administration, but generally includes department directors and others selected by the Governor.

The majority of laws enacted by the General Assembly are implemented by the administrative departments. The Governor appoints the heads of these agencies, who serve at the Governor's pleasure. While there is no rigid pattern for the structure of a department, most departments function through the collective efforts of their divisions' assigned duties. Division heads are usually appointed by and are responsible to the director of the department.

Major State Agencies

Major state agencies that regulate, fund and/or generate activities that occur within or could affect coastal areas include:

***Department of Natural Resources***

As the state of Ohio's umbrella agency responsible for development, conservation and wise use of the state's natural resources, the Ohio Department of Natural Resources (ODNR) is the designated agency for development and implementation of the OCMP. ODNR possesses the organizational structure and processes necessary to improve the coordination, integration, predictability and efficiency of governmental decision making related to coastal management.

The state coastal management law embodied in O.R.C. Chapter 1506 empowers the Director of Natural Resources with broad authorities to cooperate with other agencies of the state and its political subdivisions, to adopt rules for the implementation, centralized administration and enforcement of the OCMP and to provide coastal management assistance grants awarded from federal and state funds for coastal management purposes. With the enactment of the state coastal management law, ODNR's director delegated responsibility for the program development and administration to the Division of Real Estate and Land Management (REALM). Section 3 of this chapter provides details regarding REALM's responsibility for administering the OCMP and implementing specific provisions of Ohio's coastal management law.

ODNR's divisions and offices carry out the statutory requirements of ODNR with the approval of the director and advice of many boards and councils. ODNR's headquarters is located in Columbus, and numerous field offices and facilities of various divisions are located in the coastal area. Fourteen divisions carry out ODNR's statutory responsibilities with respect to coastal area resource management:

- The **Division of Real Estate and Land Management**, in addition to administering the coastal management program, is responsible for comprehensive recreation planning; master land-use planning for lands under the jurisdiction of ODNR; conducting ODNR's interdisciplinary environmental review process; administering the state NatureWorks local park grant program, the National Recreational Trails Fund and the federal Land and Water Conservation Fund Program; acquiring real property; coordinating the Statewide Trails Program; managing property including Lake Erie submerged lands and canal lands; and administering the submerged lands preserves program and the permit program for salvaging submerged abandoned property. The division will be responsible for implementing a permit system for construction of new permanent structures in coastal erosion areas following final designation of those areas. The division also operates the Ohio Capability Analysis Program (OCAP), a computerized natural resources geographic information system; inventories and maps

soil resources; conducts land planning courses for local officials; and obtains and analyzes aerial photographs and satellite imagery for a variety of land use applications.

- The **Division of Geological Survey** locates, maps and analyzes the geologic, mineral and fossil fuel resources of the state. This division also counsels citizens, government and industry on geologic matters. The division's Lake Erie Geology Group conducts coastal investigations and research on coastal erosion, sedimentation, wetlands, hydrology and habitat within Lake Erie and the Lake Erie watershed. This Group provides geological information and technical assistance to coastal constituents and agencies and provides educational opportunities through workshops, field trips and student internships. The Lake Erie Geology Group is responsible for identifying and mapping coastal erosion areas and monitoring the extraction of sand and gravel resources from the bed of Lake Erie. The Division operates two research vessels on Lake Erie and has specialized sampling and geophysical surveying equipment for use on Lake Erie.

- The **Division of Wildlife** manages and protects the wildlife of the state, provides hunting and fishing areas, stocks fish and wildlife, enforces hunting, fishing and trapping regulations, conducts fish and wildlife management research, administers the state endangered species law, acquires and manages wetlands and other habitats for wildlife conservation purposes and administers a program to protect and restore nongame and endangered species. Areas and facilities managed by the division within the coastal area are Magee Marsh, Metzger Marsh, Pickerel Creek, Portage River, Put-In-Bay Hatchery Aquatic Resource Education Center, Toussaint Creek, Dempsey's Lake Erie Access Area, Green Island, Little Portage River Access, Mallard Club Marsh, West Harbor Refuge, Pipe Creek, Mazurik Lake Erie Access Area, Honey Point and Willow Point. The division also maintains three wildlife production areas as well as Crane Creek Experiment Station on Lake Erie. The station is devoted to wetlands research, waterfowl management and restoration of habitat important to North America waterfowl and other wetland dependent wildlife. The division's Lake Erie Fish Research Units in Sandusky and Fairport Harbor produce basic data and undertake special investigations to support Lake Erie fisheries management.

- The **Division of Engineering** provides professional and technical, engineering and related administrative support services required by ODNR in improving, using and managing its properties and associated resources. The division serves as the principal representative of the director in all aspects of engineering, planning, designing, contracting, surveying, inspecting and managing ODNR's construction and capital improvements projects. The division issues permits for construction of erosion control structures and provides technical assistance pertaining to erosion control. In cooperation with the Division of Geological Survey, the division is authorized to prepare Ohio's plan for the management of shore erosion along Lake Erie.

- The **Division of Water** has broad responsibilities for managing Ohio's surface and groundwater resources. The division collects hydrologic data; develops groundwater resources and pollution potential maps; issues permits for the construction of dams, dikes and levees; inspects existing dams; operates the state canal systems; administers the state floodplain management program; and conducts water supply studies. The division develops the state's floodplain management requirements (minimum standards) for development undertaken by state agencies and works with coastal communities to ensure that local flood hazard regulations are being understood and implemented.

- The **Division of Natural Areas and Preserves** is responsible for acquisition and management of natural areas of the state and for the scenic river preservation program. The division administers the state endangered plant law and maintains the state's Natural Heritage Database on the occurrences of rare plant and animal species, unique geologic areas and other locations of special interest. This division cooperates with local governments, special districts and independent organizations, some of which own and manage areas dedicated within the state nature preserve system. The division also administers and manages ODNR's coastal wetlands research and educational programs through a cooperative state/federal partnership with the National Estuarine Reserve Research System. This program is headquartered in the Ohio Center for Coastal Wetlands Research facility at Old Woman Creek National Estuarine Research Reserve (OWC-NERR). Coastal preserves and facilities managed by the division are Sheldon Marsh, Dupont Marsh, Mentor Marsh, Headlands Dunes, Lakeside Daisy-Colleen "Casey" Taylor and Ruth E. Fiscus and Old Woman Creek National Estuarine Research Reserve.

- The **Division of Parks and Recreation** is responsible for developing and managing Ohio's state park system. State parks within the coastal area are Cleveland Lakefront, Crane Creek, Geneva, Headlands Beach, East Harbor, Lake Erie Islands and Maumee Bay.

- The **Division of Soil and Water Conservation** provides technical and financial assistance and program guidance to Ohio's 88 local soil and water districts. It sets agricultural pollution control and urban sediment pollution abatement standards and coordinates their local implementation. The division administers the NatureWorks funding for pollution control and the nonpoint source management program within ODNR.

- The **Division of Watercraft** administers registration, operation and safety laws for all watercraft using Ohio's waterways; operates a watercraft safety program; and assists communities in developing boating facilities. The division also administers the NatureWorks Lake Erie access local grants program.

- The **Division of Oil and Gas** regulates all oil and gas field operations to protect the resource base, the environment and public safety.

- The **Division of Recycling and Litter Prevention** administers a statewide litter control and recycling program and makes grants to local governments for specific local litter control projects.

- The **Division of Civilian Conservation Corps** conducts conservation work projects from several centers throughout the state.

- The **Division of Forestry** protects and manages Ohio's state forests and provides technical assistance to landowners on sound forest management.

- The **Division of Mines and Reclamation** regulates the mining and reclamation of coal and industrial minerals and enforces a mine safety program. Industrial mineral operations within the coastal area are regulated by this division.

***Environmental Protection Agency***

The Ohio Environmental Protection Agency (Ohio EPA) has authority to regulate air and water pollution, solid and infectious waste disposal, hazardous materials management, sewage treatment and public water supply facilities and water quality planning. Ohio EPA is also responsible for water quality planning, pollution prevention programs and waste minimization planning. For Ohio EPA administrative purposes, the state is divided into five districts. District offices at Bowling Green in Wood County, and at Twinsburg in Portage County, serve the western and eastern areas of Lake Erie, respectively. Major policy decisions and oversight for Lake Erie programs and regulatory functions are coordinated from Ohio EPA's Central Office in Columbus.

Seven divisions located in the Central Office as well as the district offices carry out Ohio EPA's regulatory authorities:

- The **Division of Air Pollution Control** ensures that clean air standards set by USEPA pursuant to the 1970 Clean Air Act and its 1990 amendments are met throughout Ohio. Division services that contribute to that enforcement include surveillance, monitoring, inspection, evaluation of new sources and permit applications, emissions inventorying, litigation support, and technical assistance to industry and the public.

- The **Division of Drinking and Ground Waters** works to assure an adequate supply of safe drinking water through implementation of the 1974 Federal Safe Drinking Water Act and its amendments. The division regulates public water supply systems and maintains and interprets ground water data in support of other Ohio EPA activities.

- The **Division of Emergency and Remedial Response** oversees investigation and cleanup work at abandoned and unregulated hazardous waste sites; works with U.S. EPA to oversee superfund site cleanup; provides assistance to communities and industries during spills and other environmental accidents; oversees the treatment, storage and disposal of PCBs through a federal grant; administers the Right-to-Know Program for the State Emergency Response Commission; regulates the cessation of regulated operations; and conducts criminal investigations of improper handling and disposal of hazardous wastes.

- The **Division of Hazardous Waste Management** provides "cradle-to-grave" regulation of hazardous wastes, which includes monitoring and permit enforcement of generation, transport and disposal in compliance with state and federal rules.

- The **Division of Solid and Infectious Waste Management** regulates the disposal of solid waste, construction and demolition waste, and infectious waste through facility permits and construction oversight inspections, complaint investigation, local solid waste management plan review, and landfill closure plan review.

- The **Division of Surface Water** works to meet the objectives of the Federal Clean Water Act (CWA) by issuing permits for treated stormwater and wastewater discharge, monitoring and enforcing permit compliance, and overseeing the treatment of industrial wastewaters before discharge into public sewage treatment systems. The division also establishes water quality standards, determines whether Ohio streams and lakes meet the requirements of the CWA and conducts detailed water quality studies. Wetland-related activities, development and implementation of Remedial Action Plans for the Cuyahoga, Maumee, Black and Ashtabula rivers, toxics monitoring and evaluation; and nonpoint source pollution monitoring and projects are coordinated by the division.

  Other Ohio EPA programs located only in the Central Office have relevance to coastal area environmental quality responsibilities. The Division of Environmental and Financial Assistance administers the Ohio Water Pollution Control Loan Fund for municipal wastewater facilities construction and control of nonpoint source pollutants, pursuant to Title VI of the CWA. The Pollution Prevention Section works with agency divisions to integrate pollution prevention concepts into agency policy and regulations. The Environmental Education Fund awards grants for projects to increase awareness and understanding of environmental issues.

### *Department of Health*

The Ohio Department of Health (ODH) has legislative authority for plan approval including location, construction and development of all marinas, campgrounds, manufactured home parks and swimming pools. ODH further works in concert with other

state agencies and local health departments to ensure proper licensure and sanitation of the above-mentioned areas.

ODH is also the coordinating agency for collection of bathing-beach water samples, regulation of private drinking water systems, posting of swimming advisories and administration of Clean Vessel Act grants. The department is responsible for issuing fish tissue consumption advisories, working in conjunction with Ohio EPA and ODNR.

***Department of Development***

The Ohio Department of Development (ODOD) administers federal community development programs and other state and federal financial assistance and service programs. ODOD's Office of Local Government Services administers the federal Community Development Block Grant program to promote community and economic development in small cities and nonurban counties.

***Department of Transportation***

The Ohio Department of Transportation (ODOT) plans, builds and maintains a safe, efficient, accessible transportation system that integrates highway, transit, rail, air and water networks to foster economic growth and personal travel.

***Department of Agriculture***

The Ohio Department of Agriculture (ODA) enforces state agricultural laws and regulations governing the production, handling, distribution and marketing of agricultural products.

***Historic Preservation Office***

The Ohio Historic Preservation Office (OHPO) is the historic preservation agency of the State of Ohio. OHPO determines compliance with provisions of the National Historic Preservation Act of 1966. OHPO identifies historic places and archaeological sites; nominates eligible properties to the National Register of Historic Places; reviews rehabilitation work on income-producing National Register properties for federal investment tax credits; monitors federally-assisted projects for effects on historical, architectural and archaeological resources; consults on conservation of buildings and sites; and offers educational programs and publications. OHPO is a division of the Ohio Historical Society (OHS), whose functions include maintaining archaeological and historic sites, registering landmarks, and operating museums and a research library.

Boards, Commissions and Authorities

Among Ohio's Boards, Commissions and Authorities, several have jurisdiction affecting activities in the coastal area:

***Lake Erie Commission***

The Lake Erie Commission consists of the directors of ODNR, Ohio EPA, ODOD, ODH, ODOT and ODAG. The commission meets quarterly or more frequently and is responsible for (1) ensuring coordination of water quality, toxic pollution control and resource protection policies and programs, (2) reviewing and making recommendations regarding management of Lake Erie water resources consistent with the Great Lakes water quality and toxic substances control agreements, (3) recommending modifications to the coastal management program, (4) implementing the Great Lakes and Lake Erie protection funds, (5) ensuring a basin-wide approach to lake issues, (6) enhancing Ohio's representation in state, regional, national and international forums regarding lake issues, and (7) promoting education regarding wise management of Lake Erie resources.

The Ohio Lake Erie Office was created to assist the commission in its efforts. The office is located in Toledo, Ohio. The executive director reports to the chair of the commission and serves as secretary for the commission. The Lake Erie Office performs functions important to coastal management, including: (1) assisting the commission in administering grants from the Lake Erie Protection Fund, (2) advising the governor and directors of relevant departments and agencies on the development, implementation and coordination of Lake Erie programs and policies, and (3) increasing representation of Ohio's interests in regional, national and international forums pertaining to resources of the Great Lakes.

***Port Authorities***

There are 11 port authorities on Lake Erie: Toledo-Lucas County, Vermilion, Huron, Put-in-Bay, Kelleys Island, Lorain, Cleveland-Cuyahoga County, Chagrin River, Fairport Harbor, Ashtabula and Conneaut. O.R.C. Chapter 4582 authorizes any county, municipal corporation or township to establish a port authority. With almost $18 billion in annual exports from Ohio, these authorities play an important role in international trade. Port authorities also work cooperatively with federal, state and local governments, and the Army Corps of Engineers in activities including harbor development and maintenance, waterfront development, redevelopment and rehabilitation.

***Hazardous Waste Facility Board***

The Hazardous Waste Facility Board (HWFB) determines whether applications for new hazardous waste facilities should be granted or denied according to criteria established in Ohio law. The HWFB is composed of the Director of Ohio EPA, the Director of ODNR,

the Chairman of the Ohio Water Development Authority, a chemical engineer and a geologist employed by a state university.

### *Environmental Review Appeals Commission*

The Environmental Review Appeals Commission (ERAC) is an appellate review board that hears appeals of decisions of the Ohio EPA Director regarding regulations and the issue and renewal of licenses, permits and pollution control certification. The ERAC also hears appeals of Board of Health actions regarding Solid Waste Facility licenses.

### *Power Siting Board*

The Power Siting Board is a seven-member board that rules on the siting of major power generation and transmission facilities in the State of Ohio by issuing or denying certificates unless the activity is regulated under interstate commerce by the Federal Energy Regulatory Commission. The Director of ODNR and the Director of Ohio EPA serve as members of the Board.

### *State and Local Government Commission*

The State and Local Government Commission serves as a forum for discussion and resolution of issues affecting state, local and federal governments. It studies relationships among levels of government in terms of the division of responsibility in providing public services. Thirteen members comprise the commission, with the Lieutenant Governor serving as chairperson. The commission is required to recommend to the governor and General Assembly any legislation or constitutional amendments that would resolve identified problems.

### *Water Development Authority*

The Ohio Water Development Authority is an independent agency that provides financing to local governments for water, sewer, solid waste and energy projects by issuing revenue bonds to be retired with fees from the projects. The directors of Ohio EPA, ODNR and ODOD serve on the seven-member authority.

### *Ohio Commission on Dispute Resolution and Conflict Management*

The Ohio Commission on Dispute Resolution and Conflict Management (OCDRCM) is charged with helping agencies and individuals learn practical ways to solve disputes. OCDRCM was the first commission in the nation to be sponsored jointly by all three branches of state government and to serve as a statewide resource for dispute resolution and conflict management information and referrals.

Local Agencies

The following are the local, county and regional entities that control or affect activities in the coastal area:

***Municipalities***

The form and powers of municipalities in Ohio are specified in the Ohio Constitution and the Ohio Revised Code. In general, municipalities provide the services associated with local government: police and fire protection, water supply, traffic control, zoning and building permits, and public health regulation and sanitation. A municipal corporation is classified as a city if its population exceeds 5,000, otherwise, an incorporated municipality is called a village. "Any municipality may frame and adopt or amend a charter for its government and . . . exercise thereunder all powers of local self-government," according to Article XVIII, Section 7, of the Ohio Constitution. It is under this home rule authority that cities and villages may adopt charters that vary their form of government from that provided under the general laws of the State of Ohio.

Municipalities with coastal flood hazard areas contribute to implementation of the OCMP by participation in the National Flood Insurance Program (NFIP) and enforcement of ordinances which meet or exceed standards required for such participation (see Policy 3). Municipalities additionally may elect to adopt and enforce ordinances to administer the OCMP permit for construction of permanent structures in Lake Erie coastal erosion areas (see Policy 1).

***Townships***

Townships in Ohio are divisions of the counties that exercise only those powers specifically delegated to them by the General Assembly, including the power to levy taxes. Townships are governed by a three-member board of trustees. Township responsibilities include road maintenance, police and fire protection, zoning and cemetery management.

***Counties***

The county is the major local subdivision of the state. Counties have been created to serve as agencies for the administration of state law. The major difference between a county and a municipality is that a municipality is created by the state upon the request of the people living within it for their interest and advantage, but a county is created by the state in order to carry out state policy. The people of the county must adopt a charter in order for the county government to exercise such broad powers.

Counties with coastal flood hazard areas contribute to implementation of the OCMP by participation in the National Flood Insurance Program (NFIP) and enforcement of ordinances that meet or exceed standards required for such participation (see Policy 3).

Counties additionally may elect to adopt and enforce ordinances to administer the OCMP permit for construction of permanent structures in Lake Erie coastal erosion areas (see Policy 1).

***Special Districts***

Ohio law has authorized the creation of a variety of special districts to serve specific governmental purposes. A special district is not a part of another governmental unit but is a unit in and of itself. It has an independent budget and means of financing. Examples of special districts include conservancy districts, park districts, solid waste management districts, joint recreational districts, port authorities, regional water and sewer districts, soil and water conservation districts, joint economic development zones, general health districts and city health districts.

***Local Health Departments***

Local health departments may operate at the municipal or county level under a city health district board, general health district or combined district board of health. They serve a broad spectrum of health-related functions. Examples of the health department actions that may affect activities in the coastal area include enforcing regulations for private water systems and household sewage disposal systems, conducting bathing-beach water quality sampling programs, and licensing manufactured home parks.

Regional Planning Agencies

County-wide and regional planning agencies also provide input on coastal management policy development and implementation. These agencies also serve an important coordinating function for the OCMP on issues of common interest among local jurisdictions in the coastal area. Regional planning agencies in the coastal area are the Toledo Metropolitan Area Council of Governments (TMACOG) and the Northeast Ohio Areawide Coordinating Agency (NOACA). Each serves as the local clearinghouse for the intergovernmental review of federal assistance applications coordinated by the State Clearinghouse. The Ashtabula County Planning Commission and the Erie County Regional Planning Commission perform planning and intergovernmental review services for Ashtabula and Erie County, respectively. TMACOG and NOACA are involved in water quality planning and the development of Remedial Action Plans (RAPs) for the Maumee River and Cuyahoga River Areas of Concern (AOCs).

## SECTION 2. IMPLEMENTATION AUTHORITIES

The primary state statutory authority for implementation of the OCMP is O.R.C. Chapter 1506, which incorporates coastal management law into O.R.C. Title 15, Conservation of Natural Resources. By definition in O.R.C. § 1506.01(B), the OCMP is " . . . the comprehensive action of the state and its political subdivisions cooperatively to preserve, protect, develop, restore, or enhance

the resources of the coastal area and to ensure the wise use of the land and water resources of the coastal area . . . ." O.R.C. § 1506.02 designates ODNR as the lead agency for the development and implementation of the OCMP. This statute requires the director of ODNR to develop and adopt the coastal management program document and to administer the OCMP in accordance with the program document, O.R.C. Chapter 1506, and administrative rules adopted under it. O.R.C. Chapter 1506 is contained in its entirety in Appendix C.

As an overview of authorities to manage activities in the coastal area, the following identifies ODNR's responsibilities derived from O.R.C. Chapter 1506 and additional state statutory authorities to implement Ohio's coastal management policies. The authorities are organized into nine issue areas that correspond to those described in Chapter 5, Management Policies, and include both enforceable and enhancement authorities as described in that chapter.

Coastal Erosion and Flooding

- Delineate 30-year Coastal Erosion Areas (O.R.C. § 1506.06, O.A.C. § 1501-6-10 to 1501-6-13)
- Enforce rules regulating new structures in Coastal Erosion Areas (O.R.C. § 1506.07, O.A.C. § 1501-6-21 to 1501-6-28)
- Require owners of property in Lake Erie Coastal Erosion Areas to notify buyers of the land's status prior to any transaction (O.R.C. § 1506.06)
- Allow local authorities to adopt regulations in compliance with O.R.C. § 1506.07 (O.R.C. § 307.37 and O.A.C. 1501-6-27)
- Administer a permit process for construction of erosion control structures (O.R.C. § 1507.04)
- Provide financial assistance for erosion and flood control projects (O.R.C. § 1507.06)
- Provide technical assistance for erosion control projects (O.R.C. § 1507.10)
- Cooperate with the Secretary of the Army, acting through the chief of engineers of the U.S. Army Corps of Engineers in conducting studies of Lake Erie shorelines and methods of arresting shore erosion and resulting damage (O.R.C. § 1507.02)
- Enforce compliance by local governments with the National Flood Insurance Program (NFIP) (O.R.C. § 1506.04, O.A.C. 1501:22-1-01 to 1501:22-1-08)
- Require that state-funded and financed developments comply with the NFIP and that when state regulatory jurisdiction preempts local regulations, ensure that the development

complies with the NFIP before granting a permit, license or authorization (O.R.C. § 1521.14)

- Prohibit financial disaster assistance within noncompliant counties and municipalities (O.R.C. § 1521.14)

- Require that all state agencies and political subdivisions consult with ODNR, Division of Water, regarding avoidance of uneconomic, hazardous or unnecessary use of floodplains for public facilities (O.R.C. § 1521.14)

- Regulate design and construction of dams, dikes and levees (O.R.C. § 1521.06 et seq., O.A.C. 1501:21)

Water Quality

- Assure attainment of State Water Quality Standards (O.R.C. Chapters 3734, 3745, 6111 and 6121, O.A.C. 3745-1)

- Control discharges into waters of the state by requiring permits to construct facilities and by establishing and enforcing effluent limitations under the national pollutant discharge elimination system (O.R.C. § 6111.03, O.A.C. 3745-31 and 3745-33)

- Administer a permit system to control injection well drilling in compliance with the "Safe Drinking Water Act" and the CWA (O.R.C. § 6111.043 and 6111.0444, O.A.C. Chapter 3745-34)

- Regulate discharge of dredge or fill material in accordance with Section 401 of the Clean Water Act (O.R.C. § 6111.03, O.A.C. Chapter 3745-32)

- Establish uniform regulations regarding solid waste disposal sites and facilities (O.R.C. 3734.02 and 3734.05, O.A.C. 3745-50 through 58, 3745-63, -65 and -69)

- Prohibit the sale or distribution for sale of phosphorus-containing household laundry detergents in the Lake Erie basin (O.R.C. § 6111.10)

- Prepare a state water quality management plan to assess technical needs for pollution control and institutional mechanisms to enforce controls (O.R.C. § 6111.41 and 6111.42)

- Administer a state revolving loan fund program to provide financial assistance for publicly owned wastewater treatment facilities (O.R.C. § 6111.03 and 6121.03)

- Provide financial support for research and pollution abatement projects (O.R.C. § 1506.23)

- Coordinate policies and programs pertaining to Lake Erie water quality through the Lake Erie Commission (O.R.C. § 1506.21)

- Promote soil and water conservation and prevention of agricultural and urban sediment pollution (O.R.C. Chapters 1511 and 1515, O.A.C. 1501:15-5)

- Provide financial and technical assistance for soil and water conservation purposes (O.R.C. § 1515.02)

- Implement the Ohio Nonpoint Source Management Program through a broad matrix of authorities

- Require emergency planning to prevent and contain environmental contaminant releases (O.R.C. Chapter 3750)

- Provide emergency response to spills (O.R.C. Chapters 6111 and 3750)

- Supervise the design, construction and operation of public water supply systems (O.R.C. § 6109.07, O.A.C. 3745-81 through 83, and -85, -89, -91, -92, -95 and -99)

- Administer the state Safe Drinking Water Act (O.R.C. Chapter 6109, O.A.C. 3745-81 and -82)

- Regulate construction and operation of water supply and wastewater disposal systems (O.R.C. § 3701.04, 6111.03, 6109.07, and O.A.C. 3745-9)

- Regulate underground hazardous and petroleum materials storage facilities and above-ground hazardous waste storage (O.R.C. § 3737.87, 3737.88, 3737.881, 3737.882 and O.A.C. 1301:7-9 and 3745-54)

- Regulate oil, gas, coal and mineral operations (O.R.C. Chapter 1509, 1513 and 1514, O.A.C. 1501-9-1, -3, -5, -7 and -9 through -11)

- Regulate subsurface injection of brine and other wastes associated with oil and gas operations (O.R.C. § 1509.22)

Ecologically Sensitive Resources

- Regulate wetland development activities through water quality standards, including the antidegradation policy, and Ohio EPA's Section 401 Water Quality Certification (O.R.C. § 6111.03(O) and 6111.03(P), O.A.C. 3745-1 and 3745-32)

- Minimize adverse impacts to wetlands in carrying out state agency responsibilities (Executive Order 90-68)

- Acquire, protect and restore coastal wetlands (O.R.C. § 1501.01, O.R.C. Chapters 1517, 1531 and 1541)

- Acquire, protect and manage state nature preserves (O.R.C. § 1517.05 and 1517.06. O.A.C. 1501:17

- Protect habitat of rare and endangered species (O.R.C. § 6111.03(O), 6111.03(R), O.A.C. 3745-1-05(C))

- Restrict the taking and possession of threatened native animal species (O.R.C. § 1531.25 and 1531.99, O.A.C. 1501:31)

- Restrict the taking, removal, transportation and sale of endangered or threatened native plant species (O.R.C. § 1518.02, O.A.C. 1501:18)

- Regulate the sale of purple loosestrife (O.R.C. § 927.682)

- Regulate the importation, sale and possession of exotic species of fish (O.A.C. 1501:31-19-01)

Ports and Shoreline Development

- Protect the public trust in Lake Erie waters and underlying lands through submerged lands leasing program (O.R.C. § 1506.10 and 1506.11 and O.A.C. § 1501-6-01 through 1501-6-06), submerged lands preserves (O.R.C. § 1506.31) and permits for salvage and alteration of submerged abandoned property (O.R.C. § 1506.32)

- Regulate the discharge and disposal of dredged material (O.R.C. § 6111.03(P) and O.A.C. 3745-1)

- Regulate commercial dredging of mineral resources (O.R.C. § 1505.07)

Recreational and Cultural Resources

- Protect public access rights through submerged lands leasing program (O.R.C. § 1506.11 and O.A.C. § 1501-6-01 through 1501-6-06)

- Provide for public access within the state nature preserve system and state parks system (O.R.C. § 1517.05 and O.R.C. Chapter 1541, O.A.C. 1501:17 and 1501:41)

- Prepare, maintain and update a Lake Erie public access facilities inventory; assess needs and prepare plans and policy recommendations to increase public access (O.R.C. § 1506.05)

- Provide grants for public access improvements (O.R.C. § 1506.02 and 1506.05)

- Protect historically and archaeologically significant resources and abandoned submerged property (O.R.C. § 149.55, 149.51, 149.56, 1506.31 and 1506.32, O.A.C. 149-1-02)

- Regulate watercraft safety (O.R.C. Chapter 1547)

- Require licensure of hunters, trappers and fishermen and provide hunter and trapper education (O.R.C. § 1533.10, 1533.111 and 1533.32, O.A.C. 1501:31)

- Conduct a watercraft safety and education program (O.R.C. § 1547.52 and 1547.521)

- Administer the refuge harbor program jointly with the U.S. Army Corps of Engineers (O.R.C. § 1547.71)

Fish and Wildlife Management

- Require hunter safety and trapper education courses (O.R.C. § 1533.10 and 1533.111, O.A.C. 1501:31)

- Regulate the taking of fish (O.R.C. § 1531.08 and O.A.C. 1501:31) and wildlife (O.R.C. Chapter 1533 and O.A.C. 1501:31)

- Protect all wildlife, including nongame and endangered species (O.R.C. § 1531.02, 1531.08 and 1531.25, O.A.C. 1501:31)

- Establish state wildlife areas (O.R.C. Chapter 1531.06, O.A.C. 1501:31)

- Investigate water pollution, fish kills and stream litter (O.R.C. § 1531.29 and 1531.02)

- Protect fish habitat (O.R.C. § 1531.29 and 6111.03, O.A.C. 3745-27-01 and 3745-1)

- Acquire and develop fishing access areas (O.R.C. 1531.06)

Environmental Quality

- Attain and maintain National Ambient Air Quality Standards (O.R.C. Chapters 3745, 3706, and 5709 and O.A.C. 3745)

- Regulate hazardous, solid and infectious waste facilities (O.R.C. Chapter 3734, O.A.C. 3745)

- Enforce requirements of the Resource Conservation and Recovery Act (RCRA) and Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (O.R.C. Chapter 3734, O.A.C. 3745-50 through 58, 3745-63 and 3745-65 through 69)

- Establish long-range solid and hazardous waste management plans and hazardous waste pollution prevention plans (O.R.C. Chapter 3734, O.A.C. 3745-52-20, 3745-54-73, 3745-54-75, 3745-34-04)

- Regulate marina construction (O.R.C. § 3733.22 and 3733.24, O.A.C. 3701-35)

- Prohibit dumping of litter (O.R.C. § 3767.32)

Energy and Mineral Resources

- Require certification of major utility facilities (O.R.C. Chapter 4906, O.A.C. 4906)

- Require 10-year demand, resource and site inventory forecasts for energy generation and transmission activities (O.R.C. § 4935.04, O.A.C. 4901:5)

- Regulate storage of energy related resources (coal, oil and gas) (O.R.C. § 4906.06, O.A.C. 4906)

- Regulate oil and gas extraction (O.R.C. § 1509.02 and O.A.C. 1501:9)

- Regulate removal of minerals and other substances from Lake Erie and under its lake bed (O.R.C. § 1505.07)

- Regulate surface mining activities (O.R.C. Chapter 1514 and O.A.C. 1501:14-1 through 1501:14-4)

Water Quantity

- Regulate water diversions from Lake Erie (O.R.C. § 1501.30 through 1501.32 and O.A.C. 1501-2-01 through 1501-2-10); coordinate with Great Lakes states and provinces regarding certain such regulatory actions (O.R.C. § 1503.32)

- Require large facilities to register capacity and submit annual withdrawal reports (O.R.C. § 1521.16)

- Develop and implement a long- range water resources plan for the Lake Erie Basin (O.R.C. § 1521.15)

- Develop regional water management plans (O.R.C. § 1521.03)

- Require the filing of well logs (O.R.C. § 1521.05)

- Assist in ground water conflict resolution (O.R.C. § 1521.03(E)) and designate ground water stress areas (O.R.C § 1521.16(B))

## SECTION 3. ORGANIZATIONAL STRUCTURE OF THE OHIO COASTAL MANAGEMENT PROGRAM

### The Role of the Division of Real Estate and Land Management

The Division of Real Estate and Land Management (REALM) is organized to serve the director and ODNR in carrying out certain mandates of state and federal law including Lake Erie coastal area management. Tables of Organization for ODNR and REALM are illustrated in Figures 3 and 4, respectively.

REALM contains six sections: Coastal Management, Land Management, Real Estate, Resource Analysis, Administration, and Facilities Management. The programs operating within these sections work in an integrated management setting. REALM conducts department-wide planning, environmental review coordination, real estate management, administration of the federal Land and Water Conservation Fund and state NatureWorks local park grant program, land capability analysis and remote sensing, capital improvements planning, comprehensive recreation planning and master planning for ODNR lands. The office has focused on integrated management to address ODNR's priority programs and to assist in implementing the specific strategic plans of ODNR's divisions.

The staff and technical resources of the Land Management, Resource Analysis and Real Estate Sections help support the Coastal Management Section. An Assistant Attorney General provides legal advice and assistance in rulemaking, and in regulatory or contractual actions. An Assistant Attorney General has assisted the Coastal Management Section in reviewing proposed OCMP authorities and policies and will assist in mediating disagreements between federal agencies and ODNR regarding consistency of federal actions with the policies of the OCMP.

REALM is charged with specific responsibilities in developing and implementing the OCMP. The following are REALM's coastal management responsibilities, some of which are keyed to corresponding policies in Chapter 5:

> Coastal Management Program Administration. REALM is responsible for coordinating the development of rules for the implementation, administration and enforcement of the OCMP and for preparing and amending the OCMP document. The Coastal Management Section prepares the program budget, uses state and federal funds to support program activities and provides grants for a wide range of coastal-related projects. Staff are responsible for coordinating with all ODNR divisions and state agencies networked in the OCMP. The Coastal Management Administrator is responsible for coordinating with ODNR's federal counterpart, the National Oceanic and Atmospheric Administration (NOAA), Office of

# OHIO DEPARTMENT OF NATURAL RESOURCES

TABLE OF ORGANIZATION

March 1996

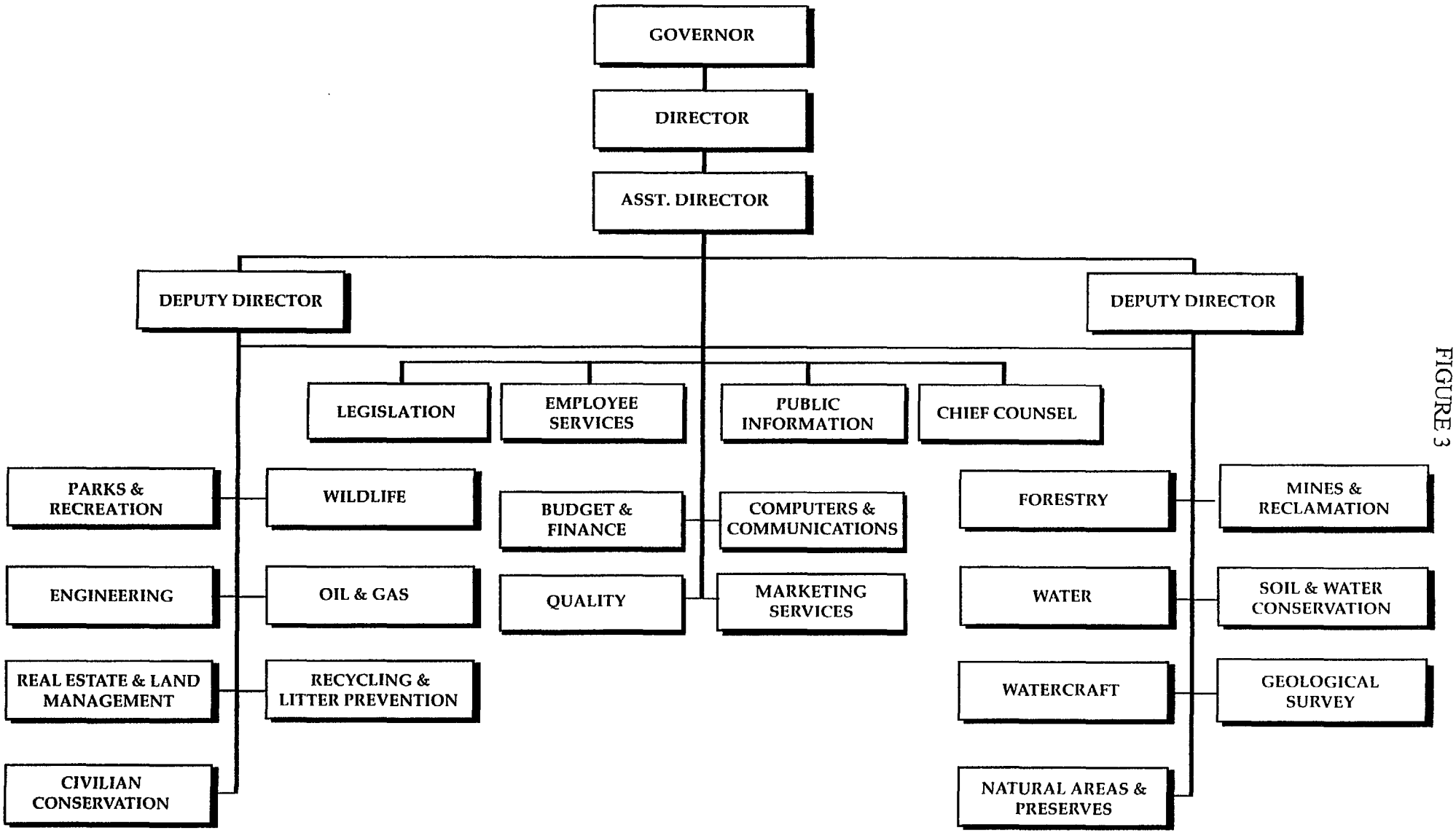


FIGURE 3

# REAL ESTATE & LAND MANAGEMENT
# FEBRUARY 1997

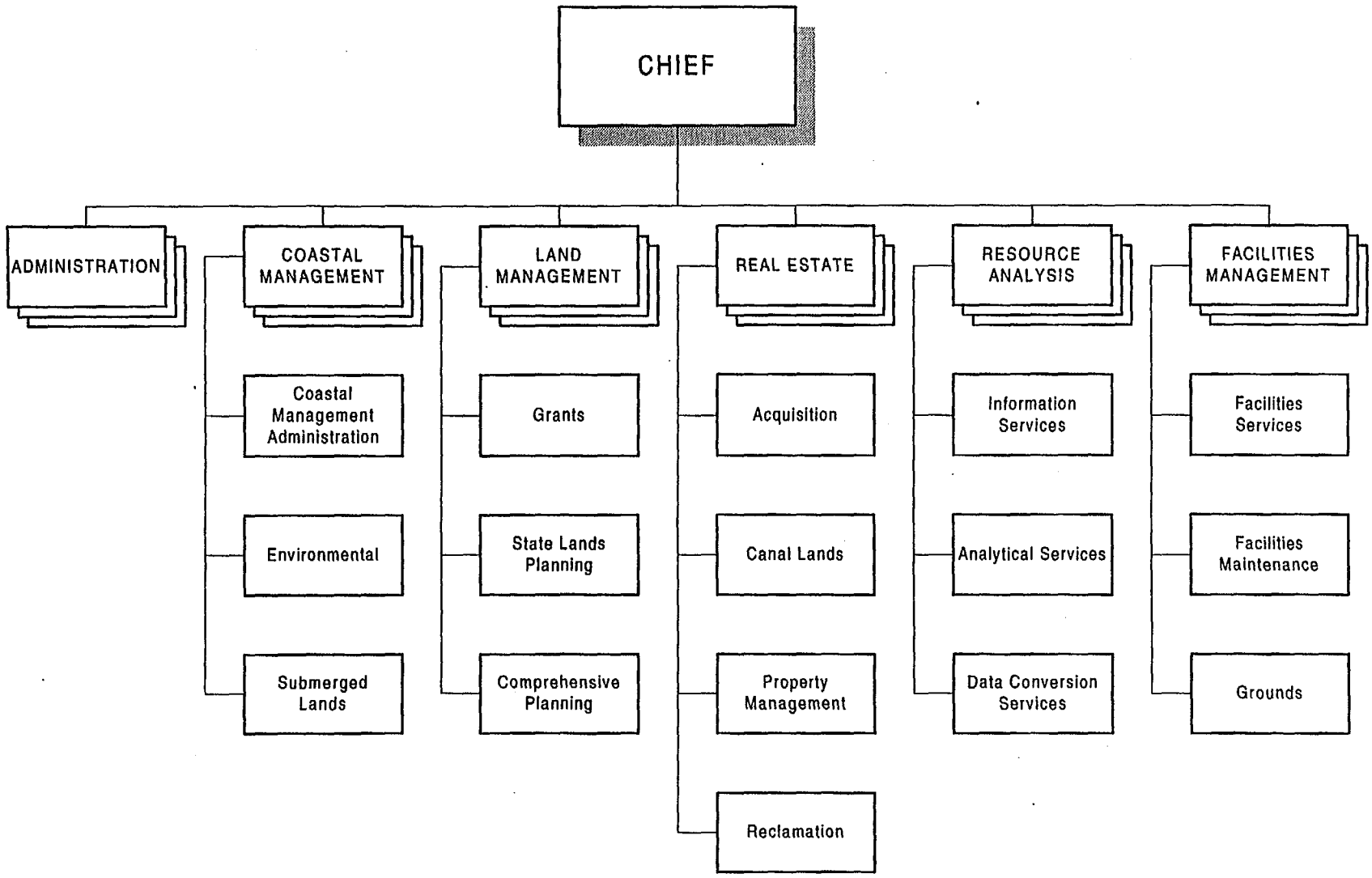


FIGURE 4

Ocean and Coastal Resource Management (OCRM), on program implementation, evaluation and enhancement.

Administration of Lake Erie submerged lands (Policy 16).

Administration of the Submerged Lands Preserves program and salvage permitting process for abandoned submerged property (Policy 26).

Conducting ODNR's consistency reviews of federal projects, activities requiring federal licenses or permits, and federal assistance activities in accordance with the requirements of the federal CZMA and implementing regulations (see Chapter 7, Federal Consistency). The Coastal Management Section is responsible for coordinating these reviews within ODNR and consulting with other agencies with coastal management responsibilities to ensure consistency with the rules, regulations and policies of the OCMP.

Conducting consistency reviews of state agency projects and activities subject to the approval of any state agency. The Coastal Management Section is responsible for coordinating these reviews within ODNR and consulting with other agencies networked in the coastal management program to ensure consistency with the policies of the OCMP (see Section 4 of this chapter, "Achieving Consistency with Coastal Management Policies").

Administering the Coastal Management Assistance Grants Program.

Preparing and maintaining a current inventory of public access facilities and preparing and publishing plans and policy recommendations for enhancing public access to Lake Erie (Policy 21).

REALM exercises significant direct controls over activities in the coastal area. Among REALM's responsibilities cited above, direct controls include (1) controlling uses of Lake Erie public trust waters and submerged lands through submerged lands leasing, (2) providing special protection for abandoned property and features and formations in Lake Erie by establishing submerged lands preserves as well as policies and rules governing access to and use of preserves, and (3) regulating the recovery, alteration or salvage of abandoned submerged property through permitting.

ODNR, through the authority of the director and/or departmental divisions, exercises many other direct controls, including: (1) controlling development of permanent structures in Lake Erie coastal erosion areas through permitting, (2) regulating erosion control structures on the shoreline of Lake Erie through construction permits, (3) regulating water diversions of Lake Erie through permits, and (4) controlling many other activities in the coastal area through the enforceable authorities of O.R.C. Title 15, Conservation of Natural Resources. These authorities are listed in Section 2 and are presented as enforceable policies in Chapter 5, including citations from O.R.C. Chapters 1501 through 1548.

Mechanisms for Networking the OCMP

Many authorities provide the basis for implementing the coastal management program, including controls exercised by other state agencies. The preceding Section 2 provides an overview. Chapter 5 contains the detailed descriptions of all enforceable policies and enhancement policies used in the coastal management program. These authorities are networked into the OCMP, and REALM has the responsibility to monitor the implementation of these policies for activities affecting the coastal area and to ensure consistency of state activities. Thus, the State of Ohio primarily will use direct state land and water use planning and regulation, control technique 306(e)(1)(B), (15 C.F.R. § 923.43), to implement the full range of policies and management techniques. Two exceptions are floodplain management (Policy 3) and administration of a permit system for construction of permanent structures in coastal erosion areas (Policy 1), for which the OCMP will use control technique 306(e)(1)(A), (15 C.F.R. § 923.42), or state establishment of criteria and standards for local implementation.

The OCMP is organized within ODNR to integrate the activities of the divisions with coastal management authorities and responsibilities.

The Integrated Management Team assists REALM in coordinating and executing coastal management responsibilities. The Integrated Management Team consists of key individuals representing ODNR's divisions who work cooperatively with REALM's Coastal Management Section to implement the OCMP to ensure that actions of their respective divisions are consistent with the OCMP and ultimately to ensure that ODNR's actions are consistent with coastal management policies. The Director of ODNR directed the chief of each division with significant relevant coastal responsibilities to select a key individual to serve on the management team. Individuals from REALM and the divisions of Natural Areas and Preserves, Parks and Recreation, Forestry, Soil and Water Conservation, Water, Watercraft, Wildlife, Geological Survey, and Engineering comprise the ODNR Integrated Management Team. The entire team meets regularly. and portions of the team meet with respect to specific issues as they arise.

The Divisions of Geological Survey, Water, Engineering and REALM have specific designation, enforcement and technical responsibilities pertaining to coastal flooding and erosion areas, shore erosion protection, and use of Lake Erie waters and submerged lands. REALM's Coastal Management Section will coordinate ODNR's review of consolidated permit applications and monitor overall program performance.

ODNR's various divisions provide input in department-wide environmental reviews conducted by REALM. The Coastal Management Section integrates these interdisciplinary reviews in the OCMP's consistency review process (discussed in Section 4 of this chapter) and coordinates with other state, federal and local agencies.

Outside of ODNR, the OCMP is networked with other state agencies having authority and responsibilities in the coastal area. One method of coordination is through the Lake Erie Commission. Agencies represented on that commission are the Departments of Health, Agriculture,

Ohio EPA, Transportation and Development. The Chief of REALM is the Director of ODNR's designee to the commission.

The OCMP uses a Policies and Programs Coordinating Committee (PPCC) to ensure continuing communication among the agencies networked in the program and to help coordinate the activities of the agencies. The PPCC consists of the Coastal Management Administrator, Executive Director of the Lake Erie Office, individuals designated by the directors of the five agencies in addition to ODNR on the Lake Erie Commission, and an individual designated by the Ohio Historical Society. The responsibilities of those serving on the PPCC include serving as agency liaisons for coastal management purposes and helping to ensure that actions by the respective agencies, or subject to the approval of or funding by the agencies, are consistent with coastal management policies. The PPCC assists ODNR and other agencies with program implementation. Further details on how this relates to other mechanisms in forming a comprehensive program are provided in Section 4 of this chapter. The PPCC will also participate in periodic program evaluation and planning to enhance the OCMP.

Memoranda of Understanding (MOUs) have been developed between ODNR and the Ohio EPA and the Department of Transportation (see Appendix E). The MOUs are a critical component of the networked coastal management program. The purpose of the MOUs is to facilitate consultation and coordination between ODNR and agencies networked in the OCMP. The MOUs set forth the responsibilities of the agencies to ensure consistency with coastal management policies of activities subject to state agency approval and to provide mechanisms for mediating determinations of inconsistency.

The MOUs describe actions that will be undertaken by each agency to minimize duplication and delays while ensuring that activities affecting the coastal area are adequately reviewed. The MOUs contain a statement of purpose and describe coordination processes with ODNR. Steps are detailed for ensuring consistency of state projects, activities that require a state permit or license, and projects receiving state financial assistance. The MOUs set forth steps to be followed to mediate disagreements and designate agency liaisons for these purposes.

Cooperation with Other Programs

The OCMP cannot achieve its integrated management goals without working with the following additional programs that have complementary objectives. Important OCMP linkages exist with the first two listed programs, which have a common federal partner, NOAA.

The **National Estuarine Research Reserve (NERR) Program,** administered in Ohio by the Division of Natural Areas and Preserves (DNAP) at the Old Woman Creek State Nature Preserve and National Estuarine Research Reserve (OWC-NERR), plays an important role in the development and implementation of Ohio's coastal management policies. Strong institutional relationships exist with the OCMP as a result of OWC-NERR's involvement in ODNR's interdisciplinary environmental reviews, nonpoint source pollution management, coastal wetlands research and wetlands protection policy development. An MOU between DNAP and REALM sets forth Ohio's policy to fully

integrate the OWC-NERR into Ohio's broad-based approach to managing Lake Erie's coastal resources (see Appendix E). This institutional arrangement promotes a strong, substantive and collaborative working relationship between the two programs. The DNAP cooperates with REALM in mutual administrative support and technical and other assistance in implementing the OCMP. The OWC-NERR program administrator is a member of the OCMP's Integrated Management Team.

The **Ohio Sea Grant College Program**, administered by The Ohio State University, is a partnership of Ohio colleges and universities, agencies, industries, the public and federal government, working to increase the enjoyment, development and balanced use of Lake Erie and marine resources. The program accomplishes its goals through supporting research and providing education and advisory or extension programs. Technology transfer is accomplished by the Advisory Service, its four extension specialists and advisory committees of citizens representing diverse interests in Lake Erie.

The OCMP works directly with Ohio Sea Grant and indirectly through the Ohio Lake Erie Office to publish information on coastal management issues and promote a better understanding of the problems and opportunities in protecting, developing and restoring coastal resources. ODNR and agencies networked in the OCMP publish articles about policies and programs affecting Lake Erie interests in the Lake Erie Commission Supplement to Ohio Sea Grant's bimonthly publication, *Twine Line*. Ohio Sea Grant staff and extension specialists consult ODNR on a wide range of coastal issues and participate in meetings of the OCMP's Coastal Resources Advisory Council. Such interaction enhances the Council's ability to make sound recommendations on policies, plans and programs for long-term, comprehensive coastal management.

The **Coastal Resources Advisory Council** an important linkage for policy development and public outreach. The Council, created pursuant to O.R.C. § 1506.12, consists of 19 members representing a broad range of interests, experience and knowledge relating to the management, use, conservation and development of the coastal area. It annually selects a chair from its members and holds meetings at least quarterly in the coastal area. Its meetings are open to the public, as are the records of its proceedings (Appendix F – Sunshine Rule). The Council advises and makes recommendations to ODNR's director on the development of coastal management policies, plans and programs, and on ways to enhance cooperation among governmental agencies having an interest in coastal management. REALM assures effective interaction between the Council and OCMP by involving members of the Integrated Management Team and PPCC in meetings of the Council. The Council assists ODNR with public participation in the development of the OCMP, including public meetings and hearings.

The **Submerged Lands Advisory Council,** created pursuant to O.R.C. § 1506.37, consists of nine members, including the Director of Natural Resources or designee, the Director of the Ohio Historical Society or designee, and seven members appointed by the Governor interested in and knowledgeable about the preservation of shipwrecks and submerged resources. At least two members must be experienced in scuba diving, and at least one member must be a professional salvor or surveyor. The Council is an important linkage between the coastal management program and sport diving interests, maritime heritage interests and others concerned with the protection and

utilization of shipwrecks and other submerged resources. The Council may make recommendations to the Coastal Resources Advisory Council, the Directors of Natural Resources and the Ohio Historical Society, and members of the General Assembly regarding creation and boundaries of submerged lands preserves, issuance of permits for salvage or recovery of submerged abandoned property, and other policy or legislative issues relating to management and preservation of submerged resources.

Cooperation with **local governments and planning agencies** in the coastal area is vital to the coastal management program. Many of the policies of the OCMP directly affect or call for action by local jurisdictions. The OCMP consults with county planning agencies, area-wide planning agencies, and local communities on submerged lands issues, Lake Erie coastal erosion area designation and enforcement, coastal flood hazard area regulation, and other aspects of coastal management. Coastal Resources Advisory Council meetings provide an opportunity for information exchange and input by local and regional entities on coastal management policy making. There are also linkages between local jurisdictions and several state agencies that are represented on the Lake Erie Commission and ODNR's PPCC. This is important because the PPCC helps state agencies with responsibilities in the coastal area to be knowledgeable about local issues, coastal activities and other coastal management concerns. In turn, the agencies represented on the PPCC assist ODNR in helping keep constituents and local agencies informed about coastal management program activities, policy making and opportunities for cooperative projects.

Finally, ODNR's partnership with NOAA will play an important role in effective administration of the coastal management program. NOAA must work closely with ODNR to maximize the protection and use of the coastal area based upon Ohio's needs, while also satisfying national needs. The CZMA is administered by OCRM. OCRM's Coastal Programs Division administers funding and oversees the development and implementation of the OCMP. ODNR receives essential policy guidance from NOAA, and in turn, with other coastal states, Ohio helps shape federal coastal management policies.

## SECTION 4. ACHIEVING CONSISTENCY WITH COASTAL MANAGEMENT POLICIES

This Section discusses measures to avoid conflicts and achieve consistency in program implementation at the state level. State consistency is essential in achieving improved coordination, increasing predictability in decision making, and ensuring that the OCMP is a comprehensive program.

Ohio law, O.R.C. § 1506.03, states that "no project or activity directly affecting the coastal area that is proposed by or subject to the approval of any agency of the state shall be implemented or approved until the Director of Natural Resources has determined that it is consistent with the policies in the coastal management program document." When the following activities directly affect the coastal area, they must be consistent with the policies in the OCMP document:

1. State agency projects and activities;

2. Applicant activities that require state permits, licenses or certifications.

"State agency" or "agency of the state" means any governmental entity of the state and includes, but is not limited to, any board, department, division, commission, bureau, society, council, institution, state college or university, community college district, technical college district, or state community college. It does not include the general assembly or any court (O.R.C. §1506.01(G)).

**Achieving state consistency with Ohio's coastal management policies is fundamentally a proactive effort.** It will be of benefit to both the sponsors of projects affecting the coastal area and the state or local agencies that enforce Ohio's policies through permitting, licensing and other actions.

**Benefits to developers and project sponsors** will include: determining more quickly and precisely what permits or other authorizations are required for a given project and understanding better why and on what basis permits and approvals would be issued, denied, or conditionally granted. In this way, project planning will be expedited and predictability of decision making improved.

**Benefits to state and local agencies** will include: enhancing each agency's knowledge of the enforceable authorities and policies of other state and local agencies with responsibility in the coastal area; improving the coordination of project reviews between and among agencies; identifying opportunities and taking action to simplify and consolidate the regulation of activities in the coastal area; and improving monitoring and enforcement through communication and networking.

The OCMP will use its enforceable authorities and policies, clearly identified in Chapter 5, to ensure state consistency. These policies and effective consultation and coordination among networked state and local agencies will combine to assure that projects directly affecting the coastal area will be consistent with the state's coastal resource management policies.

The substantive and procedural criteria for determining consistency are unique to each enforceable authority and policy cited in Chapter 5. In practice, ODNR uses information generated by agencies that implement these policies or controls on activities affecting the coastal area. When a project is subject to one or more enforceable authorities, the Coastal Management Section, REALM, reviews information provided by the responsible agency(ies) and may consult with other state, federal or local agencies. In appropriate cases, ODNR will notify the public of consistency reviews and provide an opportunity for comment prior to the final consistency determination.

ODNR will publish a policies summary and consistency guidance for state and local agencies and permit applicants. The guidance will provide detailed procedures for complying with the consistency requirement. This information and the technical assistance provided by agencies networked in the OCMP will assist developers and any state agencies that require permits or other approvals for their projects. The OCMP strongly encourages early coordination and preapplication consultation with the agencies that implement coastal management policies.

Within ODNR, REALM has the administrative responsibility for consistency reviews, using the existing interdisciplinary environmental review process. REALM may monitor individual projects during implementation and evaluate overall consistency performance by ODNR and state agencies.

Although not subject to the consistency requirement, projects for which state financial assistance is sought may benefit from the consistency process. State agencies providing financial assistance for projects that would directly affect the coastal area should provide the OCMP policies summary and consistency guidance to the project sponsor. In this way, the sponsor will be encouraged to consult with appropriate agencies to ensure consistency with coastal management policies.

By coordinating the rules and policies of agencies networked in the program, the OCMP will simplify and consolidate the regulation of activities in the coastal area consistent with the Ohio Coastal Management Law (O.R.C. § 1506.02(A)(5)). Agencies of the state will benefit from consultation that will assist decision making and avoid potential conflicts between different authorities that bear on the same project or activity. The sponsors of projects that affect the coastal area will benefit as well. There will be fewer potential delays, and the predictability of decisions by agencies that exercise authority in the coastal area will be improved. The enhanced coordination in the OCMP improves the environment for local and regional economic development consistent with the protection and management of the state's coastal resources.

Consistency for State Projects

Each state agency has responsibility to certify and ensure that its own proposed projects are consistent with coastal management policies. However, the ultimate authority to determine consistency rests with the Director of ODNR. The director may concur with another state agency's or division's certification of consistency or object and require that a particular project not be implemented or approved unless it is modified to be consistent with OCMP policies. The denial of a state permit cited in Chapter 5 or a violation of state law cited as an enforceable policy would automatically be grounds for a determination by the director that the project or activity is not consistent with coastal management policies. State projects and activities that are subject to consistency review are listed at the end of this chapter. To the maximum extent practicable, the direct state activities and development projects shall be carried out in a manner consistent with all applicable policies whether enforceable or not.

The following procedure is to be followed by the agency responsible for a proposed state project:

1. Determine whether the project will directly affect coastal resources.

2. Determine which OCMP policies apply.

3. Consult as needed with other relevant state agencies.

4. Submit to ODNR (Coastal Management Section, REALM), at least 90 days before final decisions are made by the agency or any participating agency, a notification that includes a consistency certification, location map and site plan, and a project description commensurate in detail with its size and scope.

   The certification should read as follows: "I certify that the proposed project complies with and will be conducted in a manner consistent with the policies of the Ohio Coastal Management Program."

5. Provide additional supporting data and list all applications, approvals and denials received from state, local or federal agencies for all activities associated with the project. Document consultation and findings.

ODNR shall inform the state agency of its concurrence in or objection to the consistency certification in writing within 45 days of receipt of the notification described in item 4 above. ODNR may notify the agency within that time that the final response will be delayed and provide reasons for the delay. The extension period shall be 15 days or less. Additional extensions shall not be provided unless mutually agreed to between ODNR and the agency.

Upon completion of its review, ODNR will notify the state agency in writing that the proposed project is either consistent or inconsistent with policies of the OCMP. If found consistent, no further reviews by ODNR will be necessary. If found inconsistent, ODNR will clearly identify the rule, regulation, or policy the action does not meet and will recommend ways that the action should be modified, if possible, to ensure consistency. ODNR may also request additional information necessary to make its determination. Revised proposals shall be resubmitted to ODNR for determination of consistency. ODNR will notify the state agency and the agency(ies) with approval authority of its determination within 30 days of receipt of the revised proposal.

Consistency in Activities Requiring a State License, Permit or Other Approval

For a project or activity directly affecting the coastal area subject to the approval of any agency of the state, each state agency that has regulatory or other enforceable authority will review the project for consistency. The permitting agency assumes responsibility for notifying and clarifying to the applicant the OCMP consistency requirement and the applicable policies and authorities.

The following procedure is to be followed by the authorizing agency:

1. Determine whether the regulated activity will directly affect coastal resources.

2. Inform the applicant of the OCMP consistency requirements and request necessary documentation.

3. Review the application to ensure the activity contemplated is consistent with and will be conducted in a manner consistent with applicable coastal management policies.

4. Consult as needed with the applicant and with relevant state agencies.

5. Notify ODNR (Coastal Management Section, REALM) as follows:

   a. An agency that has not developed a Statement of Coastal Management Policies approved by ODNR (see following section on Mechanisms to Ensure State Consistency), shall notify ODNR of its finding that the proposed activity is or is not consistent with its enforceable policies at least 30 days before a final action is taken.

   b. An agency that has developed a Statement of Coastal Management Policies shall notify ODNR if the proposed activity is found not to be consistent with coastal management policies at least 30 days before a final action is taken.

6. Notify ODNR in any case whether the project has met the agency's enforceable requirements (e.g., state agency intends to grant approval; agency intends to deny approval; agency intends to withhold approval until it meets standards or complies with rules).

For each proposed activity about which a state agency has notified ODNR pursuant to paragraph 5., ODNR will base its consistency determination upon the approvals of the state agencies enforcing the policies and authorities in the coastal management program document. Whenever a project does not meet the requirements of one or more state or local agencies that implement enforceable coastal management policies, the Director of ODNR will require that the project not be implemented until it is determined that it is consistent with the policies in the coastal management program document. Assurance from a state agency that its approval will be granted provided specific conditions or requirements are met could be the basis for a determination of consistency by the Director of ODNR, contingent upon the project adhering to those requirements.

ODNR will notify the applicant and the authorizing agency in writing of its consistency determination. In any determination of inconsistency, ODNR will clearly identify the rule, regulation or policy that the action does not meet and will recommend to the applicant in writing ways that the action should be modified, if possible, to ensure consistency. ODNR may request additional information necessary to make its determination. Revised proposals must be resubmitted to ODNR for determination of consistency. ODNR will make a new determination of consistency based upon the action of the agency enforcing the applicable policy. ODNR will notify in writing the applicant and the state agency(ies) with approval authority of its determination within 30 days of receipt of the revised proposal.

While all state agencies will participate in the consistency review process, each state agency is ultimately responsible for implementing only its specific authorities.

Mechanisms to Ensure State Consistency

### *Statements of Coastal Management Policies*

The Ohio Coastal Management law, in O.R.C. § 1506.03, provides for discretionary development by each state agency of a statement of coastal management policies, subject to the approval of ODNR's director. ODNR recommends that, for appropriate classes of activities, a state agency develop a statement of coastal management policies. This statement must, at a minimum, be as stringent as the corresponding OCMP policy provisions. The OCMP encourages state agencies to develop statements of coastal management policies as a means to assure consistency and avoid case-by-case reviews of projects and activities that singly and cumulatively do not have the potential to cause significant impacts upon coastal resources. A statement must include:

1. A list of the agency's projects or activities that, if implemented or approved, would directly affect the coastal area (refer to Chapter 3) and that are determined by agreement between ODNR and the agency to be consistent with the policies of the OCMP;

2. A provision that incorporates the approved statement into the agency's administrative policies and decision-making processes; and

3. A provision for the annual review of consistency performance by ODNR, with revocation of approval if consistency performance is determined to be unsatisfactory.

REALM will consult at least annually with each agency using a statement of coastal management policies. OCMP staff will request information on the number and location of projects implemented under the statement. State agencies will be encouraged to provide information on consultations with agencies that enforce coastal management policies. REALM may select projects at random for on-site review and consult with other agencies that exercise applicable enforceable authorities.

ODNR will notify any agency whose approval is to be revoked, providing a written justification for the revocation. The revocation shall be effective 30 days after the date of notification. An agency whose statement of coastal management policies is revoked may submit for ODNR approval a new statement no earlier than six months after the revocation date.

### *Memoranda of Understanding*

Several agencies networked in the OCMP have developed MOUs with ODNR to facilitate consultation and coordination and help ensure consistency (see Appendix E and Section 3 of this chapter, "Mechanisms for Networking the OCMP"). These MOUs address activities requiring case-by-case review and those exempt from review (categorical exclusions).

*Early Coordination*

ODNR will use early coordination meetings and "preapplication consultation" to communicate the requirements of the OCMP and to help ensure that an activity will be implemented in a manner consistent with the OCMP. OCMP policies and consistency guidance to be published by REALM may be used or adapted for use in grants manuals, procedural guides and other publications of state agencies that provide financial assistance or that regulate activities.

*Interagency Consultation*

Any state agency can use the Policies and Programs Coordinating Committee (PPCC) to coordinate project planning or to provide consultation in the planning or review of a project affecting the coastal area. To request such assistance, an agency representative should contact REALM's coastal management administrator. The PPCC will assist REALM in ensuring overall program consistency by monitoring select projects during implementation. This will help refine OCMP consistency mechanisms and assist in determining when categorical exclusions and case-by-case reviews are appropriate.

Conflict Resolution

Ohio's coastal management legislation requires all state agencies to "cooperate with the Department of Natural Resources in the implementation of the coastal management program" (O.R.C. § 1506.02). This provision, and the provision requiring state consistency (O.R.C. § 1506.03) greatly decrease the potential for conflict. Nevertheless, OCMP policies may lead to conflicts between parties with various rights and authorities. Therefore, the OCMP provides formal conflict resolution processes.

Conflicts between state agencies, or between ODNR divisions, over issues related to coastal management policies will be addressed initially by REALM upon request by a state agency or ODNR division. Upon receipt of a written request for mediation describing the activity or issue over which there is a serious disagreement, the Coastal Management Administrator will within 15 days schedule a meeting of the parties involved. If mediation efforts by REALM do not resolve the disagreement, the directors of the respective agencies, or chiefs of the respective divisions, will meet. If unresolved at that level, ODNR will refer the matter to the Office of the Governor for mediation, in the case of conflicts between agencies. REALM will refer unresolved ODNR conflicts to ODNR's director, for mediation.

Ad hoc Cabinet Clusters related to specific issues (e.g., Energy Policy) may be used to resolve conflicts at the direction of the Governor. Ultimate resolution of interagency conflicts, however, rests with the Governor.

The formal MOUs between ODNR and the major networked agencies with relevant responsibilities in the coastal area include specific conflict avoidance and resolution components. The provisions in those MOUs shall take precedence over those stated above for the signatory agencies.

State agencies are encouraged to be proactive in managing problems to avoid serious disagreements requiring formal conflict resolution measures. Whether seeking to become more effective in managing conflicts, or desiring third party assistance in dispute resolution, state or local agencies may wish to seek the services of the Ohio Commission on Dispute Resolution and Conflict Management.

## State Activities and Development Projects; Licenses, Permits and Approvals Subject to State Consistency Requirements

### I. Direct State Activities and Development Projects

**Department of Administrative Services, Office of the State Architect and Engineer**

State capital improvement projects other than Ohio Department of Natural Resources and Ohio Department of Transportation.
Land acquisition and disposal.

**Ohio Department of Natural Resources**

Capital improvements projects.
Master land use plans.
Establishment of Lake Erie submerged lands preserves.
Land acquisition and disposal.

**Ohio Department of Transportation**

State highway projects.
Land acquisition and disposal.

### II. Licenses, Permits and Approvals

**Ohio Department of Agriculture**

Permits for the use of pesticides and herbicides.

**Ohio Environmental Protection Agency**

Permits to Install for air sources.
Section 401 Water Quality Certifications.
National Pollutant Discharge Elimination System (NPDES) permits.
Injection well drilling permits.
Solid waste disposal plant and site permits.
Permits to Install for wastewater facilities.
Permits to Install for solid waste facilities.
Hazardous waste facility permit renewals and revisions.
Plan approvals for public water supply systems.

**Ohio Department of Health**

Marina construction and improvement plan approvals.
Private water supply system permits.

**Ohio Department of Natural Resources**

Submerged land leases.
Coastal erosion area permits.
Erosion control structure permits.
Offshore mineral removal from Lake Erie, permits and leases.
Water diversion permits.
Leases and licenses for use of state lands.
Underwater salvage permits.
Permits for dams, dikes and levees.
Authorization for use of explosives or other deleterious substances in state waters
Oil and gas extraction permits.
Surface mining permits.

**Public Utilities Commission, Power Siting Board**

Certification of major utility facilities.

**Hazardous Waste Facility Board**

Installation and operation permits for new facilities and modifications.

# CHAPTER 5
# MANAGEMENT POLICIES

The OCMP is a long-range program for protection and management of our coastal resources. It is a prospective and progressive program. Full implementation of the OCMP begins with the adoption of the program document and evolves through state and local implementation of its enforceable policies and other management measures. As indicated in the previous chapter on program organization, the OCMP relies on action and oversight by local jurisdictions and state agencies for ensuring consistency with coastal management policies.

Coastal management policies promote the wise management of those land and water uses having direct and significant impacts upon the Lake Erie coastal area. Certain policies focus upon the protection of significant natural areas, such as wetlands, that embody the unique values of the Ohio coast. Other policies have been established in an effort to simplify governmental procedures and foster agency cooperation regarding coastal activities. These management policies are sufficiently specific, comprehensive and enforceable to enable Ohio to implement a program of rational development and resource protection for the Lake Erie coastal area. Ohio's management policies are essential to provide the specific guidance needed by the state and its local jurisdictions to undertake the OCMP cooperatively.

## Managed Coastal Activities

The OCMP does not affect all activities and projects in the coastal area. Only those activities considered to have a direct and significant impact on the coastal lands, waters and resources are identified as managed activities. "Direct and significant impact" is defined as the result of any action causing or likely to cause (1) changes in the manner in which land, water or other coastal resources are used, (2) changes in the environmental quality of coastal resources, or (3) limitations on the range of uses of coastal resources. The state will consider potential individual and cumulative impacts of such uses on coastal waters.

The management approach of the OCMP addresses the potential impacts of coastal activities on coastal resources rather than the general land uses, such as agriculture, water-dependent commercial development and port operation, with which certain coastal activities are associated. Land use planning and controls such as zoning are the responsibility of local governments. The OCMP encourages local governments to exercise their responsibilities and may also provide funding assistance for the development of port and waterfront master plans. When such plans are adopted as the basis for local land-use decisions and local regulatory controls, they facilitate decision making by the state of Ohio regarding, for instance, whether the state may lease areas of Lake Erie waters and submerged lands to local government or a private littoral property owner for particular uses or developments.

Policy Development

As stated earlier, the State of Ohio has an effective existing regulatory framework for managing coastal area activities. This structure forms the basis of OCMP authorities and policies. To build upon that framework and determine the manner in which such policies would be prioritized, integrated and reinforced with nonenforceable policies, a coastal management policy development process was initiated. The first step in this process was the identification of issues and concerns that were compiled from many sources, including local governments, waterfront industries, ports, local planning agencies, interested citizens, the Coastal Resources Advisory Council, and state and federal agencies. Preceding ODNR's public hearings, meetings and solicitation of written comments on the OCMP document, there had been extensive organized participation by the general public, local jurisdictions and public and special interest groups in policy development. The state's early efforts to develop a coastal program are described in Chapter 2.

Many recommendations from these studies and ODNR's public participation efforts have become policy through subsequent amendments to Ohio's coastal law, ODNR rulemaking and policy development. Other recommendations continue to shape program implementation and enhancement. The OCMP adopts the assumptions of the Lake Erie Shore Area Redevelopment Task Force, and presents in this chapter policies for resource protection, management and development that are reflective of these assumptions. Those assumptions are:

- Benefits to be derived from Lake Erie and its shore are dependent upon the continued improvement of water quality in coastal area waters.
- The shoreline is a finite resource.
- Multiple use of the resource as a whole is inherently in the public interest.
- Competition for use of shoreline areas and coastal waters is increasing.
- Limitations on government revenues require more examination of user fees and public/private partnership initiatives.

With the above assumptions in mind, the State of Ohio's policies have been organized and prioritized with continued input from the general public, local jurisdictions, state, federal and regional agencies, independent organizations and public and special interest groups. As a result, ODNR has identified the following priority coastal management issues, not in order of priority:

- **Water resources and watersheds.**
- **Coastal land use and development.**
- **Coastal habitat, wetlands and natural areas.**

- **Coastal flooding and erosion.**

- **Recreational opportunities.**

- **Fisheries and wildlife resources.**

Activities at the state and local level directed toward accomplishing the above-stated ends will be of highest priority for funding under OCMP administration funding.

Organization of this Chapter

This chapter presents the coastal management policies that address the above-listed priority issues and additional policies organized in the same way under major issue topics. Each topic is introduced by a brief summary of concerns regarding the issue. Specific policies for achieving the coastal management objectives related to the issue are described.

The framework for implementation and the authorities responsible for such implementation are outlined in the text that follows each list of policies under the heading: Authorities and Administration. All policies document existing statutory authority, current governmental programs or established state policy. Additional information regarding coastal area resources, the boundaries of the coastal area, policies, rules and other details of the coastal management program are found in Volume II, Appendices.

In the OCMP, policies are classified as enforceable and enhancement policies as follows:

1. An enforceable policy is regulatory and legally binding. It mandates that certain requirements be satisfied prior to the initiation of a specific activity in the coastal region. Such a policy has statutory authority based upon provisions of the Ohio Revised Code. Enforceable policies are binding for federal consistency purposes, pursuant to Section 307 of the CZMA. Enforceable policies are underlined in the text of this chapter and are followed by the appropriate Revised Code citation in parentheses.

2. An enhancement policy provides guidance or preferences regarding certain activities, but is not legally binding. It may be a formal state policy or recommendation, or statute with discretionary authority.

Taken together, these two types of policies offer a clear view of the content of the OCMP. They specifically show who will be affected by the OCMP, in what fashion and when. The policies provide a clear sense of direction and predictability for decision makers who must address coastal issues in their daily work.

## COASTAL EROSION AND FLOODING

Uses Subject to Management

- Construction or redevelopment of permanent structures in Lake Erie coastal erosion areas.
- Construction of erosion control structures.
- Development in coastal and riverine flood hazard areas.
- Construction of dams, dikes and levees for flood control.

Erosion

Erosion along the Ohio shore of Lake Erie is a serious problem, requiring increased attention and effective action by the state. Each year, nearly 1.6 million tons of material is eroded along Ohio's lakeshore, with significant and far-reaching implications for public safety, health and welfare. Record-high lake levels in the early 1970s and again in the mid 1980s caused extensive damage to residential, commercial, industrial and agricultural property. Beaches were inundated by high lake levels and eroded by waves, leaving structurally unprotected bluffs more vulnerable to wave erosion. Erosion of dikes and barrier beaches exacerbated wetland loss, negatively affecting coastal wildlife populations, overall water quality and the natural capacity of the environment to absorb flood waters.

Of the estimated 1.6 million tons of material eroded along the shore each year, only about 20 percent is sand-sized sediment that remains along the shoreline. The remainder is fine-grained sediment that disperses in the lake, increasing water turbidity and sedimentation rates. Increased turbidity reduces recreational opportunities and increases treatment costs for public water supplies. Increased sedimentation disrupts valuable aquatic habitats, hurting fishery resources and the commercial and recreational fishing industries they support.

The effects of erosion on the Ohio shore of Lake Erie have been documented by the Division of Geological Survey. Field studies examined the modern physical setting (e.g., shore stratigraphy, shore relief, shore orientation, beach width, nearshore slopes, nearshore sediment, wave climate) and cultural setting (e.g., land use, shore protection structures) that influence the rate of shore erosion and recession, both temporally and geographically. Historical charts and aerial photographs document temporal changes in the physical and cultural settings.

A century ago, sand beaches fronted most reaches of the Ohio shore of Lake Erie. Along the high-bluffed shore east of Cleveland, the beach was used as a roadway by settlers coming to Ohio. Today, many beaches have been eroded. Where beaches remain, they are narrow and segmented and provide little natural protection from erosion. In their place are numerous (approximately 4,000) erosion control structures built to protect urban development.

The shore of Lake Erie varies considerably in relief and composition. Eastward from Toledo to Huron, the shore consists of low-relief clay banks, sandy barrier beaches, or armor-stone dikes, except for the rock-bound shore in the Marblehead-Catawba Island area. From Huron to Conneaut, the shore consists of 20-to 65-foot-high bluffs of till and/or bedrock. Easily eroded materials (sand, clay and till) make up about 75 percent of the Ohio lakeshore.

The two principal erosion processes are wave erosion and mass wasting (Carter, Benson and Guy, 1981; Carter and Guy, 1988). Most wave erosion occurs during spring and fall storms, when the greatest amount of wave energy is expended along the shore. The amount of mass wasting of the upper bluff material is largely dependent upon the frequency and amount of wave erosion at the bluff toe. As the bluff toe erodes, the profile steepens, inducing mass wasting in the upper bluff.

Although much of the Ohio lakeshore is composed of materials easily eroded by waves, erosion rates vary over time and from place to place. Natural factors such as shore composition, beach distribution, nearshore depths, storm frequency, lake level and shoreline orientation contribute to these variations. Man-made erosion control structures and offshore disposal of sand dredged from harbors also contribute to these variations and often aggravate existing or create new erosion problems.

The OCMP recognizes that along some reaches, erosion control structures have slowed erosion with minimal apparent adverse impact, while along many other reaches, armoring the shore has been detrimental. Despite adverse impacts associated with some erosion control structures they are an integral part of the Ohio lakeshore. Without them, many of the buildings located near the bluff edge would now face an even greater threat from erosion. The OCMP promotes proper design of new erosion protection structures and recognizes the benefits of nonstructural erosion control measures and combinations of structural and nonstructural measures. Recognizing the merits of nonstructural erosion control measures, Ohio has selected five shoreline properties "otherwise protected" by public ownership as additions to the federal Coastal Barrier Resources System (CBRS), thereby protecting the existing natural barriers and the adjoining aquatic and upland habitats. This brings to 10 the number of units in the CBRS. The "otherwise protected" areas are Sheldon Marsh, Old Woman Creek, Kelleys Island North Pond, Mentor Marsh/Headland Dunes and Arcola Creek. These areas will help demonstrate the value of natural barriers and nonstructural shoreline stabilization measures designed to mimic, enhance or restore natural stabilization systems.

For many years, numerous agencies, organizations and experts have warned that continued exposure of public and private investments to the risk of natural hazards, including coastal erosion, has widespread deleterious impacts upon state, local and national economies. Despite erosion and flooding risks, more than 85 percent of Ohio's shorelands are developed, and development is expected to continue.

Erosion-related damages on the Great Lakes were estimated at $290 million in 1985 and 1986 (DeCooke) and at $9 million in 1985 in Lake County, Ohio. Losses cited by the Lake County Planning Commission include loss of real estate structures, real estate value, private protection

expenditures, public protection expenditures and loss of real estate tax revenues, all typical losses suffered by the public and by private individuals when development is exposed to erosion risks.

Without exception, those who warned of the consequences have repeatedly urged that the most effective and fiscally responsible means to ameliorate losses to public and private investment is to encourage the location of development out of harm's way. Guiding development outside risk areas reduces costs to the general public through higher insurance premiums, direct emergency reimbursements or low-cost loans for damages, and replacement of public infrastructure.

Under the OCMP, identification of Lake Erie coastal erosion areas and control of new permanent structures through state or local permits will improve decisions by shoreland property owners and developers (see Policy 1). The coastal erosion area program will reduce property damage through hazard avoidance. In addition, proposed erosion control measures will be reviewed to help ensure their effectiveness and to eliminate or minimize potential adverse impacts on coastal processes and the adjacent lakeshore (see criteria under Policies 1 and 2). And lastly, by designating units of the federal Coastal Barrier Resources System as Special Management Areas (see Chapter 6) the OCMP is promoting the protection of other natural features along the coast and promoting the use of nonstructural measures for erosion control where practicable.

Erosion is a natural process that never will be eliminated entirely. Despite the obvious hazards and the knowledge of potential for erosion, construction has continued within known high-risk erosion areas. Erosion control structures are not feasible or cost effective in some areas along the shoreline. Other management approaches involving building and zoning regulations must be considered. Basic coastal erosion area information must be provided to developers and potential shorefront owners. More importantly, they must use such information to make intelligent decisions. Increased efforts are needed to provide this information and to offer management assistance. Pursuant to Ohio's Coastal Management Act of 1988, preliminary maps identifying land anticipated to be lost to erosion over a 30-year period have been distributed to local jurisdictions for public inspection. Coastal erosion areas were identified according to uniform and well-established scientific protocol, in accordance with administrative rules adopted in 1991 and substantively amended in 1996. A permit for construction, erection or redevelopment of any permanent structure within a coastal erosion area will be required in accordance with the Coastal Management Act. Construction will be allowed within such areas with provision for effective erosion control measures. The expected outcome is to encourage wiser choices regarding development in coastal erosion areas, creating an incentive to develop further from the shore.

Flooding

The destructive capacity of lake and riverine flooding in Ohio's Lake Erie coastal area has also been observed and documented. A 1977 ODNR report, *Coastal Hazards: Erosion, Recession and Flooding*, outlines the causes and effects of flooding and describes the critical nature of the area where lake and riverine flood waters meet. Previous studies have detailed the results and damages from particular occurrences on a localized basis. In addition, the U.S. Geological Survey in 1974 prepared a series of maps of flood prone areas for the entire Ohio Lake Erie basin at the request of

the 89th Congress as expressed in House Document 465. These maps are on file with the U.S. Geological Survey and ODNR's Division of Water. The U.S. Army Corps of Engineers prepared a *Report on Great Lakes Open-Coast Flood Levels* in 1977 and a *Revised Report on Great Lakes Open-Coast Flood Levels* in 1988. Both studies were prepared for the Federal Emergency Management Agency (FEMA), which, in administering the National Flood Insurance Program (NFIP), provides detailed flood hazard information to all designated and participating communities.

While the areas subject to flooding are reasonably well known, the timing and occurrence of such flooding along the lake is highly unpredictable, often resulting from sudden storms and short-term fluctuations in barometric pressure. More predictable flooding along rivers and streams takes place in the spring when rainfall and snowmelt occur, the ground is either saturated or frozen, and runoff is high. Ice jams also compound the flooding problem at these times.

In the late 1960s, direct flood damages in Ohio averaged $20 - $25 million annually. Today, annual damages have escalated to more than $100 million and are expected to rise even further. Again, despite the availability of data that recommends the contrary, development has continued to occur on Lake Erie's flood hazard areas. One reason for this is that many people mistakenly believe that federal expenditures on flood control devices have eliminated the possibility of severe flood damages. Although such structures have prevented some damage, they cannot offer complete protection against all floods. Furthermore, the federal government will not finance projects that cost more to build than the value of properties they are designed to protect. Flood damages also increase when flood protection structures interfere with the free flow of water. Water backs up or is diverted onto properties that were previously flood free. Paved and built-over areas and the loss of natural protective systems like wetlands compound flooding by concentrating rainwater runoff that results in an increase in floodwaters.

The shortcomings of a flood protection policy based solely upon physical structures have become apparent. The current trend is to focus on nonstructural alternatives such as floodplain regulations, flood proofing, wetland preservation, stream management and public acquisition of floodplain lands. Although such strategies can reduce potential flood damages, they are often difficult to implement. This difficulty is primarily due to a confusing combination of building codes, zoning regulations and NFIP Standards that, at times, contradict one another and result in enforcement problems. Public administrators have lacked a unified management plan that coordinates the various activities of agencies with responsibilities pertaining to floodplain management.

POLICY 1 – LAKE ERIE COASTAL EROSION AREA MANAGEMENT

**IT IS THE POLICY OF THE STATE OF OHIO TO MINIMIZE THREATS TO HUMAN SAFETY AND PROPERTY DUE TO LAKE ERIE-RELATED EROSION WHILE PROTECTING THE FUNCTIONS OF NATURAL SHORE FEATURES BY:**

**A. DELINEATING THE BOUNDARIES OF LAKE ERIE COASTAL EROSION AREAS (O.R.C. § 1506.06 AND O.A.C. 1501:6-10 THROUGH 1501:6-13);**

**B. ADMINISTERING AND ENFORCING A PERMIT PROGRAM FOR CONSTRUCTION ACTIVITIES IN LAKE ERIE COASTAL EROSION AREAS (O.R.C. § 1506.07, O.A.C. 1501:6-21 THROUGH 1501:6-28);**

**C. REQUIRING OWNERS OF PROPERTY IN LAKE ERIE COASTAL EROSION AREAS TO NOTIFY BUYERS OF THE LAND'S STATUS PRIOR TO ANY TRANSACTION (O.R.C. § 1506.06(F)); AND**

**D. ENCOURAGE STRATEGIC RETREAT WHERE NATURAL FUNCTIONS OF BLUFFS, DUNES AND COASTAL BARRIERS CAN BE MAINTAINED EFFECTIVELY AND SELECTIVE FORTIFICATION TO PROTECT EXISTING DEVELOPMENT VULNERABLE TO LONG-TERM RAPID EROSION.**

Authorities and Administration

Pursuant to O.R.C. § 1506.06 and 1506.07, ODNR will administer a permit system for construction, erection and redevelopment of permanent structures within Lake Erie coastal erosion areas. The purpose of this management approach is to promote wise decision making with respect to the location of permanent structures and thereby reduce risk and loss to private property, public infrastructure and natural protective features. It is intended that property owners will increasingly choose to locate structures outside coastal erosion areas as a result of this action. In cases where construction does occur within the coastal erosion areas, protection measures consistent with OCMP policies and review criteria will be provided.

The management strategy entails two components authorized by the Ohio Coastal Management Law: (1) identification of Lake Erie coastal erosion areas (O.R.C. § 1506.06) and (2) administration of the permit program within those areas (O.R.C. § 1506.07). Policies 1.A. and 1.B. below set forth the authorities as they will exist during program implementation. However, at the time of publication of this document and Final Environmental Impact Statement (FEIS), one important process for finalizing these authorities remains to be completed. ODNR must make a final identification of coastal erosion areas after conducting the continuing process for affected landowners to object to ODNR's preliminary identification of such areas. It is important for coastal area jurisdictions and interests to continue to be informed regarding this process, as described in the following paragraph.

ODNR completed its preliminary identification of Lake Erie coastal erosion areas in accordance with administrative rules that became effective June 14, 1996 (O.A.C. 1501-6-10 to 1501-6-13; see Appendix G). On September 30, 1996, property owners and local jurisdictions were notified of the preliminary identification and informed regarding how to obtain additional information and how to object to the preliminary identification. Eight public hearings (one in each coastal county bordering Lake Erie) were held to hear public comments on the preliminary identification. All public hearings and review and comment periods were extensively publicized throughout Lake Erie region. Following the notification of jurisdictions and property owners, 120 days was provided by law for property owners to object to the manner in which ODNR identified coastal erosion areas on their property. That period ended at midnight February 4, 1997. ODNR now has 90 days to review and rule on the objections presented. Following that, ODNR will notify each objecting person, and another 60-day objection and 60-day review period will take place. At the conclusion of ODNR's review, the agency will make the final identification of the coastal erosion areas. The final maps will be distributed to local authorities. (This authority is further explained in Policy 1.A. below.) Once the final identification has been made, owners of property within coastal erosion areas must notify buyers of that status (see Policy 1.C. below).

Based on the preliminary identification of Lake Erie coastal erosion areas released September 30, 1996, the extent of coastal erosion areas in each county is estimated to be as follows: Lucas - 7 miles, Ottawa - 24 miles, Sandusky - 4 miles, Erie - 17 miles, Lorain - 14 miles, Cuyahoga - 12 miles, Lake - 24 miles, Ashtabula - 21 miles. Approximately 55 percent of the Ohio mainland coastline was preliminarily designated within preliminary Lake Erie coastal erosion areas. These numbers may change in response to objections filed by lakefront property owners.

A. To minimize erosion damages, ODNR was directed to identify coastal erosion areas on Lake Erie (O.R.C. § 1506.06). These areas represent the land likely to be lost to shore erosion within the next 30 years if no additional approved erosion control measures are implemented. The delineation of coastal erosion areas is based upon scientific analysis of shore recession conducted by ODNR's Division of Geological Survey. The methodology was developed based upon many years of experience dealing with coastal erosion along Lake Erie and consultation with the public, local authorities and the coastal programs of other Great Lakes states. An external working group assisted with revisions to the rules in 1995. The rules governing the identification of Lake Erie coastal erosion areas are contained in O.A.C. 1501:6-10 through 1501:6-13 (see Appendix G). The mapping and tabulation of data for the preliminary identification of coastal erosion areas have been completed according to the procedures described in those administrative rules. Shoreland property owners and local governments will be notified that property or territory may lie in a coastal erosion area, in accordance with the procedures discussed above. At least once every 10 years, ODNR shall review and may revise the identification of Lake Erie coastal erosion areas.

B. Construction, erection or redevelopment of any permanent structure within a coastal erosion area requires a permit from the Director of ODNR (O.R.C. § 1506.07). A permanent structure is defined as any residential, commercial, industrial, institutional or agricultural building, any manufactured home as defined in O.R.C. § 4501.01, or any addition to such a structure if it

exceeds 500 square feet at ground level, and any septic system that receives sewage from a single-family, two-family, or three-family dwelling. Recreational vehicles as defined in O.R.C. § 4501.01 are not included (O.A.C. 1501-6-21). Final rules for enforcing the permit system in Lake Erie coastal erosion areas are included in Appendix H. These rules were officially filed with the Joint Committee on Agency Rule Review (JCARR) in July, 1995 and refiled by ODNR in final form in June, 1996.

Permits will be issued only when the site is or will be protected by an effective erosion control measure – structural, nonstructural or a combination of the two – that is approved by the Director OR if the following criteria are met:

1. The permanent structure will be movable or will be situated as far landward as applicable zoning resolutions or ordinances permit; and

2. The applicant will suffer exceptional hardship if the authorization is not given.

As indicated above, a person may seek authorization to build or redevelop within a coastal erosion area by installing an effective erosion control measure to protect the proposed new permanent structure or by demonstrating that existing erosion control measures will be effective. ODNR will assess whether any proposed erosion control measures are effective in protecting the permanent structure without causing or contributing to unacceptable adverse effects on the shore, littoral zone or coastal processes. Erosion control measures will be evaluated in terms of the following, as specified in O.A.C. 1501-6-24:

- Potential individual or cumulative impact, including any adverse effects on sand resources and coastal processes;

- Potential for accelerating erosion along the adjacent shoreline;

- Stability of the existing or proposed slope;

- The effectiveness of existing erosion control measures at the proposed site and along the adjacent shoreline;

- The integrity of the existing or proposed erosion control measure, its appurtenances and its component materials; and

- The effectiveness of proposed structural and/or nonstructural measures to protect the permanent structure.

Each permit application must be reviewed on its own merits. Potential applicants are encouraged to initiate preapplication consultation by contacting ODNR's Coastal Management Section, Division of Real Estate and Land Management.

Erosion control measures typically require a permit from the State of Ohio under O.R.C. § 1507.04, a permit from the U.S. Army Corps of Engineers (COE) pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act, and a Section 401 Water Quality Certification from Ohio EPA under O.R.C. § 6111.03(O) and § 6111.03(P). In addition, a submerged lands lease is required from the State of Ohio if any erosion control measure extends into the waters or onto the lands underlying the waters of Lake Erie (O.R.C. § 1506.11 and O.A.C. § 1501-6-1 through 1501-6-6). Therefore, a variety of factors, in addition to those noted above, are also considered during comprehensive and coordinated review by ODNR and Ohio EPA. These include, but are not limited to, impacts on water quality, fish and wildlife, and public uses such as navigation, water commerce and recreation. See Policy 12 Wetlands and Appendix K for a detailed description of the relevant criteria and coordinated review process with respect to Section 10/404 Permits and Section 401 Water Quality Certifications. See Policy 16 Public Trust Lands and Appendix L for details regarding protection of the public trust during review of proposed structures.

(NOTE: ODNR's comprehensive review of any proposed activity that is subject to a permit requirement as described in Policy 2 [O.R.C. § 1507.04] will incorporate evaluation of the first four factors described above, whether or not the structure is proposed to protect a new permanent structure.)

Any construction activities within a Lake Erie coastal erosion area may be stopped by director's order if they are found to be in violation of O.R.C. § 1506.07. Unauthorized construction activities are subject to a civil penalty (O.R.C. § 1506.09) or a fine (O.R.C. § 1506.99).

The law allows municipal corporations and counties to adopt coastal erosion area ordinances and resolutions. ODNR can provide model zoning regulations to assist local jurisdictions in the adoption of coastal erosion area ordinances or resolutions. Counties are authorized to enact coastal erosion areas standards as part of the local building code by O.R.C. § 307.37. A permit from ODNR's director "is not required within the territory of any county or municipal corporation that has adopted and is enforcing a Lake Erie coastal erosion area resolution or ordinance within its zoning or building regulations if the resolution or ordinance has been reviewed by the Director . . . and meets or exceeds the standards established under division (B) of this section" (O.R.C. § 1506.07(c)(1)).

If local controls are approved by the Director of ODNR as meeting or exceeding standards established by ODNR (O.A.C. 1501:6-21 through 28), then the county or municipality will be the permitting authority for construction projects in the coastal erosion areas. The Director of ODNR retains the authority to review the local implementation and enforcement of local standards every two years. If the director determines that the local standards are inadequately enforced, permitting authority reverts back to ODNR for the territory of the affected county or municipal corporation.

Even with local implementation of coastal erosion area regulations, a landowner will still be required to apply for a permit from the Corps of Engineers and ODNR for the construction of

any erosion control structures on Lake Erie. The OCMP will develop a consolidated permit application procedure so that an applicant may submit one application package to ODNR to obtain ODNR approvals.

C. No residential property owner who has been informed that his or her holdings are located in a coastal erosion area shall sell or transfer any interest in the property without providing written notice to the purchaser or grantee explaining that the land is included in a coastal erosion area (O.R.C. § 1506.06(F)). Such notice is to be provided on the property disclosure form for transfer of residential real property, in accordance with O.R.C. § 5302.30.

D. Ohio's Lake Erie shore is highly developed, and the realities of significant preexisting economic investment must be recognized. In coastal erosion areas where the existing level of development is substantial, continued stabilization may be prudent to protect life and property. ODNR will focus its funding efforts (see Policy 5) upon appropriate comprehensive projects in such areas, if a demonstrated statewide or regional public benefit will result. Where practicable and advantageous, ODNR encourages the use of nonstructural techniques in conjunction with or instead of structural controls. Within areas where it would be more effective to maintain the natural functions of beaches, dunes, bluffs and littoral zones, or where construction would measurably increase erosion elsewhere, construction and related shore protection will be discouraged and relocation facilitated. In its administration of its authorities, and in the provision of financial and technical assistance for erosion control projects and coastal erosion management, ODNR will emphasize and encourage strategic retreat and selective fortification.

## POLICY 2 – SHORE EROSION CONTROL

**IT IS THE POLICY OF THE STATE OF OHIO TO PROMOTE SOUND DECISIONS REGARDING CONTROL OF SHORE EROSION BY:**

**A. ISSUING PERMITS FOR CONSTRUCTION OF SHORELINE EROSION CONTROL STRUCTURES (O.R.C. § 1507.04);**

**B. PROVIDING TECHNICAL ASSISTANCE TO THE PUBLIC ON SHORELINE EROSION CONTROL STRUCTURES (O.R.C. § 1507.10); AND**

**C. DEVELOPING A PLAN FOR THE CONTROL OF SHORE EROSION AND MAKING THE PLAN AVAILABLE TO THE PUBLIC (O.R.C. § 1507.10).**

Authorities and Administration

A. Any person planning to construct a beach, groin or other structure to arrest or control erosion, wave action or inundation along or near the Ohio shoreline of Lake Erie must first submit plans and specifications to the Division of Engineering, ODNR, for review in accordance with O.R.C. § 1507.04. Plans and specifications for shoreline erosion control structures will be reviewed by the division in accordance with coastal engineering standards specific to the proposed structure. A permit to construct the structure will be issued by the Chief Engineer if the proposed structure is in compliance with any applicable laws and rules and is of sound coastal engineering design. Administrative rules as are necessary for the administration, implementation and enforcement of this authority will be developed and adopted by the Chief Engineer.

A submerged lands lease is required if the proposed shoreline erosion control structure will extend into the waters or onto the lands underlying the waters of Lake Erie (O.R.C. § 1506.11 and O.A.C. 1501-6-1 through 1501-6-06). In addition, a U.S. Army Corps of Engineers (COE) Section 10/404 permit and Ohio EPA Section 401 Water Quality Certification normally are required. Because these authorizations are also required for construction in Lake Erie, factors in addition to sound coastal engineering design are considered during comprehensive and coordinated review by ODNR and Ohio EPA. These factors include, but are not limited to, impact on water quality, fish and wildlife, fish and wildlife habitat, and public uses such as navigation, water commerce and recreation. See Policy 12 Wetlands and Appendix K for a detailed description of the relevant criteria and coordinated review process with respect to Section 10/404 Permits and Section 401 Water Quality Certifications. See Policy 16 Public Trust Lands and Appendix L for details regarding protection of the public trust.

B. ODNR encourages property owners to spend ample time and effort in the initial planning phase of a shoreline erosion control project. Consideration should be given to all potential means to control shore erosion, including nonstructural and structural measures and a combination of both. Design of a shoreline erosion control project must be based on the site-specific conditions

and the desired level of erosion protection. Consideration also should be given to designing and implementing a coordinated shoreline erosion control project among adjacent property owners, rather than individual, property-by-property projects. Coordinated shoreline erosion control projects can be more effective, less disruptive to natural processes and less costly than individual projects.

C. The Chief Engineer of ODNR, in cooperation with the Division of Geological Survey, is authorized by O.R.C. § 1507.10 to prepare a shore erosion prevention plan and to develop a program to provide technical assistance to the public. The Division of Geological Survey publishes and updates reports on Lake Erie shore erosion and flooding. These reports contain technical data on physical setting, coastal processes and shore recession, and general recommendations on shore protection.

## POLICY 3 – FLOODPLAIN MANAGEMENT

**IT IS THE POLICY OF THE STATE OF OHIO TO MINIMIZE FUTURE FLOOD DAMAGES AND PREVENT POTENTIAL LOSS TO EXISTING DEVELOPMENT IN COASTAL FLOODPLAINS BY:**

**A. REQUIRING ALL COUNTIES AND MUNICIPALITIES WITH COASTAL FLOOD HAZARD AREAS TO PARTICIPATE IN THE NATIONAL FLOOD INSURANCE PROGRAM OR TO ADOPT ORDINANCES MEETING OR EXCEEDING PROGRAM STANDARDS (O.R.C. § 1506.04 AND O.A.C. 1501:22-1-01 THROUGH 1501:22-1-08);**

**B. REQUIRING THAT ANY STATE FUNDED OR FINANCED DEVELOPMENT LOCATED WITHIN THE 100-YEAR FLOODPLAIN COMPLY WITH THE FLOODPLAIN MANAGEMENT CRITERIA OF THE NATIONAL FLOOD INSURANCE PROGRAM. ANY STATE AGENCY HAVING REGULATORY JURISDICTION THAT PREEMPTS THE AUTHORITY OF POLITICAL SUBDIVISIONS TO REGULATE DEVELOPMENT IN FLOODPLAINS SHALL ENSURE THAT BEFORE GRANTING A LICENSE, PERMIT, OR OTHER AUTHORIZATION, THE DEVELOPMENT COMPLIES WITH THE NATIONAL FLOOD INSURANCE PROGRAM CRITERIA (O.R.C. § 1521.14);**

**C. REQUIRING THAT NO STATE FINANCIAL ASSISTANCE IN CONNECTION WITH A FLOOD DISASTER SHALL BE DISBURSED TO OR WITHIN ANY COUNTY OR MUNICIPALITY THAT DOES NOT COMPLY WITH THE FLOODPLAIN MANAGEMENT CRITERIA OF THE NATIONAL FLOOD INSURANCE PROGRAM (O.R.C. § 1521.14); AND**

**D. REQUIRING THAT ALL STATE AGENCY AND POLITICAL SUBDIVISIONS, PRIOR TO EXPENDITURE OF FUNDS FOR CONSTRUCTION OF BUILDINGS, STRUCTURES, ROADS, BRIDGES, OR OTHER FACILITIES IN LOCATIONS THAT MAY BE SUBJECT TO FLOODING OR FLOOD DAMAGE, NOTIFY AND CONSULT WITH THE DIVISION OF WATER AND SHALL FURNISH SUCH INFORMATION AS THE DIVISION MAY REASONABLY REQUIRE IN ORDER TO AVOID THE UNECONOMIC, HAZARDOUS OR UNNECESSARY USE OF FLOODPLAINS IN CONNECTION WITH SUCH FACILITIES (O.R.C. § 1521.14).**

Authorities and Administration

A. O.R.C. § 1506.04 mandates that all communities with coastal flood hazard areas designated under the Flood Disaster Protection Act of 1973 (P.L. 93-234) must either participate in the NFIP or enact regulations that meet or exceed the standards required for such participation (O.R.C. § 1506.04). These standards are set forth in O.A.C. 1501:22-1-01 through -08 (see Appendix I). The law further states that, if the Director of ODNR determines that a county or

municipality is in violation of this requirement, the director may request that the Attorney General bring an action for appropriate relief against the noncompliant community. The director may also request that an action be brought against any developer conducting a development activity in a designated flood hazard area within a county or municipal jurisdiction not in compliance with O.R.C. § 1506.04. Table 1 lists all communities in the coastal area with such identified floodplain areas and indicates their participation in the NFIP. All Ohio coastal area communities with identified floodplain areas either participate in the NFIP, or have adopted floodplain management ordinances which comply with the standards of that program.

Nonparticipation in the NFIP results in restrictions on federal or federally related financing within the flood hazard areas. Most importantly, nonparticipating community residents will not be eligible to purchase flood insurance, no federal grants or loans for buildings within flood hazard areas will be made and most forms of federal disaster assistance will not be available following flood disasters. ODNR is the designated state agency responsible for coordinating floodplain management activities with federal, state and local governments (O.R.C. § 1521.03(C) and (D)). Local communities will be given assistance in developing acceptable floodplain management regulations by the ODNR's Division of Water.

Local governments may grant variances to their floodplain regulations only when the strict enforcement of such regulations due to physical conditions of the land would cause undue hardship for landowners. Requests for relief from local floodplain regulations must be made to the locally designated variance body. Variances granted by local governmental units must conform to state law and the intent of federal laws and programs, including the NFIP where applicable.

B. State agencies that undertake, fund or finance developments located in floodplain areas must ensure that such projects or activities are consistent with the NFIP standards (O.R.C. § 1521.14). This requirement extends to activities permitted by state agencies where state law preempts local governments from setting flood damage prevention standards. O.R.C. § 1521.14 further stipulates that the state develop flood damage reduction standards that shall be consistent with the floodplain management criteria of the NFIP. ODNR provides technical assistance and guidance to state agencies to ensure that such projects meet these criteria. The Director of ODNR may request the Attorney General to bring civil action for injunctive relief against any state agency that violates the statute (O.R.C. § 1521.14).

C. O.R.C. § 1521.14 requires that state disaster funds in connection with a flood be withheld from a "noncompliant" community until the community takes action to establish or re-establish compliance. A community is considered "noncompliant" if it either does not participate in the NFIP or has not adopted local floodplain regulations that are consistent with that program. All Ohio coastal communities are listed as compliant by the State of Ohio.

TABLE 1

National Flood Insurance Program Participation Status
of Shoreline Communities
(As of March, 1997)

| Community | Participation Status | Current Map Date |
|---|---|---|
| ASHTABULA COUNTY | R | 01-02-81 |
| Ashtabula | R | 02-01-80 |
| Conneaut | R | 02-15-80 |
| Geneva-on-the-Lake | R | 12-04-79 |
| North Kingsville (NSFHA) | R | N/A |
| LAKE COUNTY | R | 09-20-95 |
| Eastlake | R | 02-18-81 |
| Fairport Harbor* | NP | 05-15-80 |
| Grand River | R | 09-20-95 |
| Lakeline (NSFHA) | R | N/A |
| Mentor | R | 09-20-95 |
| Mentor-on-the-Lake | R | 08-01-79 |
| North Perry | R | 07-16-79 |
| Painesville | R | 02-02-77 |
| Timberlake (NSFHA) | R | N/A |
| Willoughby | R | 01-16-81 |
| Willowick | R | 12-04-79 |
| CUYAHOGA COUNTY | | |
| (no unincorporated coastal areas) | | |
| Bay Village | R | 12-01-77 |
| Bratenahl | R | 06-15-81 |
| Cleveland | R | 08-01-78 |
| Euclid | R | 08-17-81 |
| Lakewood | R | 02-01-78 |
| Rocky River | R | 05-16-80 |
| LORAIN COUNTY | | |
| (no unincorporated coastal areas) | | |
| Avon Lake | R | 11-02-77 |
| Lorain | R | 03-03-92 |
| Sheffield Lake | R | 03-01-78 |
| Vermilion | R | 11-12-82 |

(continued)

Table 1 continued

| Community | Participation Status | Current Map Date |
|---|---|---|
| ERIE COUNTY | R | 09-20-95 |
| Bay View | R | 09-15-77 |
| Huron | R | 04-03-78 |
| Kelleys Island* | NP | 08-17-81 |
| Sandusky | R | 07-05-77 |
| SANDUSKY COUNTY | R | 01-17-79 |
| Fremont | R | 04-17-84 |
| OTTAWA COUNTY | R | 11-04-92 |
| Marblehead | R | 02-01-84 |
| Oak Harbor | R | 04-01-82 |
| Port Clinton | R | 09-30-77 |
| Put-in-Bay | R | 09-30-77 |
| WOOD COUNTY | R | 12-17-91 |
| Perrysburg | R | 05-02-83 |
| Rossford | R | 05-02-83 |
| LUCAS COUNTY | R | 03-16-83 |
| Harbor View | R | N/A |
| Maumee | R | 03-28-80 |
| Oregon | R | 03-15-78 |
| Toledo | R | 06-04-80 |

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R - Regular program, final approved ordinances in effect
NP - Nonparticipating community, flood insurance not available
NSFHA - No special flood hazard area has been identified in the community

* Although Fairport Harbor and Kelleys Island are not participating in the NFIP, both communities are considered to meet the Coastal Management Program requirements by having adopted floodplain management ordinances that comply with the standards of the NFIP.

**COMMENTS:** The City of Ashtabula has been in a "Probation" status in the NFIP since 1993 due to deficiencies in the city's floodplain management program. The Federal Emergency Management Agency uses the probationary period as an official notice to the community and its residents that they are not implementing an effective and compliant local floodplain management program. During the probationary period, flood insurance is still available; however, all new and renewed flood insurance policies will carry a penalty $50.00 surcharge. In March, 1996, the city submitted information addressing outstanding issues. FEMA is in the process of reviewing the city's submission to determine if all issues have been addressed. "Probation" is expected to remain in effect through April 1997.

D. As provided in O.R.C. § 1521.14, all departments and agencies of the state, and local governmental units, prior to expenditure of funds for, or construction of buildings, structures, roads, bridges or other facilities in locations that may flood, shall notify and consult with the Division of Water to avoid unwise floodplain use. Recommended Division of Water floodplain regulation criteria are based on a 100-year level of flood protection for most developments. However, certain critical developments, which if flooded would create an added dimension to a potential flood disaster, need to be protected to the 500-year flood.

POLICY 4 – FLOOD PROTECTION AND MITIGATION

**IT IS THE POLICY OF THE STATE OF OHIO TO PROMOTE EFFECTIVE FLOOD PROTECTION BY:**

**A. REGULATING THE DESIGN AND CONSTRUCTION OF DAMS, DIKES AND LEVEES, AND INSPECTING THEIR USE AND OPERATION (O.R.C. § 1521.06 et seq.);**

**B. CONDUCTING DETAILED STUDIES AND INVESTIGATIONS OF ALL FACTORS RELATING TO FLOODS AND FLOOD PROTECTION:**

**C. ESTABLISHING CONSERVANCY DISTRICTS WHERE LOCALLY DESIRED; AND**

**D. PROMOTING THE PROTECTION AND RESTORATION OF WETLANDS FOR FLOODWATER STORAGE.**

Authorities and Administration

A. The Chief of the Division of Water in ODNR requires construction permits for new dams, dikes and levees and makes periodic inspections of existing dams, dikes and levees pursuant to O.R.C. § 1521.06 et seq. While the construction, permitting and inspection authorities include flood protection structures, the law applies to all types of dams, dikes and levees, regardless of purpose.

All dams, dikes and levees constructed in Ohio and not exempted by O.R.C. § 1521.062 or the Chief of the Division of Water shall be inspected periodically to assure that continued operation and use of the dam, dike or levee does not constitute a hazard to life, health or property (O.R.C. § 1521.062). The chief shall order the owner of the dam, dike or levee to perform repairs or other measures necessary to safeguard life, health or property. Owners of dams, dikes and levees subject to O.R.C. § 1521.062 are required to secure approval of plans to repair, improve, alter or remove a dam, dike or levee.

B. ODNR's Division of Water is authorized to conduct detailed studies and investigations of all factors relating to flood and flood protection in the state as funds are appropriated; and to cooperate with the U.S. government and with any political subdivision of the state in planning and constructing flood protection works (O.R.C. § 1521.03).

C. Conservancy districts can be established along the shoreline for the purpose of constructing flood protection measures. A conservancy district is a political subdivision formed in accordance with O.R.C. § 6101.05 by local landowners to address a common water and/or erosion problem. Once formed, a conservancy district is a political subdivision of the state;

however, affected lands remain under private ownership unless actually purchased by the district for project development or maintenance purposes.

D. An important function of wetlands is the temporary storage of floodwater and a resulting reduction in peak flows. Therefore, protection and restoration of wetlands is a desirable nonstructural approach to lessening the dangers and damages of flooding. The State of Ohio is committed to protecting and enhancing existing wetlands, restoring degraded wetlands and developing new ones. The OCMP uses a variety of authorities and mechanisms to accomplish wetland preservation, as discussed in Policy 12.

POLICY 5 – SHORE EROSION AND FLOOD HAZARD MITIGATION ASSISTANCE

**IT IS THE POLICY OF THE STATE OF OHIO TO ASSIST LAKE ERIE COASTAL COMMUNITIES EXPERIENCING FLOODING AND SHORE EROSION PROBLEMS TO MINIMIZE FUTURE DAMAGES BY:**

**A. ADMINISTERING FUNDS FOR PROTECTION OF LAKE ERIE SHORES AND WATERS (O.R.C. § 1507.05); AND**

**B. PROVIDING TECHNICAL INFORMATION AND ASSISTANCE FOR ADDRESSING EROSION AND FLOOD HAZARD CONCERNS (O.R.C. § 1507.10).**

Authorities and Administration

A. ODNR administers the state permit and lease fund, that consists of monies derived from the granting of permits and leases under O.R.C. § 1505.07 for the removal of sand, gravel, stone, gas, oil and other substances from and from under the bed of Lake Erie and from applications for construction permits submitted under O.R.C. § 1507.04 (O.R.C. § 1507.05). The department administers the fund for, among other purposes, protection of Lake Erie shores and waters, the investigation and prevention of erosion. Funds may be used to partially fund erosion protection projects. The Chief Engineer of ODNR may enter into agreements with counties, municipal corporations, townships, park boards and conservancy districts or any other state departments or divisions for the purpose of protecting publicly owned littoral property by constructing and maintaining projects to prevent, correct and arrest erosion along the shore of Lake Erie and in any rivers that are connected with the lake, and any other watercourses that flow into the lake (O.R.C. § 1507.06).

The state also may provide financial assistance for the construction of conservation works of improvement for flood and erosion projects. The Director of ODNR, upon recommendation by the Ohio Soil and Water Conservation Commission, is authorized to enter into agreements with boards of county commissioners to cost-share in improvements constructed by the county for a soil and water conservation district. The state share shall be paid from funds appropriated for such purposes and shall not exceed 50 percent of the nonfederal cost of the project (O.R.C. § 1515.16).

ODNR coordinates the state role in the U.S. Natural Resources Conservation Service P.L. 83-566 Watershed Program (16 U.S.C. 1001 et seq.), which provides assistance to local communities, agencies and landowners in the planning and development of adequate flood control, storage and farm land drainage projects. The state may provide technical assistance to aid local agencies in meeting nonfederal obligations (O.R.C. § 1521.03).

B. Technical information and assistance is available from several sources. ODNR's Division of Water provides public information on flooding and flood mitigation; coordinates determinations

of community eligibility for NFIP; and directs communities and homeowners to other available sources of assistance. The Chief Engineer is required to establish a technical assistance program on shore erosion protection for local governments and property owners (O.R.C. § 1507.10). The Division of Engineering provides technical information on the design of shore erosion control structures. The Division of Geological Survey provides site-specific information on geologic setting, geologic processes, shore recession rates and shore protection measures.

The Ohio Emergency Management Agency is responsible for disaster preparedness, operations and recovery. The agency provides local governments with assistance in designing emergency management plans and training programs and coordinating response to disasters with the FEMA and other state agencies.

The Ohio Sea Grant Program arranges workshops on site conditions and available options for real estate professionals, appraisers, coastal property owners and local government officials. Fact sheets have been developed on Lake Erie erosion topics. Additional technical assistance is available on coastal erosion causes, erosion abatement alternatives and homeowner options. Site visits are coordinated with groups of property owners.

## WATER QUALITY

Uses Subject to Management

- Activities involving public water supplies, to ensure that a sufficient and safe public water supply is available for the population along Lake Erie.
- Activities involving any process, system, or practice that may be a source of water quality degradation.
- Activities causing nonpoint or diffuse source of water pollution.
- Activities addressed by Remedial Action Plans (RAPs) for Ohio's four International Joint Commission-designated Areas of Concern (AOCs), the Maumee, Black, Cuyahoga and Ashtabula Rivers.
- Activities affecting ground water.

One of the most serious problems that adversely affects the Ohio coastline is the pollution of Lake Erie and its tributaries. Water pollution has greatly accelerated the Lake's natural eutrophication process. Even without human interference, however, Lake Erie would be considerably more eutrophic than other Great Lakes due to its shallowness, relative warmth, and the high fertility of the surrounding basin's soils. The two factors of human activities and local, natural conditions, have resulted in a Lake Erie characterized by excessive plant nutrients, over-abundant plankton and algae populations, extensive areas with low levels of dissolved oxygen, areas with high quantities of toxic chemicals and diminished fisheries.

By the 1960s and early 1970s, water quality had become so poor that nearly the entire hypolimnion (lowermost layer of colder water in a thermally-stratified lake) of the central basin was devoid of oxygen during summer months. Massive algal blooms were common in the western basin. However, in recent years, the water quality of Lake Erie has improved. Almost all beaches have reopened, and fish populations are rebounding. Evidence documents that nutrient enrichment of the lake and oxygen depletion in the central basin have decreased. Algal blooms once prevalent in the western basin have been nonexistent in recent years. Since 1970, open lake phytoplankton abundance has decreased and species composition has shifted more toward that of mesotrophic lakes.

Toxics, however, remain a serious concern. Tumors have been found on fish in several of Lake Erie's tributaries. Although most Lake Erie fish pose no health risk for the majority of people, Maumee Bay catfish should not be eaten, and limitations on consumption of other species are advised. There are 42 sites in the Great Lakes basin designated as AOCs by the International Joint Commission (IJC). AOCs are specific areas that suffer from severe environmental degradation that has negatively impacted water quality and has limited beneficial uses of the area. Four such areas have been designated in Ohio: the lower reaches of the Maumee River, the Black River, the Cuyahoga River and the Ashtabula River.

Nutrient enrichment, particularly from phosphorus, presented a water quality problem needing specific attention. More than 78 percent of this nutrient originates from nonpoint sources such as agriculture, livestock waste, urban runoff, on-site disposal systems and the atmosphere. Sewage treatment plants are the second major source of phosphorus, contributing approximately 20 percent. High nutrient levels have far-reaching consequences, including foul-tasting drinking water and reduced fish populations. Sewage treatment facilities are being improved with expenditures of more than $1 billion in the Lake Erie basin. The goal of reducing the average phosphorus concentration of certain targeted municipal wastewater treatment facilities has nearly been achieved.

Many Lake Erie tributaries deliver heavy sediment loads to Lake Erie. ODNR estimates of sediment loads for Ohio's portion of Lake Erie indicate that roughly 2 million tons are derived annually from tributaries and 1.6 million tons from the shoreline. Fined-grained sediments from certain watersheds clog shipping channels, damage fish habitat, complicate water supply treatment, contribute to nutrient enrichment and adversely affect recreational use of the lake. In Ohio alone, the U. S. Army Corps of Engineers spends approximately $10 million annually to dredge an estimated 2 million cubic yards of sediments from the shipping channels and harbors of Lake Erie.

In 1972, Congress amended the Federal Water Pollution Control Act (FWPCA P.L. 92-500, 33 U.S.C. 1251 et seq., renamed the Clean Water Act in 1977), establishing as its objective the restoration and maintenance of the chemical, physical, and biological integrity of the nation's waters. This includes the national goals of eliminating the discharge of pollutants into navigable waters; wherever attainable, achieving safe water quality levels for fish, shellfish, wildlife and recreational users, and eliminating the discharge of toxic pollutants in toxic amounts. Further, the governments of the United States and Canada entered into the Great Lakes Water Quality Agreement (GLWQA) in the same year. The agreement provides for the restoration and enhancement of water quality in the Great Lakes system. Similar to the FWPCA, the GLWQA and its subsequent revisions called for the prohibition of toxic discharges in toxic amounts and for the virtual elimination of the discharge of all persistent toxic substances. Inherent in both the FWPCA and the GLWQA was the development of coordinated planning processes, the development of best management practices and the utilization of the best available technologies for controlling pollution.

As required by the Great Lakes Water Quality Agreement and the Great Lakes Critical Programs Act of 1990 amending the Clean Water Act, a lake-wide management plan (LaMP) is being developed for Lake Erie. The main purpose of the LaMP is to assess and reduce the impacts and loadings of toxics into the lake, but it will address other sources of stress to Lake Erie as well. Some of these other issues include the impacts of exotic species, loss of habitat and nutrient dynamics.

Under the leadership of U.S. EPA and Environment Canada, Ohio, as the lead state, has been working with a binational group of state, federal and provincial agencies to develop a Concept Paper describing the framework upon which to build the LaMP. The geographic boundaries will include the lake proper, near shore, bays and river mouths. The institutional structure of the LaMP consists of a Management Committee, Work Group, Public Forum and several subcommittees. Current subcommittee issues include an assessment of beneficial use impairments, development of

ecosystem objectives, compilation of contaminant sources and loadings information, and public involvement.

Public involvement is considered an important component of the LaMP. Mechanisms are being developed to involve various levels of public representation in every LaMP initiative. Four public workshops were held in May and June, 1995 to solicit public input in the identification of ecosystem objectives for the lake. These results were considered in a technical workshop in October, 1995 to determine which sets of objectives are conceivable for the lake. These objectives are being further considered by the Work Group and are being taken back to the public for further review and to add values. Once objectives are determined, indicators will be developed to measure the progress in meeting these objectives.

A beneficial use impairment assessment is currently under way to assess which of the 14 beneficial uses listed in the Great Lakes Water Quality Agreement are impaired. An initial LaMP report is scheduled for completion in March, 1997.

POLICY 6 – WATER QUALITY

**IT IS THE POLICY OF THE STATE OF OHIO TO MAINTAIN AND IMPROVE THE QUALITY OF THE STATE'S COASTAL WATERS FOR THE PURPOSE OF PROTECTING THE PUBLIC HEALTH AND WELFARE AND TO ENABLE THE USE OF SUCH WATERS FOR PUBLIC WATER SUPPLY, INDUSTRIAL AND AGRICULTURAL NEEDS, AND PROPAGATION OF FISH, AQUATIC LIFE AND WILDLIFE BY:**

**I. ASSURING ATTAINMENT OF STATE WATER QUALITY STANDARDS AND OTHER WATER QUALITY RELATED REQUIREMENTS (O.A.C. 3745-1) THROUGH:**

**A. CONTROLLING DISCHARGES INTO WATERS OF THE STATE BY REQUIRING PERMITS TO CONSTRUCT FACILITIES AND BY ESTABLISHING AND ENFORCING EFFLUENT LIMITATIONS UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES, SECTION 402 CWA, O.R.C. § 6111.03);**

**B. ADMINISTERING A PERMIT SYSTEM TO CONTROL INJECTION WELL DRILLING IN COMPLIANCE WITH THE "SAFE DRINKING WATER ACT" AND THE CWA (O.R.C. § 6111.043 AND 6111.044);**

**C. REGULATING DISCHARGE OF DREDGE OR FILL MATERIAL INTO SURFACE WATERS INCLUDING WETLANDS IN ACCORDANCE WITH SECTION 401 OF THE CLEAN WATER ACT (O.R.C. § 6111.03);**

**D. ESTABLISHING UNIFORM REGULATIONS REGARDING SOLID WASTE DISPOSAL SITES AND FACILITIES (O.R.C. 3734.02 AND 3734.05);**

**E. PROHIBITING THE SALE OR DISTRIBUTION FOR SALE OF PHOSPHORUS-CONTAINING HOUSEHOLD LAUNDRY DETERGENTS IN THE LAKE ERIE BASIN (O.R.C. § 6111.10);**

**F. PREPARING A STATE WATER QUALITY MANAGEMENT PLAN TO ASSESS TECHNICAL NEEDS FOR POLLUTION CONTROL AND INSTITUTIONAL MECHANISMS TO ENFORCE CONTROLS (O.R.C. § 6111.41 AND 6111.42); AND**

**G. ADMINISTERING A STATE REVOLVING LOAN FUND PROGRAM TO PROVIDE FINANCIAL ASSISTANCE FOR PUBLICLY OWNED WASTEWATER TREATMENT FACILITIES (O.R.C. § 6111.03 AND 6121.03).**

**II. COORDINATING, THROUGH THE LAKE ERIE COMMISSION, STATE AND LOCAL POLICIES AND PROGRAMS PERTAINING TO LAKE ERIE WATER QUALITY; REVIEWING, AND MAKING RECOMMENDATIONS CONCERNING, THE DEVELOPMENT AND IMPLEMENTATION OF POLICIES, PROGRAMS AND ISSUES FOR LONG-TERM, COMPREHENSIVE PROTECTION OF LAKE ERIE WATER RESOURCES AND WATER QUALITY THAT ARE CONSISTENT WITH THE GREAT LAKES WATER QUALITY AGREEMENT AND GREAT LAKES TOXIC SUBSTANCES CONTROL AGREEMENT (O.R.C. § 1506.21).**

**III. USING THE LAKE ERIE PROTECTION FUND (LEPF) TO ESTABLISH A FIRM SCIENTIFIC BASE FOR IMPLEMENTING A BASINWIDE SYSTEM OF WATER QUALITY MANAGEMENT FOR LAKE ERIE AND ITS TRIBUTARIES; SUPPORTING RESEARCH TO IMPROVE THE SCIENTIFIC KNOWLEDGE ON WHICH LAKE ERIE AQUATIC RESOURCE PROTECTION POLICIES ARE BASED (O.R.C. § 1506.23).**

Authorities and Administration

I. State Water Quality Standards

The State of Ohio is committed to maintaining and improving the quality of its coastal waters. Ohio EPA is the agency responsible for ensuring that state water quality standards are met. All water quality standards, enforcement procedures and authorities of Ohio EPA have been approved by the USEPA as being consistent with federal water quality goals established by the Clean Water Act (CWA).

Water quality standards set forth in O.A.C. Chapter 3745-1 establish minimum requirements for all surface waters of the state. Water quality standards consist of two parts: designated uses and numerical or narrative criteria designed to protect the uses. The water quality use designations are assigned to protect reproducing populations of fish, plants, and associated vertebrate and invertebrate organisms. Lake Erie itself is designated as Exceptional Warmwater Habitat, State Resource Water, Public Water Supply, Agricultural and Industrial Water Supply, and Bathing Waters (O.A.C. 3745-1-31). Tributaries within the coastal area are designated for various uses as indicated in Table 2.

O.A.C. 3745-1-05 outlines the state's antidegradation policy. Existing water uses in Lake Erie and its tributaries shall be maintained and protected, and degradation that would interfere with such uses is prohibited. Where the existing water quality exceeds those levels necessary for propagation of fish, shellfish, wildlife, and recreation, waters shall be maintained and protected unless the Director of Ohio EPA determines otherwise through public notice and intergovernmental coordination. In addition, degradation of water quality shall not interfere with or become injurious to existing or planned uses, and the Director of Ohio EPA shall require that the most stringent statutory and regulatory controls be employed by all new point sources.

TABLE 2 – TRIBUTARY DESIGNATIONS

| Stream Segment* | Aquatic Life Habitat | | | | Water Supply | | Recreation |
|---|---|---|---|---|---|---|---|
| | State Resource Water | Warm Water | Exceptional Warmwater | Seasonal Salmonid | Agricultural | Industrial | Primary Contact |
| Maumee River | | | | | | | |
| - from Perrysburg bridge to mouth | | X | | | X | X | X |
| - remaining segment within coastal area | X | X | | | X | X | X |
| Portage River | | X | | | X | X | X |
| Toussaint River | | X | | | X | X | X |
| Sandusky River | | X | | | X | X | X |
| Huron River | | X | | X | X | X | X |
| Old Woman Creek | X | X | | | X | X | X |
| Vermilion River | | | X | X | X | X | X |
| Black River | | X | | X | X | X | X |
| Rocky River | X | X | | X | X | X | X |
| Cuyahoga River | | | | | | | |
| - entirety of Ship Channel, N & SS RR bridge to mouth** | | | | | | X | X |
| - remaining segment within coastal area | | X | | | X | X | X |
| Chagrin River | X | X | | X | X | X | X |
| Grand River | | X | | X | X | X | X |
| Ashtabula | | X | | | | X | X |
| Conneaut Creek ( Designated coldwater habitat) | | | | X | X | X | X |

* Segment of stream in coastal area

** June-January -- Limited Resource Water; February-May -- Fish Passage

A. Permits to Install and NPDES Enforcement

1. The Ohio EPA is authorized by O.R.C. § 6111.03 to issue permits for the discharge of conventional pollutants, toxic pollutants, and nutrients to waters of the state pursuant to the National Pollutant Discharge Elimination System (NPDES, Section 402, CWA) consistent with the State Water Quality Management Plan (Section 208, CWA). Limits set for permit issuance are based on Technical Support Documents (TSDs) that compile all background material for the planning regions and Water Quality Based Effluent Limit (WQBEL) reports that use the TSDs, toxicity test results and Wasteload Allocations (WLAs).

2. The Ohio EPA monitors, through monthly operating reports submitted by permitted dischargers, the quality of effluent discharged, tracks compliance with NPDES permits, and takes enforcement action against entities when necessary (O.R.C. § 6111.03).

3. Sewage treatment plants are regulated by the requirement to obtain from the Director, Ohio EPA a "permit to install" a new source of pollution (O.A.C. 3745-31-02).

4. Ohio EPA administers and enforces the publicly owned treatment works pretreatment program in accordance with the CWA pursuant to O.R.C. § 6111.03. This allows the agency to apply and enforce pretreatment standards contained in O.A.C. 3745-3; approve or deny requests for publicly-owned pretreatment programs and oversee or implement such programs; and set the terms and conditions of permits as necessary to achieve compliance with O.R.C. Chapter 6111.

5. Ohio EPA regulates the discharge of toxics into publicly owned treatment works or waters of the state through NPDES permits. It may take enforcement action when necessary and enforces National Municipal Policy to ensure compliance by permittees with water quality standards as mandated by the 1981 amendments to the CWA (O.R.C. Chapter 6111). Ohio EPA recommends, identifies and assesses the impact of controls for the discharge of toxic materials to protect the public health and the environment from effects due to toxic chemical exposures via surface waters of the state.

6. The director may "issue, modify, or revoke orders to prevent, control, or abate water pollution" by requiring the construction of new disposal systems or modifying existing ones pursuant to O.R.C. § 6111.03(H)(2). This refers to all sewage system and waste treatment works including all pipes, conduits, etc. used to conduct or collect a waterborne sewage or other waste to a point of disposal or treatment. Further, the director may modify terms or conditions of a permit consistent with the CWA to require the maximum use of technology furthering the elimination of wastes into waters of the state (O.R.C. § 6111.031).

B. Injection Well Drilling Regulation

Ohio EPA administers a program established under O.R.C. § 6111.043 and 6111.044 to regulate the injection of wastes into waters of the state. When the director reviews permits under the program, the director must find before issuing a permit that the activity will comply with the CWA, the "Safe Drinking Water Act" and the State Clean Water Act (O.R.C. § 6111). Unless otherwise authorized by the director, "no person shall drill a new well or convert an existing well for the purpose of injecting sewage, industrial wastes, or other wastes, without having obtained an injection well drilling permit issued by the director of environmental protection" (O.R.C. § 6111.043 and O.A.C. Chapter 3745-34).

C. Section 401 Water Quality Certification

Any activity that requires a federal permit pursuant to Section 404 of the CWA or Section 10 of the Rivers and Harbors Act of 1899, or any other federal permit or license for an activity that may result in any discharge into navigable waters, must be consistent with the state's water quality standards (O.R.C. § 6111.03). Rules that, in part, set forth criteria for Section 401 Water Quality Certification are contained in O.A.C. Chapter 3745-32 (See Appendix K for the entire text.) Policy 12 further describes OCMP policy on regulation of activities affecting wetlands through the 401 process.

D. Regulation of Solid Waste Disposal Facilities

Ohio EPA has established uniform regulations throughout the state governing solid waste disposal sites and facilities and requires issuance of licenses from local boards of health for disposal sites (O.R.C. §s 3734.02 and 3734.05). Detailed plans for such sites, facilities and methods of operation must be approved by the Director of Ohio EPA prior to issuance of any permit (O.R.C. § 3734.02). See Policy 31 for further details.

E. Regulation of Phosphorus-containing Detergent

Within the State Water Quality Management Plan, Ohio EPA has developed the Ohio Phosphorus Reduction Strategy for Lake Erie to quantify phosphorus loadings into Lake Erie from Ohio, and to identify those mechanisms that, if properly implemented, would reduce such loadings. Pursuant to the strategy, Ohio prohibits the sale and distribution for sale of household laundry detergents containing more than 0.5 percent by weight of phosphorus in all Ohio counties in the Lake Erie watershed (O.R.C. § 6111.10).

F. State Water Quality Management Planning

Ohio EPA prepares a State Water Quality Management Plan under provisions of the CWA, Sections 205(j), 208, 303 and 604(b). The plan is used to assess technical needs for pollution control and to identify institutional mechanisms necessary to enforce controls. It is a compilation of various reports addressing a number of issues related to protecting

and improving Ohio's water quality. The plan incorporates reports that are prepared by Areawide Planning Agencies established under Section 208 and that address water quality management needs in their areas. It also includes the Phosphorus Reduction Strategy, 305(b) Water Quality Inventory, the Nonpoint Source Assessment and Nonpoint Source Management Plan, and Remedial Action Plans (RAPs) and others.

G. Funding Publicly Owned Wastewater Treatment Systems

As the designated lead agency, Ohio EPA is authorized to administer the Water Pollution Control Loan Fund (O.R.C. § 6111.036), in conjunction with the Ohio Water Development Authority (OWDA). This fund was established pursuant to the CWA of 1987 to provide financial assistance for publicly owned wastewater treatment systems and nonpoint source pollution controls. Provisions require the state to match every five federal dollars with one dollar from its own funds. The Water Pollution Control Loan Fund statute authorizes state funding of the program (O.R.C. § 6111.036). Financial assistance from the fund is limited to projects appearing on a priority list that is prepared by the Director of Ohio EPA and that ranks projects principally on the basis of relative water quality and public health benefits and financial need of the applicant.

OWDA is responsible for certain financial matters pertaining to the State Revolving Loan Fund Program. These duties include distributing funds to contractors and receiving loan payments from communities, issuing revenue bonds, and offering financial advice. The loan payback period may not exceed 20 years, and interest rates are set by Ohio EPA through a public participation process. The revolving fund may use bonds issued upon the incoming interest payments of the initial loans to provide additional funding for future wastewater treatment projects. OWDA is also authorized to make loans and issue bonds unrelated to the State Revolving Loan Fund Program to raise the necessary local share of financing for these projects (O.R.C. § 6121.03 and 6121.04).

II. Lake Erie Commission

The Lake Erie Commission plays a key role in ensuring coordination of state and local policies and programs pertaining to Lake Erie water quality. The commission makes recommendations concerning the development and implementation of policies and programs for long-term, comprehensive protection of Lake Erie water resources and water quality consistent with the Great Lakes Water Quality Agreement and Great Lakes Toxic Substances Control Agreement.

The commission, described in Chapter 4, operates under a work plan developed with public input and holds meetings quarterly. Meetings and records of the commission are open to the public. The broad-based representation on the commission and interaction with the public and interest groups facilitated by the agencies and the Ohio Lake Erie Office help to ensure the development of sound resource protection policies and the promotion of environmentally sustainable economic development.

III. Lake Erie Protection Fund

The Lake Erie Protection Fund (LEPF) is supported by payments from the Great Lakes Protection Fund (GLPF), the Lake Erie license plate program, Erie . . . Our Great Lake credit card program, donations and bequests. The GLPF, a regional trust fund established by the Great Lakes states, divides one-third of its net earnings among member states in proportion to their respective contributions.

Ohio uses these funds in grants to advance the goals of the Toxic Substances Control Agreement, the OCMP and the Great Lakes Water Quality Agreement. The Lake Erie Commission prepares and publishes a Lake Erie protection agenda describing proposed uses and priorities of the protection fund for succeeding state fiscal years. The Commission also regularly publishes a State of the Lake Report that documents the state's progress, deficiencies and goals in managing its Lake Erie resources. The Commission solicits proposals for water quality and ecosystem change research, monitoring, aquatic habitat restoration, coastal management initiatives implementation and other activities consistent with these goals.

(**NOTE**: Nonpoint sources of pollution such as construction site, mine and agricultural runoff also degrade water quality. Such sources are addressed in Ohio's Nonpoint Source Management Program, as explained in Policy 8. Regulations enforced by Ohio EPA to prevent and reduce water pollution resulting from airborne pollutants as well as from solid, infectious and hazardous wastes are detailed in Policies 30 and 31, respectively.)

## POLICY 7 – ENVIRONMENTAL CONTAMINANTS: PREVENTION AND EMERGENCY RESPONSE

**IT IS THE POLICY OF THE STATE OF OHIO TO PREVENT AND/OR MINIMIZE TO THE GREATEST EXTENT POSSIBLE, DAMAGES TO THE PUBLIC HEALTH, SAFETY AND WELFARE, AND TO THE ENVIRONMENT FROM CONTAMINANTS BY:**

**A. REQUIRING OWNERS OF FACILITIES SUBJECT TO O.R.C. CHAPTER 3750, EMERGENCY PLANNING, TO COMPLY WITH THE STATE'S RIGHT TO KNOW AND SPILL PREVENTION LAWS; AND**

**B: PROVIDING FOR EMERGENCY RESPONSE TO ALL SPILLS WITH A COORDINATED AND PLANNED EFFORT MAXIMIZING RESOURCES AND MINIMIZING ENVIRONMENTAL DAMAGE (O.R.C. CHAPTERS 6111 AND 3750).**

Authorities and Administration

Ohio's State Emergency Response Commission (SERC) is authorized to coordinate emergency planning efforts (O.R.C. Chapter 3750). SERC accomplishes this through administration by Ohio EPA's Division of Emergency and Remedial Response (DERR). Pursuant to O.R.C. § 3745.01, Ohio EPA administers "the laws pertaining to chemical emergency planning, community right-to-know, and toxic chemical release reporting." The director "shall adopt rules in accordance with Chapter 119 of O.R.C. that are consistent with and equivalent in scope, content, and coverage to, and no more stringent than the Emergency Planning and Community Right-to-Know Act of 1986" 42 U.S.C.A. 11001 (O.R.C. § 3750.02) and 42 U.S.C.A. 11023 (O.R.C. § 3751.02).

A. The State of Ohio strives to prevent accidental releases of environmental contaminants and to minimize their effects when they do occur by enforcing O.R.C. Chapter 3750 Emergency Planning. The specific requirements of the Emergency Planning and Community Right-to-Know Act of 1986 (also known as SARA Title III) and the corresponding Ohio Revised Code provisions include four basic reporting requirements, as follows:

1. Owners of facilities with extremely hazardous substances (360 chemicals listed by U.S. EPA) must identify themselves and participate in emergency planning (O.R.C. § 3750.05).

2. Owners of facilities identified must report all spills or releases of substances covered by Comprehensive Environmental Response Compensation and Liability Act (CERCLA) or by SARA (O.R.C. § 3750.06).

3. Owners of identified facilities must provide to Ohio EPA (1) a Material Safety Data Sheet and (2) a list of chemicals stored and their human health hazard (O.R.C. § 3750.07).

4. Owners must complete a Facility Identification form, Chemical Inventory form and Facility map (O.R.C. § 3750.08).

As provided in O.A.C. Chapters 3750-20, 3750-25 and 3750-30, a facility must comply with O.R.C. Chapter 3750 when all of the following conditions are met:

1. The facility is subject to the OSHA Hazard Communication Standard;

2. The facility stores a Hazardous Chemical and/or an "Extremely Hazardous Substance" (EHS): and

3. A quantity in storage of one of these Hazardous Chemicals or Extremely Hazardous Substances is in excess of the "Threshold Quantity" (TQ).

Oil releases are addressed under O.R.C. § 3750.06 and the CWA, as amended 33 U.S.C. 1251 et seq. The federal Spill Prevention Control and Counter-measure program and related regulations for oil storage facilities provide directions to industries to plan their response to any possible spillage from their facilities (40 CFR 112). Preventive engineering, such as containment dikes, were also called for to prevent spills from reaching waterways.

B. SARA Title III directs communities and industries to work together in developing response plans and procedures for hazardous spills. Local emergency planning committees (LEPCs) of each emergency planning district are required to "prepare and submit ... a chemical emergency response and preparedness plan for the district" to SERC (O.R.C. § 3750.04). (Within the coastal area, each of the nine counties is a separate emergency planning district.) These local "Hazardous Materials Emergency Management Plans" include an identification of local hazardous facilities and routes used to transport hazardous materials, emergency response procedures, evacuation plans, and a list of response personnel and equipment.

The Ohio Emergency Management Agency (Ohio EMA) coordinates local plan development and makes recommendations to SERC, which is responsible for final approval or disapproval (O.R.C. § 3750.02). Plans have been prepared for all nine coastal counties. As of June 1995, plans for Ashtabula, Lake, Cuyahoga, Lorain, Wood, Ottawa, Erie, Lucas and Sandusky counties have been reviewed, and the Commission has concurred with them.

DERR follows the National Contingency Plan (NCP) guidance for spill response and cleanup. To facilitate spill reporting, Ohio EPA operates a toll-free 24-hour telephone number. DERR investigates reported releases and provides local governments with telephone assistance in evaluating incidents and in directing the company's cleanup efforts. DERR also coordinates efforts to assure compliance with cleanup levels and disposal methods.

Ohio EPA has drafted rules and standards governing the storage and disposal of PCBs at commercial facilities (O.R.C. § 3734.122). The agency has a cooperative agreement with U.S. EPA to conduct PCB compliance inspections, of which 65 are made annually across the state of Ohio. Such inspections foster a greater awareness in Ohio of the special handling and disposal requirements regarding PCBs.

## POLICY 8 – NONPOINT SOURCE POLLUTION

**IT IS THE POLICY OF THE STATE OF OHIO TO CONTROL NONPOINT SOURCE WATER POLLUTION IN ORDER TO REDUCE SEDIMENT, NUTRIENTS AND OTHER POLLUTANTS AND OTHERWISE IMPROVE THE WATER QUALITY OF LAKE ERIE AND ITS TRIBUTARIES, THUS REDUCING DAMAGE TO AQUATIC HABITATS AND LOWERING COSTS OF WATER TREATMENT AND CHANNEL DREDGING, BY USING A BROAD ARRAY OF STATE AND LOCAL AUTHORITIES TO REGULATE AND MANAGE THE CONTRIBUTING SOURCES AND ACTIVITIES.**

### Authorities and Administration

The State of Ohio manages and regulates activities that contribute to nonpoint source pollution through a complex but coordinated array of institutional mechanisms and authorities. A complete analysis of these mechanisms and authorities and how they operate to achieve stated goals and comply with federal regulations is contained in the Ohio Nonpoint Source Management Program document. Eight major sources of nonpoint source contaminants are addressed by this program, and the roles and responsibilities of all agencies and organizations involved with implementation are described therein.

The State of Ohio developed the Nonpoint Source Management Program document pursuant to Section 319 of the CWA. The program was developed in 1988 and updated in 1992 by ODNR under an agreement with Ohio EPA. (The 1992 update is yet to be approved by U.S. EPA.) The program specifies Best Management Practices for the eight major sources of nonpoint pollutants: agriculture, hydromodification/habitat modification, land disposal, mining, oil field wastes, silviculture, urban runoff and construction site erosion and a section addressing specific ground water issues. Section 319 funds are allocated based on the program's recommendations and policies. Funds have been used to initiate local watershed treatment and aquatic restoration and protection projects. The Program has incorporated a policy that at least 10 percent of each year's Section 319 funds go toward pollution prevention projects, and that goal is usually exceeded. Promoting public awareness about nonpoint pollution issues has been identified as critical to the future success of pollution control projects and programs and is therefore a major program goal. State funds have been appropriated to ODNR to help implement local nonpoint projects.

Section 6217 of CZARA directs states to develop Coastal Nonpoint Pollution Control Programs to be implemented through changes to the state coastal management plan and the state nonpoint source management plan. REALM held several initial meetings in 1993 to begin coordinating program development and implementation through cooperation with a Division of Surface Water (Ohio EPA) – Division of Soil and Water Conservation (ODNR) team. However, the OCMP has decided to focus its primary efforts on core program development. Changes to CZARA are anticipated to allow additional time for states now developing core coastal management programs to develop their coastal nonpoint source pollution programs. Pending this change, the OCMP intends to initiate development of the coastal nonpoint program following federal approval of the

OCMP core program. Key aspects of the program are the development of additional enforceable authorities, where needed, and provision for public involvement and education in all phases of the program. Details of this program and a narrative discussing Ohio's Nonpoint Source Management Program are provided in Appendix J.

## POLICY 9 – POTABLE WATER SUPPLY

**IT IS THE POLICY OF THE STATE OF OHIO TO ENSURE THAT A SAFE SUPPLY OF WATER IS AVAILABLE FOR PRIVATE, COMMUNITY, INDUSTRIAL, AGRICULTURAL AND COMMERCIAL USES ALONG LAKE ERIE BY:**

**A. ADMINISTERING THE STATE SAFE DRINKING WATER ACT (O.R.C. CHAPTER 6109);**

**B. SUPERVISING THE DESIGN, CONSTRUCTION, AND OPERATION OF PUBLIC WATER SUPPLY TREATMENT AND DISTRIBUTION SYSTEMS (O.R.C. § 6109.07); AND**

**C. REGULATING PRIVATE WATER SYSTEMS (O.R.C. § 3701.344, O.A.C. 3701-28).**

Authorities and Administration

A. The Ohio Environmental Protection Agency is the principal water quality regulatory agency over public water systems in Ohio and is the state administrator of P.L. 93-523, the Safe Drinking Water Act and its Amendments 42 U.S.C. 300(f) et seq. Ohio EPA's Division of Drinking and Ground Waters derives its authority from the State Safe Drinking Water Act, O.R.C. Chapter 6109. The statute does not apply to public water systems that meet all of the following criteria:

1. Consist only of distribution and storage facilities and do not have any collection and treatment facilities;

2. Obtain all of their water from, but are not owned or operated by, a public water system;

3. Do not sell water to any person; and

4. Are not carriers that convey passengers in interstate commerce.

The Division of Drinking and Ground Waters oversees compliance with and monitoring of maximum contaminant levels (MCLs) for public drinking water. Primary standards have been established for contaminants, including toxic chemicals, that have been shown to directly affect the health of consumers (O.A.C. 3745-81). Secondary standards have been established for contaminants that may cause economic or aesthetic impacts but that have not been shown to directly affect the health of consumers (O.A.C. 3745-82). Additional treatment is required if any contaminant exceeds a primary standard. Improvements are discussed and may be recommended if a contaminant exceeds secondary standards. Appropriate enforcement actions are taken for failure to meet requirements of the Safe Drinking Water Act.

B. The Ohio EPA Division of Drinking and Ground Waters reviews plans and issues plan approval for construction or substantial improvement of public water systems. Installation of or substantial changes to a water system requires the approval of Ohio EPA based on requirements of the State Safe Drinking Water Act and the rules adopted thereunder.

The division also has primary responsibility for on-site survey inspections of public water systems and maintains a laboratory certification program for commercial, private, state and industrial facilities conducting biological and/or chemical analysis on potable water.

C. Local health departments regulate private water supply systems in accordance with rules promulgated by the Public Health Council of the State of Ohio (O.R.C. § 3701.344, O.A.C. 3701-28). Those water systems that regularly serve fewer than 15 service connections and do not regularly serve an average of at least 25 individuals daily at least 60 days out of the year are subject to regulation. A private water supply system includes any well, spring, cistern, pond or hauled water. In the event that the Director of the Ohio Department of Health (ODH) determines that a public health district is not properly enforcing the private water system rules, ODH will enforce the private water supply system program in that district. The ODH also investigates private water supply systems for potential contamination at the request of the local health department.

## POLICY 10 – AREA OF CONCERN REMEDIAL ACTION PLANS

**IT IS THE POLICY OF THE STATE OF OHIO TO COORDINATE THE DEVELOPMENT AND IMPLEMENTATION OF REMEDIAL ACTION PLANS FOR OHIO'S FOUR LAKE ERIE BASIN AREAS OF CONCERN AS IDENTIFIED IN THE INTERNATIONAL JOINT COMMISSION'S (IJC) REPORTS ON GREAT LAKES WATER QUALITY.**

### Authorities and Administration

In 1974, the Water Quality Board of the International Joint Commission (IJC) began identifying problem areas along the Great Lakes in its reports on Great Lakes water quality. By 1981, many of the problems caused by conventional pollutants had been alleviated by improvements in effluent treatment by both municipal and industrial dischargers. However, persistent environmental quality problems remained in many areas. In 1985, to address the problems at these locations, the IJC requested that the jurisdictions (states and provinces) prepare Remedial Action Plans (RAPs) for each of their Areas of Concern (AOCs). This request became a requirement of the Great Lakes Water Quality Agreement in 1987 and a statutory requirement under the Great Lakes Critical Programs Act amendment 33 U.S.C. 1268 to the 1990 CWA.

The Ohio EPA is responsible for the preparation of RAPs for four AOCs identified as highly polluted sites along the Lake Erie shoreline. These areas are the lower Maumee, Black, Cuyahoga and Ashtabula Rivers and harbors. RAPs are the framework to provide a systematic and comprehensive ecosystem approach to restore these areas to beneficial use and to track the effectiveness of remedial activities as they are implemented.

RAPs are to be developed with significant local community involvement. Development/implementation teams include representatives from local, state and federal government agencies, elected officials, industry and business, special interest groups, academia and the general public. Ohio's four RAPs have established active community RAP teams. Stage 1 RAP reports, identifying the impaired uses and sources of pollution, have been completed for all four AOCs.

All of the RAP groups are beginning to develop Stage 2 RAP reports that will recommend remedial actions, identify responsible parties and search for sources of funding. The major task of the Stage 2 process is to accomplish implementation of the identified remedial actions. Where possible, identified remedial actions are already being implemented. More information on RAPs for AOCs is provided in Chapter 6, Special Management Areas.

POLICY 11 – GROUND WATER

**IT IS THE POLICY OF THE STATE OF OHIO TO PROMOTE THE PROTECTION AND MANAGEMENT OF OHIO'S GROUND WATER RESOURCES BY:**

**A. REGULATING ACTIVITIES AND ENFORCING RULES REGARDING THE CONSTRUCTION AND OPERATION OF WATER SUPPLY AND WASTE-WATER DISPOSAL SYSTEMS (O.R.C. § 3701.04, O.R.C. § 6111.03, O.R.C. § 6109.07, AND O.A.C. 3745-9);**

**B. REGULATING UNDERGROUND HAZARDOUS AND PETROLEUM MATERIALS STORAGE FACILITIES AND ABOVE-GROUND HAZARDOUS WASTE STORAGE (O.R.C. § 3737.87, 3737.88, 3737.881, 3737.882 AND O.A.C. 1301:7-9 AND 3745-54);**

**C. REGULATING OIL, GAS, COAL AND MINERAL OPERATIONS (O.R.C. CHAPTER 1509, 1513 AND 1514, O.R.C. § 1509.22);**

**D. REGULATING SUBSURFACE INJECTION OF BRINE AND OTHER WASTES ASSOCIATED WITH OIL AND GAS OPERATIONS (O.R.C. § 1509.22);**

**E. PREPARING GROUND WATER POLLUTION POTENTIAL MAPS; AND**

**F. COORDINATING STATE ACTIVITIES REGARDING GROUND WATER ISSUES.**

Authorities and Administration

A. & B.

The Ohio Department of Health (ODH), Ohio EPA, and the State Fire Marshal administer the state's ground water programs relating to water quality concerns. All three bodies implement permitting, monitoring and planning activities and provide technical assistance to local governments.

ODH is authorized to administer programs, monitor water quality, and enforce compliance with regulations pertaining to private water systems under the authority of the Public Health Council in O.R.C. § 3701.344.

Ohio EPA has general supervisory power over public water supplies pursuant to O.R.C. § 6111.03 and O.A.C. 3745-81 through 3745-99. Construction or installation plans for a public water system must be approved by Ohio EPA in compliance with requirements of the Safe Drinking Water Act (O.R.C. § 6109.07 and O.A.C. 3745-91). State standards for the location, construction, operation, and modification of wells are set forth in O.A.C. Chapter 3745-9. Ohio EPA also administers

wastewater disposal programs and regulates hazardous and nonhazardous materials management and disposal. Ohio EPA's Division of Drinking and Ground Waters implements the ground water protection requirements of the CWA (O.R.C. § 6111.03); manages the state's Underground Injection Control program which regulates the types and amounts of waste that can be injected into underground geologic formations (O.A.C. 3745-34); monitors ground water quality , and manages and works to achieve voluntary participation in Ohio's Wellhead Protection Program (O.A.C. 3745-91).

Ohio EPA enforces the state's ground water protection standard (O.A.C. 3745-54-92) that provides that the owners and operators of facilities that treat, store or dispose of hazardous waste must comply with conditions specified in the facility permit that are designed to ensure that hazardous constituents under O.A.C. 3754-54-93 detected in the ground water from a regulated unit do not exceed the concentration limits under O.A.C. 3745-54-94 in the uppermost aquifer underlying the waste management area beyond the point of compliance under O.A.C. 3745-54-95 during the compliance period under O.A.C. 3745-54-06.

The State Fire Marshal (Ohio Department of Commerce) has responsibility for regulating underground storage tanks in Ohio, through its Bureau of Underground Storage Tank Regulation (BUSTR) (O.R.C. § 3737.87 and O.A.C. 1301-7-9), in accordance with the Resource Conservation and Recovery Act (RCRA, 40 C.F.R. § 280). O.A.C. 1301-7-9 establishes performance standards, design and construction standards, financial responsibility, a listing of regulated substances and operating requirements.

C. ODNR regulates oil, gas, coal and industrial mineral extraction (see Policies 36 and 38).

D. The Division of Oil and Gas, ODNR, administers a permit program for subsurface injection and other brine management activities that specifically prohibits contamination of surface and underground waters (O.R.C. § 1509.22).

E. ODNR's Division of Water prepares ground water pollution potential maps that illustrate the relative vulnerability of ground water to contamination. The maps evaluate the major geologic and hydrogeological factors that affect ground water vulnerability. These factors are combined with hydrogeologic settings to produce color-coded maps with ground water pollution potential information. Each map is accompanied by a report that includes general geologic and hydrologic information. Planners, managers and local officials can use the maps and reports to evaluate potential for contamination from various pollution sources and thereby direct land-use activities to appropriate areas. Water quality protection, monitoring and cleanup efforts also can be facilitated through use of pollution potential maps.

F. The State of Ohio has a comprehensive ground water policy, the Ohio Ground Water Protection & Management Strategy. State agencies with regulatory and programmatic jurisdiction over ground water, i.e., Ohio EPA, Ohio Department of Health (ODH), Ohio Department of Agriculture (ODA), Ohio Department of Transportation (ODOT) and ODNR, prepared the strategy with the assistance of federal agencies, regional planning agencies, citizen's groups, and

business and professional associations working through a Ground Water Task Force. State agencies are responsible for implementing the initiatives of the strategy. The strategy directs limited state resources to priority needs and emphasizes proper development and protection and management of the ground water resources.

The ground water strategy contains six principal initiatives, each of which includes program recommendations:

1. Controlling sources of ground water contamination;

2. Assessing Ohio's ground water;

3. Coordinating agency activities;

4. Targeting critical areas;

5. Regional and local ground water protection and management; and

6. Education, training, research and technology transfer.

The state agencies listed above, and the Department of Development, the Public Utilities Commission of Ohio (PUCO) and the Bureau of Underground Storage Tank Regulation in the Department of Commerce, formed the State Coordinating Committee on Ground Water (SCCGW) to promote exchange of agency information and coordination of programs and activities. The SCCGW meets on a regular basis and is developing a Comprehensive Ground Water Protection and Management Plan, a State Management Plan for pesticides, and technical standards for well construction and sealing.

Uses Subject to Management

- Activities involving the filling, dredging or alteration of wetlands and special aquatic sites.
- Activities affecting natural areas, nature preserves, wildlife habitat areas and areas of exceptional ecological significance.
- Activities threatening rare and endangered plant and animal species.
- Activities involving the introduction or propagation of exotic species.

Wetlands

Wetlands are considered a critical natural resource in Ohio because they serve many beneficial natural functions and are greatly diminished throughout the state relative to the original extent of wetlands in Ohio. The U.S. Fish and Wildlife Service's *Report to Congress, Wetlands Losses in the United States – 1780s to 1980s* (Dahl, T.E., 1990), estimated Ohio's loss at 90 percent of an original 5 million acres. In pre-settlement times, nearly 300,000 acres of marshes spread from the Great Black Swamp of northwest Ohio eastward along Lake Erie. Conversion of Lake Erie marshes and coastal wetlands to other uses has continued. A Division of Wildlife (DOW) inventory showed a 45 percent decline in acreage from 1954 to the mid-1970s. Since that time, however, losses have been partially offset as a result of increased state and federal regulatory authority (Sections 401 and 404, CWA) and more aggressive acquisition and restoration efforts of recent years. Today, an estimated 33,000 acres of wetlands remain within the coastal management area.

The Ohio Wetlands Priority Conservation Plan published by ODNR in 1988 identified the following threats to remaining wetlands:

Agricultural drainage – Losses attributable to drainage improvement projects involve both direct conversion and incidental results of stream and drainage system modification. Thousands of acres of low-lying coastal marshes have been diked and drained for farming, although some are flooded in fall for waterfowl. Such areas are not irreversibly converted to nonwetland uses. In fact, some of these areas have reverted to marsh by landowner design or by the encroachment of higher lake levels.

Development – Ohio's lacustrine and adjacent palustrine wetlands are threatened by the construction of marinas and waterfront developments such as condominiums and resort communities. This is particularly critical in the Lake Erie region, where unprecedented development and economic growth is occurring because of the area's attractiveness for outdoor recreation and tourism and its quality of life amenities. It is extremely difficult to quantify such losses, because

many are piecemeal losses, partial habitat alterations and secondary and cumulative effects upon wetlands.

Mounting pressure exists to convert diked (and sometimes pumped) wetlands in cropland use to nonagricultural and nonwater dependent uses such as residential, recreational and resort development. This can represent an even greater threat to wetlands than agricultural use because such development is irreversible and is often adjacent, or in close proximity, to other marshland. Secondary and cumulative impacts of such development are serious concerns.

Nonpoint Source Pollution – The degradation of wetlands through nonpoint source pollution is more difficult to assess and manage. Ohio EPA and ODNR have developed the state's Nonpoint Source Assessment and Management Plan, which in 1988 identified hydrologic/habitat modification activities as the principal nonpoint source threat to wetlands in Ohio. Ohio's 1993 Statewide Comprehensive Outdoor Recreation Plan (SCORP) reaffirmed this.

Secondary impacts on off-site or "downstream" wetlands is a serious concern with respect to many large-scale earth disturbing developments and activities. Inadequate erosion control and stormwater runoff control measures can result in the downstream siltation of aquatic habitats including wetlands.

No comprehensive study has been conducted since 1989, and there is no concrete evidence to suggest that dramatic changes have occurred in either the nature or extent of these threats. One possible exception is that marina development has declined significantly since the late 1980s. However, as stated earlier, losses are being slowed by regulatory and other protective efforts, and a decline in the rate of loss is occurring. As of 1997, it is difficult to quantitatively assess this change in loss rate, but it is important to do so. The OCMP, through program administration funding, intends to improve tracking of individual and cumulative losses and restorations to assess and monitor the status and trends of coastal wetlands. The recently developed Ohio Wetlands Strategy includes a proposal for a biennial report to assess and summarize status and trends, including all enforcement actions.

The outlook for coastal wetlands reflects positive trends in statewide wetlands conservation. The Ohio EPA protects wetlands by including the term wetlands in the Ohio Water Quality Standards and Section 401 Regulations and Permit Procedures. The acquisition and protection of coastal area wetlands has been enhanced by increasing partnership projects for wetlands acquisition and restoration developed among public, private and independent agencies and organizations.

To aid wetlands regulation, monitoring and enforcement, acquisition and protection strategies, and other planning and management activities for wetlands conservation in Ohio, a statewide wetlands inventory has been developed. Managed by ODNR's Division of Wildlife (DOW), it is a remotely sensed inventory from satellite imagery. It has been designed to be used by resource managers, agricultural interests, local and regional agencies and other public and private interests for a wide variety of wetlands related purposes. The inventory has been completed for all nine

coastal area counties and shows approximately 33,000 acres of wetlands within Ohio's coastal management area. About one-half of that acreage is either publicly owned and managed or is owned and managed by hunting clubs and nonprofit conservation organizations, as follows:

| Ownership | Wetland Acreage | Total Acreage Owned |
|---|---|---|
| ODNR | | |
| Parks and Recreation | 1,400 | 5,653 |
| DNAP | 1,200 | 1,849 |
| DOW | 4,500 | 6,762 |
| USFWS (Ottawa NWR) | 5,350 | 8,316 |
| The Nature Conservancy | 133 | 770 |
| Hunting Clubs | 4,300 | 8,000 |
| TOTAL | 16,883 | 31,350 |

In 1993 and 1994, the DOW completed the Mallard Club and Pickerel Creek wetland restoration projects and broke ground on the Metzger Marsh restoration project. These projects will add nearly 2,400 acres of viable wetlands along the Lake Erie coast.

Several thousand acres of former wetlands in the coastal region exist in productive or marginally productive agricultural status. Some of these areas have high potential for restoration and management as habitat for migratory waterfowl, other wetland-dependent fish and wildlife, and rare species of plants and animals. Ohio is situated in the Lower Great Lakes-St. Lawrence River Joint Venture region of the North American Waterfowl Management Plan (NAWMP) developed by agreement between Canada and the United States in 1986. Lake Erie Marshes is a focus area of the NAWMP in which thousands of acres of coastal area wetlands are being protected, restored and enhanced through the cooperative efforts of the U.S. Fish and Wildlife Service, Division of Wildlife and other public, private and independent organizations. More than 650 acres of privately owned previously drained coastal area wetlands have been restored through DOW cost-sharing projects with farmers and other landowners. Restoration projects within NAWMP focus areas and joint venture boundaries receive the highest priority.

Diking of many coastal wetlands is essential for their survival, because it is usually the only means of protecting wetlands whose landward advance during periods of high lake levels is restricted by inland development. Maintenance and reconstruction of dikes is a continual, expensive and necessary task, especially during periods of high water. In addition to units of the Ottawa National Wildlife Refuge and several state wildlife areas, privately owned diked marshes are an important component of Ohio's coastal wetland resource base. Diked marshes require expensive maintenance and carefully planned water level management and other controls to maintain fish and wildlife

habitat values and overall productivity. Many benefits important to the general public interest are realized by the active management of these wetlands.

Natural Areas and Endangered Species

Early explorers of the Lake Erie region described vast areas of wetlands, upland hardwood forests and miles of sandy beaches. Development proceeded quickly until very little of the shore had escaped human impact. Efforts to protect the remnants started late and have met with only limited success in recent years due to high land costs, limited funds and conflicting ideas on appropriate land use. Presently, Ohio's coastal area has within its boundary six designated state nature preserves: Mentor Marsh, Headlands Dunes, Old Woman Creek, DuPont Marsh, Lakeside Daisy and Sheldon Marsh. These six areas collectively total about 1,920 acres and are managed by ODNR's Division of Natural Areas and Preserves. The Nature Conservancy and the Cleveland Museum of Natural History are also involved in acquisition and/or management of several natural areas in the coastal area.

In addition to protecting large, undisturbed sites, it is also important to consider the ecological diversity – the plants, animals and physical features that make up the coastal landscape. The loss of even a few species due to habitat alteration and other environmental disturbances can impair the ecosystem's function and harm recreation, water supply, commercial fish production and overall ecosystem stability. The loss of predator fish species in Lake Erie with subsequent overabundance of other species is a good example. ODNR's Division of Natural Areas and Preserves (DNAP), maintains the state's Natural Heritage Database, which is a repository of information on Ohio's rare plant and animal species and unique natural features.

Continued protection of remaining natural coastal areas and elements of diversity requires an increased understanding of intricate ecosystem relationships and the system's susceptibility to disturbance. More importantly, a firm public commitment and capital improvement funding are needed to preserve such areas in the coastal area.

Exotic Species

The introduction of exotic species, or nonindigenous flora and fauna, to the coastal area environment has been documented since settlement of the region. Since the 1800s, 139 nonindigenous species, mostly plants, have become established in the Great Lakes. Thirteen have substantially affected the region's ecosystem, economically as well as ecologically. Three examples illustrate this problem in Lake Erie:

1. Zebra mussels (*Dreissena polymorpha*) were almost unheard of in the Lake Erie coastal area until 1989. But by the end of the year, zebra mussels had colonized nearly everywhere in Lake Erie. Zebra mussels are being reported from other sites in all of the Great Lakes and are spreading beyond the Great Lakes to other lakes and rivers. Zebra mussels originated from the Caspian region of western Russia and spread throughout Europe with the construction of canals and increased shipping.

Their invasion into the Great Lakes appears to have occurred due to the discharge of freshwater ballast by one or more transoceanic ships. Zebra mussel infestation in water intake structures for power plants and municipal water treatment plants causes significant reductions in pumping capabilities. Recreation is affected due to extensive deposits of zebra mussel shells on Lake Erie beaches. Cooling water inlets on boat engines can become clogged. Ecological and human health impacts are possible because the filter feeding zebra mussels can rapidly accumulate organic pollutants within their tissues. This may have implications for human consumption of fish and waterfowl. Clearer water resulting from the mussels' cleansing ability may cause rapid aquatic weed growth and declining zooplankton levels, thus further disrupting the food chain. Zebra mussel pollutant uptake and food chain relationships are currently being studied.

2. Purple loosestrife (*Lythrum salicaria*) has become a major pest in Lake Erie coastal area marshes. This is a significant problem for protecting and managing many wetland areas that provide important resting and feeding areas for migratory waterfowl and habitat for other marsh-dependent fish and wildlife species. This plant invades marshes and grows in profusion, creating a monoculture habitat to the detriment of wildlife and other plants and plant communities. Purple loosestrife is only one example of problems with nonindigenous flora. However, many habitats and plant associations suffer from the presence of weed species. Protecting the integrity of natural areas and nature preserves can require intensive management to maintain desired natural conditions.

3. The common carp (*Cyprinus carpio*) is another problem species. Carp were apparently introduced into Ohio waters in the Cincinnati area and around Fremont in the Lake Erie coastal area in the late 1800s. Carp are often present in great numbers and may contribute to turbidity problems, adversely affecting the germination and growth of aquatic plants and interfering with the spawning success of other species of fish.

Through the coastal management program, ODNR will be increasing the state's efforts, working with other Great Lakes states and public and private interests to develop, adopt and enforce policies that will help prevent the invasion and spread of exotic species.

POLICY 12 – WETLANDS

**IT IS THE POLICY OF THE STATE OF OHIO TO PROTECT, PRESERVE AND MANAGE WETLANDS WITH THE OVERALL GOAL TO RETAIN THE STATE'S REMAINING WETLANDS, AND, WHERE FEASIBLE, RESTORE AND CREATE WETLANDS TO INCREASE THE STATE'S WETLANDS RESOURCE BASE BY:**

**A. REGULATING ACTIVITIES IN WETLANDS THROUGH THE ENFORCEMENT OF OHIO WATER QUALITY STANDARDS FOR ANY ACTIVITY THAT MAY RESULT IN ANY DISCHARGE INTO WETLANDS AND OTHER WATERS OF THE STATE (O.R.C. § 6111.03(O), O.R.C. § 6111.03(P), O.A.C. 3745-1 AND 3745-32);**

**B. PROVIDING LEADERSHIP AND TAKING ACTION TO MINIMIZE ADVERSE EFFECTS TO WETLANDS IN CARRYING OUT STATE AGENCY RESPONSIBILITIES, AND, TO THE EXTENT PERMITTED BY LAW, AVOIDING UNDERTAKING CONSTRUCTION OR PROVIDING FINANCIAL ASSISTANCE FOR CONSTRUCTION THAT WILL SUBSTANTIALLY DEGRADE OR DESTROY THE NATURAL AND BENEFICIAL FUNCTIONS OF WETLANDS (GOVERNOR'S EXECUTIVE ORDER 90-68);**

**C. ACQUIRING WETLANDS OR INTEREST IN WETLANDS AND THE BUFFER LANDS THAT MAY BE NEEDED FOR THEIR PROTECTION; RESTORING AND MANAGING PREVIOUSLY CONVERTED OR DEGRADED WETLANDS; AND PROVIDING ASSISTANCE TO PRIVATE OWNERS FOR WETLANDS RESTORATION AND MANAGEMENT;**

**D. COOPERATING WITH THE OLD WOMAN CREEK NATIONAL ESTUARINE RESEARCH RESERVE, THE OHIO SEA GRANT COLLEGE PROGRAM AND OTHER INSTITUTIONS IN EDUCATION AND RESEARCH. THE STATE WILL ENCOURAGE WETLANDS RESEARCH AND PRIORITIZE FUNDING ASSISTANCE FOR RESEARCH THAT ENHANCES COASTAL MANAGEMENT; AND**

**E. PROVIDING INFORMATION ON WETLANDS RESOURCES AND TECHNICAL ASSISTANCE TO ORGANIZATIONS AND INDIVIDUALS REQUESTING HELP IN WETLANDS CONSERVATION PROJECTS.**

Authorities and Administration

A. All coastal area wetlands fall within the jurisdiction of the U.S. Army Corps of Engineers (COE) in regulating activities under the Rivers and Harbors Act of 1899 (Section 10) and/or the CWA (Section 404). The scope of the state's authority under Section 401 of the CWA and Ohio

water pollution control laws is coterminous with that of the COE and covers all surface waters within the coastal area, including wetlands. However, state water pollution control law extends the state's authority to require a state water quality certification for all applicants for any federal license or permit to conduct any activity that may result in any discharge into the waters of the state (O.R.C. § 6111.03(P)). "Waters of the state" include wetlands (O.A.C. 3745-32-01(N)). "Wetlands" are defined in state regulations as "areas where the water table is at, near, or above the land surface long enough each year to support the growth of water dependent vegetation and to result in the formation of characteristic wet soil types. These include marshes, swamps, bogs and similar areas" (O.A.C. 3745-32-01(O)). Revision of Section 401 rules, which will change this definition to be consistent with the federal wetland definition, is under way.

Wetlands are "state resource waters" (O.A.C. 3745-1-05(A)(8)(c)). Present ambient water quality may not be degraded for all substances determined to be toxic or to interfere with any designated use as determined by the Director, Ohio EPA (O.A.C. 3745-1-05(C)(7)). Existing uses shall be maintained and protected (O.A.C. 3745-1-05 (C)(1)). No further degradation that would interfere with or become injurious to existing designated uses is allowable.

The discharge of dredged or fill material or the creation of any obstruction or alteration is prohibited in wetlands unless the Director, Ohio EPA, determines that the activity will (1) not interfere with the attainment or maintenance of water quality standards, and (2) not result in a violation of any applicable provision of the CWA, including: (a) effluent limitations described in Section 301; (b) water quality related effluent limitations as described in Section 302; (c) water quality standards and implementation plans as described in Section 303; (d) national standards of performance as described in Section 306; or (e) toxic and pretreatment effluent standards as described in Section 306. Notwithstanding an applicant's demonstration that these criteria are met, the director may deny an application for a Section 401 certification if the director finds that the discharge or obstructions or alterations will result in adverse long- or short-term impact on water quality (O.A.C. 3745-32-05).

There are water quality certification exemptions. No Section 401 water quality certification need be obtained if the discharge of dredged or fill material is part of the construction of a federal project specifically authorized by Congress, provided the effects of such discharge are included in an environmental impact statement submitted to Congress prior to the actual discharge (O.A.C. 3745-32-03).

The director may impose terms and conditions as a part of the Section 401 water quality certification that are necessary to ensure compliance with the applicable laws and to ensure adequate protection of water quality (O.A.C. 3745-32-05(C)). Also, prior to the issuance of a water quality certification or prior to, during or after the discharge of dredged or fill material, to ensure adequate protection of water quality, the director may require that the applicant perform various environmental quality tests (O.A.C. 3745-32-05(D)). The director may revoke a Section 401 water quality certification if the director concludes at any time that any applicable laws or regulations have been or are likely to be violated (O.A.C. 3745-32-06). Section 401

certifications are issued, modified, revoked or denied and may be challenged in accordance with the provisions of the rules of procedure of the Ohio EPA, Chapter 3745-47 of the Administrative Code (O.A.C. 3745-32-07). Procedural rules require public notice regarding such Ohio EPA actions; public notice is given when the agency begins consideration of issuance of Section 401 certification.

In conducting reviews of activities subject to the state's Section 401 certification authority, Ohio EPA follows review guidelines established for three major categories of projects: fill projects, dredging projects, and bulk commodity facilities. The guidelines are presented in flowchart format and require consideration of water dependency and alternatives to activities in wetlands and other waters. An assessment must be made to determine whether proposed fill needs to be located in an aquatic environment to fulfill a project's basic purpose. Consistent with the federal law, applicants are required to evaluate alternatives to aquatic fills. It is the responsibility of the applicant to provide data and information and to demonstrate the water-dependency of the activity and/or, as applicable, that alternative nonwetland sites do not exist. In the alternatives analysis, an application must document that the project reflects efforts at avoidance of wetlands, minimization of wetland impacts found to be unavoidable and mitigation of unavoidable wetland impacts. This sequencing within the alternatives analysis is based on National Environmental Policy Act regulations and CWA Section 404(b)(1) guidelines.

If an applicant produces an acceptable alternatives analysis and mitigation plan and has worked to minimize environmental impacts, Ohio EPA may grant water quality certification for proposals to fill wetlands. However, certification is denied when feasible alternatives to filling wetlands exist or when a wetland is of high quality or value. State water quality certification regulations and procedures are included in Appendix K.

"Water dependency" means that a project must be located on or in a water body to fulfill its basic project purpose. Projects that could also be constructed on upland property, including support facilities such as parking lots for projects that are water dependent, are not considered water dependent. Federal regulations (40 CFR 230.10) define the term water dependency for special aquatic sites, including wetlands.

Ohio's antidegradation policy states that (1) existing beneficial uses shall be maintained and protected; (2) if a waterbody is exceeding the level of quality expected of that water body, water quality cannot be lowered except in cases of demonstrated social or economic need; and (3) in waters designated as State Resource Waters (which includes all wetlands), no lowering of water quality is allowed at all. Ohio EPA defines degraded wetlands using best professional judgment based on site visits and documentation. Functional values are evaluated as part of this analysis, which is done on a case-by-case basis. In permitting wetland fills, Ohio EPA assures that wetlands created, restored or enhanced as mitigation will fully replace the functions performed by the wetland which was destroyed, thereby avoiding a violation of water quality standards, including the antidegradation policy.

Ohio's current water quality standards make no functional value distinctions among wetland types, extending all Ohio wetlands the same degree of protection. This can lead to excessive efforts to protect wetlands of relatively low functional value and inadequate protection of high-quality wetlands. Any wetland determined to be a water of the state and within the jurisdiction of the Clean Water Act is by definition a State Resource Water under Ohio's current water quality standards, and according to the antidegradation policy, its water quality may not be degraded. Fills are permitted in these areas only after sequencing (avoidance, minimization) and wetland mitigation to replace lost functional values.

Ohio's water quality standards for wetlands will be modified to accurately reflect ecological goals that are appropriate and attainable for all wetland types. Appropriate and highly specific designations will allow water quality standards to more accurately describe ambient conditions in wetlands as well as reflect Ohio's goals for its wetlands resources. Ohio EPA is in the process of developing water quality standards for wetlands that will provide a standardized, objective methodology for evaluating wetland functions. These changes in the standards will allow Ohio EPA to direct limited program resources towards appropriate levels of protection for wetlands with different functional values.

Ohio EPA's review of mitigation proposals is guided by written mitigation policies, the text of which is included in Appendix K. (It should be emphasized that, prior to approval of a mitigation proposal, adherence to Section 404(b)1 guidelines is required. These guidelines stipulate the sequencing process, i.e., that an applicant must demonstrate there is no practicable alternative and then demonstrate that impacts will be minimized before proceeding with a mitigation proposal.)

The mitigation policies require (1) a minimum of 1.5 mitigated (restored or created) acres for every 1 acre of affected wetlands, (2) replacement of functions and values, (3) replacement of affected wetland type, (4) location as close to the affected wetlands as practicable, preferably at the project site or within the same watershed, and (5) a minimum of five years of monitoring and submission of data to Ohio EPA by the applicant.

Mitigation conditions most often attached to 401 water quality certifications are monitoring of water quality, hydrology and vegetation; an on-site meeting with Ohio EPA in the third year of post-mitigation construction; and a guarantee that the wetland will not be filled, drained or otherwise converted to upland, including a deed restriction to this effect if the property is sold. (Ohio EPA's standard wetland mitigation conditions are included in Appendix K.)

In reviewing applications for water quality certification, Ohio EPA solicits input from ODNR and the U.S. Fish and Wildlife Service. ODNR may provide comments or data regarding fish and wildlife impacts, biological and other natural resources, and potential effects upon resources or uses of concern to ODNR. Ohio EPA receives and incorporates in its administrative record comments and recommendations submitted by ODNR and the Fish and Wildlife Service to the Corps of Engineers (COE). Comments by ODNR are submitted in part to express the views of

the state regarding the conservation of fish and wildlife resources in accordance with the Fish and Wildlife Coordination Act and other applicable laws and regulations.

State authority provides increased protection of wetlands beyond controls over activities under the COE's Section 10/404 permit authority. State law provides that the Director, Ohio EPA may certify or deny certification to any applicant for a federal license or permit to conduct any activity that may result in a discharge into the waters of the state (O.R.C. § 6111.03(P)). Further, O.A.C. 3745-32-02 sets forth the specific requirements that a Section 401 water quality certification is required to obtain the following: (1) a permit from the COE pursuant to Section 10 of the Rivers and Harbors Act; (2) a permit from the COE pursuant to Section 404 of the Clean Water Act; (3) a permit from the COE under both Section 10 and 404; and (4) any other federal permit or license that may result in any discharge to waters of the state.

In addition, increased protection of wetlands beyond the scope of the COE's authority is realized through the state's water pollution law and regulations. As an illustration, in December, 1996, the COE published the final rule for the administration of its nationwide permit program regulations. The Corps' permits are not valid until the state certifies that the discharge does not violate the state's water quality standards. Ohio EPA denied water quality certification for nationwide permits 17 – discharges associated with hydropower projects and 21 – surface coal mining activities.

Also, state water quality certification has imposed general and specific conditions on many nationwide general permits. A list of Ohio EPA's water quality certification exceptions to Section 404 Nationwide Permits is provided in Appendix K.

The Environmental Review Appeals Commission (ERAC), an appellate review board, separate and distinct from the Ohio EPA (see Chapter 4, Section 1), has ruled that the director's action of issuing water quality certification to an applicant with the condition that a portion of a wetland not be filled is reasonable and lawful because wetlands are waters of "exceptional ecological significance" within the meaning of O.A.C. 3745-1-05 and are therefore subject to the antidegradation policy of Ohio's water quality standards (EBR 79-42, 8/30/79). This decision construing Ohio EPA regulations has been sustained on appeal to the Franklin County Court of Appeals and the Ohio Supreme Court.

B. Above and beyond the state's water pollution control laws, Section 401 implementing regulations and review guidelines, Governor's Executive Order 90-68 states (E.O. 90-68): "Consistent with the policies of the Ohio Nonpoint Source Management Program and Coastal Management Program, each state agency shall apply this policy in support of decisions to issue or deny permits or to authorize activities subject to the approval of the agency. To the extent permitted by law, state agencies will enforce the following sequence of mitigation options: avoidance of impacts to wetlands, minimization of impacts to wetlands, and finally, mitigation or compensation measures for unavoidable wetland impacts." (Appendix K contains the complete text of E.O. 90-68.)

Ohio EPA's Wetlands Mitigation Policies Used in Section 401 Reviews (see Appendix K) effectuates E.O. 90-68 in support of decisions on whether or not to authorize discharges of dredged or fill material in surface waters including wetlands. Ohio EPA's mitigation policies are much more detailed, thereby enhancing the predictability of whether a state water quality certification would be granted or denied for an activity affecting wetlands.

ODNR follows its published wetlands policy, consistent with E.O. 90-68, in providing input to Section 404 permitting by the Corps of Engineers and Section 401 certification actions by Ohio EPA. This helps ensure consistency of policies and actions by the State of Ohio in furtherance of E.O. 90-68.

E.O. 90-68 orders each agency of the state to take action to minimize adverse effects to wetlands and to conserve and enhance wetlands and their beneficial functions. Each state agency is to avoid undertakings that would degrade or destroy wetlands by utilizing an alternatives analysis in planning and implementing projects. Further, each agency, in considering the acquisition, disposal of real property, or granting of any lease, license or other interest, is to determine whether wetlands may be affected and to take steps to protect wetlands, restore wetlands, and otherwise implement the policy of the State of Ohio.

The effect of E.O. 90-68 is limited to the extent that state agencies have authorities and discretion in implementing the mandates of their respective programs. An important effect of E.O. 90-68 on state agency activities and decisions is enhanced consideration of wetlands protection early in planning and decision making processes.

ODNR's wetlands policy provides an example of state agency decision making consistent with E.O. 90-68. Implementing provisions of ODNR's wetlands policy includes the following: requiring wetlands conservation measures in the planning of water resources developments and capital improvements projects; prioritizing funding for wetlands acquisition and protection; requiring that ODNR's regulatory programs be administered in a manner that avoids unnecessary wetlands damages and losses; and directing land managing divisions to act affirmatively to preserve and enhance wetlands. (Appendix K contains the full text of ODNR's Policy Statement on wetlands.)

C. It is the policy of the OCMP to seek increased dedicated public funding for wetlands restoration, enhancement and management. This includes financial assistance such as tax abatements and other incentives for private owners when long-term benefits to the general public interest will be realized. Coastal wetlands are protected by acquisition of land interests under various programs. ODNR has the authority to appropriate property for specific uses and purposes on behalf of any division in the department (O.R.C. § 1501.01).

The Division of Natural Areas and Preserves (DNAP) administers the State Nature Preserve Program (O.R.C. § 1517.05) to protect and manage outstanding examples of Ohio's natural heritage. Private owners may sell or donate qualifying wetland areas to the division.

Alternatively, they may dedicate their wetland properties to the preserve system or maintain these wetlands as natural areas under the Ohio Natural Landmarks Program.

The Division of Wildlife (DOW) protects wetlands by acquiring and managing lands as wildlife areas. DOW has the authority to acquire and manage lands and waters or their surface rights for the specific purpose of fish and wildlife management, preservation, propagation, and protection, nongame recreational pursuits, public fishing and hunting grounds and preservation of the flora and fauna (O.R.C. § 1531.06).

ODNR also protects wetlands by acquiring and operating lands as state parks. The Division of Parks and Recreation (DPR) acquires and manages these lands for public protection and use (O.R.C. § 1541.02). Similarly, Ohio's park district agencies may acquire lands for the conservation of the natural resources of the state (O.R.C. § 1545.11).

Many independent organizations and private interests acquire and protect wetlands. Their management and preservation efforts for various conservation and recreation purposes assure the continued protection of important wetland areas.

The National Wetlands Priority Conservation Plan provides a process for identifying wetlands that should receive priority attention for federal or state acquisition. The 1993 Statewide Comprehensive Outdoor Recreation Plan (SCORP) published by ODNR, REALM, consistent with the National Plan, highlights the importance of wetlands to outdoor recreation. Under this plan, ODNR is increasing funding from a variety of sources for the acquisition and restoration of wetlands. Lake Erie area wetlands are given a high priority in the Ohio Wetlands Priority Conservation Plan due to declining wetland types within the ecoregion, their high degree of public benefit and their vulnerability to development.

Many programs assist coastal wetlands acquisition by ODNR, the U.S. Fish and Wildlife Service, local governments and independent organizations. Coastal wetlands conservation grants (Coastal Wetlands Planning, Protection and Restoration Act, Title III, Public Law 101-646) are utilized by ODNR and DNAP for the acquisition of wetlands and buffer lands at high priority sites (e. g., aquatic habitats associated with coastal barrier land forms). Federal Land and Water Conservation Fund Act grants are used for both state and local wetlands conservation projects. ODNR's Ohio Wetlands Priority Conservation Plan, developed under the SCORP, assigns high priority to the acquisition-protection of coastal area wetlands. In the past five years, ODNR's Division of Wildlife and its many partners have protected, restored and enhanced approximately 3,800 acres of Lake Erie wetlands under the NAWMP. ODNR's DNAP has expanded the Sheldon Marsh State Nature Preserve by 75 acres in the past three years and plans a 311-acre addition to the Mentor Marsh State Nature Preserve with a coastal wetlands conservation grant, supplemented by the state's income tax refund checkoff program.

Wetlands acquisition and restoration projects under the North American Waterfowl Management Plan (NAWMP) are assisted through federal matching funds originating through

the North American Wetlands Conservation Act (P.L. 101-233, as amended). The investment is multiplied through the agreements and partnerships entered into by DOW and a variety of conservation organizations, businesses and governmental agencies.

DNAP also cooperates in partnership projects with other agencies and independent organizations and private landowners to acquire, protect and restore wetlands that serve as outstanding examples of Ohio's natural heritage. Wetlands are also being inventoried, restored and enhanced on existing public lands in state parks and other areas.

Public/private partnerships are essential to accomplishing the state's wetlands conservation objectives. The first project in the NAWMP's Lake Erie Marshes focus area, in cooperation with the Winous Point Shooting Club, resulted in the designation of the 2,400-acre Muddy Creek Bay as a waterfowl refuge. This bay is the most concentrated staging area for black ducks on the continent. On a smaller scale, partnership projects for wetlands restoration on private lands are also important. DOW assists landowners with the restoration of small isolated wetlands that are vitally important to waterfowl and other migratory and wetland dependent wildlife. The Lake Erie Marshes focus area of the NAWMP is of the highest priority for restoration projects with private landowners. Through 1995, DOW had assisted in the restoration of more than 650 acres of previously drained privately owned wetlands.

The Division of Soil and Water Conservation works cooperatively with the U. S. Natural Resources Conservation Service to provide additional incentives for wetland protection on privately owned lands under the federal Wetlands Reserve Program (WRP). The WRP is focused chiefly on wetlands in agricultural production, providing cash payments to property owners for permanent conservation easements on wetland property and cost-sharing for restoration. The DSWC has provided piggy-back funding for the WRP targeted at riparian wetlands. This policy of assisting in paying down the costs of the permanent easement has allowed the state to receive enhanced federal funding for more set-asides. As a result, nearly 3,100 acres of wetlands were protected in the state during the first year of the WRP. Approximately 250 acres were in coastal counties, and the protection of more than 500 additional acres in riparian areas of the Maumee River watershed is expected to enhance water quality in the Lake Erie basin. The Division has set aside nearly $600,00 in NatureWorks funds to expand the use of this program to help achieve the state's nonpoint source water quality goals.

The OCMP will promote increased financial, technical and cooperative assistance for private owners to promote long-term wetlands protection and management.

D. In partnership with the Ohio Sea Grant College Program, the OCMP strives to increase the usefulness of wetlands research to state and local decision makers and improving coastal management. The Lake Erie Protection Fund program may provide assistance for research and coastal wetlands restoration projects, with a particular emphasis on projects that may benefit wetlands restoration and management elsewhere in the coastal area and Great Lakes system.

Public education and outreach are mutual objectives for which these programs strive to maximize existing resources.

One of the premier locations for wetlands research and education on Lake Erie and the entire Great Lakes is the Old Woman Creek State Nature Preserve and National Estuarine Research Reserve (OWC-NERR). A memorandum of agreement between the OWC-NERR and the OCMP formalizes an institutional linkage intended to maximize the benefits of the use of the OWC-NERR for long-term scientific research, monitoring and educational programs. Assessing the impact of nonpoint sources of pollution in the watershed of the NERR is a high priority for research and is intended to be useful to other geographic locations in the coastal area.

E. A broad network of individuals and institutions provides information and technical assistance on wetland issues ranging from acquisition-protection projects and strategies to mitigation options, research, education, inventorying, and wetlands restoration and development. The OCMP endeavors to maintain effective linkages and networks to maximize the resources that may be devoted for coastal wetland conservation purposes. The Ohio Sea Grant College Program and member institutions provide information generated from wetlands research. Information on wetlands protection through state and federal regulatory authority is readily available from Ohio EPA, Division of Surface Water. ODNR's DOW manages the statewide wetlands inventory and provides a wide range of technical assistance for planning and management purposes. The Lake Erie Geology Group of the Division of Geological Survey also provides technical assistance on the hydrology and geology of coastal wetlands. The OWC-NERR cooperates with the OCMP by interacting to disseminate information on wetlands and related coastal management issues and acting as a clearinghouse for information and policy on coastal management issues. DNAP's Natural Heritage Database inventory may contain information on high-quality wetland communities. This information is available to the public and local government for planning purposes. DNAP may also provide technical assistance on the protection of these areas and on the restoration of natural wetland communities.

## POLICY 13 – NATURAL AREAS AND FEATURES

**IT IS THE POLICY OF THE STATE OF OHIO TO PRESERVE SIGNIFICANT NATURAL AREAS AND OTHER OUTSTANDING FEATURES OF OHIO'S NATURAL HERITAGE BY:**

**A. ACQUIRING, DEDICATING AND MANAGING STATE NATURE PRESERVES (O.R.C. § 1517.05, 1517.06);**

**B. MANAGING THE STATE'S NATIONAL ESTUARINE RESEARCH RESERVE PROGRAM;**

**C. CREATING AND MAINTAINING WILD, SCENIC AND RECREATIONAL RIVERS (O.R.C. § 1517.14 THROUGH § 1517.18);**

**D. MAINTAINING AN UP-TO-DATE INVENTORY OF NATURAL AREAS AND OTHER NATURAL FEATURES AND ENCOURAGING THEIR PRESERVATION THROUGH PRIVATE ORGANIZATION PROTECTION EFFORTS AND LOCAL GOVERNMENT REGULATION; AND**

**E. RECOGNIZING AS NATURAL LANDMARKS PRIVATELY OWNED NATURAL AREAS NOT SCHEDULED FOR ACQUISITION.**

### Authorities and Administration

A. ODNR, Division of Natural Areas and Preserves (DNAP) administers and operates a system of state nature preserves pursuant to O.R.C. § 1517.05. The intent of the system is to preserve through acquisition and dedication natural areas of state or national significance. "'Natural area' means an area of land or water which either retains to some degree or has re-established its natural character, although it need not be completely undisturbed, or has unusual flora, fauna, geological, archaeological, scenic, or similar features of scientific or educational interest" (O.R.C. § 1501.01). These areas include, but are not limited to, sites characteristic of Ohio's presettlement landscape types, natural vegetation and geological history.

Dedicated nature preserves are held in trust for the uses and purposes set forth in O.R.C. § 1517.05 for the benefit of the people of the state, of present and future generations. They are managed and protected in the manner approved by, and subject to rules established by, the Chief of the DNAP. These preserves shall not be taken for any other use except another public use–after a finding by ODNR of the existence of an imperative and unavoidable public necessity for such other public use and with the approval of the governor (O.R.C. § 1517.06).

Potential sites are evaluated for designation by DNAP based on the following internal criteria:

1. Whether the area complements the state's existing preserve program.

2. Whether it is a good representative of the community type that once existed in the region.

3. Whether it contains state or federal endangered flora or fauna.

4. Whether there is evidence of significant human disturbance of the area.

The division cooperates closely with local and national conservation organizations, nonprofit organizations, natural history museums, and universities in locating and identifying areas worthy of preservation. Through the Natural Areas State Income Tax Checkoff Program, the public is able to assist in acquisition and preservation of these natural areas, scenic rivers and endangered species by contributing a portion of its tax refund to the DNAP.

Nature preserves are classified as scientific, interpretive or scenic, with scientific areas being the most restrictive in use and scenic areas being the least restrictive. Preserves are managed for the following uses and purposes:

1. For conducting scientific research;

2. For teaching biology, ecology, natural history, geology, coastal processes and other related subjects;

3. To provide habitats for plant and animal communities;

4. As reservoirs of natural materials;

5. To serve as places of natural interest and beauty;

6. For fostering public visitation and observation of the natural world;

7. To promote understanding and appreciation of the aesthetic, cultural and scientific values of these areas; and

8. To preserve and protect such natural areas from any uses that would destroy their natural or aesthetic conditions. Active recreation, camping and organized sports are prohibited.

B. Ohio's only designated National Estuarine Research Reserve is at Old Woman Creek. The National Estuarine Reserve Research System (NERRS) was established by Section 315 of the Coastal Zone Management Act of 1972, 16 U.S.C. 1461, to provide financial assistance awards on a 50-50 matching basis to coastal states (including Great Lakes) for acquisition, development

and operations of estuarine areas as natural field laboratories. These areas are used primarily for long-term scientific and educational programs that provide information essential to local, regional and national coastal decision making. The Reserve's administrative offices -- designated as the Ohio Center for Coastal Wetland Studies -- are located on-site at Old Woman Creek.

To guarantee long-term protection of Old Woman Creek estuary, and to ensure fulfillment of the goals and objectives of the NERRS Program, the Reserve is managed by DNAP as a nature preserve. Budget and policy decisions are made by the chief of DNAP in coordination with the on-site NERRS Program Administrator and the Chief of the Sanctuaries and Reserves Division (SRD)/National Oceanic and Atmospheric Administration (NOAA)/U.S. Department of Commerce.

C. The Director of ODNR or the director's representative is authorized to create, supervise, operate, protect and maintain wild, scenic and recreational river areas (O.R.C. § 1517.14). Areas that possess water conservation, scenic, fish, wildlife, historic or outdoor recreation values may be preserved, and adjacent lands of sufficient width necessary to protect those values may be included. ODNR is responsible for preparing and maintaining plans for the establishment, development, use and administration of these areas as part of comprehensive state plans for water management and outdoor recreation. The department also cooperates with federal wild, scenic and recreational river programs.

ODNR does not, as a result of such designation, restrict land use of property owners within the designated area. However, the Chief of DNAP does participate in watershed-wide planning with federal, state and local agencies to protect the wild, scenic and recreational values of these areas. DNAP administers federal financial assistance for such areas and may expend funds appropriated by the Ohio general assembly for acquisition, protection and maintenance of property (O.R.C. § 1517.17). Channel modifications, construction and road building by state agencies and political subdivisions are prohibited within wild, scenic and recreational rivers outside municipal limits without plan approval by the Director of ODNR (O.R.C. § 1517.16).

"Wild river areas" are free of impoundments, inaccessible except by trail, with essentially primitive shorelines and watersheds and unpolluted waters. "Scenic river areas" are free of impoundments, accessible in places by roads, with largely undeveloped watersheds and primitive shorelines. "Recreational river areas" are accessible by roads or railroads, have some development along their shorelines, and may have undergone some impoundment or diversion in the past (O.R.C. § 1517.16).

Segments of five Lake Erie tributaries have been designated as Scenic Rivers. All designated segments of these rivers (the Chagrin, Grand, Cuyahoga, Sandusky and Maumee) lie outside the proposed Coastal Management boundary. Nevertheless, wise watershed management through implementation of stormwater management techniques and nonpoint source pollution control in these areas has a highly beneficial impact on coastal area water quality. The Scenic

Rivers Program cooperates with the Ohio EPA and ODNR's Division of Soil and Water Conservation to encourage watershed protection on designated streams within the basin. (See Appendix J for additional detail regarding the Scenic Rivers Program's role in nonpoint source pollution control.)

D. DNAP systematically identifies ecologically significant natural areas, communities, species and features to analyze and establish land protection priorities. This information is also provided to planners and government officials for local protection programs and regulations, and to developers to direct development away from sensitive areas.

E. The Ohio Natural Landmark Program, is designed to make landowners aware of significant natural features, encourage them to protect these features and provide technical assistance as needed. This is a nonbinding notification and recognition program for owners of natural areas that are not presently scheduled for acquisition. Such areas are then recognized as a part of the registry of natural areas, and technical assistance through DNAP is available to manage them.

## POLICY 14 – RARE AND ENDANGERED SPECIES

**IT IS THE POLICY OF THE STATE OF OHIO TO PRESERVE AND PROTECT RARE, THREATENED AND ENDANGERED PLANT AND ANIMAL SPECIES TO PREVENT THEIR POSSIBLE EXTINCTION BY:**

**A. RESTRICTING THE TAKING OR POSSESSION OF NATIVE ANIMAL SPECIES, OR THEIR EGGS OR OFFSPRING, THAT ARE THREATENED WITH STATEWIDE EXTINCTION (O.R.C. § 1531.25 AND O.R.C. § 1531.99);**

**B. REGULATING THE TAKING, POSSESSION, REMOVAL, TRANSPORTATION OR SALE OF NATIVE PLANT SPECIES LISTED AS ENDANGERED OR THREATENED WITH EXTIRPATION (O.R.C. 1518.03); AND**

**C. PROTECTING THE WATERS THAT PROVIDE A HABITAT FOR RARE AND ENDANGERED SPECIES (O.R.C. 6111.03(O), O.R.C. § 6111.03(R), O.A.C. 3745-1-05(C).**

Authorities and Administration

A. ODNR, Division of Wildlife (DOW) protects fish and wildlife species threatened with statewide extinction under O.R.C. § 1531.25. The division, with approval from the Wildlife Council, restricts the taking or possession of native species of wild animals, their eggs, or offspring threatened with statewide extinction. This restriction includes all species on the United States list of endangered fish and wildlife native to Ohio or that migrate within the state. The taking of species threatened with statewide extinction for zoological, educational, scientific or propagation purposes requires a written permit from the Chief of the Division of Wildlife (O.R.C. § 1531.25 and O.A.C. 1501:31-23 and 1501:31-25). Any violation of this Section is considered a first degree misdemeanor pursuant to O.R.C. § 1531.99.

   Through the Nongame Wildlife Income Tax Checkoff Program, funds are made available to the DOW for protection and management of rare and endangered animals, including habitat purchase and protection and research.

B. ODNR, Division of Natural Areas and Preserves (DNAP), has identified, designated, and listed plants that are native to Ohio that are in danger of extirpation or threatened with becoming endangered (O.R.C. § 1518.01 and O.A.C. 1501:18-1). This list includes all species native to Ohio that are listed on the United States list of endangered and threatened plants. The removal or injuring of endangered and threatened plant species without permission from the private property owner or the removal from public property is prohibited (O.R.C. § 1518.02). The taking of endangered and threatened plants for botanical, educational, scientific, or for propagation in captivity to preserve the species requires a written permit from the Chief of the DNAP pursuant to O.R.C. § 1518.03.

Through the Natural Areas Income Tax Checkoff Program, funds are made available to DNAP for the protection and management of rare and endangered plants, including habitat purchase and protection and research.

C. The Ohio EPA, through the state water quality standards (O.A.C. 3745-1), provides additional protection to aquatic species identified as threatened or endangered. The Antidegradation Policy (O.A.C. 3745-1-05(C)) protects waters of exceptional ecological significance (e.g., waters that provide a habitat for state and federally identified threatened or endangered species). Present ambient water quality in such waters will not be degraded for all substances determined to be toxic or to interfere with any designated use as determined by the Director of Ohio EPA. This authority is used through various permitting actions such as National Pollution Discharge Elimination System (NPDES) permits and Section 401 water quality certifications.

POLICY 15 – EXOTIC SPECIES

**IT IS THE POLICY OF THE STATE OF OHIO TO PREVENT INTRODUCTION OF AND CONTROL EXOTIC SPECIES TO PRESERVE THE BALANCE AND DIVERSITY OF NATURAL ECOSYSTEMS OF OHIO'S LAKE ERIE REGION BY:**

**A. REGULATING THE SALE AND PROPAGATION OF PURPLE LOOSESTRIFE (O.R.C. § 927.682);**

**B. REGULATING THE IMPORTATION, SALE AND POSSESSION FOR PURPOSES OF INTRODUCTION INTO WATERWAYS OF EXOTIC SPECIES OF FISH OR HYBRIDS THEREOF (O.A.C. 1501:31-19-01);**

**C. ESTABLISHING AND IMPLEMENTING CONTROL MEASURES FOR NON-NATIVE FLORA AS PART OF MANAGEMENT PLANS FOR ODNR-MANAGED PRESERVES AND WILDLIFE AREAS;**

**D. INFORMING THE PUBLIC REGARDING PROPER PROCEDURES TO PREVENT FURTHER SPREAD OF ZEBRA MUSSELS;**

**E. CONDUCTING AND SUPPORTING SCIENTIFIC RESEARCH TO ASSIST IN UNDERSTANDING THE EFFECTS OF ZEBRA MUSSELS AND CARP UPON THE LAKE'S ECOLOGY AND TO ASSESS A VARIETY OF MEANS TO CONTROL THE SPECIES; AND**

**F. PARTICIPATING ON THE GREAT LAKES PANEL ON AQUATIC NUISANCE SPECIES AND CONDUCTING OTHER ACTIVITIES TO SUPPORT AND MAINTAIN CONSISTENCY WITH THE PURPOSES OF THE NONINDIGENOUS AQUATIC NUISANCE SPECIES PREVENTION AND CONTROL ACT OF 1990.**

A. The Director of the Department of Agriculture (DOA) prohibits the sale and propagation of purple loosestrife pursuant to O.R.C. § 927.682. No person or governmental entity may sell, offer for sale or plant *Lythrum salicaria* without a permit issued by the director. The director may issue a permit only for controlled experiments and may exempt from the permit requirement any variety demonstrated not to be a threat to the environment (O.R.C. § 927.682).

B. The State of Ohio's fishing regulations provide that exotic species of fish or hybrids thereof may not be imported, sold or possessed for the purposes of introduction into any body of water that is connected to or drains into a flowing stream or other body of water that would allow egress of fish into public waters in the state. In addition, the possession and importation of grass carp capable of reproducing is prohibited. Importers and sellers of grass carp are required to certify that all grass carp handled are of the sterile triploid variety and must have prior written

authorization from the Chief of the Division of Wildlife (DOW) to import and sell this variety (O.A.C. 1501:31-19-01).

C. Each preserve and wildlife area managed by ODNR, DOW and DNAP, is governed by a management plan specific to that area. Each plan incorporates a statement of policy regarding treatment of nonnative plant species identified as problems within the preserve or wildlife area. In the coastal area, plants identified include purple loosestrife, garlic mustard, European buckthorn, bush honeysuckle and Hungarian brome. Although Phragmites is a native species, there is the belief in the scientific community that a more aggressive European form exists. This European form of Phragmites is considered to be very invasive, and its ability to out-compete less-invasive native wetland species in recent years has caused this plant to be a problem species for coastal resource managers. Generally speaking, guidelines call for manual removal, burning and treatment with herbicides. Management plans include provision for monitoring and assessment to determine the extent of growth and nature of the disturbance, if any. Management plans are tailored to the specific preserve or wildlife area and prescribe the treatment appropriate for each species depending upon the habitat type, extent of invasion and management goals for the area.

D. Spread of the zebra mussel cannot be prevented entirely, but it can be slowed. Because anglers and recreational boaters inadvertently contribute to transport and spread of the mussel, ODNR informs them of proper procedures for inspecting, draining, washing and drying equipment. Information regarding storage techniques and the use of antifoulants and coatings is also provided.

E. ODNR, DOW is conducting and supporting numerous scientific studies of zebra mussels and carp and their effects on water clarity, pollutant uptake, predator/prey relationships, and other interactions of organisms at various trophic levels. Several methods of control are being investigated, including artificially inducing spawning at inappropriate times. Monitoring for the presence of ruffe and adult and larval sea lamprey has been conducted and will continue. Ruffe has not yet been found in Lake Erie, and sea lamprey have been controlled in the past and are confined to upper reaches of two coldwater streams in the eastern Ohio coastal area. Carp are controlled on DOW-managed areas by drawing down in early summer and placing screens on pump inlets and culverts in diked marshes. Rotenone is used in deep channels to eliminate remaining carp.

F. ODNR, through DOW, participates on the Great Lakes Panel on Aquatic Nuisance Species, which was established to identify Great Lakes priorities and make recommendations to the Aquatic Nuisance Species Task Force. The Task Force was established as a result of the Nonindigenous Aquatic Nuisance Prevention and Control Act (NANPCA) of 1990. The goals of that act are to prevent unintentional introductions; coordinate research; disseminate information; develop and implement environmentally sound control methods; minimize economic and ecological impacts; and establish a research and technology program to benefit state governments. The Great Lakes Panel has been instrumental in establishment of new Coast

Guard regulations to stop imports and is assisting in development of research protocol, educational strategies, and management and research priorities. The State of Ohio also is represented on the panel by the Ohio Sea Grant Program.

Ohio has developed a State Aquatic Nuisance Species Management Plan as called for by NANPCA. The plan is patterned after the Model Comprehensive State Management Plan for the Prevention and Control of Nonindigenous Aquatic Nuisance Species developed through a May 1995 Great Lakes regional workshop funded under Section 308 of the CZMA. The steering committee that developed the plan includes ODNR staff from the Divisions of Wildlife and Natural Areas and Preserves, OCMP staff from REALM and staff from Ohio EPA, Sea Grant, the Lake Erie Office and The Ohio State University. The management plan and first annual work plan were submitted to the National Aquatic Nuisance Species Task Force in late 1996.

## PORTS AND SHORE AREA DEVELOPMENT

### Uses Subject to Management

- Activities involving the development of submerged lands of Lake Erie.
- Activities involving the dredging and disposal of dredged materials.
- Activities affecting the development of the shore and nearshore waters.
- Activities involving port development, maintenance and expansion.

### Dredging

Large vessels traveling the Great Lakes require harbor depths of 28 feet below low water datum. Keeping Ohio's commercial and recreational harbors open to these vessels requires annual dredging by the U.S. Army Corps of Engineers. Dredging involves large quantities of materials that are very costly to remove and may pose environmental problems. Polluted materials must be disposed at approved upland sites or in confined disposal facilities. These facilities are expensive and occupy valuable nearshore habitat. Improved dredging techniques and new methodology for the disposal of dredge materials is vital to the shipping industry.

### Residential Development

Lakeshore access, expansive views and other aesthetic considerations make the shore area a desirable place to live. Residential development, primarily single family housing, occupies nearly 45 percent of the 262 miles of Lake Erie shore in Ohio. In some areas near Cleveland, high-rise apartment buildings have been built on the bluffs overlooking the Lake. Neighboring communities face pressure from developers to rezone their lakeshores to allow for more condominiums and high-rise apartments. High-density housing drastically changes the shore's character, limits the options for its future use, and may create unforeseen environmental problems. Local decisions to redevelop the shore to provide high density housing must be considered carefully. Proper plans should be developed and implemented by local governments to reduce the effects of continued residential development on the Lake Erie shore.

### Industrial and Commercial Development

A sound, viable and progressive economy is an essential element of the Lake Erie region. The commercial and industrial advantages provided by the lake's economic resources are important to the region and the state. A lakeshore location satisfies two basic industrial location criteria: economic shipping distance for major raw materials including iron ore, coal and limestone; and availability of a large-volume water supply for processing needs.

Approximately 10 percent of the shore is developed by industrial or commercial interests. Many of the lake's tributaries are also heavily developed. However, their harbors, which in the past have been almost exclusively areas of commercial and industrial development, are now undergoing urban waterfront development.

Some developments along the lakeshore are lake-dependent and require actual lakefront access to operate. These include commercial fishing, port facilities, certain mineral extraction industries, large boatworks, shipyards, and marinas. Other developments along Lake Erie require water, but not necessarily lakefront land, as an integral part of their operation. Electrical generating facilities and steel plants are examples of this second group of developments.

Ports

The availability of an inexpensive water-based transportation system has greatly influenced development of cities and industry along the Lake. Commercial ports along Ohio's Lake Erie shore provide a vital link in the state's transportation system and are vital to the local, regional and state economy. The major commercial ports are Ashtabula, Cleveland, Conneaut, Fairport Harbor, Huron, Lorain, Sandusky and Toledo. Major commodities are coal, iron ore, grain, fertilizers, limestone, sand, gravel, salt and stone. A declining industrial base has hurt the ports, yet they have kept pace by diversifying their cargos and seeking new business. Innovative thinking and continued port development should maintain the flow of goods in the coastal area.

POLICY 16 – PUBLIC TRUST LANDS

**IT IS THE POLICY OF THE STATE OF OHIO TO PROTECT THE PUBLIC TRUST HELD WATERS AND LANDS UNDERLYING THE WATERS OF LAKE ERIE, PROTECT PUBLIC USES OF LAKE ERIE AND MINIMIZE THE OCCUPATION OF PUBLIC TRUST LANDS FOR PRIVATE BENEFIT BY:**

**A. REGULATING OFFSHORE DEVELOPMENT AND IMPROVEMENT PROJECTS BY REQUIRING A LEASE FOR THE USE OF SUBMERGED LANDS (O.R.C. § 1506.10 AND 1506.11 AND O.A.C. 1501-6-01 THROUGH 1501-6-06);**

**B. REGULATING RECOVERY OF SUBMERGED ABANDONED PROPERTY THROUGH PERMITS (O.R.C. § 1506.32); AND**

**C. ESTABLISHING AND ENFORCING LAKE ERIE SUBMERGED LANDS PRESERVES (O.R.C. §1506.31).**

Authorities and Administration

The waters of Lake Erie and lands underlying them belong to the state as proprietor in trust for the people of the state for the public uses to which they may be adapted, subject to the powers of the United States government, to the public rights of navigation, water commerce and fishery, and to the property rights of littoral owners, including the right to make reasonable use of the waters in front of or flowing past their lands (O.R.C. § 1506.10). Ohio's "public trust doctrine" was originally established in 1803 when Section 14, Article III, of the "Northwest Ordinance" gave the new state authority to regulate activities occurring in navigable waters within state boundaries.

The U.S. Supreme Court ruled in Illinois Central Railroad Company v. Illinois 146 US 387 (1892) that the state may not abdicate its control of public trust properties and leave them under private control. Subsequent court decisions have looked with disfavor upon governmental actions that reallocated public uses to those of a select, private party. Several Ohio cases have clarified that the "public use" is to be construed broadly and extended beyond the traditional concepts of commerce, navigation and fishery. Specifically, State ex rel Brown v. Newport Concrete Co. (1975) 44 Ohio App. 2d 121 clarified that public use includes recreation, while State ex rel Squire v. Cleveland (1948) 150 OS 303 asserted that law regarding public use should provide a broad construction of "navigation" and be flexible enough to allow for future, as yet unanticipated, beneficial uses.

A. A lease from the State of Ohio, acting through the Director of ODNR, is required before any improvements may be made on the waters and the land underlying the waters of Lake Erie (O.R.C. § 1506.11, O.A.C. 1501-6-01 through 1501-6-06). Although the current shoreline serves as the general baseline for determining which areas require a lease for development, state

law also requires a lease of Lake Erie submerged land for filled land that was originally occupied by the lake's waters. Landowners with such improvements made prior to October 13, 1955 are automatically granted a lease if the developments do not constitute an unlawful encroachment on navigation and water commerce interests. Any additions or improvements upon the existing fill or structures may require a new lease.

ODNR, REALM reviews proposed projects in accordance with the following criteria, established in O.A.C. 1501-06-03, to determine the potential impacts upon Lake Erie and the public's use of Lake Erie:

1. Water Dependency – Generally, an application will not be approved for a nonwater-dependent development or activity.

2. Protection of Environmental Quality – The Director of ODNR may require an Environmental Impact Assessment to determine probable impacts of the activity upon the natural and human environment.

3. Public Recreation – Potential impacts upon the public right of recreation, including present or prospective recreational uses, will be evaluated. Provision for public access may be required as a lease or permit condition depending upon historic use patterns and suitability of the lease site for existing or prospective recreational uses.

4. Relationship to port development, commercial navigation and waterfront development plans – Consideration will be given to compatibility with such plans, sensitivity to preservation and restoration of other coastal features, and importance to the local and regional economy, interstate commerce and other national, state or regional interests.

In addition, as provided in O.A.C. 1501-6-03, consideration will be given to the following:

1. Whether the proposed project will prejudice the littoral rights of any owner of land fronting on Lake Erie.

2. Whether the proposed project conforms to the permitted uses as regulated by the local government, where applicable.

3. Whether any of the public uses (navigation, water commerce and fishery) of the original area would be destroyed or greatly impaired.

4. Whether the diminution of the area of original use would be small compared to the use of the entire area.

5. Whether the area has a history of use including, but not limited to, services rendered to the general public.

In reviewing an application in terms of a project's potential impairment of public rights, ODNR solicits comments and uses, to the maximum extent practicable, the findings of the COE Section 10/404 permit process, and the Section 401 Water Quality Certification by Ohio EPA. This policy allows other state agencies to comment on potential environmental impacts before ODNR issues a submerged lands lease. (Erosion control measures also require a permit pursuant to O.R.C. § 1507.04 [see Policy 2]. If proposed in conjunction with erection, construction or redevelopment of a permanent structure within the Lake Erie coastal erosion area, O.R.C. § 1506.07 will apply as well.)

All lease agreements contain a reservation to the State of Ohio of all mineral rights and a provision that the removal of any mineral shall be conducted in a manner that does not damage any improvements placed by the littoral owner, lessee or permit holder on the lands. Also, no lease or permit expresses or implies any control of fisheries or wildlife.

Rental payments received from leases entered into on or after March 15, 1989, accrue to the Lake Erie Submerged Lands Fund (O.R.C. § 1506.11). From the fund, 50 percent of each rental is paid to ODNR for administration of submerged lands and for the Coastal Management Assistance Grant Program. The other 50 percent of the rental is paid to the municipal corporation, county or port authority with jurisdiction over the area for which the lease was executed. For leases existing prior to March 15, 1989, the total lease rentals are paid directly to the local government until the renewal clauses becomes effective.

Rules for leasing of Lake Erie submerged lands are included in Appendix L.

B. The State of Ohio holds ownership and title to submerged abandoned property in Lake Erie and ODNR administers a permit system for recovery of such property (O.R.C. § 1506.33 and 1506.32). See Policy 26 for additional details.

C. In order to provide special protection for significant abandoned property and features in Lake Erie, the Director of ODNR with approval of the Director of OHS may adopt rules to establish Lake Erie submerged lands preserves (O.R.C. § 1506.31). See Policy 26 for additional details.

## POLICY 17 – DREDGING AND DREDGED MATERIAL DISPOSAL

**IT IS THE POLICY OF THE STATE OF OHIO TO PROVIDE FOR THE DREDGING OF HARBORS, RIVER CHANNELS AND OTHER WATERWAYS AND TO PROTECT THE WATER QUALITY, PUBLIC RIGHT TO NAVIGATION, RECREATION AND NATURAL RESOURCES ASSOCIATED WITH THESE WATERS IN THE DISPOSAL OF THE DREDGED MATERIAL BY:**

**A. REGULATING, THROUGH THE OHIO ENVIRONMENTAL PROTECTION AGENCY WATER QUALITY CERTIFICATION, THE DISCHARGE OR DISPOSAL OF DREDGED MATERIAL (O.R.C. § 6111.03(P) AND O.A.C. 3745-1);**

**B. REQUIRING A LEASE FOR STATE-ADMINISTERED SUBMERGED LANDS THROUGH THE DEPARTMENT OF NATURAL RESOURCES BEFORE INITIATING THE CONFINED DISPOSAL OF DREDGED MATERIAL IN THE WATERS OR ON LANDS UNDERLYING THE WATERS OF LAKE ERIE (O.R.C. § 1506.11);**

**C. REGULATING COMMERCIAL DREDGING OF MINERAL RESOURCES (O.R.C. § 1505.07 AND O.R.C. § 1505.99); AND**

**D. COORDINATING INTERDISCIPLINARY REVIEWS OF DREDGING PROJECTS AT OHIO'S LAKE ERIE PORTS AND PROVIDING TECHNICAL AND FUNDING ASSISTANCE TO HELP SELECT AND IMPLEMENT ENVIRONMENTALLY SOUND DREDGING AND DREDGED SEDIMENT MANAGEMENT PRACTICES.**

### Authorities and Administration

A. The Ohio EPA regulates discharges of dredged materials into Ohio waters through the authority of the Director, Ohio EPA, to certify or deny certification to an applicant for a federal license or permit that the discharge will comply with the CWA (O.R.C. § 6111.03(P)). Before any agency or individual disposes of dredged material into Ohio waters, a state water quality certification must be obtained. Water quality certifications are issued, denied or conditioned pursuant to Ohio EPA's review of a COE Section 10/404 permit application or application made directly to Ohio EPA. (See Policy 12 for a more complete description of the 401 water quality certification authority.)

B. Before any improvements are undertaken to develop an in-water confined disposal facility (CDF), the project sponsor must obtain a lease from the ODNR for use of the waters and underlying submerged lands of Lake Erie (O.R.C. § 1506.11). The application process and lease/permit criteria are explained in Policy 16.

C. The Director, ODNR, with the approval of the Director, Ohio EPA, the Attorney General, and the Governor, requires a permit or lease for removal of sand and gravel and other mineral resources from the bed of Lake Erie. Permits are issued for terms of not less than one year nor more than 10 years or until the economic extraction of the mineral has been completed. Dredging of sand and gravel must be within certain fixed boundaries that do not conflict with the rights of littoral owners. Pursuant to O.R.C. § 1505.07, no person shall remove sand, gravel, stone or other minerals from or from under the bed of Lake Erie without first having obtained a permit or lease therefor from the Director, ODNR. Whoever violates this law shall be fined not less than $100 and not more than $500 (O.R.C. § 1505.99).

D. ODNR cooperates with Ohio EPA, U.S. EPA, the U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers (COE), and the local agency or individual in determining the appropriate method and location for disposal of dredged materials. ODNR uses an interdisciplinary resource management approach to the evaluation of dredging and disposal projects. The uniqueness of dredge disposal projects and the variability of environmental conditions in Lake Erie and the coastal area necessitate this approach. The OCMP encourages the development of long-term sediment management plans for harbors and navigation channels where continuing dredging will be necessary to maintain navigation and beneficial and economic uses of these coastal areas.

The U.S. EPA has developed Section 404(b)(1) guidelines for determining the suitability of in-water disposal of dredged or fill material. In developing management mechanisms in the Ohio Nonpoint Source Management Program, ODNR and Ohio EPA recognized that determining the presence and relative concentration of contaminants in dredged material is only one important factor. Predicting the fate of those contaminants in each disposal option and assessing the environmental impacts of each dredged material disposal alternative is even more important. Decisionmaking regarding the management of dredged sediments from harbor areas and navigation channels where major tributaries deliver large quantities of sediments must be made on the basis of which alternatives provide reasonable protection for water quality and aquatic life uses and meet Ohio's objectives for sustaining beneficial human uses of the coastal area.

Management must be flexible. Lake Erie has tremendous variability in substrate conditions, currents, ambient water quality and natural sediment resuspension from location to location. Also, as the levels of pollutants in sediments decline with increased controls of point sources and nonpoint sources, open lake disposal options and methods need to be carefully examined to ensure that natural resources and beneficial uses of Lake Erie are adequately protected. The OCMP will use integrated management to fully explore upland and in-lake sediment reuse options. Traditional in-water confined disposal facilities (CDFs) for dredged sediments eliminate large areas of open water and submerged lands and underwater resources. This results in a major commitment of natural resources and habitat for fish and wildlife to a sediment disposal use.

The OCMP has developed general priorities for the location of dredge disposal sites. Evaluation of all projects depends upon the specific characteristics of the situation and the site. Areas for the disposal of dredged materials determined not suitable for open-lake disposal, in order of their relative priority are: (1) upland sites and (2) nearshore confined sites.

Except for sand and gravel, the OCMP does not advocate an order of preference among site alternatives for the disposal or use of materials determined suitable for open-lake disposal. Site selection must be examined on a case-by-case basis considering ambient environmental conditions, dredged sediment characteristics and the characteristics of alternative open-lake sites.

The sand- and gravel-sized sediments should be returned to the littoral system downdrift of the point of dredging. All sand and gravel dredged from nearshore areas and from stream mouths, marina facilities and entrance channels during construction or maintenance should be returned to the nearshore zone downdrift of the channel.

Through the Ohio Department of Transportation's (ODOT) port assistance program, technical and financial assistance, including financial assistance for planning and feasibility studies, is available to assist port authorities and municipalities in determining proper methods and sites for the disposal of dredged materials. Policy 19 contains information on the port assistance program.

POLICY 18 – LOCAL LAKESHORE DEVELOPMENT

**IT IS THE POLICY OF THE STATE OF OHIO TO ENCOURAGE LOCAL GOVERNMENTS TO PLAN FOR AND CONTROL SHORE DEVELOPMENT TO PROVIDE FOR THE WISE USE OF THE SHORE AND COASTAL RESOURCES BY:**

**A. PROVIDING PLANNING AND MANAGEMENT ASSISTANCE FOR THE DEVELOPMENT AND IMPLEMENTATION OF COMPREHENSIVE SHORE MASTER PLANS;**

**B. COLLECTING, ANALYZING AND PUBLISHING RESOURCE DATA THROUGH THE OHIO DEPARTMENT OF NATURAL RESOURCES, OHIO CAPABILITY ANALYSIS PROGRAM, FOR USE BY LOCAL GOVERNMENTS IN THEIR PLANNING AND DECISION-MAKING PROCESSES; AND**

**C. ASSISTING LOCAL GOVERNMENTS TO PREPARE ORDINANCES AND RESOLUTIONS NECESSARY TO EFFECTIVELY ADMINISTER THESE PLANS.**

Authorities and Administration

A. In Ohio, local governments have been constitutionally (Article XVIII, Section 3 of the Ohio Constitution) or legislatively (O.R.C. Chapters 303 and 519) granted the authority and responsibility to plan for and control the development of specific land uses within their respective jurisdictions. The state encourages local governments to exercise this responsibility and authority in the development and implementation of comprehensive lakeshore master plans to provide for the wise use of these important land and water resources. Ideally, local lakeshore plans should:

1. Give high priority to public access, port and other coastal dependent uses over other types of development.

2. Discourage unprotected development and redevelopment in coastal erosion and flood prone areas.

3. Promote improved air and water quality.

4. Guide new development in or adjacent to areas of similar or compatible use.

5. Preserve fish and wildlife habitat and other significant natural areas or features.

6. Maintain prime and specialty agricultural (nursery and viticulture) areas.

7. Preserve historic and archaeological sites and other areas of cultural significance.

8. Use land capability analyses in the planning process.

9. Minimize filling of Lake Erie, especially for nonwater-dependent uses.

B. ODNR conducts investigations and collects data on the natural resources of the coastal area to assure their wise use and development. These efforts include information about soils, ground water, geology, forests, wetlands, floodplains, sediments and other resources and coastal processes. Much of this information is available through the Ohio Capability Analysis Program (OCAP), managed in the Division of Real Estate and Land Management. OCAP is a computer information system containing natural and physical data needed to analyze and present information on the land's ability to support or sustain various land uses. Additional information on coastal erosion and sedimentation, including Coastal Erosion Area maps, is available from the Lake Erie Geology Group of the Division of Geological Survey and the department's Lake Erie Geographic Information System. These data and analyses, available for all lakeshore communities, are valuable tools for local decisions on land use and development.

C. ODNR has developed guidelines for local land-use management, and model ordinances have been developed for different types of critical resources and hazard areas, including flood hazards, geological hazards, mineral resources, river corridors and natural areas. In addition, model ordinances for Lake Erie coastal erosion area permitting will be made available to communities. (See Policy 1.) The ODNR Division of Water provides assistance in the development and review of flood hazard area regulations. (See Policy 3.)

Owners of agricultural land meeting the requirements of O.R.C. § 929.02 may apply for designation by the county auditor of their land as an agricultural district. Agricultural districts are exempt from certain special assessments and have limited protection from land condemnation (O.R.C. § 929.03, 929.04, 929.05). The benefits provided by designation of agricultural districts may help keep some land as agricultural land that otherwise may be converted to some other use.

## POLICY 19 – LAKE ERIE PORTS

**IT IS THE POLICY OF THE STATE OF OHIO TO PROMOTE AND PROVIDE FOR MARITIME COMMERCE AND RELATED ECONOMIC DEVELOPMENT ALONG THE LAKE ERIE SHORE BY:**

**A. PROVIDING ASSISTANCE TO, AND ASSISTING IN THE PROCUREMENT OF FEDERAL FUNDS FOR PORT DEVELOPMENT ACTIVITIES FOR, LOCAL GOVERNMENTS AND PORT AUTHORITIES THAT HAVE THE POWERS TO PLAN, IMPROVE, ACQUIRE, ENLARGE, OPERATE, MAINTAIN AND FINANCE PORT ACTIVITIES AND PROJECTS; AND**

**B. ENCOURAGING THE DEVELOPMENT OF COMPREHENSIVE PORT FACILITY AND EXPANSION MASTER PLANS AND IMPROVEMENT PROJECTS THROUGH FINANCIAL ASSISTANCE FROM THE OHIO DEPARTMENT OF TRANSPORTATION.**

Authorities and Administration

In Ohio, any municipality, township, county or combination of such, may create a port authority (O.R.C. § 4582.22). A municipality shall act by ordinance; a township shall act by resolution of the township trustees, and a county shall act by resolution of the county commission in authorizing the creation of a port authority. Port authorities shall be governed by a board of directors (O.R.C. § 4582.27). The jurisdiction of a port authority shall include all of the territory of the political subdivision or subdivisions creating it, provided that the same area is not included in more than one port authority.

A. The State of Ohio has developed a port assistance program for Ohio's Lake Erie ports. Grants are available through the Ohio Department of Transportation (ODOT), Division of Transportation Assistance, to assist port authorities in port planning, feasibility studies and improvement projects. These planning and feasibility studies should be coordinated with the affected local communities and should reflect local comprehensive planning and zoning regulations, where applicable. ODOT also provides technical assistance to port authorities in obtaining financial assistance for port development and expansion from other state and federal agencies.

B. Ports are encouraged to undertake planning studies that provide public access points or recreation areas within the harbors as well as studies on the compatibility of recreational development and commercial facilities and traffic. This consideration increases public awareness and support for the ports and the important role they play in the local, regional and state economy.

## POLICY 20 – TRANSPORTATION FACILITIES

**IT IS THE POLICY OF THE STATE OF OHIO TO INCORPORATE COASTAL CONCERNS AND RESOURCE PROTECTION INTO COASTAL TRANSPORTATION PLANNING THROUGH COORDINATION WITH THE OHIO DEPARTMENT OF TRANSPORTATION, REGIONAL TRANSPORTATION AGENCIES AND LOCAL MUNICIPALITIES.**

### Authorities and Administration

The state reviews federally financed projects through the state intergovernmental review process. The following internal guidelines are used in reviewing transportation projects and related facilities:

1. The development of new commercial water transportation facilities should be encouraged to locate in areas in or adjacent to already developed commercial and industrial areas in existing ports and harbors.

2. The development and maintenance of land transportation and improvement of highway and railroad access to Lake Erie ports and other major Lake Erie facilities is encouraged. However, development of new, major land transportation that impedes physical access to the Lake and the immediate shore; damages or destroys wetlands, wildlife habitat or other natural areas; or is in Lake Erie or its bays, is discouraged.

3. The development and maintenance of new air transportation facilities, including airports that serve Lake Erie ports, islands or other major Lake Erie facilities is encouraged. However, development of new air transportation facilities, including airports, that impede access to the lake and the immediate shore; damage wetlands without mitigation; cause unacceptable damage to wildlife habitat and other natural areas; interfere with shore erosion protection, or commercial or recreational boating and fishing; or create unacceptable noise or safety hazards to the abutting or surrounding area, is discouraged.

4. The use of lakeshore property for parking lots is discouraged, except for those parking facilities that provide public access or serve lake-dependent facilities.

Projects may require water quality certification or other permits or approval from the Ohio EPA or the COE (see Policy 12).

## RECREATION AND CULTURAL RESOURCES

Uses Subject to Management

- Activities associated with the development of public park and recreation areas including marinas and boat-launching facilities.
- Activities associated with the development of public hunting and fishing areas.
- Activities affecting archaeological or historic sites.

Recreational Facilities

Over 3,200 square miles of Lake Erie are held in trust as a state resource for the people of Ohio. The Lake offers an almost endless variety of recreational opportunities on a year-round basis. However, user conflicts arise because the coastal area must provide for the recreational needs of Ohioans, while also maintaining nonrecreational and nonwater-dependent opportunities. Some existing recreational facilities are overburdened, and new facilities and expansion of existing facilities are needed in some areas.

Despite a wide variety of state, local and federally managed recreational areas, there remains a shortage of access and facilities necessary to promote the full recreational enjoyment of Lake Erie, according to the 1993 Ohio Statewide Comprehensive Outdoor Recreation Plan (SCORP). The demand for current facilities is increasing more rapidly than new ones can be provided. The high cost of land and the loss of potential recreational areas to other uses make it increasingly difficult to offer new services. The lakeshore is one of the more intensively developed areas of the state, and decreasing acreage has been available for recreational development, especially parcels both large and suitable enough for extensive recreation.

Many local officials indicate that the high cost of maintenance is a significant deterrent to new recreational development. Communities have limited resources and rely increasingly on federal funding for general municipal operations. As other costs of city government increase, park maintenance is often given a lower priority. In some cases, parks were built without provision for continuing park maintenance. Many local governments previously neglected the maintenance of shore area parks because poor water quality, high lake levels and erosion have lessened their value as public recreational areas. Improved environmental quality and increased awareness of Lake Erie's opportunities have created a growing demand for lake-based recreation that must be matched by government commitment to providing appropriate facilities.

Beaches

Swimming and other beach activities have always been popular along the Lake Erie lakeshore. During the 1970s, poor water quality significantly reduced the use of Lake Erie beaches. Today, only a few beaches near larger cities and municipal/industrial facilities experience beach advisories for swimming during the summer months because of water pollution. Eventually, all beaches must be cleaned up for recreational use.

Erosion also has damaged beaches. Recent high lake levels have increased erosion, significantly reducing beach areas in many locations and completely eliminating others. In some areas, damage has extended to beach houses and shelters. Erosion is costly, not only in terms of the loss of valuable beach resource, but also in terms of construction and maintenance costs for erosion control structures.

Boating

Lake Erie is the primary area of use of a substantial number of Ohio's recreational boaters. The high degree of demand creates several pressures on the Lake's resources.

Harbors of refuge are an important need of recreational boaters. Recreational boats are typically small and are often threatened by storm waves that develop quickly due to Lake Erie's shallow depth. Harbors of refuge provide safety when storm conditions develop. Most of the accessible and geographically suitable natural locations for harbors of refuge have been developed, although the capacity and accessibility of these existing harbors varies.

Construction, maintenance and improvement of boating facilities can conflict with environmental concerns. Marinas and small boat harbors often have been located at the mouths of streams or in wetland areas. The development of marina facilities and the review of such projects must consider the environmental impacts and the public interest.

Fishing and Hunting

Lake Erie provides a greater variety of fish species than any of the other Great Lakes. While fish populations fluctuate on an annual basis, the Lake supports a thriving sport fishing economy. The one-half million anglers who fish there spend an estimated $100 million annually in pursuit of their sport. Principal species are walleye, yellow perch, white bass and smallmouth bass.

Mallards, black ducks, wood ducks and blue-winged teal comprise approximately 70 percent of Ohio's annual harvest of more than 100,000 ducks. Mallards and black ducks are late migrants into Ohio and make up over half of the waterfowl reported on the hunter bag checks in the Lake Erie marsh region. Trapping for sport and harvest is particularly important in the Lake Erie marshes. Ohio's consistent second place rating in muskrat production is due principally to trapping along Lake Erie.

Cultural Resources

Cultural resources include the historic, architectural and archaeological resources important in the history and pre-history of the State of Ohio. The State of Ohio has acknowledged the importance of historic sites for over a century. In 1885, the state granted a charter to the Ohio Historical Society (OHS), a private, nonprofit organization, to serve as curator for the material remains of Ohio's past. Federal-level consideration for the protection of cultural resources is provided under the National Historic Preservation Act of 1966. In accordance with the provisions of the act, Ohio has designated the Chief of the Historic Preservation Division of OHS to serve as the State Historic Preservation Officer.

POLICY 21 – LAKESHORE RECREATION AND ACCESS

**IT IS THE POLICY OF THE STATE OF OHIO TO PROVIDE LAKESHORE RECREATIONAL OPPORTUNITIES AND PUBLIC ACCESS AND ENCOURAGE TOURISM ALONG LAKE ERIE BY:**

**A. PROVIDING FOR PUBLIC ACCESS TO COASTAL AREAS WITHIN THE STATE NATURE PRESERVE SYSTEM THROUGH ARTICLES OF DEDICATION WHEREVER POSSIBLE AND CONSISTENT WITH PRESERVATION AND PROTECTION OF THE LAND (O.R.C. § 1517.05);**

**B. PROTECTING PUBLIC ACCESS RIGHTS TO LAKE ERIE WATERS AND SHORELINE AREAS WHERE COMPATIBLE WITH EXISTING AND PLANNED USES OF WATERFRONT AREAS THROUGH THE LAKE ERIE SUBMERGED LANDS LEASING PROGRAM (O.R.C. § 1506.11 AND O.A.C. 1506-6-01 THROUGH 1501-6-06);**

**C. DEVELOPING AND MAINTAINING SHOREFRONT STATE PARKS (O.R.C. CHAPTER 1541);**

**D. PROVIDING FOR COMPREHENSIVE ASSESSMENT OF RECREATIONAL NEEDS AND PLANNING FOR FACILITIES TO MEET THOSE NEEDS THROUGH THE STATEWIDE COMPREHENSIVE OUTDOOR RECREATION PLAN (SCORP) AND LAKE ERIE ACCESS PROGRAM (LEAP);**

**E. ASSISTING LOCAL GOVERNMENTS TO DEVELOP LAKESHORE AND URBAN WATERFRONT RECREATIONAL AREAS BY PROVIDING FINANCIAL AND TECHNICAL ASSISTANCE;**

**F. PROVIDING FOR RECREATIONAL OPPORTUNITIES SUCH AS HIKING, BIRD WATCHING AND INTERPRETIVE SERVICES AT STATE PARKS, WILDLIFE AREAS AND NATURE PRESERVES AND ENCOURAGING LOCAL GOVERNMENTS AND OTHER AGENCIES TO PROVIDE GREATER ACCESS TO THE SHORE OF LAKE ERIE; AND**

**G. ENCOURAGING THE INCORPORATION OF PUBLIC ACCESS AND APPLICABLE RECREATIONAL OPPORTUNITIES INTO THE PLANNING OF PRIVATE DEVELOPMENTS AND PUBLIC INSTITUTIONS LOCATING ALONG THE SHORE OR RIVERS IN THE COASTAL AREA.**

Authorities and Administration

A. ODNR is charged with the responsibility of acquiring a system of nature preserves for scientific research, teaching of natural history, ecology, conservation and similar fields, as habitats for plant and animal species and communities, as reservoirs of natural materials, as places of natural interest and beauty, and other purposes and uses. Articles of dedication shall be executed by the owner of the land in the same manner and with the same effect as a conveyance of an interest in land and shall be irrevocable (except as provided in O.R.C. § 1517.05). The nature preserve law expresses the intent of the Ohio General Assembly and ODNR "wherever possible and consistent with such preservation and protection of the land, the articles shall provide for public access in order that the maximum benefit be obtained for the uses and purposes stated . . ." (O.R.C. § 1517.05).

B. ODNR's authority to control Lake Erie's submerged lands through the lease application process has been effective in retaining public access where it has been a traditional and beneficial use of the waterfront. Rules that guide the lease process provide that "public access may be required as a condition of a lease or permit depending upon historic use patterns and suitability of the lease site for existing or prospective recreational uses" (O.A.C. 1501-06-03(1)(3). Where no public access had existed previously, ODNR and the lessee have often identified opportunities for provision of various forms of public access (shoreline fishing, pedestrian access to shorelands, transient boat dockage and other uses and improvements). Often, developers have taken the initiative to provide for access, in light of potential benefits to their coastal-dependent enterprises. (See Policy 16 for additional detail on the lease program. Submerged lands leasing rules are contained in Appendix L.)

C. ODNR's Division of Parks and Recreation (DPR) is charged with the development, operation and maintenance of a system of state parks in Ohio for the recreational use of the citizens of Ohio (O.R.C. Chapter 1541). State park development is financed primarily through ODNR's capital improvement budget. The Land and Water Conservation Fund (LWCF) and the NatureWorks program are supplemental sources of funding for state parks, and ODNR continues to develop new facilities and expand existing facilities along Lake Erie.

D. The Statewide Comprehensive Outdoor Recreation Plan (SCORP) is the State of Ohio's official policy document for outdoor recreation. The SCORP identifies statewide issues and problems impeding the provision of recreation opportunities and also identifies recreation resources, participation and activity trends, and social indicators that will influence the provision of these opportunities in the future. ODNR, REALM is the lead agency responsible for developing the SCORP. The SCORP also serves as a guide for allocations from the LWCF and local NatureWorks funding.

Ohio SCORPs have recognized the importance of Lake Erie in providing outdoor recreation opportunities for Ohio and its visitors. The need to provide additional access to Lake Erie was recognized in the 1980-85 Ohio SCORP that recommended the implementation of a

comprehensive study of the access needs for boating and fishing. The Lake Erie Access Study was initiated in 1983 and included a comprehensive inventory of existing and potential access sites along the 262-mile shoreline. User surveys of boaters and anglers were also conducted to develop a data base for assessing access needs. The Lake Erie Access Study identified regional boating and fishing access needs to assist decision makers in developing rational acquisition and development strategies for providing access to Ohio's single most important water resource.

Upon completion of the Lake Erie Access Study, a public assistance program, the Lake Erie Access Program (LEAP), was established and has been administered by ODNR's Division of Watercraft. The program is authorized to provide up to 75 percent matching funds to local governmental agencies along the Lake Erie coast for boating and fishing improvements.

Assistance provided by the LEAP and continued demand for recreational access has necessitated a need to update the Lake Erie Access Study. Scheduled periodic updating will help decision makers in prioritizing sites for acquisition and recreational development.

The LWCF program provides up to 50 percent reimbursement grants to the state and its political subdivisions for acquisition and/or development of public outdoor recreation areas, consistent with SCORP. Other federal funding programs may, in certain instances, be matched with the LWCF money. However, ODNR requires that a minimum of 20 percent of the project costs be local funds to assure a local commitment to the proper operation and maintenance of the project. In allocating LWCF monies, a high priority has been placed on local projects.

The NatureWorks program was established in 1994 with permanent funding through $200 million in state bonds. Of the first $200 million in bonds, a minimum of $40 million will be set aside for a local grants program. Since no more than $50 million can be issued in any year, approximately $10 million will be available for local NatureWorks grants during each funding year. The remainder is to be used for state park improvements, protecting unique natural areas and wildlife habitats, and accomplishing other environmentally critical updating at other ODNR facilities. As the bonds are retired, the funds become available for continued improvements.

The General Assembly specified that NatureWorks funds are to be available on a modified county per capita basis. Government agencies within each county are to apply to ODNR and compete for funds available to the county. Approximately one-fourth of the total county allocation will be available each funding year. The local grants program is an up-to 75 percent reimbursement program, so the project sponsor must have the 25 percent matching funds as well as cash flow capability to complete the project. "In-kind" costs are not eligible as match.

ODNR, in its review of applications for grants from the NatureWorks and LWCF programs, gives high priority to projects that:

1. Meet an immediate and serious need within the area to be served.

2. Preserve open space on the periphery or within proximity of expanding urban centers.

3. Provide exceptional quality, flexibility and intensity of basic recreation.

4. Are, in their entirety, beyond the financial capabilities of the political subdivision. (The political subdivision must be able to document the availability of its local matching funds.)

5. Balance existing and probable future recreation developments by private, state and other political subdivisions within the area to be served.

E. ODNR encourages local governments to develop lakeshore recreational areas through technical and financial assistance for the acquisition and development of community park and recreation areas. The goals of ODNR's assistance are to: (1) qualify the state to receive federal funds from both the LWCF and the National Recreational Trails Fund (NRTF) component of the Intermodal Surface Transportation Efficiency Act (ISTEA), (2) administer the NatureWorks and LWCF programs and the NRTF component of ISTEA in Ohio so that political subdivisions receive the maximum benefits, and (3) provide other essential assistance to communities to provide quality recreation throughout the state.

Technical assistance is provided to communities by REALM. Typical assistance includes identification of funding sources; site inspection and evaluation; plan reviews and recommendations; inventory information; and guidance in application preparation, federal regulation compliance and project procedures.

ODNR encourages local communities to revitalize valuable urban water resources by providing technical and financial assistance to fully use the recreational potential of urban waterfronts. Technical assistance through REALM is primarily oriented toward providing information and expertise to local governments in such areas as plan review, applicable state and local programs, and sources of financial aid. Projects have been funded primarily through the LWCF program and the Waterways Safety Fund.

Projects that propose to provide new or improved boating, fishing or recreational opportunities to Lake Erie for the general use of the public are eligible to receive assistance through the LEAP. The lake access to be developed must be in the form of launching lanes or ramps, and/or shore-based fishing facilities such as piers, platforms, walls or breakwalls. In addition to actual access facilities, support accommodations such as parking, rest rooms, lighting, breakwalls, landscaping and lakefront park development may be eligible for financial assistance. In 1994, funding from the NatureWorks program in the amount of $1.75 million for the 1996/97 biennium was made available specifically for LEAP.

F. ODNR provides recreational opportunities at its state parks, nature preserves and wildlife areas in the coastal area. Interpretive facilities and programs continue to be developed at ODNR-managed properties on the Lake. Financial assistance through NatureWorks, LWCF or the

NRTF can be provided to local and regional governmental agencies to develop recreational opportunities, including trails. Technical assistance is available from ODNR for interest groups, local communities and park districts interested in developing trails in Ohio. ODNR, (REALM) is the designated state agency responsible for the administration of the National Recreational Trails Fund (NRTF) program. The NRTF was established with the passage of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 (PL 102-240). NRTF funds can be used to assist governmental agencies and trail groups in the rehabilitation, development, maintenance and acquisition of recreational trails and related facilities. NRTF funds also can be used by states for environmental protection and safety education programs. Trails funded with NRTF monies may be motorized, nonmotorized or multiple-use trails.

G. ODNR, through Section 10 and 404 permits and technical assistance, encourages the incorporation of public access and recreational opportunities into the planning of major developments and public institutions that locate at the shoreline or along rivers in the coastal area. Project developers and planners are encouraged to recognize multiple-use advantages of providing access areas in their plans where feasible.

POLICY 22 – LAKE ERIE BEACHES AND PUBLIC BATHING

**IT IS THE POLICY OF THE STATE OF OHIO TO PROVIDE PUBLIC BEACH ACCESS AND SAFE PUBLIC BATHING AREAS ALONG LAKE ERIE BY:**

**A. DEVELOPING AND MAINTAINING BEACHES AND BATHING AREAS ON STATE-OWNED LAND;**

**B. PARTICIPATING JOINTLY WITH THE U.S. ARMY CORPS OF ENGINEERS, SHORELINE PROPERTY OWNERS AND LOCAL LAKESHORE GOVERNMENTS IN BEACH AND LITTORAL NOURISHMENT PROJECTS;**

**C. PROVIDING FOR CONTINUING STUDY OF BATHING BEACH WATER QUALITY ALONG THE LAKE ERIE SHORE AND ADVISING APPROPRIATE AUTHORITIES OF WATER TEST RESULTS WITHIN THEIR RESPECTIVE JURISDICTIONS; AND**

**D. ENCOURAGING LOCAL AUTHORITIES TO ESTABLISH BEACH SAMPLING AND SANITATION PROGRAMS.**

Authorities and Administration

A. ODNR, through the Division of Parks and Recreation (DPR), develops and maintains Lake Erie public beach access areas. DPR is charged with the development, operation and maintenance of new and existing bathing facilities within the state park system. DPR also has the authority to govern all state beaches and swimming activities on lands and waters that are part of the state park system (O.R.C. § 1541.03).

B. ODNR strongly urges the COE and requires other public and private entities to provide littoral/beach nourishment by returning dredged material composed primarily of sands or gravels derived from Lake Erie beach or nearshore zones to the shallow (less than 10 feet deep) nearshore waters or on the beach downdrift of the worksite. This is consistent with ODNR's position that all sand and gravel of littoral origin be returned to the downdrift littoral zone when dredged from marinas and channels by private interests and/or public agencies. ODNR works with the COE and other intrastate agencies on littoral/beach nourishment projects.

The COE, through several federal laws, including Section 145 of the Water Resources Development of 1986, Section 111 of the 1968 Rivers and Harbors Act and Section 103 of the 1962 Rivers and Harbors Act, is authorized to coordinate with the state on littoral/beach nourishment projects. The state also comments through the Section 404, Environmental Assessment and Evaluation, Public Notice, and Finding Of No Significant Impact (FONSI) review process, to achieve an environmentally acceptable alternative for the disposal of dredged material.

C. The Ohio Department of Health (ODH) samples and analyzes water from (1) selected beaches to determine the need for water quality improvements and pollution abatement, (2) all state park beaches along the lake to determine water quality and to monitor changes in the various state park watersheds, and (3) various community and privately owned beaches within local health districts to provide water quality data and assist in developing local bathing beach sampling and sanitation programs. All ODH samples along the Lake Erie shore are taken routinely once a week throughout the bathing beach season. Additional samples are taken in response to unusual conditions or to evaluate water quality problems when identified.

If fecal coliform counts exceed standards, ODH recommends to DPR or the local health department that a beach swimming advisory be posted. Such a posting does not prohibit swimming; it merely informs the public that for a particular time period, high-risk groups may increase their chances of becoming ill as a result of increased fecal coliform levels. Subsequent testings determine whether or not the beach advisory remains posted.

D. ODH encourages local health departments to establish permitting systems for operation of public bathing beaches and to develop regulations regarding water quality and other health and safety concerns. ODH provides local health departments with guidelines for developing regulations and strongly recommends adoption of regulations through their program surveys and reviews of local procedures. Ottawa, Lucas, Erie and Ashtabula counties administer their own permitting and regulatory programs.

POLICY 23 – RECREATIONAL BOATING

**IT IS THE POLICY OF THE STATE OF OHIO TO SATISFY AND SERVE THE PUBLIC INTEREST FOR RECREATIONAL BOATING OPPORTUNITIES AND WATERCRAFT SAFETY IN THE COASTAL AREA BY:**

**A. REGULATING SAFETY OF WATERCRAFT BY ENFORCING WATERCRAFT LAWS (O.R.C. CHAPTER 1547);**

**B. CONDUCTING A WATERCRAFT SAFETY AND EDUCATION PROGRAM (O.R.C. § 1547.52 AND 1547.521);**

**C. DEVELOPING AND OPERATING BOAT FACILITIES AT STATE-OWNED AREAS ALONG LAKE ERIE;**

**D. ASSISTING IN THE PLANNING AND DEVELOPMENT OF LOCAL GOVERNMENT OPERATED MARINAS AND BOAT LAUNCHING AREAS UNDER OHIO DEPARTMENT OF NATURAL RESOURCES' COMMUNITY WATERCRAFT ASSISTANCE PROGRAM AND THE LAKE ERIE ACCESS PROGRAM; AND**

**E. PARTICIPATING JOINTLY WITH THE U.S. ARMY CORPS OF ENGINEERS AND LOCAL COASTAL AREA GOVERNMENTS IN COMPLETING THE OHIO LAKE ERIE REFUGE HARBOR SYSTEM (O.R.C. § 1547.71).**

Authorities and Administration

A. The Division of Watercraft in ODNR is responsible for the enforcement of the state watercraft laws and pursuant regulations (O.R.C. Chapter 1547). Watercraft laws and regulations pertain to vessel registration and operation, safety equipment and procedures, littering and abandonment of vessels. The division has two district offices along Lake Erie for patrol and education purposes. Enforcement and patrol activities are coordinated with municipal marine patrol officers and the U.S. Coast Guard.

B. State watercraft officers conduct safety classes, both in the classroom and on the water, for interested groups along Lake Erie as part of the division's Watercraft Safety and Education Program (O.R.C. § 1547.52 and 1547.521).

C. ODNR, through the Divisions of Watercraft, Parks and Recreation, and Wildlife, develops and operates boating facilities on state properties along Lake Erie. The Division of Watercraft can assist financially in the development of such facilities at state parks. As a part of the Fish Ohio Program, the Division of Wildlife acquires properties for fishing access to Lake Erie and develops boat launching facilities on these properties and other public shoreline areas. Land

and Water Conservation Fund grants can also be used for public recreation boating facilities (see Policy 21).

D. ODNR provides financial assistance to local communities for the planning and development of boating facilities. The Division of Watercraft provides assistance to local communities for launching and marina facilities from the Waterways Safety Fund (O.R.C. § 1547.72) with the consent and approval of the Director of ODNR. The Waterways Safety Fund is financed from boat registration and title fees and one-half of 1 percent of the motor fuel tax. The Division of Watercraft allocates funds statewide as determined by need, the number of boats to be benefited, the cost of the projects in relation to the amount of funds available, priority relative to other projects and the willingness of public agencies and political subdivisions to participate in a cooperative project. Only political subdivisions, park districts, conservancy districts and agencies of state government are eligible for assistance from the Waterways Safety Fund in developing recreational boating facilities. Projects that receive major attention are those that provide for the construction of ramps or hoists, parking areas and better access, essential sanitary facilities, or the expansion of existing facilities.

Projects that propose to provide new or improved boating or fishing opportunities to Lake Erie for the general use of the public are coordinated through the Lake Erie Access Program (LEAP). The LEAP encourages increased boating and fishing access to the lake. These projects are eligible for cooperative funding by ODNR to local park districts and political subdivisions through the above-mentioned funding sources and various other sources.

E. Pursuant to O.R.C. § 1547.71, the Division of Watercraft acts as the refuge and small boat harbor agency for Ohio for the purpose of cooperating with ODNR and the Corps of Engineers in acquiring, constructing, and maintaining refuge and small boat harbors. The refuge harbor program in Ohio is carried out jointly with the Corps of Engineers under Congressional authorization for federal financial and technical assistance. Participation by the Division of Watercraft in a refuge harbor project is determined by the need, the number of boaters to be benefited, the cost of the project in relation to the amount of funds available, priority relative to other projects and the willingness of public agencies to participate in such cooperative projects. Recreational harbors are low priority for the federal government.

POLICY 24– FISHING AND HUNTING

**IT IS THE POLICY OF THE STATE OF OHIO TO PROVIDE EXPANDED SPORT FISHING AND SAFE HUNTING OPPORTUNITIES IN THE COASTAL AREA BY:**

**A. REQUIRING LICENSURE FOR HUNTING, TRAPPING AND FISHING (O.R.C. § 1533.10, 1533.111 AND 1533.32);**

**B. REQUIRING COMPLETION OF THE OHIO DEPARTMENT OF NATURAL RESOURCES HUNTER SAFETY AND TRAPPER EDUCATION COURSES FOR FIRST-TIME LICENSE BUYERS BEFORE ISSUING A HUNTING LICENSE OR TRAPPING PERMIT (O.R.C. § 1533.10 AND 1533.111);**

**C. ACQUIRING AND DEVELOPING AND ASSISTING LOCAL GOVERNMENTS IN DEVELOPING FISHING ACCESS AREAS;**

**D. ESTABLISHING AND MAINTAINING WILDLIFE AREAS AND WETLANDS, AND EXPANDING THE USE OF OTHER STATE-OWNED LANDS FOR THE REGULATED TAKING OF WILDLIFE; AND**

**E. ENCOURAGING PRIVATE LANDOWNERS TO ALLOW FISHING AND HUNTING ON THEIR LAND UNDER THE OHIO WILDLIFE COOPERATIVE FISHING AND HUNTING PROGRAM.**

Authorities and Administration

A. See Policies 27 and 29.

B. All first-time hunting license buyers in the State of Ohio are required to complete a hunter safety and conservation course and pass an examination as prescribed by the Chief of the Division of Wildlife (DOW) before a hunting license can be issued (O.R.C. § 1533.10). The course consists of subjects including, but not limited to, hunter safety and health, use of hunting implements, hunting tradition and ethics, the role of hunting in conservation, and hunting rules and regulations.

C. DOW has the authority to acquire and develop areas for fishing access along Lake Erie, (O.R.C. § 1531.06). This activity is part of the Division's Fish Ohio Program to increase fishing opportunities in Ohio through cleaner waters, stocking and fishing access to Ohio's waters. The division has developed a prioritization system for fishing access projects of the LEAP, which considers fishing access needs, shoreline analysis for potential sites and number of existing accesses and cooperation of landowners.

ODNR provides financial and technical assistance for fishing access to local governments along the Lake Erie shoreline. Development of shoreline fishing access has resulted from shoreline recreational projects funded through the Land and Water Conservation Fund (LWCF). Technical assistance is available from the above divisions and programs for fishing access.

D. See Policies 27 and 29.

E. Through the Ohio Wildlife Cooperative Hunting and Fishing Program, additional hunting and fishing opportunities are created for Ohio hunters and anglers by encouraging private landowners to permit public hunting, fishing and trapping. Effective control of public use is available to participating landowners. Under the hunting phase of the program, the landowner permits hunting on a first-arrival basis. Permits outlining certain conditions to be followed while hunting on the premises must be signed by each hunter and the landowner. The landowner still retains the authority to regulate the number of hunters on his or her land at any one time and to refuse hunting privileges to any intoxicated, disrespectful or abusive individuals. A landowner must control a single farm unit of 50 acres or more. In return, the DOW agrees to furnish certain materials to landowners that will help them control hunters on their property. Hunting with permission, parking and safety zone signs are provided by the DOW as well as the permit forms. To increase game on the property, participants in the program may obtain food and cover planting stock from the DOW. State wildlife officers patrol these areas during the hunting season as a routine part of their duties. Through the hunting permit, the landowner is released from liability in case the sportsperson is injured or suffers personal property damage while on the landowner's property (O.R.C. § 1533.18 and 1533.181).

## POLICY 25 – SURPLUS PUBLIC PROPERTY

**IT IS THE POLICY OF THE STATE OF OHIO TO, WHEREVER APPROPRIATE, RETAIN SURPLUS STATE LAKESHORE PROPERTY IN PUBLIC OWNERSHIP AND TO OBTAIN FEDERAL LAKESHORE PROPERTY TO USE OR REDEVELOP SUCH AREAS FOR OTHER PUBLIC SHORELINE ACCESS AND PUBLIC PURPOSES.**

### Authorities and Administration

All departments within the State of Ohio provide notice to other agencies regarding availability of surplus property within the state. The Ohio Department of Administrative Services reviews notices of federal and state surplus properties in the state and coordinates with other agencies to evaluate the suitability of such property for state management. In the case of the Ohio Department of Transportation (ODOT), the agency notifies ODNR directly. The OCMP will review such notices for properties within the coastal area and for properties where activities may significantly affect the coastal area. OCMP will assess and actively pursue opportunities for retention by the current agency or transfer to ODNR for provision of public access and use.

POLICY 26 – PRESERVATION OF CULTURAL RESOURCES

**IT IS THE POLICY OF THE STATE OF OHIO TO PROVIDE FOR THE PRESERVATION OF CULTURAL RESOURCES TO ENSURE THAT THE KNOWLEDGE OF OHIO'S HISTORY AND PRE-HISTORY IS MADE AVAILABLE TO THE PUBLIC AND IS NOT WILLFULLY OR UNNECESSARILY DESTROYED OR LOST, BY:**

**A. PROTECTION OF CULTURAL RESOURCES ON OR ELIGIBLE FOR STATE AND NATIONAL REGISTERS OF HISTORIC PLACES (O.R.C. § 149.51 THROUGH 149.55);**

**B: REGULATING RECOVERY OF SUBMERGED ABANDONED PROPERTY THROUGH PERMITS (O.R.C. § 1506.32); AND**

**C. ESTABLISHING AND ENFORCING LAKE ERIE SUBMERGED LANDS PRESERVES (O.R.C. § 1506.31).**

Authorities and Administration

A. The State of Ohio, to protect its cultural resources, identifies, evaluates, designates and preserves significant resources and provides for consideration of cultural resources endangered by public and private development. The state accomplishes these goals through the following activities.

National Register of Historic Places – In accordance with the provisions of the National Historic Preservation Act of 1966, the Ohio Historic Preservation Office (OHPO) within the Ohio Historical Society (OHS) reviews nominations for placement of properties on the National Register. The 17-member Ohio Historic Site Preservation Advisory Board (OHSPAB) advises the OHPO as to whether National Register criteria are met. If the nominated site meets the criteria, the nomination is forwarded to the National Register, where the final decision is made.

State Registries of Archaeological and Historic Landmarks – The OHS has the authority to develop and maintain a State Registry of Archaeological Landmarks pursuant to O.R.C. § 149.51 and a Registry of Historic Landmarks pursuant to O.R.C. § 149.55. OHS places land on these registries only after obtaining a written agreement with the landowner that subjects the property to the provisions of the Revised Code. Within any land placed on either registry, no person or governmental entity may alter or disturb the cultural resources located there without first notifying the Director of OHS, allowing inspection by his or her representatives and providing information on findings of archaeological or historical significance. In addition, sale and possession of objects removed from such sites without privilege to do so is prohibited (O.R.C. § 149.51 and 149.55). The owner may not engage in or authorize any archaeological

survey or salvage work within lands registered as Archaeological Landmarks without a permit issued under O.R.C. § 149.54.

Archaeological Preserves – OHS may accept articles dedicating as preserves real property upon which significant archaeological sites are located, if funds and services are available for their preservation and protection. Whenever possible and consistent with such purposes, the articles are to provide for public access (O.R.C. § 149.52).

State Memorials – OHS is authorized to create, supervise, operate, protect, maintain and promote for public use a system of state memorials in Ohio (O.R.C. § 149.30(A)).

Agency Coordination – All departments, agencies and political subdivisions of the State of Ohio must cooperate with the OHS and OHSPAB in the preservation of historic sites and in the recovery of the scientific information from such sites (O.R.C. § 149.53). In compliance with the National Historic Preservation Act of 1966, the federal government requires that "undertakings" it funds or licenses in Ohio be reviewed by the OHPO to determine what effects, if any, they will have upon historic, architectural or archaeological resources. "Undertakings" include a broad range of federal activities, including construction, rehabilitation and repair projects, demolition, licenses, permits, loans, loan guarantees, grants, federal property transfers and many other types of federal involvement. The OHPO reviews more than 9,000 federally assisted undertakings each year to see that alternatives are considered in any action that would damage or destroy properties listed on, or eligible for, the National Register. If after consultation with the state, there is no prudent and feasible alternative, the state and the federal Advisory Council on Historic Preservation may agree to the loss of a significant property if steps adequate to reduce the impact of its destruction are taken.

The following are nonenforceable enhancement activities that contribute to carrying out the above-mentioned enforceable protections.

Certified Local Governments – Communities can participate more actively in the state historic preservation program by becoming Certified Local Governments, as provided for by the National Historic Preservation Amendments Act of 1980 (16 U.S.C. 470). To become certified, a unit of local government must have an approved program for recognizing and protecting its historic, architectural and archaeological resources. The OHPO helps local governments establish certifiable preservation programs, offering advice on identifying historic, architectural and archaeological resources; developing a preservation plan; nominating eligible properties to the National Register of Historic Places; and protecting local resources. Certified Local Governments can apply for matching grants awarded by the OHPO to help fund projects like these and others.

Ohio Historic Inventory and Ohio Archaeological Inventory – The Ohio Historic Inventory (OHI) records places of historic or architectural merit. The Ohio Archaeological Inventory

(OAI) records prehistoric and historic archaeological sites. Records describing more than 70,000 properties in all parts of the state are kept at the Ohio Historical Center in Columbus.

Rehabilitation Investment Tax Credits – Owners who rehabilitate income-producing properties listed on the National Register of Historic Places are eligible to apply for federal investment tax credits on qualified expenses. Work must be certified as conforming to the Secretary of the Interior's "Standards for Rehabilitation." OHPO counsels owners about how to apply for certification and conducts preliminary meetings, site visits and project assessments as needed to help them qualify for the tax credit.

Ohio Historic Preservation Plan – OHPO has, with public input, prepared a comprehensive statewide historic preservation plan. The plan organized existing information about the state's historic, architectural and archaeological resources so that it can be used to set future priorities for the identification, evaluation and protection of Ohio's historic resources. The goal of the plan is to identify and publicize the critical, pressing issues that face preservation of Ohio's historic architectural and archaeological properties. The plan is composed of broad-based goals and objectives that will provide guidance and direction for state and local organizations to take in preserving Ohio's historic properties over the next five years.

Technical Advice and Educational Programs – Technical advice is available from OHPO staff, and periodic workshops and other educational programs help inform Ohioans about historic preservation. Services include a preservation research library, Building Doctor clinics, an annual preservation conference, an awards program and publications.

Grants – When federal funds are available, the OHPO can make direct matching grants-in-aid to individuals, organizations and agencies for projects that help OHPO carry out the survey and planning responsibilities as defined by the National Historic Preservation Act of 1966, 26 U.S.C. 470 et seq. The OHPO also administers historic preservation matching development grants, also when available, for properties listed in the National Register of Historic Places. Matching grants of up to 50 percent of the cost of stabilization, preservation, restoration and rehabilitation of properties listed in the National Register of Historic Places are available to both owners and tenants of National Register-listed properties through OHPO. (Such funds are not available currently).

B. The State of Ohio has ownership and title to submerged abandoned property in Lake Erie in trust for the benefit of the people of the state. Any person who wishes to recover, alter, salvage or destroy any abandoned property located on, in or in the immediate vicinity of and associated with a submerged watercraft or aircraft in Lake Erie must obtain a permit from the Director of ODNR (O.R.C. § 1506.32). Permits are issued only with the approval of the Director of OHS. If the Director of OHS determines that the property has historical significance, the permit may be conditioned or denied (O.R.C. § 1506.32(D)). If the Director of ODNR determines that the property has substantial recreational, ecological, environmental, scenic or scientific value, the director may deny or condition the permit (O.R.C. § 1506.32(E)). No permit shall be approved

within any submerged land preserve unless the operation is for historical or scientific purposes or will not adversely affect the historical, cultural, recreational or ecological integrity of the preserve as a whole (O.R.C. § 1506.32(I)). O.R.C. Chapter 1506 is contained in Appendix C.

C. To provide special protection for abandoned property and features and formations in Lake Erie having historical, archaeological, recreational, ecological, geological, environmental, educational, scenic or scientific value, the Director of ODNR with approval of the Director of OHS may adopt rules to establish Lake Erie submerged lands preserves (O.R.C. § 1506.31).

A preserve may be established for any area of submerged lands that contains a single watercraft or aircraft of historical value, two or more watercraft or aircraft constituting abandoned property, or other features of archaeological, historical, recreational, ecological, environmental, educational, scenic, scientific, or geological value other than sand, gravel, stone, and other minerals and substances authorized to be taken and removed in accordance with O.R.C. § 1505.07. Each preserve established shall include the designated area and extend upward to include the water surface. When establishing preserves, the directors must consider:

1. Whether it is necessary to protect either abandoned property or significant underwater features possessing historical, archaeological, recreational, geological, ecological, environmental, educational, scenic or scientific value;

2. The extent of local public and private support for creation of the preserve;

3. If the purpose of the preserve is to be recreational, the extent to which preserve support facilities have been developed in or are planned for the coastal area nearest the proposed preserve;

4. Whether creating the preserve will conflict with existing or potential authorized removals of sand, gravel, stone or other minerals or substances.

The directors may establish rules regarding access to and use of such preserves. Access shall be limited or prohibited if the site is biologically or ecologically sensitive or is hazardous, or if historically valuable property is fragile or suffering extensive deterioration due to unregulated access (O.R.C. § 1506.31(C)). O.R.C. Chapter 1506 is contained in Appendix C.

## FISH AND WILDLIFE MANAGEMENT

Uses Subject to Management

- Activities involving the taking of fish and wildlife.
- Activities affecting the fish and wildlife habitat areas.
- Activities that affect the management of fish and wildlife.

Fish and Habitat Management

The history of Lake Erie fisheries has included human-induced changes in both the extent and variety of lake habitats. Generally, the populations and diversity of sport and commercial fish species have declined in conjunction with loss of habitat loss and degradation. Those habitats most greatly reduced in size include deep, oxygenated cold water areas, vegetated areas, clean bottom sand and gravel areas, estuaries, and wetlands used for spawning, feeding, migration, and refuge.

Increased sedimentation from past and present land use, higher nutrient levels in Lake Erie from point and nonpoint pollution sources, dredging and filling activities, and chemical and thermal pollution all have had their impacts.

Lake Erie's varied aquatic ecosystems, including nearshore waters, bays and estuaries, offshore shoal areas, and deep water, all provide important fish habitat. Specifically, there are five habitat areas of critical concern: Maumee Bay, the Toussaint-Locust Point reef complex, the Islands area, the Ruggles reef complex, and Sandusky Bay (including Muddy Creek Bay). Protection of these habitat areas is an important objective of the OCMP. A few remaining coastal coldwater streams east of Cleveland offer important seasonal habitat for salmonids because they are the closest suitable habitat near summer feeding areas of Lake Erie. These species are adapted to the colder water temperatures provided by such streams, and thus it is important that such habitat is not degraded or warmed.

International committees and work groups of the Great Lakes Fisheries Commission, the Lake Erie Committee, the Walleye Task Group, the Yellow Perch Task Group, the Forage Task Group and the Standing Technical Committee have reached a consensus regarding necessary scientific needs and a management approach for Lake Erie. Funds available through the Federal Aid in Sport Fish Restoration Program 16 U.S.C. 777 have been used primarily for research, development of access sites, fish hatchery renovations and land acquisition. Through the Council of Great Lakes Governors, the four Lake Erie states and Ontario are continuing efforts to develop a coordinated fish advisory for Lake Erie. Such improved coordination and unified management practices will continue to improve these valuable fisheries.

Wildlife and Habitat Management

Human activities in the Lake Erie basin have dramatically reduced wildlife habitat in the coastal area. This habitat loss is the major reason for an overall reduction in Ohio's coastal wildlife population. Most of the original Lake Erie wetlands and swamp forests have been drained, filled, cut or paved over for various purposes. High water and erosion have caused an additional loss of shoreline wetlands.

Wildlife habitat areas that remain relatively undisturbed still face an array of threats including air and water pollution, soil erosion and siltation. Poor water quality is a particularly serious problem that helps explain why aquatic animals make up a large portion of Ohio's endangered species. Loss of habitat and degraded environmental quality have harmed migratory waterfowl, for whom the Great Lakes serve as an important link between Canada and southern destinations. In particular, marshes of the western Lake Erie basin are known as significant migration resting areas as well as sites of excellent waterfowl hunting. These marshlands extend from Sandusky to Toledo and contain approximately 22,700 acres of waterfowl habitat, a large portion of which is actual wetlands. Most of this habitat is owned by the state or federal government and private hunting clubs. The Ottawa National Wildlife Refuge alone encompasses roughly 8,300 acres of waterfowl habitat. ODNR, Division of Wildlife, maintains approximately 4,500 acres of western basin wetlands located within seven western Lake Erie wildlife areas. Private hunting clubs manage an additional 8,000 acres of habitat.

POLICY 27 – FISHERIES MANAGEMENT

**IT IS THE POLICY OF THE STATE OF OHIO TO ASSURE THE CONTINUAL ENJOYMENT OF THE BENEFITS RECEIVED FROM THE FISHERIES OF LAKE ERIE AND TO MAINTAIN AND IMPROVE THESE FISHERIES BY:**

**A. REGULATING THE TAKING OF FISH (O.R.C. § 1531.08 AND O.A.C. 1501:31);**

**B. PROSECUTING PERSONS RESPONSIBLE FOR STREAM LITTER AND FOR WATER POLLUTION RESULTING IN FISH KILLS (O.R.C. § 1531.29 AND 1531.02);**

**C. PROTECTING FISH HABITAT THROUGH OHIO EPA'S SECTION 401 WATER QUALITY CERTIFICATION AUTHORITY (O.R.C. § 6111.03(O) AND 6111.03(P) AND O.A.C. 3745-1 AND 3745-32);**

**D. CONSIDERING THE PROTECTION OF FISH HABITAT THROUGH THE REVIEW OF STATE AND FEDERAL PERMIT APPLICATIONS;**

**E. ESTABLISHING STATE WILDLIFE AREAS FOR FISH AND WILDLIFE HABITAT (O.R.C. § 1531.06);**

**F. SURVEYING FISH POPULATIONS AND TRENDS AND CONDUCTING OTHER FISHERY RESEARCH STUDIES;**

**G. PROVIDING ACCESS TO THE FISHERY; AND**

**H. PROVIDING TECHNICAL AND GENERAL INFORMATION ABOUT THE LAKE ERIE FISHERIES.**

Authorities and Administration

A. The state holds title to and is mandated to protect all the fish in Ohio for the benefit of the public (O.R.C. § 1531.02). The Chief of the Division of Wildlife (DOW), ODNR, has authority and control in all matters pertaining to the protection, preservation, propagation, possession and management of the state's fisheries. Pursuant to O.R.C. § 1531.08, the chief may regulate the taking, possession, transportation, buying, selling, offering for sale and exposing for sale fish or any part thereof.

All orders of the DOW relating to establishment of seasons, limits, size, species, method of taking and possession shall be adopted only upon approval of the Wildlife Council (O.R.C. § 1531.03). The Wildlife Council is an eight-member appointed body whose functions are to advise on policies and programs of the division. O.R.C. Chapter 1533 specifies the laws

concerning the taking of fish from Lake Erie. O.A.C. 1501:31 specifies the rules promulgated by the Chief of DOW regarding the taking of fish.

Any persons16 years of age or older, including nonresidents, taking or catching fish by angling in any waters in the state are required to have a fishing license from DOW (O.R.C. § 1533.32). All money derived from fishing license fees is appropriated exclusively for the use of ODNR, DOW (O.R.C. § 1533.33) and is used primarily for public fishing waters acquisition, stock fish management, education, research and waterbody improvements.

B. DOW investigates incidents of stream pollution that result in the killing of fish and other wildlife. Under O.R.C. § 1531.02 and 1531.201, persons responsible for the pollution that causes the death of fish or other wildlife are civilly and criminally liable for the taking of the fish or wildlife (O.R.C. § 1531.99).

Persons dumping trash in or along Ohio waters and industries discharging or spilling oily wastes into Ohio waters without a valid National Pollutant Discharge Elimination System (NPDES) permit issued by the Ohio EPA may be charged by the DOW with a violation of the Stream Litter Act (O.R.C. § 1531.29); enforcement of other water quality laws rests with Ohio EPA (see Policy 6). Individual violators may be fined up to $500 or sentenced to 60 days in jail, or both, for a first offense. Corporations may be fined up to $3,000 for the first offense and $5,000 for subsequent offenses (O.R.C. § 2929.31). No kills of fish need to be involved in a case of stream litter. The Stream Litter Act applies to the banks and bluffs along Lake Erie as well as other waterways in the state.

C. The State of Ohio helps protect habitat for fish and aquatic life through Ohio EPA's authority to issue or deny Section 401 water quality certifications for activities that discharge dredged or fill material to waters of the state or create any obstruction or attraction in waters of the state. (See Policy 12 for details on this authority.) Biological criteria are considered in water quality standards, and the antidegradation policy is used to protect state resource waters from degradation. Therefore, a Section 401 certification may be denied for sufficient grounds to protect important aquatic life uses of Lake Erie and coastal area waters. Special conditions of Section 401 certifications may be imposed on activities (O.A.C. 3745-32-05(C)). Such terms and conditions may affect the design of a project to protect or enhance fish habitat; may provide for increased water circulation or other factors important to maintaining quality habitat; or may restrict when dredging might occur in order to avoid adverse impacts to spawning areas.

D. ODNR protects fish habitat through several means. ODNR reviews Section 10 and Section 404 permits through the COE, using prime fish habitat as an aspect of the review criteria. Preservation of fish habitat is considered in mineral extraction and energy facility-siting decisions (see section on "Energy and Mineral Resources"); in approving permits for offshore development, dredging and dredged material disposal (see "Ports and Shore Area Development"); in the water quality regulations and nonpoint pollution policies (see "Water Quality"); in the protection and acquisition of wetlands and natural areas (see "Ecologically Sensitive

Resources"); and through the submerged lands leasing program (see "Ports and Shore Area Development").

E. The Chief of DOW, with the approval of the Director of ODNR, may acquire or lease lands or surface rights upon lands and water for wild animals, fish and wildlife management, preservation, propagation, and protection, outdoor and nature activities, public hunting and hunting grounds, and flora and fauna preservation. The lease or purchase of all such lands and waters may be paid from hunting and fishing license fees (O.R.C. §1531.06).

F. DOW conducts continuing surveys with trawls and gill nets to provide an index of population numbers through monitoring of incoming year class strengths, relative numbers of adult age groups, seasonal abundance, growth rates, and maturity for sport and commercial species. Age, sex and size composition of these same species captured commercially are also monitored. Correlations between seasonal sport catches and reports from charter boat operators are used for future estimates of total sport fishing harvest.

G. DOW provides fishing facilities (parking, boat launching, piers, shoreline access, etc.) to improve access to the fishery resource (see Policy 21).

H. DOW provides technical and general information to sport and commercial fishermen. Information leaflets and reports cover a wide range of subjects including sport and commercial fishing laws, fish identification, bait fish, Lake Erie fishing services and facilities, when and where to fish, and the life history of many species in Lake Erie.

POLICY 28 – FISHERIES RESEARCH AND INTERSTATE COOPERATION

**IT IS THE POLICY OF THE STATE OF OHIO TO COOPERATE IN GREAT LAKES BASINWIDE FISHERIES MANAGEMENT EFFORTS AND TO CONTINUALLY RESEARCH BETTER FISHERIES USE AND MANAGEMENT.**

Authorities and Administration

ODNR, Division of Wildlife, coordinates closely with Canada, Michigan, Pennsylvania and New York by working in conjunction with the Great Lakes Fishery Commission, the IJC, the Great Lakes Commission, U.S. Fish and Wildlife Service and other groups concerned with Lake Erie fishery management and rehabilitation. The commissions coordinate their efforts for the better development of fishery rehabilitation programs and management practices, including a process for consolidating and resolving issues.

The division also conducts extensive research on Lake Erie fisheries. Annual indices of fish population trends and sport and commercial fisheries harvests are developed by the division and are used to develop recommendations to allow a desirable fish community to reach its potential within existing environmental conditions. Such indices are prerequisites for determining the present status and future outlook of certain fish stocks. This comprehensive stock assessment program assists in determining research priorities and provides a means of evaluating the success of management strategies. The application of findings from these assessment surveys provides biologically sound harvest regulations for the sport and commercial fisheries.

The Great Lakes Toxic Substances Control Agreement calls for the issuance of uniform lakewide fish consumption advisories. This initiative has improved cooperation among state agencies involved with the issues of toxic pollutants in the environment and public health. The Directors of ODNR, Ohio EPA, Ohio Department of Health (ODH) and Ohio Department of Agriculture (ODA) agreed to identify additional surveillance, laboratory and related programs needed to effectively address these issues. An ad hoc committee from those departments was formed to recommend the types of fish tissue contaminant monitoring programs that are needed.

## POLICY 29 – WILDLIFE MANAGEMENT

**IT IS THE POLICY OF THE STATE OF OHIO TO PROVIDE FOR THE MANAGEMENT OF WILDLIFE IN THE COASTAL AREA TO ASSURE THE CONTINUED ENJOYMENT OF BENEFITS RECEIVED FROM WILDLIFE BY:**

**A. PROTECTING ALL WILDLIFE INCLUDING NONGAME AND ENDANGERED SPECIES (O.R.C. § 1531.02, 1531.08 AND 1531.25);**

**B. REGULATING THE TAKING OF WILDLIFE (O.R.C. CHAPTER 1533 AND O.A.C. 1501:31);**

**C. ESTABLISHING STATE WILDLIFE AREAS AND PROVIDING RECREATION OPPORTUNITIES;**

**D. PROVIDING FOOD, COVER AND HABITAT FOR WILDLIFE, AND**

**E. PROVIDING NONGAME WILDLIFE RESEARCH AND EDUCATION FUNDING.**

Authorities and Administration

A. The state holds title to all wild animals in Ohio for the public (O.R.C. § 1531.02). The Chief of the Division of Wildlife, ODNR, has authority and control in all matters pertaining to the protection preservation, propagation and management of wild animals (O.R.C. § 1531.08). The chief may regulate the taking, possession, transportation, buying, selling, offering for sale or exposing for sale any wild animal or part thereof. DOW also protects fish and wildlife species threatened with statewide extinction (O.R.C. § 1531.25). See Policy 14.

B. O.R.C. Chapter 1533 specifies the laws concerning the taking of wild animals. O.A.C. 1501:31 specifies the rules promulgated by the chief on taking wild animals. All orders of the DOW relating to establishment of seasons, limits, size, species, method of taking and possession shall be adopted only upon approval of the Wildlife Council (O.R.C. § 1531.03).

Persons hunting any wild bird or wild quadruped are required to have a hunting license or a trapping permit if trapping furbearers (O.R.C. § 1533.10 and 1533.111). Special permits are required for deer and turkey hunting (O.R.C. § 1533.11). A property owner may hunt on his or her own property without a hunting license. First-time hunters are required to complete a hunter safety and conservation course before a license will be issued. First-time trappers must complete a trapper education course. Persons owning or controlling land or water within a 10-mile radius of a state or federal waterfowl management area shall annually obtain a permit from the Chief of DOW prior to allowing the hunting or taking of waterfowl on said land or water (O.R.C. § 1533.81). This permit is designated as a "waterfowl hunting area permit." Fees from

the sale of hunting and trapping licenses are to be used by the DOW for the following purposes (O.R.C. § 1533.15):

1. Education of hunters and trappers;

2. Purchase, management, preservation, propagation, protection, and stocking of wild birds and wild quadrupeds; and

3. Establishing and purchasing or otherwise acquiring title to lands for wildlife preservation, propagation, and protection, and for public hunting.

C. The Chief of DOW, with the approval of the Director of ODNR, may acquire or lease lands or surface rights upon lands and water for wild animals, fish and wildlife management, preservation, propagation, and protection, outdoor and nature activities, public fishing and hunting grounds, and flora and fauna preservation. The lease or purchase of all such lands and waters may be paid for from hunting and fishing license fees (O.R.C. § 1531.06). Under this effort, four state wildlife areas have been established in the coastal area. These areas are managed by wildlife biologists and devoted primarily to the management of migratory birds, fish habitat, and marsh-dependent wildlife. The areas are generally open to the public except during hunting season, when their use may be restricted.

D. The DOW offers a variety of programs and services to rural landowners who wish to make their property more attractive to wildlife or to control excessive hunting pressure. A qualified biologist from the DOW will review a landowner's current wildlife habitat and evaluate the potential for developing additional habitat. A complete wildlife management plan will be designed for the current and future pattern of crop and land use on the property.

   Annually, the division offers to landowners free packets of food plot seed mixture that provide a winter food supply for wildlife. Each packet will plant up to one-quarter acre. Wood duck nesting boxes are made available without charge in suitable habitats, and free informational materials are provided regarding nesting structures for other species.

E. An Endangered Species and Diversity Program has been established in the Division of Wildlife, with responsibilities encompassing more than 1,000 species of wild animals. In less than 200 years, 10 of these species have become extinct and 78 have been extirpated from the state. One hundred-sixteen species are protected as endangered, and more are being reviewed for endangered status. O.R.C. § 1531.25 provides for the adoption of rules by the chief restricting the taking or possession of native wildlife, or any eggs or offspring thereof, that the chief finds to be threatened with statewide extinction. Current program objectives are to provide population status reports, develop habitat management guidelines and procedures, develop species-specific management programs for endangered animals and develop restoration programs for selected nongame wildlife species extirpated from Ohio.

The State of Ohio administers the Nongame and Endangered Wildlife Tax Checkoff Program to help fund nongame management. Money from this source has contributed to activities such as the restoration of Ohio's Bald Eagle population; a wildlife education program called "Project Wild;" a bluebird restoration project; and the reintroduction of the River Otter into four watersheds in the eastern portion of the state, including the Grand River watershed in the coastal region.

Uses Subject to Management

- Activities involving any process, system or practice that may be a source of air pollution.
- Activities involving the storage, handling, disposal, and transportation of toxic substances and hazardous wastes.
- Activities involving the cleanup of unregulated hazardous waste disposal sites.
- Activities involving the handling and disposal of marine sanitary wastes.
- Activities affecting the visual and aesthetic quality of the shoreline, including unsanitary dumping and unsightly littering in Lake Erie and its tributaries or along its banks, and in embayments, tributaries, and back waters.

Air

Ohio's lakeshore counties contain many of the state's largest industrial complexes, including coal-fired electric generating facilities with 17 percent of the statewide coal-fired generating capacity. In the past 10 years, emissions from the numerous air pollution facilities have decreased substantially. However, unacceptable air quality conditions remain in the industrialized regions of Lucas, Lake, Lorain, and Cuyahoga Counties, and to a lesser degree, in Ashtabula County (see Table 3 below).

Because of poor air quality nationwide, Congress passed the Clean Air Act (CAA) in 1967, strengthening it considerably in 1970, 1977 and 1990. These amendments broadened the federal role in setting standards for air quality, directing state efforts to meet the standards and providing for enforcement of plans when a state fails to do so.

The U.S. EPA has established primary National Ambient Air Quality Standards (NAAQS) sufficient to protect public health and secondary NAAQS to protect against damages to property, vegetation, crops and animals. The CAA required states to develop State Implementation Plans (SIPs) that would result in attainment of the standards for six primary air pollutants. Current SIPs focus primarily upon the pollutant standards with which certain areas in Ohio have not achieved compliance. Additional work is also necessary in Cuyahoga County to address the 1987 revision to the particulate standard to emphasize particulate matter of 10 microns or less ($PM_{10}$); the Cuyahoga County particulate SIP is being revised accordingly. Table 3 indicates the nonattainment status for the pollutants for which several coastal counties in Ohio have not achieved compliance.

TABLE 3

Ohio Counties of the Lake Erie Coastal Area
Designated Nonattainment
for the National Ambient Air Quality Standards

| | $PM^{10}$ | OZONE | SULFUR DIOXIDE primary |
|---|---|---|---|
| LUCAS | | | X |
| WOOD* | | | |
| OTTAWA* | | | |
| SANDUSKY* | | | |
| ERIE* | | | |
| LORAIN | | | X |
| CUYAHOGA | X | | X |
| LAKE | | | X |
| ASHTABULA* | | | |

Source: Ohio EPA (March 1997)

NOTE: Although this table reflects the entire county as designated nonattainment, the actual nonattainment designations refer to specific areas within each county. Actual boundaries can be found in the Code of Federal Regulations (40 C.F.R. § 81.336).

* Attainment for all criteria pollutants.

These matters are of concern to Ohio's Coastal Management Program primarily because they have major impacts upon the health and property of coastal residents. Also, directly and indirectly, air pollutants adversely affect water quality and the aquatic biota and wildlife of the region. Atmospheric deposition of toxics is currently being studied to determined the extent to which it poses a threat to the environmental well-being of the Great Lakes region.

Solid, Hazardous and Infectious Waste

Ohioans generate approximately 1 ton of solid waste per person, per year. Much of that solid waste includes substances that can be harmful if improperly released into the environment. The majority of these household solid wastes are disposed of in the nearly 90 sanitary landfills operating in Ohio.

Of the more than 1,400 large-quantity generators of hazardous waste in Ohio, 532 are located in the coastal counties, according to Ohio EPA records based on Generator Annual Reports filed for 1993. There are more than 10,000 small quantity generators in Ohio. There are approximately 100 hazardous waste storage, treatment and disposal facilities operating within Ohio, 30 in coastal counties.

Of the top 10 counties for hazardous waste shipments listed in Annual Reports, four are coastal counties. These counties and their statewide rank are: Ashtabula (1), Cuyahoga (2), Lorain (6) and Lucas (7). The coastal counties with significant treatment, storage or disposal activity are Ashtabula (1), Sandusky (6) and Cuyahoga (7).

Improper management of hazardous waste in the past has created many environmental and public health problems in Ohio. There are approximately 30 abandoned waste sites in Ohio today that are on the National Priority List for action under the federal Comprehensive Environmental Response Compensation Liability Act "Superfund" (CERCLA) program. In the coastal area, five Superfund sites are in Ashtabula County and one is in Lorain County. There are nearly 900 additional sites that, although not of sufficient importance or hazard to be placed on the National Priority List, do pose environmental threats.

As the nation's landfills have begun to fill up and more stringent waste-disposal laws have been enacted, hospitals, labs and clinics are looking more carefully at how they dispose of the infectious wastes they produce. Many choose to incinerate a portion of these materials at the site where they are produced. Others decide to transport their infectious wastes to commercial incinerators. Therefore, the need has arisen to address infectious waste as a separate category of waste and to regulate its transport and treatment.

Marina Facilities

Water quality improvements and the Lake Erie fishery caused a dramatic upswing in the use of Lake Erie by recreational boaters during the 1980s. The number of marinas in the Lake Erie basin has increased by 30 percent since 1986. Recreational boaters, the general public and the environment must be protected from unsafe drinking water, pollution hazards from improperly disposed wastes, accident hazards and other unsanitary conditions that potentially can result from marina construction and use.

## POLICY 30 – AIR QUALITY

**IT IS THE POLICY OF THE STATE OF OHIO TO ATTAIN AND MAINTAIN AIR QUALITY LEVELS THAT PROTECT PUBLIC HEALTH AND PREVENT INJURY TO PLANT AND ANIMAL LIFE AND PROPERTY BY SURVEYING AND MONITORING AIR QUALITY; ENFORCING NATIONAL AMBIENT AIR QUALITY STANDARDS THROUGH PERMITS AND VARIANCES; AND RESTRICTING OPEN BURNING. (O.R.C. CHAPTERS 3745, 3706 AND 5709).**

### Authorities and Administration

The Ohio EPA, Division of Air Pollution Control, operates several programs that have far-reaching effects on the air quality of the state and Lake Erie. Such programs range from those developed and implemented since the inception of the agency, to new initiatives that limit the exposure of the population to air toxics.

Ohio's State Implementation Plan (SIP), approved by U.S. EPA, is developed, revised, implemented, and enforced by the Ohio EPA, local air pollution control agencies, and areawide planning agencies designated by the Governor. The principal provisions of the SIP are state emission limitations designed to meet federal primary and secondary ambient air quality standards (O.A.C. 3745-17, 3745-18, 3745-21, 3745-23 and 3745-71). Implementation and enforcement of these regulations are achieved through the issuance of air permits by the Director, Ohio EPA (O.A.C. 3745-31 and 3745-35).

SIPs are in effect statewide, with specific provisions for sources in nonattainment areas. Pursuant to the 1990 Clean Air Act (CAA) amendments, Cuyahoga, Lake, Lorain, Lucas and Wood counties are undergoing SIP revisions to reduce point and mobile sources contributing to the moderate ozone nonattainment. Automobile inspection and maintenance are required in these areas.

Ohio's SIP also incorporates the following:

1. Emergency episode standards requiring the reduction of air contaminants during air pollution alerts, air pollution warnings and air pollution emergencies (O.A.C. 3745-25);

2. Restrictions on certain types of open burning within the boundaries of municipal corporations and buffer areas, and total prohibition of open burning of garbage (O.A.C. 3745-19);

3. Transportation control plans prepared by NOACA and TMACOG in the coastal area and geared toward encouraging and providing facilities for alternative means of transportation such as buses, rapid transit, bicycling and car pooling, as mandated by Section 174 of the CAA and enforced by Ohio EPA pursuant to its directive to adopt and maintain a program

for the prevention, control and abatement of air pollution that is consistent with the federal CAA (O.R.C. § 3704.02(2));

4. Extensive procedural means for citizen and industry involvement in agency actions; and

5. Provisions for daily Pollutant Standards Index readings in each major metropolitan area.

Operators of new sources of air contaminants must obtain a Permit to Install (O.A.C. 3745-31) and must meet criteria for the Prevention of Significant Deterioration (PSD) in attainment areas or emission offset regulations in nonattainment areas. New Source Performance Standards (NSPS), National Emission Standards for Hazardous Pollutants (NESHAPs), Best Available Technology (BAT) criteria, and source impact determinations must all be met before issuance of a Permit to Install. Risk assessment modeling studies may be conducted.

Additionally, permits to operate are issued to pollution sources that are in full compliance with regulations. Sources unable to attain compliance can be issued variances that include a schedule outlining the control program that the source will follow to achieve full compliance (O.A.C. 3745-35). Once full compliance is attained, a Permit to Operate may be granted.

Ohio EPA conducts field surveillance and source inspection to ensure that sources remain in compliance and that noncompliant sources make timely progress toward compliance. The Director of Ohio EPA may revoke or suspend any Permit to Operate upon finding that any conditions, standards or regulations have been or will be violated.

The Division of Air Pollution Control conducts an enforcement program. Compliance is monitored in the field, and noncomplying sources are referred to the Central Office, where enforcement cases are developed. Industry can be issued findings and orders to comply, or the case may be referred to the Ohio Attorney General for prosecution.

The Ohio General Assembly enacted legislation and subsequently revised O.R.C. § 5709.20 to 5709.27 in 1963 and in 1973 to provide incentives for the purchase, installation and use of air pollutant emission control equipment. The incentives were in the form of exemptions from Ohio's real and personal property, franchise use and sales taxes. The legislature empowered the Tax Commissioner of Ohio to issue Air Pollution Control Certificates granting such exemptions after a determination that the equipment qualifies for such tax benefits.

The Division of Air Pollution Control assists with the development of a procedure for risk assessment, management, and communication, and will participate in cooperative efforts with other Ohio EPA divisions and Great Lakes states concerning multiple pathway pollution sources. These pathways of contamination to the Great Lakes should be monitored and controlled. New initiatives will begin to assess the impacts of toxics.

The air permit program (O.A.C. 3745-31) provides a means to control emission of criteria pollutants such as sulfur dioxide, oxides of nitrogen and particulate matter from stationary sources through the application of best available technology for new sources. Mobile sources of pollution are being addressed in major urban areas such as Cleveland, where an automobile inspection and maintenance program is being implemented to control ozone precursors. A program will be implemented in the Toledo urban area as well.

POLICY 31 – HAZARDOUS, SOLID AND INFECTIOUS WASTE MANAGEMENT

**IT IS THE POLICY OF THE STATE OF OHIO TO ENSURE THAT THE GENERATION OF SOLID, INFECTIOUS AND HAZARDOUS WASTES IS REDUCED AS MUCH AS POSSIBLE BY:**

**A. ADMINISTERING A PERMIT PROGRAM FOR THE SITING OF NEW FACILITIES AND THE MODIFICATION, REVISION AND OPERATION OF EXISTING FACILITIES (O.R.C. CHAPTER 3734);**

**B. COMPLIANCE MONITORING AND ENFORCEMENT OF REQUIREMENTS OF O.R.C. CHAPTER 3734, DEVELOPED PURSUANT TO AND IN ACCORDANCE WITH PROVISIONS OF THE FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) AND THE FEDERAL COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT (CERCLA) (O.A.C. 3745-50 THROUGH 58 AND 3745-65 THROUGH 69);**

**C. ESTABLISHING LONG-RANGE SOLID AND HAZARDOUS WASTE MANAGEMENT PLANS (O.R.C. § 3734); AND**

**D. ENCOURAGING THE ADOPTION OF POLLUTION PREVENTION PRACTICES THAT EMPHASIZE A PREFERENCE FOR SOURCE REDUCTION AND ENVIRONMENTALLY SOUND RECYCLING OVER TREATMENT AND DISPOSAL.**

Authorities And Administration

A. through C.

*Hazardous Waste Management*

"Hazardous waste" means any waste or combination of wastes in solid, liquid, semisolid or contained gaseous form that in the determination of the Director, Ohio EPA, because of its quantity, concentration or physical or chemical characteristics, may:

(1) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(2) Pose a substantial present or potential hazard to human health or safety or to the environment when improperly stored, treated, transported, disposed of or otherwise managed.

"Hazardous waste" includes any substance identified by regulation as hazardous waste under the Resource Conservation and Recovery Act of 1976 (RCRA) 42 U.S.C.A. 6921 as amended, and does not include any substance that is subject to the Atomic Energy Act of 1954, 42 U.S.C.A. 2011 (O.R.C. § 3734.01(J)).

Ohio EPA regulates the generation, transportation, treatment, storage and disposal of hazardous waste under authority of O.R.C. Chapter 3734, in part as a means of enforcing RCRA. Specific criteria for management of hazardous waste are specified in O.A.C. 3745-50 through 3745-58, 3745-63, and 3745-65 through 3745-69. These rules are implemented and enforced by Ohio EPA's Division of Hazardous Waste Management with headquarters personnel in Columbus and field staff located in five district offices.

Generators of hazardous waste must provide for the proper transportation, treatment and disposal of the wastes. "Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in O.A.C. 3745-51 or whose act first causes a hazardous waste to become subject to the hazardous waste rules (O.A.C. 3745-50-10). The "cradle-to-grave" tracking of the movement and disposition of hazardous wastes is documented by a paperwork system that requires a manifest to accompany each waste load leaving a generator facility and requires entries at each point in the process leading up to final disposal of the waste. Generators are required to maintain these manifests, and the regulatory agencies can cross-reference manifest records to verify proper handling of the wastes (O.R.C. § 3734.12 et seq.). Standards for generation of hazardous wastes are contained in O.A.C. 3745-52.

Each hazardous waste storage, treatment and disposal facility must operate in conformance with regulations that include specifications for day-to-day operations, financial responsibility, and the eventual closure of the facility and post-closure care. Storage, treatment, disposal or transport to nonpermitted facilities is prohibited. Final siting decisions for new hazardous waste treatment, storage and disposal facilities or modification to such facilities are made by the Ohio Hazardous Waste Facility Board (HWFB). The terms "storage," "treatment," "disposal" and "facility" are defined in O.R.C. § 3734.01. Rules governing facilities are specified in O.A.C. 3745-54-01 through O.A.C. 3745-59-50.

*Remedial Response to Previously Improperly Disposed Hazardous Wastes*

Ohio EPA has completed preliminary assessments at each abandoned hazardous waste site and is in the process of establishing priorities for corrective action. Corrective action at these sites involves a thorough study to characterize the nature of the problem and to evaluate alternatives for remedial action. After a remedial action plan is selected, Ohio EPA works with responsible parties to ensure that a proper cleanup is completed and that continuing environmental monitoring and maintenance of the site is secure. Requirements governing the investigation, cleanup and acquisition of abandoned hazardous waste sites are specified in O.R.C. § 3734.19 through 3734.24; funding mechanisms are provided by O.R.C. § 3734.25 through 3734.28. These provisions are implemented by Ohio EPA's Division of Emergency and Remedial Response (DERR).

*Solid and Infectious Waste Management*

"Solid wastes" means such unwanted residual solid or semisolid material as results from industrial, commercial, agricultural, and community operations, excluding earth or material from construction, mining, or demolition operations, or other waste materials of the type that would normally be included in demolition debris, nontoxic fly ash, spent nontoxic foundry sand, and slag and other substances that are not harmful or inimical to public health, and includes, but is not limited to, garbage, tires, combustible and noncombustible material, street dirt, and debris. "Solid wastes" does not include any material that is an infectious waste or a hazardous waste (O.R.C. § 3734.01(E)). (Construction and demolition wastes are defined and regulated separately under O.A.C. 3714.)

"Infectious wastes" includes cultures and stocks of infectious agents and associated biologicals; laboratory wastes that have or may have been in contact with such agents; pathological wastes; waste materials from rooms of humans or enclosures of animals that have been isolated due to communicable disease; blood specimens and products; contaminated carcasses, body parts, and bedding of animals intentionally exposed to infectious agents; sharp wastes used in treatment, diagnosis, or inoculation of humans or animals exposed to infectious agents (O.R.C. § 3734.01(R)).

Existing solid waste landfills must operate in accordance with established rules that include requirements for daily cover of materials, minimization of nuisance conditions and other requirements to ensure that the facility does not cause an environmental problem (O.A.C. 3745-27). In addition, residual solid waste landfills must operate in accordance with O.A.C. 3745-30.

Ohio EPA's Division of Solid and Infectious Waste Management (DSIWM) regulates the disposal of solid waste and transport and treatment of infectious waste through permitting, registrations, licensing, monitoring, oversight of construction operations and closure and post-closure care pursuant to regulations specified in O.A.C. 3745-27, 3745-31 and 3745-37. Licensing systems for solid and infectious waste disposal facilities may be administered by the Board of Health of the health district in which the facility is located if Ohio EPA has determined that the board substantially complies with O.R.C. Chapter 3734. Decisions regarding siting of new solid and infectious waste facilities are the responsibility of Ohio EPA's Division of Solid and Infectious Waste Management with support from the Division of Drinking and Ground Waters.

*Long-Range and Pollution Prevention Planning*

Ohio EPA has adopted a State Solid Waste Management Plan in conjunction with the Solid Waste Advisory Council (O.R.C. § 3734.50). The primary goals of this plan, completed in 1989, are to reduce the state's reliance upon landfills and to establish objectives for solid waste reuse, reduction, recycling and minimization. Boards of County Commissioners must establish single or joint county solid waste management districts (O.R.C. § 3734.52). District committees must prepare, adopt and submit a solid waste management plan to Ohio EPA in compliance with agency standards (O.R.C. § 3734.54 and 3734.55).

Hazardous waste generators and permitted facilities are required to certify that waste minimization programs and reports are in process (O.A.C. 3745-52-20, 3745-54-73 and 3745-54-75). Annual waste minimization reports are required, and waste minimization requirements are included in hazardous waste permit terms and conditions (O.R.C. Chapter 3734).

Underground injection facilities' owners and operators are required to prepare waste minimization plans for industrial wastes disposed at their facilities. Each owner or operator of a class I injection well facility, as defined in O.A.C. 3745-34-04, must prepare and adopt a waste minimization and treatment plan to identify specific technically and economically feasible measures that will be taken to prevent or reduce releases into the environment of the industrial waste and other wastes generated at the facility. For an injection well facility located on the premises of the industrial facility generating the wastes disposed of at the injection facility, the plan must also address the industrial waste and other wastes generated at that industrial facility. The plan must cover a three-year planning period (O.R.C. Chapter 6111.045).

D. Ohio EPA incorporates pollution prevention requirements into enforcement cases to achieve environmental improvements rather than solely imposing penalties. Settlement offers may include reduced monetary penalties in exchange for development of waste minimization or pollution prevention plans or the installation of source reduction processes.

   Ohio EPA has received federal funding to develop projects to identify pollution prevention opportunities for Ohio businesses in the Lake Erie Basin. Projects include Hazardous Waste Generation and Management; Hazardous Waste Minimization and Pollution Prevention; Great Lakes Pollution Prevention Program Survey; Pollution Prevention Case Study Development; and Waste Management Alternative plans.

   Other efforts to encourage achievement of waste minimization and pollution prevention include participation in the Great Lakes Pollution Prevention Challenge; low interest capital improvement loans through Ohio EPA and Ohio Department of Development's jointly administered Pollution Prevention Loan Program; pollution prevention grants offered by the Ohio Environmental Education Fund; and recognition of outstanding efforts to reduce waste through Annual Governor's Awards for Outstanding Achievement in Pollution Prevention.

## POLICY 32 – MARINA FACILITIES

**IT IS THE POLICY OF THE STATE OF OHIO TO REGULATE MARINA CONSTRUCTION THROUGH THE OHIO DEPARTMENT OF HEALTH AND LOCAL HEALTH DEPARTMENTS IN ORDER TO ASSURE THAT MARINAS WILL PROVIDE ADEQUATE SANITARY FACILITIES FOR THE WATERCRAFT USING THE MARINA, AND THAT SUCH MARINAS WILL BE CONSTRUCTED, LOCATED, MAINTAINED, AND OPERATED IN A SANITARY MANNER SO AS NOT TO CREATE A NUISANCE OR CAUSE A HEALTH HAZARD (O.R.C. § 3733.21 THROUGH 3733.30 AND O.A.C. 3701-35).**

### Authorities and Administration

The Public Health Council has adopted statewide regulations, pursuant to O.R.C. § 3733.22, governing marinas and the inspections and issuance of licenses for all marinas (O.A.C. 3701-35). The intent of the marina law is to ensure that Ohioans using recreational watercraft, as well as surrounding areas, will be protected from unsafe drinking water, pollution hazards from improperly disposed wastes, accident hazards, and other unsanitary conditions. This is accomplished by establishing uniform, minimum health and safety requirements for marinas throughout the state. Such marinas will provide adequate sanitary facilities for the watercraft using them, and will be constructed, located, maintained, and operated in a sanitary manner so as not to create a nuisance or cause a health hazard.

No person shall construct a marina, alter the sanitary facilities of a marina, or substantially increase the size or number of watercraft using the marina, unless the Director of ODH has approved plans for the improvement, alteration or increase. Plans must be submitted for review to and approved by the Director of ODH at least 60 days before any construction, alteration or increase begins. During the month of March, a license to operate an existing marina for that year must be obtained from the Board of Health of the health district in which the marina is located (O.R.C. § 3733.24). If a new marina is to be constructed, application must be made for a license from the Board of Health district in which the marina is to be located at the same time as submission of the plans to the Director of ODH. Before a license is initially issued, and annually thereafter, the Board of Health inspects each marina, compiles a record of each inspection, and requires each marina to satisfactorily comply with O.R.C. § 3733.21 et seq. and the regulations adopted thereunder. The following are the criteria for licensing: approved plan, minimum sanitary facilities, waste disposal facilities, minimum safety equipment, vector control and nuisance prevention (O.A.C. 3701-35-01 to 3701-35-09). Marinas that provide dockage for watercraft with installed sewage holding tanks must provide sewage pump-out facilities (O.A.C. 3701-35-05).

POLICY 33 – VISUAL AND AESTHETIC QUALITY

**IT IS THE POLICY OF THE STATE OF OHIO TO PROTECT THE VISUAL AND AESTHETIC AMENITIES OF LAKE ERIE AND ITS SHORELINE TO ENHANCE THE RECREATIONAL, ECONOMIC, CULTURAL AND ENVIRONMENTAL VALUES INHERENTLY ASSOCIATED WITH THE COASTAL AREA BY:**

**A. PROHIBITING THE DUMPING OF LITTER AND REFUSE INTO OR ALONG THE WATERS OF LAKE ERIE AND ITS TRIBUTARIES, AND MAINTAINING LAW ENFORCEMENT ACTIVITIES TO APPREHEND VIOLATORS (O.R.C. § 1531.29 AND 3767.32);**

**B. ENFORCING STATE WATER QUALITY STANDARDS (O.R.C. CHAPTER 6111, O.A.C. 3745-1-04); AND**

**C. PRESERVING AESTHETIC RESOURCE AREAS OF STATEWIDE SIGNIFICANCE THROUGH THE NATURE PRESERVE, WILDLIFE AREA, PARK DEVELOPMENT AND HISTORIC PRESERVATION PROGRAMS.**

Authorities and Administration

A. Pursuant to O.R.C. § 3767.32, no person shall deposit litter or cause litter to be deposited on any public property, on private property not owned by that individual, or in or on waters of the state. "Litter" means garbage, trash, waste, rubbish, ashes, cans, bottles, wire, paper, cartons, boxes, automobile parts, furniture, glass, or anything else of an unsightly or unsanitary nature.

   In addition, O.R.C. § 1531.29 prohibits the disposal of any litter into watercourses of the state or onto banks thereof, or where it is liable to be washed into the water either by ordinary flow or floods.

   O.R.C. Chapter 1502 also has created a grant assistance program administered by the Division of Recycling and Litter Prevention within ODNR. Financial assistance is available to state agencies and local governments for implementing a variety of litter prevention and recycling activities, including collection, education, and litter law enforcement.

B. Visual and aesthetic qualities of the state's waters are further protected under the state's Water Quality Standards (O.A.C. 3745-1-04). These narrative standards, commonly called the "five free froms," provide the Director of Ohio EPA with authority to regulate pollution sources that create floating debris, oil, scum, color, odor or other annoyances. Violation of these standards are subject to criminal and civil penalties (O.R.C. § 6111.07).

C. The State of Ohio plays a direct role in protecting the visual quality of the coastal area and providing visual access to shoreline resources through acquisition and development of public

access areas, state parks, state nature preserves, wildlife areas and historic areas. Municipalities, townships and counties are encouraged to protect visual qualities of and to provide visual access to the Lake Erie shoreline through their planning processes and local actions. These concerns can be addressed through site plan review, architectural boards of review, special protection districts, development standards (such as requiring landscaping, screening, and setback and height limitations), and additional subdivision requirements.

## ENERGY AND MINERAL RESOURCES

Uses Subject to Management

- Activities involving the siting of major energy facilities and transmission lines.
- Activities involving the storage and transshipment of energy resources.
- Activities involving the onshore or offshore drilling of oil and gas resources.
- Activities involving the mining and extraction of onshore and offshore mineral resources.

Energy

The shore of Lake Erie is one of Ohio's major energy facility siting areas. Several major coal-fired and two nuclear-generating facilities are located in the coastal area.

Three principal factors for the siting of those facilities in the coastal area are proximity to large coastal urban areas, competitive shipping advantages of Lake Erie and the abundant supply of water for cooling. Some of these facilities are inherently lake-dependent, in that their successful functioning requires that they be sited on the coast. For others, inland locations may be possible but may entail increased costs to industry and consumers.

The siting of energy production facilities and related energy problems are concerns addressed by the OCMP. Coastal energy facility siting is useful for maintaining the economy and standard of living in the coastal and inland region. However, it raises many questions regarding effects on fish and wildlife, loss of valuable shorefront access and potential dangers.

Growth in energy demand is a dominant factor in determining the number of facilities to be constructed. Energy conservation may reduce the need to construct additional facilities. Methods by which energy can be conserved and used more efficiently include the establishment of lighting and heating standards, use of energy-conserving building and insulating materials, establishment of energy-sensitive building codes, implementation of rate structures that encourage energy conservation, and the promotion of statewide energy conservation measures.

In developing its energy policies, the OCMP has recognized that siting of energy facilities is of state and sometimes national concern. OCMP policies have been designed to maintain adequate electrical service to Ohio customers. In summation, Ohio recognizes the need for a rational allocation of coastal land for the accommodation of energy needs in a manner that minimizes impacts on the environment and is economically feasible.

Mineral Resources

Commercially available mineral resources of Ohio's coastal area provide numerous benefits to Ohio's citizens. These mineral resources are sand and gravel, limestone, dolomite, gypsum, sandstone, salt, shale and land reserves of oil and gas.

Mineral deposits are nonrenewable resources. Keen competition for land containing these reserves threatens their future availability. Unwise extraction of these minerals can impair use of the area's other resources. Proper planning and management are necessary to ensure adequate future supply and to avoid irreversible loss or damage to other valuable coastal resources. The OCMP therefore supports actions directed toward preservation of lands for future mineral recovery, environmentally sound exploitation, stricter enforcement of permits and monitoring, and ultimate rehabilitation of the land for future appropriate uses.

## POLICY 34 – ENERGY FACILITY SITING

**IT IS THE POLICY OF THE STATE OF OHIO TO PROVIDE FOR ENVIRONMENTALLY SOUND SITING OF MAJOR ELECTRIC ENERGY GENERATING AND TRANSMISSION FACILITIES IN THE COASTAL AREA, AND TO REGULATE THE SITING OF THESE FACILITIES TO PROTECT THE HEALTH, SAFETY, AND WELFARE OF OHIO'S CITIZENS AND THE NATURAL RESOURCES OF THE STATE BY:**

**A. REQUIRING CERTIFICATION OF ANY MAJOR UTILITY FACILITY THROUGH THE OHIO POWER SITING BOARD IN A PROCESS WHICH ENSURES PUBLIC PARTICIPATION (O.R.C. CHAPTER 4906 AND O.A.C. 4906) AND**

**B. REQUIRING 10-YEAR DEMAND, RESOURCE AND SITE INVENTORY FORECASTS FOR ALL ENERGY GENERATION AND TRANSMISSION ACTIVITY IN THE STATE (O.R.C. § 4935.04).**

Authorities and Administration

A. O.R.C. Chapter 4906 establishes the Ohio Power Siting Board (PSB), within the Public Utilities Commission (PUCO), as the lead agency to implement a "one-stop" process for all permits involving the construction, operation and maintenance of a major utility facility. The PSB is composed of the Directors of Ohio Department of Health (ODH), ODNR, the Department of Development, Ohio EPA, Department of Agriculture (ODA) and PUCO; a public member; and four legislators (nonvoting) (O.R.C. § 4906.02). PSB decisions and actions relate to any "major utility facility" including:

1. An electric generating plant and associated facilities designed for, or capable of, operation at a capacity of 50 megawatts or more;

2. An electric transmission line and associated facilities of a design capacity of 125 kilowatts or more; and

3. A gas or natural gas transmission line and associated facilities designed for, or capable of, transporting gas or natural gas at pressures in excess of 125 pounds per square inch.

The PSB shall not issue a certificate unless it finds and determines that "the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations" (O.R.C. § 4906.10(A)(3)). Under this authority, the PSB conditions all permits upon compliance with all applicable state and federal permits.

Other coastal-related concerns considered by the PSB include degree of coastal dependency, impact on environmentally sensitive areas and Special Management Areas (SMAs), compatibility with adjacent uses and activities, coastal access, visual impact upon adjacent areas (mainly in regard to alignment of transmission lines), and degree of erosion and flood hazard involved (O.A.C. 4906).

B. All owners and operators of major utility facilities within the state are required to annually provide PUCO with a long-term forecast report pursuant to O.R.C. § 4935.04. These annual reports, which must provide a 10-year year-by-year forecast, are reviewed by PUCO and made available to the public. Criteria for evaluating these long-term forecasts are contained in O.A.C. 4901:5-1, 5-3, 5-5, and 5-7. Complete details regarding Ohio's energy facility planning process are provided in Chapter 10.

POLICY 35 – ENERGY RESOURCE STORAGE AND TRANSSHIPMENT

**IT IS THE POLICY OF THE STATE OF OHIO TO REGULATE THE STORAGE OF ENERGY RELATED RESOURCES (COAL, OIL AND GAS) IN THE COASTAL AREA THROUGH PLANNING ASSISTANCE AND PERMIT REVIEW TO ASSURE THE SAFE AND EFFICIENT USE OF THESE RESOURCES; AND TO ENSURE THAT AIR, WATER AND OTHER ENVIRONMENTAL STANDARDS ARE MET (O.R.C. § 4906.06 AND O.A.C. 4906-13-02).**

Authorities and Administration

The location and layout of all storage areas for proposed major utility facilities (O.R.C. § 4906.01(B)) is reviewed by the Ohio Power Siting Board (PSB) as a part of the certification process described in Policy 34. O.R.C. § 4906.06 and O.A.C. 4906-13 require a description of the location of the storage facility and the major utility facility to be built thereon, as well as a summary of any studies made regarding potential environmental impacts of the facility. O.A.C. 4906-13-02 requires an applicant for a PSB certificate to supply a map of the generating plant site showing the fuel storage facilities, fuel processing facilities, and other pertinent installations of the proposed and existing facilities and their associated facilities. O.A.C. 4906-13-04 requires an applicant to provide detailed and specific environmental data for all phases of the activity, i.e., preconstruction, construction and operation to be used by the PSB to assess environmental effects of the proposed facility. O.A.C. 4906-13-05 requires submission of costs and benefits of direct and indirect effects of alternative siting decisions to allow for assessment of potential social and ecological impacts of the proposed facility.

Authorities related to the storage and transshipment of coal, oil and gas in locations unrelated to major utility facilities are discussed in Chapter 10.

In addition to other guidelines used in the project review process, projects that locate storage and transshipment facilities adjacent to major energy facilities, in port areas already used for industrial purposes, or removed from the immediate shoreline, will be encouraged.

Complete details regarding Ohio's energy facility planning process are provided in Chapter 10.

## POLICY 36 – OIL AND NATURAL GAS DRILLING

**IT IS THE POLICY OF THE STATE OF OHIO TO PROTECT PUBLIC SAFETY AND WELFARE AND THE ENVIRONMENT AND TO ASSURE WISE MANAGEMENT BY:**

**A: REGULATING OIL AND GAS DRILLING ONSHORE BY REQUIRING A PERMIT TO DRILL FROM ODNR (O.R.C. § 1509.05); AND**

**B. DISCOURAGING OFFSHORE OIL AND NATURAL GAS DRILLING IN OHIO WATERS OF LAKE ERIE.**

Authorities and Administration

A. ODNR, Division of Oil and Gas, requires a permit for any person planning to drill a new well, drill an existing well deeper, reopen a well, convert a well to any use other than its original purpose, plug a well to a source of supply different from the existing pool, or plug and abandon a well (O.R.C. § 1509.05 and § 1509.13). When any well is to be abandoned, it shall be plugged in accordance with a method of plugging adopted by rule by the Chief of the Division of Oil and Gas, except those wells located in coal-bearing townships, which shall be plugged in accordance with rules adopted by the Chief of the Division of Mines and Reclamation. The Chief, Division of Oil and Gas, also administers a permit program for subsurface injection solution (salt) mining and brine disposal activities pursuant to O.R.C. § 1509.22.

Drilling and operation rules cover the criteria for permit issuance, disposal of brine and other oil field wastes, secondary recovery operations, solution mining of minerals, safety practices for drilling and operations of wells, pipeline installation, and plugging of wells (O.A.C. 1501:9-1, 1501:9-3, 1501:9-5, 1501:9-7, 1501:9-9, 1501:9-10, and 1501:9-11). Permit regulations provide criteria for a surety bond, spacing of wells, location of wells with reference to inhabited dwellings and public rights of way, and prevention of contamination and pollution.

B. The Governor of Ohio and the other Great Lakes states governors agreed to "A Statement of Principle Against Oil Drilling in the Great Lakes" that opposed drilling for oil in the waters of the Great Lakes and the connecting channels. The statement declares the states' shared stewardship of and intent to protect Great Lakes water quality and its dependent fishery, wildlife resources, drinking water, and recreational, transportation, business, and agricultural uses.

The drilling permit (O.R.C. § 1509.05), the mineral lease (O.R.C. § 1505.07) and the submerged lands lease (O.R.C. § 1506.11) are existing tools to implement this policy. By opposing drilling "in the waters of the Great Lakes," the statement would not affect directional drilling; no such drilling currently is occurring in Ohio's portion of the Lake Erie basin. Ohio's statutes and rules governing these permits and leases do not, however, specifically contain conditions or criteria in this regard and therefore would allow such drilling.

## POLICY 37 – OFFSHORE MINERAL EXTRACTION

**IT IS THE POLICY OF THE STATE OF OHIO TO PROVIDE FOR AND REGULATE THE EXTRACTION OF MINERALS AND OTHER SUBSTANCES FROM AND FROM UNDER THE BED OF LAKE ERIE, THROUGH THE ISSUANCE OF OHIO DEPARTMENT OF NATURAL RESOURCES MINERAL LEASES AND PERMITS, TO PROTECT THE PUBLIC SAFETY AND WELFARE, AND TO MINIMIZE ADVERSE ENVIRONMENTAL IMPACTS (O.R.C. § 1505.07).**

### Authorities and Administration

Pursuant to O.R.C. § 1505.07, no person shall remove sand, gravel, stone or other minerals or other substances from or from under the bed of Lake Erie without obtaining a lease or permit from the Director of ODNR. Issuance of any lease by the Director of ODNR requires the additional approval of the Director of Ohio EPA, the Attorney General and the Governor. The issuance of an offshore extraction lease is granted on either a rental or royalty basis, whichever is deemed best for the state. All monies derived from the granting of these leases are deposited into a special revenue account administered by ODNR for the protection of Lake Erie shores and waters; investigation and prevention of erosion; the planning, development, and construction of facilities for recreational use of Lake Erie; preparation of the state shore erosion plan under O.R.C. § 1507.10; and state administration of Lake Erie coastal erosion areas under O.R.C. § 1506.06 and 1506.07 (O.R.C. § 1507.05). All data pertaining to the origin, distribution, extent, use and valuation of offshore minerals, and other offshore substances or resources are collected, analyzed, and interpreted by the Division of Geological Survey (O.R.C. §1505.01). The director may, in accordance with O.R.C. Chapter 119, promulgate rules for the implementation of the aforementioned lease activities (O.R.C. § 1505.07).

Offshore sand and gravel extraction is currently limited to three designated areas: Vermilion-Lorain Inner, Vermilion-Lorain Outer, and Fairport. Extraction areas are designated based upon sufficient distance from the shoreline to avert erosion damage. ODNR continues explorations for sand and gravel areas that may be economically viable now and in the future. Dredge operators must comply with all state and federal water quality regulations during the extraction process.

The extraction of oil and natural gas from under Lake Erie is also included under this lease requirement. See Policy 36 for discussion of this extraction activity.

The construction or maintenance of channels, jetties, docks, boating facilities, or other projects along Lake Erie and its bays often requires removal of sand and gravel resources from the littoral zone. It is ODNR's policy that sand and gravel be returned to the littoral zone downdrift of a project to reduce erosion by nourishing and restoring beaches downdrift of the project site. This requirement is applied to both public and private projects and is enforced through special conditions developed in submerged lands leases (O.R.C. § 1506.11) and through the Section 401 Water Quality Certification process.

## POLICY 38 – SURFACE MINING

**IT IS THE POLICY OF THE STATE OF OHIO TO REGULATE SURFACE MINING ACTIVITIES TO MINIMIZE ADVERSE ENVIRONMENTAL IMPACTS, PREVENT DAMAGE TO ADJOINING PROPERTY, AND ENSURE RECLAMATION OF ALL AFFECTED AREAS THROUGH THE ISSUANCE OF OHIO DEPARTMENT OF NATURAL RESOURCES PERMITS (O.R.C. § 1514.02 AND O.R.C. § 1514.021.**

### Authorities and Administration

ODNR, Division of Mines and Reclamation, requires a permit prior to the initiation of any surface mining activity (O.R.C. § 1514.02(A)). When applying for a permit, the applicant must include, among other submissions, a mining and reclamation plan. The Chief of Mines and Reclamation shall issue an order granting or denying an operating permit or amendment to an operating permit within 90 days after the filing of an application (O.R.C. § 1514.02(F)).

An application for a surface mining permit (for materials other than coal) shall contain the information set forth in O.R.C. § 1514.02 and shall be submitted to the Chief of the Division of Mines and Reclamation. The chief has promulgated rules and regulations for surface mining in O.A.C. 1501:14-1 through 1501:14-4. These rules cover the general permit provisions and mining and reclamation performance standards.

The Chief of the Division of Mines and Reclamation shall issue an order granting a permit upon his approval of an application as required and filing of a performance bond and filing fee. Such funds are to be used by the chief if the applicant fails to perform reclamation of the area according to O.R.C. Chapter 1514. If the applicant performs the required reclamation, the performance bond shall be released to the applicant by the chief.

## WATER QUANTITY

### Uses Subject to Management

- Activities involving the diversion of waters out of or into the Lake Erie Basin.
- Activities related to Lake Erie water levels.
- Activities involving water supply planning.

Lake Erie is an interstate and international resource that Ohio shares with Michigan, Pennsylvania, New York and the Canadian Province of Ontario. Lake Erie water supports an array of activities, including commercial navigation, power generation, recreation, and industrial and public water supply. It also provides extensive wildlife and aquatic habitat. Changes in Lake Erie levels can affect these various activities, especially those that rely on in-lake water uses. Fluctuating lake levels and the potential for large-scale transfers of water by out-of-basin interests make it judicious for water managers in the Lake Erie Basin to develop and maintain a comprehensive water use and management plan.

### Diversions

New and increased water diversion out of the Great Lakes basin has been advocated by some as a means to address high lake levels and replenish water supplies in the arid Great Plains and Southwestern states. The Council of Great Lakes Governors, concerned about the economic and environmental consequences of large-scale diversions of Great Lakes water, adopted a 1983 resolution on such diversions. This resolution encouraged the Great Lakes States and provinces to implement actions to regulate and mitigate potential impacts from large-scale diversions out of the Great Lakes basin. In 1985, the eight governors and two premiers of the region signed the Great Lakes Charter, establishing guidelines and principles for the management of Great Lakes water resources. The states agreed to give prior notice and consultation on future diversions and consumptive uses, and to develop a common data and information exchange system to document management of the Great Lakes water resources. In 1986, Congress passed the Water Resources Development Act, which prohibits the diversion of water out of the Great Lakes Basin without the approval of the governors of all the Great Lakes states.

### Fluctuating Lake Levels

The Great Lakes are a vast natural freshwater system over which man exerts little control. Lake Erie water levels vary naturally over time in cyclical fluctuations, ranging from the record historical average monthly low of 568.08 feet (IGLD 1985) in February 1936 to the record high of 574.31 feet in June 1986. Long-term average level of Lake Erie is 571.16 (IGLD 1985) feet. Lake level is controlled naturally through precipitation and evaporation in the basin, inflow from the upper Great Lakes via the Detroit River and outflow into the Niagara River. Although four man-made diversions

and two regulatory structures have some effect on Great Lakes water levels in general, no water level control structures exist specifically on Lake Erie. Outflow is naturally constricted at the Niagara River, limiting the rate at which water leaves the lake. Relatively small amounts of water are diverted through the Welland Canal, New York State Barge Canal and Black Rock Lock in the Niagara River.

Water Supply

Lake Erie water is an abundant resource for public water systems and is routinely transported inland to serve ground water-poor areas in the basin. Approximately 75 percent of the water used in the basin comes from Lake Erie. Because of the lake's shallowness and nearshore water quality problems, water supply withdrawers are required to locate intake structures at least 1,500 feet into the lake.

Industry and public utilities, found primarily around larger cities in the harbor areas, are major users of Lake Erie water. About 89 percent of Lake Erie withdrawals are used for industrial processing and electrical generation. Electrical generation alone accounts for 74 percent of the withdrawals. Along the Ohio Lake Erie shoreline, there are eight coal-fired plants and two nuclear power plants (Davis Besse in Ottawa County and Perry in Lake County).

## POLICY 39 – WATER DIVERSION

**IT IS THE POLICY OF THE STATE OF OHIO TO MANAGE DIVERSION OF LAKE ERIE AND TRIBUTARY WATERS BY:**

**A. REGULATING WATER DIVERSIONS OF LAKE ERIE BASIN WATERS THROUGH THE OHIO DEPARTMENT OF NATURAL RESOURCES PERMIT PROCESS (O.R.C. § 1501.30 THROUGH 1501.32);**

**B. OBTAINING THE PERMISSION OF THE GREAT LAKES STATES' GOVERNORS PRIOR TO APPROVING PERMITS FOR DIVERSIONS OF LAKE ERIE WATERS (O.R.C. § 1501.32); AND**

**C. REVIEWING ALL NEW DIVERSIONS OUT OF THE GREAT LAKES BASIN AND ANY PROPOSED FEDERAL STUDIES THAT WOULD INVOLVE DIVERSIONS OUT OF THE GREAT LAKES BASIN.**

Authorities and Administration

A. ODNR regulates diversions in excess of 100,000 gallons per day out of and into the Lake Erie Basin (O.R.C. § 1501.32 and O.A.C. 1501-2-01 through 1501-2-10). A diversion is any withdrawal of waters from one drainage basin and the transfer of these waters to another basin without return. (Diversion does not include evaporative loss within the basin.) Any diversion in excess of 100,000 gallons per day must receive a permit issued by the Director of ODNR. A permit will not be issued if it is found that: (1) some or all of the water will be needed for use within the basin, (2) the public health, safety or welfare would be endangered, (3) the proposed diversion is not demonstrated to be a reasonable and beneficial use, (4) reasonable efforts to develop and conserve water resources have not been made in the importing basin, (5) the proposed diversion, alone or in conjunction with other diversions or losses, will have significant adverse impact on in-stream uses or on economic or ecological aspects of water levels, or (6) the proposed diversion is inconsistent with regional or state water resources plans (O.R.C. § 1501.32(B). Any person who receives notice of a denial or modification under O.R.C. § 1501.32 is entitled to a hearing under O.R.C. Chapter 119 upon written request (O.R.C. § 1501.32(E)(2)).

The director shall revoke any permit issued under O.R.C. § 1501.32 without a prior hearing if it is determined that the quantity of water being diverted exceeds the amount allowed by the permit. A permit may be suspended if the director determines that continued diversions will endanger public health, safety or welfare. Within five days after the suspension, the director shall provide the permittee an opportunity to be heard and to present evidence that the continued diversion of water will not endanger the public health, safety or welfare (O.R.C. § 1501.32(F)).

B. Through the Council of Great Lakes Governors, Ohio signed the Great Lakes Charter in which it agreed to seek to implement a strategy to protect the Great Lakes waters. The Great Lakes Charter calls on the states to regulate and manage diversions out of the Great Lakes basin of more than 2 million gallons per day.

Whenever the Director of ODNR receives an application for a diversion of more than 100,000 gallons per day, the director shall consult and seek consensus with the governors and premiers of the Great Lakes states and provinces (O.R.C. § 1501.32). The director shall not approve a diversion to which Section 1109 of the Water Resources Development Act (WRDA) of 1986, 42 U.S.C. 1962d-20 pertains, i.e., any use of Great Lakes basin waters outside the basin, until all governors of the Great Lakes states have approved the diversion (O.R.C. § 1501.32). Further, pursuant to the Great Lakes Charter and Section 1109 of the WRDA, the Director of ODNR shall review and approve or disapprove any proposed projects and federal studies for water diversion out of the Great Lakes basin in any Great Lakes state.

C. The Council of Great Lakes Governors developed a process for prior notice and consultation on proposed projects (*Managing the Waters of the Great Lakes Basin*, February 1987). It is the responsibility of the state or province in which the project is proposed to notify the other states and provinces and seek consensus and approval. States and provinces have 45 days from notification to provide comments or request a consultation meeting. Once all the states and provinces have replied, the lead state or province will notify the others of its decision on the project.

## POLICY 40 – LAKE ERIE WATER LEVELS

**IT IS THE POLICY OF THE STATE OF OHIO TO PROMOTE THE DEVELOPMENT AND IMPLEMENTATION OF A LAKE LEVELS MANAGEMENT PLAN AGREEABLE TO THE UNITED STATES AND CANADA CONCERNING THE WATER LEVELS OF LAKE ERIE AND THE GREAT LAKES.**

### Authorities and Administration

ODNR is the lead state agency in coordinating with the International Joint Commission (IJC) on lake level issues. ODNR will work with the IJC to mitigate high lake levels and implement measures that reduce shore damage from high waters without accelerating shore erosion or harming biological resources, recreational and residential interests, commercial navigation, and hydroelectric power facilities. ODNR will also advocate that IJC recommendations address the issues of low, high and fluctuating lake levels in a balanced perspective.

## POLICY 41 – WATER MANAGEMENT

**IT IS THE POLICY OF THE STATE OF OHIO TO COLLECT AND ANALYZE WATER RESOURCES INFORMATION TO PROMOTE WATER RESOURCES PLANNING AND MANAGEMENT BY:**

**A. REQUIRING LARGE WATER WITHDRAWAL FACILITIES TO REGISTER THEIR CAPACITY AND SUBMIT ANNUAL WITHDRAWAL REPORTS (O.R.C. § 1521.16);**

**B. PREPARING WATER SUPPLY PLANS;**

**C. PREPARING A LONG-TERM WATER RESOURCES PLAN FOR THE LAKE ERIE DRAINAGE BASIN;**

**D. REQUIRING THE FILING OF WELL LOGS AND WELL-SEALING REPORTS (O.R.C. § 1521.05);**

**E. PREPARING TECHNICAL STUDIES AND MAPPING, DESIGNATING GROUND WATER STRESS AREAS, AND ASSISTING IN CONFLICT RESOLUTION (O.R.C. § 1521.03(E) AND 1521.16(B)); AND**

**F. PARTICIPATING WITH THE OTHER GREAT LAKES STATES AND PROVINCES IN COOPERATIVE PROGRAMS AND MANAGEMENT OF GREAT LAKES BASIN WATER RESOURCES.**

Authorities and Administration

A. ODNR's Division of Water administers a water withdrawal facility registration program for water withdrawal facilities with a capacity of more than 100,000 gallons per day, O.R.C. § 1521.16. Facilities must be registered within three months of completion and shall file an annual report with the Division of Water listing the amount of water withdrawn and other data. The registration and reporting of these water uses allows the state to identify the sources of water withdrawal, the types of uses, and the distribution of withdrawals and uses statewide. This information is critical for the proper development and management of water supplies and to assist in the investigation and resolution of water use conflicts.

B. ODNR's Division of Water, under authority of O.R.C. § 1521.03(B), collects and analyzes data and develops water supply plans for communities, upon request. The division, in cooperation with Ohio EPA's Division of Drinking and Ground Waters, assesses the state's water supply situation on a regional or site-specific basis and formulates immediate and long-term recommendations for community water supply source development. In formulating these recommendations, the use of Lake Erie water is considered an alternative to the development

of inland sources and is recommended when it is the least-cost solution for users within the Lake Erie drainage basin.

C. ODNR's Division of Water is required to develop a long-term water resources plan for the Lake Erie drainage basin by September 1, 1998 (O.R.C. § 1521.15). The plan is to include an inventory of surface and groundwater resources; an assessment of existing uses and future demand for withdrawals, diversions and consumptive uses; guidelines to minimize consumptive use; and guidelines and procedures to coordinate, conserve, develop, protect, use and manage the water resources of the Lake Erie drainage basin. The plan will serve, in part, as the basis for decisions on permit applications for water diversions.

D. Any person who constructs or seals a well as defined in O.R.C. § 1521.01(B) is required to keep a careful and accurate log of the construction or sealing and to file a well log or well-sealing report with the Division of Water, ODNR, for each well (O.R.C. §1521.05).

E. Using the information on the well logs, the division produces county ground water resource maps that generally describe the expected ground water yields throughout the county. The division has the authority to assist in resolving ground water conflicts by conducting investigations, issuing a report of findings and recommendations, and holding public meetings or hearings (O.R.C. § 1521.03(E)). The division responds to requests for ground water information and provides technical assistance to the public and to local, state, and federal agencies. The chief of the division also has the authority to designate a Ground Water Stress Area (O.R.C. § 1521.16(B)), which will provide more detailed information on uses of ground water.

F. As a part of the Great Lakes Charter, the Great Lakes states and provinces made a commitment to develop a basin water resource management program to "guide future development, management and conservation of the water resources of the Great Lakes basin." The framework for this basin water resource management program is similar to that of the long-term water resources plan in O.R.C. § 1521.15. ODNR's Division of Water, in conjunction with its work on the Lake Erie basin plan, will coordinate with the Great Lakes states and provinces on the basin water resources management program. As with Ohio's Lake Erie basin plan, the basin water resource management plan is to serve as the basis for decisions on applications for water diversions.

The Great Lakes states and provinces have developed the Great Lakes Regional Water Use Data Base. The Great Lakes Commission is the repository for the data. Each year states and provinces are to submit data on prescribed forms. A technical committee has been established to maintain and refine the protocol for reporting and compiling data.

# CHAPTER 6

# SPECIAL MANAGEMENT AREAS

The Ohio Coastal Management Program is a long-range and comprehensive approach to the improved resolution of coastal problems. Yet there are many coastal areas with special conditions that warrant immediate attention. These areas are distinguished by either their unique coastal-related qualities or the intense competition for use of their resources. In many cases, these conditions occur simultaneously, often forcing the most fragile and desirable regions to contend with the fiercest developmental threats. As a result, inherent coastal values are placed in jeopardy, and the potential uses of such areas are diminished. General planning and policies cannot adequately address such critical situations; specific and direct action is needed. Establishment of Special Management Areas (SMAs) in intended to address this need for heightened attention.

SMA designation provides the basis for prioritizing local, state and federal government actions concerning the special needs of certain areas. In most cases, sufficient authorities and regulations are already in place; the problem is primarily that management may lack clarity and cohesion. Therefore, the solution is not to create additional agencies or regulations, but rather to focus and coalesce existing management efforts. The creation of SMAs will accomplish this by prioritizing the allocation of funds to promote interagency cooperation, provide technical assistance, and support research and local planning. This is particularly appropriate for those areas where the degree of state or local commitment has been minimal or vague. SMA status will thus serve as an important tool for those state agencies and local governments grappling with complex and pressing coastal issues.

The OCMP differentiates between two SMA categories. The first, Areas of Particular Concern (APC), are areas for which the OCMP provides for the establishment of use priorities for a broad range of similar, or generic, areas. (Specific sites may also be designated as APCs, but all initial OCMP designated APCs are generic.) The Area for Preservation and Restoration (APR) category is used for specific sites requiring aggressive management to preserve or restore their conservation, historical, recreational, ecological or aesthetic values. Federal funds available pursuant to the Coastal Zone Management Act (CZMA) may be used for construction, restoration or acquisition purposes for designated APRs.

## Past Designation Process

The first stages of the SMA designation process actually began with the coastal program's inception in 1974 (see Chapter 2). Various agencies conducted analyses and inventories of areas with unique and significant natural, historical or cultural values; areas of high natural productivity or those providing critical fish and wildlife habitat; areas with great recreation potential; areas essential for coastal-dependent developments and facilities; areas with hydrological or geological attributes necessary for industry, commerce and dredge spoil disposal; urban areas with competitive shoreline and water uses; erosion and flood hazard areas; and areas needed to protect, maintain and replenish coastal resources. Several reports resulted from these studies.

The public was given the opportunity to officially nominate areas for SMA status in 1977. Nomination forms and accompanying explanations were disseminated through local newspapers and a newsletter. Returned forms showed that public concern revolved mainly around critical erosion areas, public access and recreational opportunities, islands, historic sites, and wetlands.

Since 1979, a plethora of studies conducted by various groups and agencies has provided the OCMP with additional information. The results of a survey conducted by the Lake Erie Shore Area Redevelopment Task Force in 1988 were particularly useful. Respondents nominated sites for special consideration and expressed their views that the most pressing issues were related to natural areas and recreational use.

Generic APCs

Public input enabled OCMP staff to compile a list (Appendix M) of approximately 100 sites and areas for nomination. Such a large list, however, would have proven unwieldy for management purposes. Additionally, the intent was not to create and use a list of specific sites to which explicit standards could be applied, but rather to delineate broad groups of coastal areas facing similar problems for which general use priorities could be devised. Using this approach, all sites with similar attributes could be managed in a relatively equal and consistent fashion. Therefore, the list of specific sites has been condensed into eight "generic" Areas of Particular Concern (APCs). This method is advantageous because it channels management efforts toward areas of need, while still providing flexibility in the prioritization and allocation of funds for APCs. (Note that while these initial designations are of the generic type, federal regulations allow for site-specific APCs [15 C.F.R. § 923.21]. The OCMP may therefore designate specific sites in the future if such sites are not already included as generic APCs.)

The following designations include a brief description of the generic APCs' problems and guidelines for use priorities. Priority guidelines are especially important because they provide the basis for special management approaches, serve as a common reference point for resolving conflicts and define activities of lowest priority. For every APC, water-dependent uses are determined to have top priority. Among such uses, those that are most compatible with the needs and values of the particular APC will have highest priority. Lowest consideration is given to those activities that adversely affect the area.

Critical Fish Habitat - (See Policy 27.) Many portions of Lake Erie and its bays are considered Critical Fish Habitat used by various fish species for spawning, nurturing, feeding, migration and wintering, or refuge. ODNR's Division of Wildlife (DOW) has conducted research on the following parameters to determine that parts of Lake Erie are most critical for the survival of the fisheries population:

1. Biological – benthos, phytoplankton, zooplankton, fish populations;

2. Physio-chemical – water bathymetry and morphometry, water quality (temperature, dissolved oxygen, etc.), lake bottom conditions; and

3. Fishing Mortality – sport and commercial harvests.

Information was used to devise maps of the Critical Fisheries Habitat and to provide the background for proper management decisionmaking. This habitat includes areas that are located both near and offshore; those of vegetated and nonvegetated conditions; and those with different bottom sediment types. Such habitat faces a wide array of threats, ranging from toxic chemicals to sedimentation and turbidity to physical alteration of the actual habitat area. Uses that maintain or improve the integrity of such habitat and support a sound fisheries population will receive top priority. Low priority will be given to activities that harm the natural integrity of this habitat.

Generic APC status is recommended for these critical fish habitat areas, and their preservation is of highest priority. Local, state and federal governments may assist in the OCMP's APC protection efforts through acquisition-protection measures or through the control of activities on contiguous land areas to minimize nonpoint source pollution.

The following authorities are used to protect the fish habitats of the Ohio portion of Lake Erie:

- The State has overall authority as proprietor in trust of Lake Erie resources for the people of the state. ODNR is responsible for the leasing of submerged lands (O.R.C. § 1506.02 and 1506.11).

- The ownership of and the title to all wild animals, including fish, is entrusted in the state of Ohio for the benefit of all its citizens (O.R.C. § 1531.02).

- The Director, Ohio EPA has the authority to issue or deny a Section 401 Water Quality Certification to any applicant for a federal permit or license for any activity that may result in any discharge into the waters of the state (O.R.C. § 6111.03(O) and 6111.03(P)).

ODNR staff reviews U.S. Army Corps of Engineers (COE) Section 10/404 permit applications and Ohio EPA uses the Section 401 Water Quality Certification process to prevent adverse impacts from dredging or filling in prime fish habitat areas. Ohio EPA also helps maintain high quality fish habitat by enforcing compliance with water quality standards set forth in O.A.C. Chapter 3745-1.

Ports and Harbors – (See policies in "Ports and Shore Area Development" section, Chapter 5.) Ohio's Lake Erie communities have flourished primarily because of their location at naturally protected river harbors along the Lake. Several of the ports that developed at these harbors have grown to possess immense commercial significance for Ohio's statewide economy. They continue to be one of the greatest factors in maintaining the economic well-being of the urban coastal areas. In addition, the smaller coastal river mouths have promoted the development of heavily used small boat harbors. Larger ports also support, to a varying extent, recreational boating facilities. Both

small boat harbors and large-port complexes are increasingly subject to intense pressures for commercial-industrial uses and for public access.

Generic APC designation is recommended for Ohio's Lake Erie ports and harbors because of their vital importance to Ohio's economy and to the recreational enjoyment of its people. High priority will be given to those uses that improve the capabilities of Ohio's ports and harbors to accommodate water-dependent transportation, recreation and public access activities. Any uses that infringe upon a port or harbor's chief functions will be of low priority.

Proper planning is necessary to assure that port related needs and other coastal uses, such as recreation and public access, are considered. Port authorities have the responsibility to carry out such planning efforts. Local zoning regulations can be used to ensure compatible land uses in the harbor areas, especially to provide for necessary expansion of harbor-dependent development and storage.

The Ohio Department of Transportation (ODOT), helps promote the appropriate use and commercial development of ports and harbors (O.R.C. § 5501.04).

ODNR is responsible for the inventory, evaluation and promotion of public access to the Lake Erie shoreline (O.R.C. § 1506.05).

The removal of minerals, sand, gravel, stone or other substances is regulated by ODNR pursuant to O.R.C. § 1505.07. A lease or permit from ODNR is required before any improvements or developments may be made on the water or lands underlying the waters of Lake Erie (O.R.C. § 1506.11).

Dredging activities are managed by Ohio EPA, consistent with the state's water quality standards (O.R.C. § 6111.03(O) and 6111.03(P)). Before any dredge material disposal into waters of the state may be allowed, Ohio EPA must first issue a Section 401 Water Quality certification.

State Nature Preserves and Wildlife Areas – (See Policies 13 and 14 and policies under "Fish and Wildlife Management," Chapter 5.) Ohio's Lake Erie region possesses a diverse system of natural areas and wildlife habitats. The viability of numerous plant communities, wildlife populations and endangered species depends upon their proper management. Scientific research and public education is greatly enhanced through interpretive uses of these areas. Wildlife areas also provide the state's greatest recreational opportunities for fishing and hunting. However, the number of areas capable of fulfilling nature preserve and wildlife habitat functions diminishes each year, and those areas that do remain in a natural state are faced with numerous threats to their environmental integrity. Lowest priority uses will be determined in accordance with each area's management plan.

SMA designation for state nature preserves and wildlife areas places a high priority on maintaining the natural qualities of these refuges. Uses of high priority are those that promote, respectively, preservation or wildlife management, undeveloped recreation, restoration, scientific

research and public education. Low priority activities are those that would adversely affect the primary values for which such areas were acquired and are dedicated.

ODNR's Division of Natural Areas and Preserves (DNAP) is authorized by O.R.C. Chapter 1517 to acquire and accept the dedication of public and privately owned lands as nature preserves. Also, under O.R.C. § 1501.01, the Director, ODNR may accept bequests of lands and acquire property by purchase or lease, with the authority to appropriate property. The Division has authority to manage and protect such lands for educational and scientific use, visitation and protection of natural features, including endangered species. DNAP is authorized to inventory, plan, study and regulate the use of such areas. Currently dedicated nature preserves in the coastal area are Mentor Marsh, Headlands Dunes, Old Woman Creek National Estuarine Research Reserve (OWC-NERR), Sheldon Marsh, Dupont Marsh and Lakeside Daisy. State nature preserves are identified as APRs on the coastal boundary maps (Appendix B).

ODNR's DOW is authorized to acquire land and water areas as wildlife areas and to manage them using sound wildlife management techniques (O.R.C. Chapter 1531).

ODNR also cooperates extensively with conservation and preservation groups such as The Nature Conservancy, The National Audubon Society and the Ohio Historical Society to acquire and manage such lands.

Coastal Erosion and Flood Hazard Areas – (See policies under "Coastal Erosion and Flooding" Chapter 5.) The serious damages that result from flooding and erosion dictate the need for joint efforts by state agencies and local communities regarding coastal erosion and flood hazard area management. Portions of Ohio's Lake Erie shore have been identified as coastal erosion areas (see Policy 1), while the entire shoreline is subject to wave attack and erosion forces. Flood prone areas have been identified along the entire shore, but potential flood damage is particularly severe at stream mouths and in low relief areas of the western basin.

Both flooding and erosion are the results of natural and sometimes unpredictable forces, and the resultant damages are often the result of unwise development practices. The promotion of passive land use in areas most subject to such forces is the most efficient method for reducing damages. Therefore, high priority uses are open space, natural area preservation and undeveloped recreation (on public land). Uses that do not conform with flood insurance program regulations or those not in accordance with rules governing development within coastal erosion areas are not permitted.

O.R.C. § 1506.04 requires that communities with coastal flood hazard areas either participate in the National Flood Insurance Program (NFIP) or enact regulations that meet or exceed the standards required for such participation. O.R.C. § 1506.06 authorizes the Director of ODNR to designate coastal erosion areas. Technical information for these coastal erosion areas has been compiled by the Division of Geological Survey under rules promulgated in June 1996, and maps defining coastal erosion areas have been prepared. The construction, erection or redevelopment of any permanent structures within a coastal erosion area requires a permit from either the director or

the local government of a county or municipality that is enforcing a Lake Erie Coastal Erosion Area resolution or ordinance approved by the director (O.R.C. § 1506.07). No person shall build or construct a beach or erect groins or other shore protection structures to arrest erosion along the Ohio shore of Lake Erie without first receiving a permit from ODNR's Division of Engineering (O.R.C. § 1507.04).

Specifically included in this generic APC designation would be all areas identified by ODNR as coastal erosion areas pursuant to O.R.C. § 1506.06, all coastal flood hazard areas designated under the Flood Disaster Protection Act of 1973 (P.L. 93-234) and all Ohio units of the federal Coastal Barrier Resources System.

Public Parks and Access Areas – (See Policies 21, 22 and 23.) Of all shore uses, recreational areas have the widest constituency of users. Providing adequate access is the only way to make the recreational opportunities of Lake Erie available to the public. Public lakeshore parks are, however, experiencing increasing problems. Budget constraints impede proper planning and maintenance of local parks. Additionally, many parks are developed to satisfy smaller local demands rather than those of the region as a whole. These factors lead to park deterioration or destruction due to overuse or lack of supervision.

The OCMP recognizes both the need for additional recreational opportunities and the mediation of user conflicts that may arise. Therefore, generic APC designation is proposed for all waterfront parks and public boating and fishing access sites within the coastal area. High-priority uses are those that provide public access and promote public recreation in such areas. Uses of low priority are those that inhibit the recreational potential of an area.

ODNR's Division of Parks and Recreation (DPR) is authorized to create, supervise, operate, protect and maintain a system of state parks and promote their use by the public (O.R.C. Chapter 1541).

Park districts (county, township and municipal) have been established for the purposes of acquiring, planning, developing, protecting and maintaining or improving lands for parks (O.R.C. § 1545.11).

The Division of Watercraft, whenever it deems it to be in the best interest of the state, may construct, maintain, and repair refuge harbors and other projects providing for marine recreational activities (O.R.C. § 1547.72).

The Chief of the Division of Wildlife, with the approval of the Director of ODNR, may acquire by gift, lease, purchase or otherwise, sites that provide fishing and hunting access (O.R.C. § 1531.06).

Pursuant to O.R.C. § 1506.05, the Director of ODNR has prepared an inventory and evaluation of public access facilities, and makes policy recommendations for enhancing public access to Lake Erie.

Wetlands – (See Policy 12.) Approximately 33,000 acres of wetlands along the Ohio shore form one of the most valuable portions of the entire Lake Erie ecosystem. This valuable state resource provides extremely important habitat for fish, game and waterfowl. Tremendous economic benefits result from the hunting and fishing of this wildlife. Wetlands also lessen the damaging effects of flooding by holding back floodwaters, and along lakeshores by absorbing wave energy. Their water filtering and purification abilities improve overall water quality.

Ohio's coastal wetlands have been severely depleted due to extreme development pressures. The generic APC categorization of wetlands provides for the recognition that all wetlands are worthy of protection or mitigative measures prior to any change in their current use. High priority uses for wetlands are those that preserve and restore natural attributes and serve natural preservation, wildlife habitat, hunting, floodwater retention, groundwater recharge, scientific research and environmental education functions. Any other uses are of lower priority.

The state has authority to acquire and manage wetlands through the DNAP for state nature preserves (O.R.C. Chapter 1517) and through the DOW for state wildlife areas (O.R.C. § 1531.06). ODNR staff will actively seek additional matching funds for wetland protection efforts and will continue to inventory and survey wetland areas. Additionally, Ohio's Capital Improvements budget for fiscal years 1989 and 1990 created the Ohio Wetlands Fund and targeted $400,000 specifically for the purchase of wetlands.

Ohio EPA protects the water quality of Lake Erie wetlands through the exercise of its Section 401 Water Quality Certification authority in accordance with O.A.C. Chapter 3745-32.

Ohio EPA and ODNR are working on several wetlands initiatives, cooperatively and independently. Ohio EPA, under a State Wetlands Program Development grant from U.S. EPA, coordinated the development of a State Comprehensive Wetlands Strategy in close coordination with ODNR, other state agencies, county, local, and regional governments, and with significant input from the private sector and agencies such as the U.S. Fish and Wildlife Service and U.S. Department of Agriculture. ODNR, DOW, has inventoried coastal wetlands, working in cooperation with the Division of Real Estate and Land Management and U.S. Soil Conservation Service. Wetland inventory maps will be available at county Soil and Water Conservation District offices.

Protection and restoration of wetlands important to waterfowl is being addressed under the North American Waterfowl Management Plan (NAWMP). Lake Erie coastal marshes are within a high-priority focus area of the plan. DOW is cooperating with the U.S. Fish and Wildlife Service, private landowners and independent organizations such as Ducks Unlimited to acquire, protect and restore critical wetland habitat.

Local units of government will be encouraged to use land-use controls to protect valuable wetlands. Local authorities may also preserve wetlands by acquisition and maintenance as natural areas and wildlife refuges. ODNR can provide technical assistance and management guidelines for such efforts through provision of the inventory maps and the critical areas program as well as financial assistance through the Land and Water Conservation Program.

Historic and Archaeological Sites – (See Policy 26.) Historic and archaeological sites are districts, sites, buildings, structures and objects significant to Lake Erie's cultural and historic heritage. Such areas provide Ohioans with a strong sense of their past and Lake Erie's importance in the development of the Great Lakes region. Historic and archaeological sites provide a valuable record for scientists in studying the history and culture of the region. They are also important tourist attractions.

The OCMP recognizes the great importance of these historic, cultural and archaeological resources to the coastal area. SMA designation is proposed to assure that coastal activities and developments occur without harm to such reminders of our heritage. High-priority uses are those that preserve, restore and protect the historical or archaeological nature of sites. Activities that destroy or inhibit restoration are of lowest priority.

The Ohio Historical Society (OHS) will update coastal historical archaeological site records and issue permits pursuant to O.R.C. § 149.54 to control archaeological survey or salvage work requiring compliance with the historic landmarks preservation notification procedures in O.R.C. § 149.55. OHS may also designate, acquire and manage sites that it feels are worthy of National Historic Register protection (O.R.C. § 149.30). Local governments may also acquire such sites or use zoning laws and landmark preservation ordinances to assure that development does not detract from a site's historic or cultural significance. Areas that are of state interest are purchased through appropriations from the General Assembly.

Areas of Concern – (See Policy 10.) The lower Cuyahoga, Maumee, Black and Ashtabula Rivers have been designated as Areas of Concern (AOC) by the Water Quality Board of the International Joint Commission (IJC); these AOCs lie partially within Ohio's coastal area. The IJC designation was based on the severe water quality problems and the degree of use impairment within each of the four areas. (AOC designation should not be confused with the APC category used by the OCMP).

To guide and assess cleanup efforts, the Great Lakes states and Ontario have committed to the development of Remedial Action Plans (RAPs) for each AOC under the oversight of the IJC. RAPs embody an ecosystem or multimedia approach and are systematic plans designed to improve degraded conditions and restore beneficial uses. Ohio EPA, as the state's lead agency for water quality issues, is responsible for the development and implementation of the RAPs. The public, industry and all levels of government must actually implement such plans. RAPs represent a marked departure from past trends in pollution control because they address more than just individual point sources of pollution. Rather, a RAP considers the full array of inputs, as well as the authorities

responsible for such inputs. Furthermore, all pertinent stakeholders in the AOCs' future, including industry, government and the public, are included in the RAP planning process.

Information on the progress of RAPs for Ohio's four AOCs is included in Appendix N. Figure 5 shows the relative locations of the AOCs on Lake Erie and their corresponding watershed areas.

The critical nature of AOCs and the inherent difficulty in using such a comprehensive approach make it appropriate to establish a generic APC category for such areas. APC designation for those portions of these AOCs that lie within the OCMP coastal area may provide the additional support needed to achieve the desired goal of improved water quality for Ohio's AOCs. High priority uses are those that contribute to remedial actions and do not promote further degradation of the AOC. Low priority is given to uses that negatively affect water quality or compound the existing problems.

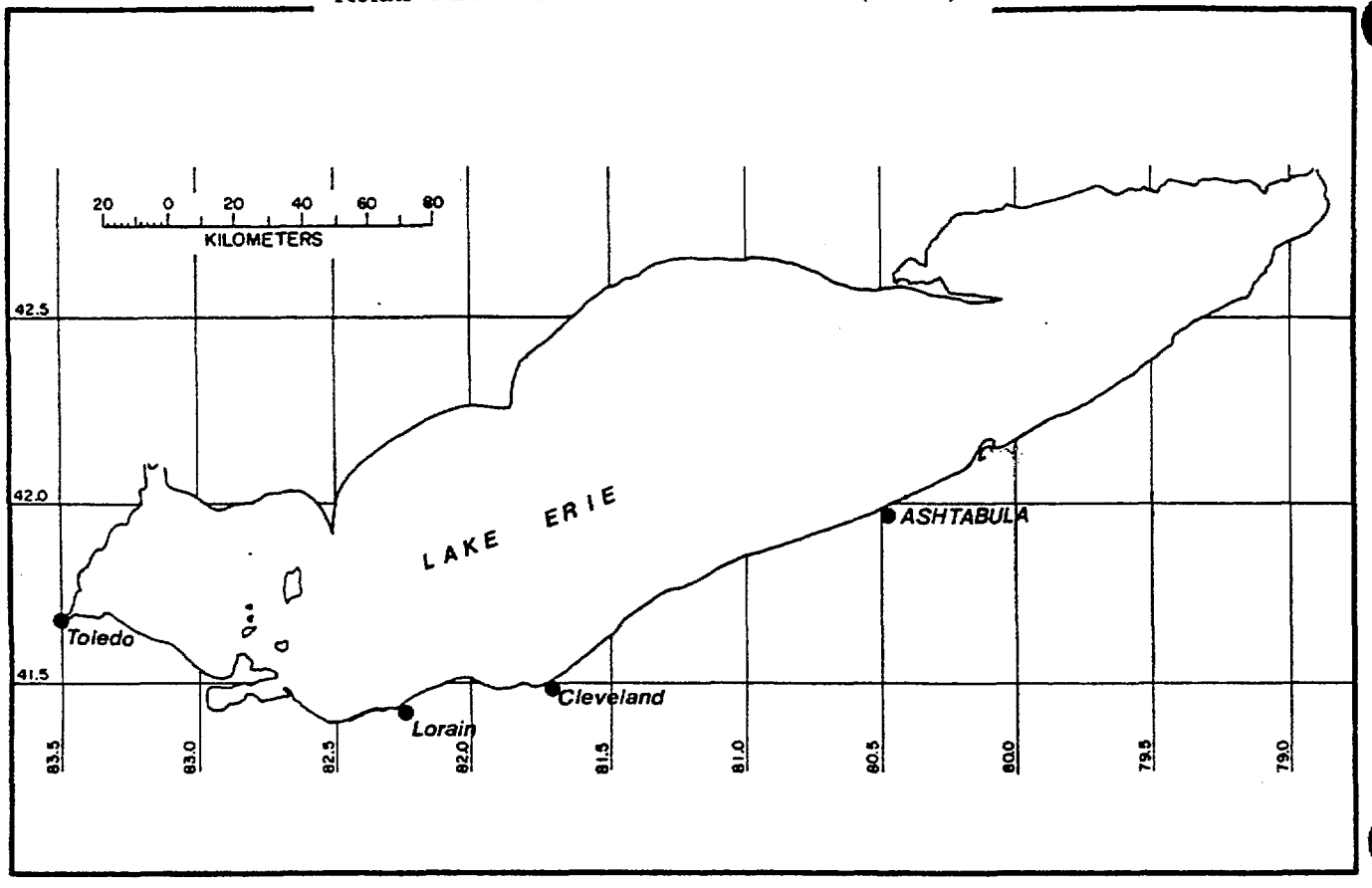
AOC remedial programs must be incorporated into Ohio's existing water management framework. Although the state lacks AOC specific authority, several of its agencies are responsible for programs that, directly or indirectly, affect Ohio's AOCs. Pertinent agency responsibilities are those related primarily to water quality, the degradation of which is the fundamental problem underlying every AOC.

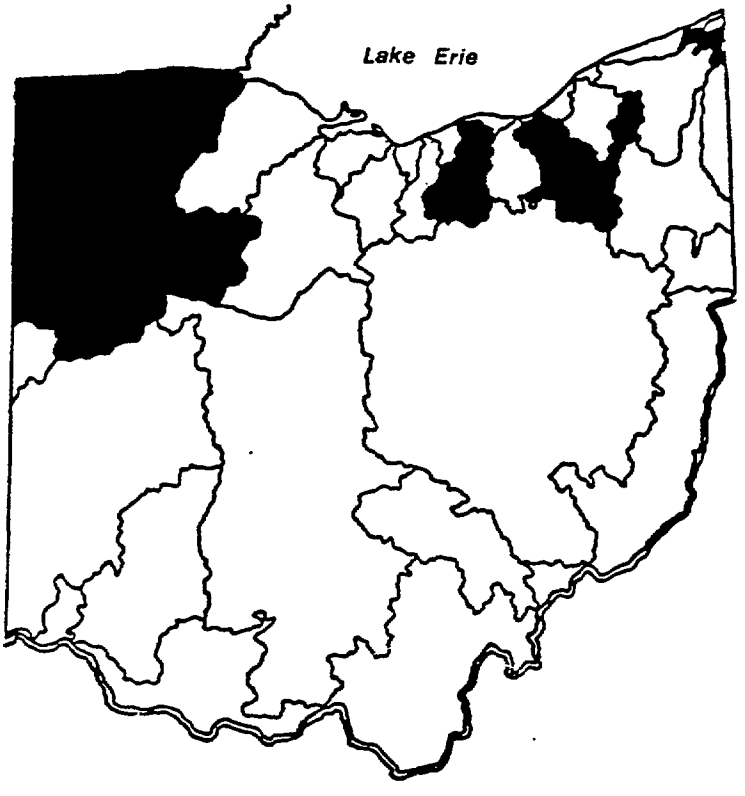
Specific APRs

Areas for Preservation and Restoration (APRs) are specific sites for which an additional level of protection, beyond that afforded through generic APC designation, has been deemed necessary. These are designated sites where the preservation and restoration of conservation, recreational, ecological, historical or aesthetic values are the dominant public policies. In APRs, any activities that are inconsistent with such policies shall be excluded. Further, water-dependent uses generally are higher priority than those that are not dependent upon water. Although funds may also be used to acquire sites that meet APR designation criteria, Ohio remains sensitive to the potential impacts on local economies that might result from public land acquisition. APRs are generally local, state or federally owned lands that receive maximum protection via the application of strict regulations governing their use.

Two fundamental conditions must be met for a site to receive APR designation. First, it must have current value, or potential value when restored, as either a recreational, natural or historic area. Secondly, the special values of such a site must be available, or potentially available, for public use, recognizing that restrictions on this use may be necessary to protect the site's character. Private lands without public access cannot be considered APRs.

FIGURE 5
Relative Locations of Areas of Concern (AOCs)



The following list briefly describes the seven site-specific APRs located within Ohio's coastal area:

1. **DuPont Marsh State Nature Preserve** is a 113-acre example of the once-prevalent Lake Erie estuarine marsh community. It includes freshwater marsh, old field, and mixed emergent riverine vegetation types, and is home to rare plants such as the leafy blue flag iris and hairy-fruited sedge, and is visited by bald eagles. Additional acquisition is needed to more fully protect the site.

2. **Headland Dunes State Nature Preserve** is one of the best sand dune-vegetation communities of its kind in Ohio. This isolated 16 acre tract provides valuable habitat for a rare assemblage of plants and animals characteristic of the sand beach and dune communities that were once common along the shores of Lake Erie.

3. **Lorain Lighthouse** is listed in the National Historic Register. Constructed in 1917 at Lorain, Ohio, this lighthouse is preserved and managed by the Lorain Historical Society. It is in need of structural work to prevent further deterioration of the base.

4. **Mentor Marsh State Nature Preserve** is a 666-acre marsh that includes approximately 50 species of deciduous trees and extensive coverings of Phragmites. As one of the first National Natural Landmark areas designated by the U.S. Department of the Interior in 1966, it provides habitat for animal species such as red-headed woodpeckers, long-billed marsh wrens, mink, red fox, and weasel.

5. **Old Woman Creek State Nature Preserve and National Estuarine Research Reserve (OWC-NERR)** is one of Ohio's best remaining examples of a Great Lakes-type estuary. The 572-acre reserve encompasses a variety of habitats including freshwater marshes, swamp forests, a barrier sand beach, upland forests, estuarine waters and near-shore Lake Erie. As a natural transition zone between land and water, the OWC-NERR provides valuable habitat for a wide array of plant and animal life from microscopic algae, aquatic vascular plants, numerous fish, reptile and amphibian species; to hundreds of species of birds, including the American bald eagle. The wetlands ecosystem of the reserve performs valuable natural functions such as filtration of stream sediments, nutrients, and pollutants, and affords protection from coastal erosion and flooding.

6. **Sheldon Marsh State Nature Preserve** is a 463-acre preserve containing some of the last remaining undeveloped stretches of lakeshore in the Sandusky Bay region. Preserved are habitat relicts of the original lake-marsh-forest ecosystem such as old field, hardwood forest, woodland swamp, cattail marsh, barrier sand beach and open water. Nearly 300 bird species and many wildflowers, including the spectacular cardinal flower, are known to the area. Sheldon Marsh is well known for its valuable habitat for fledgling American bald eagles, migratory waterfowl, shore birds and wood warblers. Additional acquisition will be needed for increased site protection.

7. **Lakeside Daisy – Colleen "Casey" Taylor and Ruth E. Fiscus – State Nature Preserve** is a 19-acre preserve in Ottawa County that protects a portion of the population of *Hymenoxys herbacea* (E.L. Greene) Cusick, Lakeside Daisy, a federally protected threatened and state-protected endangered plant. Additional land acquisition is needed.

Future Designation Process

Despite the aforementioned generic APCs and specific APRs, Ohio realizes that SMA nomination and designation was not merely a one-time exercise. Changing conditions may dictate the need for additional APCs and APRs. SMA nominations for APCs (either generic or site-specific) or site-specific APRs may be submitted by any interested party. The proposal must include the following information:

1. General area description showing that the area is within the OCMP boundary.

2. Explanation of why current management of the area is inadequate and why the area's problems are not covered under existing OCMP policies or SMA categories.

3. Suggested management policies that will resolve the area's problems.

4. Agencies capable of implementing policy directives.

The nominations are to be submitted to ODNR, which solicits review comments from:

1. Appropriate federal, state and local agencies;

2. Coastal Resources Advisory Council; and

3. Members of the public with an expressed interest in coastal issues.

A new APC category or site or specific APR site will be authorized if ODNR determines both that the primary values of the area in question are being degraded and that the existing institutional frameworks are insufficient to remedy the situation. If creation of a new category is necessary, ODNR shall prepare a statement that justifies designation of the new SMA. The statement shall include an explanation of how improved management strategies will alleviate the principal concerns. The new SMA would then be submitted to the Office of Ocean and Coastal Resource Management (OCRM) for inclusion in the OCMP, then announced in OCMP materials, made part of the public record, and formally added to the list of Ohio SMAs, if approved by OCRM.

Coastal Resources of National Significance

Section 306(d)(13) of the CZMA provides that a state coastal management program must provide for "(A) the inventory and designation of areas that contain one or more coastal resources of national significance; and (B) specific and enforceable standards to protect such resources."

As indicated in the bibliography below, the State of Ohio has inventoried and mapped the following coastal resources of national significance: coastal wetlands, reefs, beaches and dunes, barrier islands, and fish and wildlife habitat. Lake Erie's estuarine systems have been described in a NOAA publication, *Lake Erie Estuarine Systems: Issues, Resources, Status, and Management* (1989). Wetlands and critical fish habitat areas have been designated as generic APCs. State nature preserves and wildlife areas, several of which contain significant fish and wildlife habitat as well as barrier sand beaches and dunes, are designated as generic APCs. Six stretches of undeveloped coastal barriers have been designated units in the Coastal Barrier Resources System (CBRS), which prohibits federal flood insurance and financial assistance for development. Ohio has added five additional areas to the CBRS, including several low-lying seasonal dunes, (at Sheldon Marsh, Old Woman Creek, Kelleys Island North Pond, Mentor Marsh/Headland Dunes and Arcola Creek) for inclusion as otherwise-protected areas in the CBRS. These areas are owned and managed as nature preserves or state parks by the State of Ohio and The Nature Conservancy (Arcola Creek).

Enforceable standards regarding these resources are detailed in Policies 1, 2, 12, 13, 14, 16, 27 and 29. As described earlier in this chapter, the SMA nomination and designation process is an ongoing one intended to provide additional protection and special management as new areas and/or concerns regarding these resources become apparent.

*Wetlands*

- National Wetlands Inventory. U.S. Department of the Interior.

- State of Ohio Wetlands Inventory. Ohio Department of Natural Resources, Division of Wildlife.

The wetlands inventory is conducted using satellite imagery. Additional information, such as topographic maps, soil surveys and field surveys are used to assist in the location, description and classification of wetlands. This is an ongoing inventory. Ohio has completed the inventory of probable wetland sites and is in the process of printing hard-copy maps for public distribution. Maps for the nine coastal area counties are available in final form.

*Coastal Erosion and Flood Hazard Areas*

- Lake Erie Shore Erosion and Flooding, Reports of Investigation (Lucas, Lake, Erie and Sandusky counties). 1976, 1978 and 1980. Ohio Department of Natural Resources, Division

of Geological Survey. These studies are a series of county-wide investigations that quantify historic erosion and recession.

*Beaches and Dunes*

- Resources of the Lake Erie Island Region. 1977. Center for Lake Erie Area Research. (Included shore type, length and percent beach).

- Coastal Hazards: Recession, Erosion and Flooding. 1977. Ohio Department of Natural Resources, Coastal Zone Management Section.

- Beach Inventory. 1980. Ohio Department of Natural Resources, Division of Geological Survey. (Excluded islands and Sandusky Bay.)

- Coastal Hazard Management: Shore Erosion. 1982. Ohio Department of Natural Resources, Coastal Zone Management Section.

- Inventory of Shoretype, Subaqueous Nearshore Composition and Bluff Lithology. 1987. U.S. Army Corps of Engineers, Ohio Department of Natural Resources, Division of Geological Survey.

- Inventory of Critical Erosion Areas. 1987. Ohio Department of Natural Resources, Division of Geological Survey. Data incorporated into U.S. Army Corps of Engineers database.

- Beaches and Dunes of Ohio's Lake Erie Shore. 1993. Ohio Department of Natural Resources, Division of Geological Survey. Using aerial photos verified by field studies, the division has compiled file data and maps (unpublished) documenting the location and size of beaches and dunes along the entire Ohio Lake Erie shore.

- Lake Erie Shore Erosion and Flooding, Reports of Investigations (Lucas County 1978, Lake County 1976, Erie and Sandusky counties 1980, and Ashtabula County 1983). Ohio Department of Natural Resources, Division of Geological Survey. These studies are a series of county-wide investigations that quantify historic erosion and recession.

*Barrier Islands*

Only one barrier island exists along Ohio's Lake Erie shore. That island, at Cedar Point, was previously the northwestern end of a long sand spit offshore, northeast of Sandusky. An island was created when a breach occurred near Point Retreat in the fall of 1972.

*Fish and Wildlife Areas*

- The Fishing Potential, Special Management Areas, and their Interaction with Dredge Spoil Sites in Lake Erie. 1977. Ohio Department of Natural Resources, Center for Lake Erie Area Research. Includes inventories and maps of critical habitat and substrate types for Lake Erie fish species.

- Status and Trend Highlights: Ohio's Lake Erie Fish and Fisheries. Annual Reports. Ohio Department of Natural Resources, Division of Wildlife.

- Natural Heritage Database, Ohio Department of Natural Resources, Division of Natural Areas and Preserves. The database is an ongoing process involving constant update and refinement of information, locating the elements of the natural world which, if preserved, will preserve diversity. Habitats of vulnerable plant and animal species, representative examples of ecological communities and unique or outstanding natural features are located. The Heritage Data Base results in a more comprehensive identification of Ohio's biological resources than was possible with previous inventories. This is accomplished through its element-based approach that focuses first on the components of natural diversity.

- Ohio Breeding Bird Atlas. 1991. Ohio Department of Natural Resources, Division of Natural Areas and Preserves.

- Fish and wildlife resources of the Great Lakes coastal wetlands within the United States, Volume 1: Overview, Volume 3: Lake Erie. 1981. U.S. Fish and Wildlife Service, Washington, D.C., FWS/81/02-v1,v3.

- Nesting and migration areas of birds of the U.S. Great Lakes (30 April to 23 August, 1976). 1979. W.C. Scharf, et al.

*Estuaries*

- Lake Erie Estuarine Systems: Issues, Resources, Status, and Management. 1989. U.S. Department of Commerce, National Oceanic and Atmospheric Administration.

*Reefs*

- Physical characteristics of the reef area of western Lake Erie. 1972. Ohio Department of Natural Resources, Division of Geological Survey Report of Investigation.

# CHAPTER 7

# FEDERAL CONSISTENCY

The Coastal Zone Management Act (CZMA) requires that federal actions reasonably likely to affect any land or water use or natural resource of the coastal zone, regardless of location, be consistent with approved state coastal management programs. Federal actions include:

- Federal agency activities and development projects;
- Private applicant activities that require federal licenses, permits or other forms of approval; and
- State and local government activities conducted with federal assistance.

A complete list of these federal activities is provided at the end of this chapter. Any change to the list of federal activities will be made using the program modification process described in Appendix O.

The OCMP is a comprehensive program. Besides using the policies and authorities embodied in the state coastal management law (O.R.C. Chapter 1506), the OCMP integrates other state rules, regulations and policies to protect uses and resources of the coastal area. These are the enforceable policies to be addressed by federal agencies and federal permit applicants in their consistency determinations and certifications. These authorities are described in Chapter 5 of this program document.

The consistency review process will be conducted and coordinated by ODNR, REALM. Consistency review findings will be developed with consideration of relevant comments and information supplied by other state agencies, areawide clearinghouses and local jurisdictions. Agencies needing guidance on policies or procedures regarding consistency review should contact the Coastal Management Administrator, REALM.

Administrative procedures for implementing federal consistency requirements are described below for each category. Terms used herein are as defined in the National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, federal regulations, 15 C.F.R. Part 930, which are incorporated by reference herein.

## 1. Consistency for Federal Activities and Development Projects

The CZMA requires that "each federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved state management programs" (16 U.S.C. § 1456(c)(1)). Federal agency activities are any functions performed by or on behalf of a federal agency in the exercise of its statutory responsibilities, but does not include the granting of a federal license or permit. A federal development project is a federal

activity involving the planning, construction, modification, or removal of public works, facilities, or other structures; and the acquisition, utilization, or disposal of land or water resources. (15 C.F.R. § 930.31).

Federal agencies must review proposed actions, whether within or outside the coastal area, affecting any land or water use or natural resource of the coastal area, to determine that they are consistent with the OCMP. The determination provides Ohio with the opportunity to ensure that proposed activities are consistent to the maximum extent practicable with the OCMP. The consistency process also helps to maintain the necessary communication and coordination between all levels of government to ensure the wise management of coastal resources.

*Consistency Determinations by Federal Agencies*

It is the responsibility of all federal agencies, pursuant to 15 C.F.R. § 930.37(a), to determine whether their activities affect Ohio's coastal area and are subject to consistency requirements. The OCMP and NOAA regulations consider all federal agency development projects within Ohio's coastal area as defined in O.R.C. § 1506.01(A) to be activities affecting the coastal area as defined in O.R.C. § 1506.01(A). Each federal agency is responsible for reviewing all of its activities within Ohio's coastal area as well as all of its activities that are outside the coastal area but within the Lake Erie watershed in Ohio to determine whether they affect the coastal area. 15 C.F.R. § 930.33. (The Lake Erie watershed in Ohio is shown in Figure 6 and encompasses the following U.S. Geological Survey hydrologic cataloging units in Ohio: Raisin L092, Ottawa-Stony L093, Maumee L094, Cedar-Portage L095, Sandusky L096, Huron-Vermilion L097, Black-Rocky L098, Cuyahoga L099, Grand L101, Ashtabula-Chagrin L102, Chautauqua-Conneaut L103.) The list of federal activities that are subject to consistency review is included at the end of this chapter. 15 C.F.R. § 930.35(a). Other federal activities not listed at the end of this chapter will be monitored with the assistance of and consultation with state and local agencies participating in its intergovernmental review process. 15 C.F.R. § 930.35(b).

Federal agencies shall submit to the Director of ODNR consistency determinations for all federal activities affecting the coastal area. The Coastal Management Section, REALM, will then initiate a formal public notice and comment process and conduct the state's consistency review of the proposal. Consistency reviews will incorporate ODNR's interdisciplinary environmental review and consultation with other agencies with responsibilities in the coastal area. The Coastal Management Section, REALM, will solicit comments from appropriate agencies and incorporate appropriate comments and recommendations into findings that will support the director's agreement or disagreement with the federal agency's consistency determination. Consistency determinations shall be submitted to ODNR at the earliest practicable time in the planning of the activity, but before the federal agency has reached a significant point of decision making in its review process. A consistency determination must be submitted to ODNR at least 90 days before federal approval of the activity, unless ODNR and the agency agree to extend the notification period beyond 90 days.

## Ohio's Lake Erie Watershed

**Figure 6**

15 C.F.R. § 930.34. Procedures for requesting and agreeing upon an extension shall be in memoranda of understanding between ODNR and the respective federal agencies.

The consistency determination for a federal activity affecting the Ohio coastal area shall, pursuant to 15 C.F.R. § 930.39, include:

- A brief statement indicating whether the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the OCMP;
- A detailed description of the proposed activity and associated facilities; and
- Comprehensive data and information to support the federal agency's consistency statement.

If a federal agency determines that a proposed activity would affect the coastal area and be inconsistent with the OCMP, but compliance would otherwise be prohibited based upon requirements of federal law applicable to the agency's operations, the agency shall notify ODNR of its determination. Notification should be made through direct correspondence from the federal agency to the Director of ODNR when that determination is made. Pursuant to 15 C.F.R. § 930.32, the notification must clearly describe the proposed activity and cite and describe the applicable federal laws or authorities that limit the agency's compliance with the OCMP.

If more than one federal agency is involved in an activity or related activities in or affecting Ohio's coastal area, a single consistency determination should be submitted for all the agencies. In such cases, the federal agencies shall determine which agency shall prepare and submit the consistency determination. The consistency determination shall be transmitted to ODNR at least 90 days before final decisions are made by any of the participating agencies. The determination must indicate whether each of the proposed activities is consistent to the maximum extent practicable with the OCMP, and must include information on each proposed activity sufficient to support the consistency determination. 15 C.F.R. § 930.40.

If a federal agency decides that a consistency determination is not required, the agency shall notify ODNR of its decision as soon as possible, but at least 90 days before final approval of the activity, unless the federal agency and ODNR agree to an alternate schedule. The notification shall briefly set forth the reasons for the negative determination. 15 C.F.R. § 930.35(d).

Consistency determinations will be required for ongoing federal activities affecting the coastal area, other than development projects initiated prior to approval of the OCMP, which are governed by the statutory authority under which the federal agency retains discretion to reassess and modify the activity. Federal agencies shall provide consistency determinations to ODNR no later than 120 days after management program approval for ongoing activities listed or identified through monitoring as subject to consistency with the OCMP. 15 C.F.R. § 930.38(a).

A consistency determination will be required for major, phased federal development project decisions made following program approval for development projects initiated prior to program approval. The federal agency responsible for the project shall consider coastal area effects not fully evaluated at the outset of the project. This provision shall not apply to phased federal decisions that were specifically described, considered and approved prior to program approval. 15 C.F.R. § 930.38(b).

The State of Ohio reserves the right to request a consistency determination from a federal agency for a proposed federal activity that, in the opinion of ODNR, may affect the coastal area. The OCMP will monitor federal activities not listed herein and will immediately notify the federal agencies of unlisted federal activities affecting the coastal area that require a review. If the OCMP receives notice of the proposed activity and does not provide notification within 45 days of the issuance of the notice, the program waives its right to review the unlisted activity. 15 C.F.R. § 930.54.

In cases where a federal agency will be performing a repeated activity, other than a development project, the agency may develop a general consistency determination. This general consistency determination may only be used in situations where the incremental actions are repetitive or periodic, substantially similar in nature, and do not affect the coastal area when performed separately. If a general consistency determination is issued, the federal agency must consult with ODNR on a periodic basis to discuss the action. 15 C.F.R. § 930.37(b).

If the federal agency has sufficient information to determine the consistency of a federal development project from planning to construction, only one consistency determination will be required. However, if decisions on a major development project will be made in phases based upon developing information, then a consistency determination will be required for each major decision. 15 C.F.R. § 930.37(c).

*State Response*

On behalf of the State of Ohio, ODNR shall inform the federal agency of its agreement or disagreement with the consistency determination within 45 days from receipt of the determination and necessary information, unless ODNR notifies the federal agency within that time that the state's final response will be delayed and provides the reasons for the delay. Federal agencies shall approve one request for an extension period of 15 days or less. Other extensions shall be negotiated between the parties, but are at the discretion of the federal agency. If no response or request for extension of time is received from ODNR within 45 days, agreement by the state shall be presumed. 15 C.F.R. § 930.41.

If the state disagrees with the federal agency's consistency determination, ODNR shall so notify the federal agency in a formal response, according to the schedule described above, and send a copy of the response to the Director, OCRM. The notice of disagreement shall include the rationale for the disagreement; describe specific points of inconsistency between the proposed activity and

enforceable policies of the OCMP; and describe alternative measures that, if implemented, would make the proposed activity consistent with the OCMP. If ODNR disagrees with the consistency determination based on a lack of necessary information from the federal agency, the response will describe the type of information needed to determine the consistency of the federal activity and contain an explanation supporting the need for this information. 15 C.F.R. § 930.42.

ODNR, in cooperation with each federal agency, will monitor federal activities to assure they are undertaken in a manner consistent, to the maximum extent practicable, with the approved program. If ODNR finds that an activity that was previously determined to be consistent with the approved program, or was previously determined not to be a federal activity affecting the coastal area but now appears to be inconsistent with the approved program, ODNR will promptly notify the appropriate federal agency. ODNR will include supporting information and a proposal recommending remedial action that will make the activity consistent with the approved program. If, after a reasonable time following a request for remedial action, ODNR maintains that disagreement exists, either party may request the secretarial mediation services provided for in 15 C.F.R. Part 930, Subpart G.

*Mediation of Conflicts*

If a serious disagreement between a federal agency and Ohio regarding whether a proposed activity affects the coastal area or regarding the consistency of a proposed activity affecting the coastal area remains unresolved after discussions between the agency and the state, either party may seek mediation by the Secretary of Commerce as provided for in 15 C.F.R. Part 930, Subpart G, or informal negotiations through OCRM.

2. Consistency for Activities Requiring a Federal License or Permit

Federally licensed or permitted activities include any authorization, certification, approval or other form of permission that any federal agency is empowered to issue to an applicant. 15 C.F.R. § 930.51. Federally licensed or permitted activities include renewals of and major amendments to federal license and permit activities either not previously reviewed by ODNR, or previously reviewed by ODNR but which are filed after and are subject to management program amendments not in existence at the time of the original ODNR review, or previously reviewed by ODNR but causing coastal effects different from those originally reviewed (15 C.F.R. § 930.51). Federal license and permit activities subject to consistency review for the OCMP are listed at the end of this chapter. The list includes those federal licenses or permits that are likely to affect any land or water use or natural resource of the Ohio coastal area. ODNR may also review federal license and permit activities outside the coastal area but which affect the coastal area. The area outside the coastal area within which ODNR will review license and permit activities is defined as the Lake Erie watershed in Ohio (see Figure 6). Only activities that reasonably can be expected to affect the Ohio coastal area would be reviewed. The list may be revised by the state following consultation with the federal agency and approval by OCRM if federal law creates additional licenses or permits, or if the state

determines that other activities requiring a federal license or permit affect land and water uses of the coastal area. 15 C.F.R. § 930.53.

ODNR will monitor certain federal license and permit activities not on the list, and shall, within 30 days of receipt of the notice of application, notify the respective agencies, applicants, and the Director, OCRM, of such activities determined to affect the coastal area and that require state agency review. Otherwise, the state waives its right to review the unlisted activity.

The federal agency and applicant shall have 15 days from the receipt of ODNR's notice to provide comments to the Director, OCRM. The director shall issue a decision with supporting comments within 30 days of ODNR's notice. If the notice is disapproved by OCRM, the federal agency may approve the permit or license. If the notice is approved, the applicant shall amend the federal application by including a consistency certification and supporting information. ODNR's concurrence on the consistency certification will be conclusively presumed if ODNR does not object within six months of the original federal notice or within three months of the receipt of the applicant's certification and supporting information, whichever terminates last. 15 C.F.R. § 930.54.

*Consistency Certifications*

The applicant shall furnish to both the federal permitting agency and to ODNR a certification statement specifying that the proposed activity complies with and will be conducted in a manner consistent with the OCMP. To avoid additional paperwork burdens on federal permitting agencies and the public, the completed federal application will contain the coastal management consistency certification. The statement shall include the following: "The proposed activity complies with Ohio's approved coastal management program and will be conducted in a manner consistent with such program" (15 C.F.R. § 930.57). In the majority of cases, information required by the federal permitting agency and provided to ODNR by public notice and routine correspondence will be sufficient for consistency review purposes. A complete and satisfactory application will usually serve the requirement to furnish the certification and supporting information to ODNR (see Information Requirements for Permit Application below).

It is the responsibility of both the applicant and the permitting agency to be familiar with the OCMP. To facilitate the process, ODNR will provide a coastal management consistency form for inclusion in federal permit applications (e.g., Department of the Army, Section 10/404 permits) and distribute state coastal management policy information to applicants for federal permits or licenses. 15 C.F.R. § 930.56. Applicants and federal agencies should not presume project consistency based upon a state permit or license that may have been issued, but should examine the relevant policies of the OCMP.

*Information Requirements for Permit Applications*

If a federal license or permit application form provides sufficient information pursuant to the requirements of 15 C.F.R. § 930.58 for ODNR and the federal agency to ascertain whether the

proposed activity is consistent with the OCMP, the completed application in addition to the consistency certification may suffice to initiate formal review by ODNR, once received. If the federal application does not require information meeting the requirements of 15 C.F.R. § 930.58, the applicant shall provide the following to ODNR:

- A detailed description of the proposed activity and its associated facilities, which is adequate to permit the assessment of possible coastal area impacts;

- A copy of the federal application and all supporting information supplied to the federal agency;

- A brief assessment relating the probable coastal area effects of the proposal and associated facilities to the enforceable policies of the OCMP;

- A brief set of findings indicating that the proposed activity, associated facilities and effects are all consistent with the OCMP. 15 C.F.R. § 930.58. Upon receipt by the applicant, ODNR shall provide assistance in formulating the required consistency assessment and finding.

Public notices of applications for federal permits or licenses, including the applicant's consistency statement, are also coordinated through an intergovernmental review process. Interested persons provide comments to the federal agency and may additionally forward comments to ODNR regarding the applicant's consistency statement. Copies of all comments received will be forwarded to ODNR for use in determining consistency with the approved program. 15 C.F.R. § 930.61. Thus, the existing public notice and comment procedures will be used to ensure public participation in the OCMP consistency certification review. The OCMP will ensure that additional public participation is provided for, if necessary, including public hearings.

ODNR will begin the formal consistency review process once ODNR receives a copy of the certification and necessary supporting information. ODNR will complete reviews within reasonable time periods afforded by routine public notices whenever possible. This should be the case for most permit actions. However, ODNR may take up to six months to respond to a certification. 15 C.F.R. § 930.63. Further, the improved coordination among ODNR and other agencies should improve the overall review time for more complex projects that may require several federal and state permits and authorizations. A request by ODNR for additional information or data beyond that required in 15 C.F.R. § 930.58 will not extend the commencement date of ODNR's review.

With respect to the Department of the Army's regulatory program, in addition to individual permits that require public notice, existing coordination procedures between the Buffalo District, COE and ODNR provide for alternate forms of authorizing activities having relatively minor impacts to coastal resources. These include Letters of Permission and general permits. ODNR recognizes the value of these abbreviated forms of coordination and will adhere to procedures involving shorter review and comment periods whenever possible. Additional notification procedures will be

developed if necessary between the COE and ODNR to ensure that ODNR has knowledge of actions authorized by the COE that may also be subject to regulations or enforceable authorities of the state.

Within six months of the receipt of the applicant's consistency certification, ODNR shall notify the applicant and the federal agency whether it concurs with or objects to the consistency certification. If no decision has been made within three months, ODNR shall notify the applicant and the federal agency of the status of the review and the reasons for the delay. If ODNR does not respond within six months, concurrence by the state shall be conclusively presumed. The federal agency may not approve the license or permit following receipt of the ODNR objection to the certification unless ODNR issues a concurrence or is conclusively presumed to concur, or if on appeal by the applicant, the Secretary of Commerce finds that the proposed activity is consistent with the objectives or purposes of the CZMA or is necessary in the interest of national security. 15 C.F.R. § 930.65.

If ODNR objects to the applicant's consistency certification within six months, the objection by ODNR shall describe:

a. How the proposed activity is inconsistent with specific enforceable policies of the OCMP; and

b. Alternative measures (if they exist), which, if adopted by the applicant, would permit the proposed activity to be conducted in a manner consistent with the OCMP.

ODNR shall notify the applicant, federal agency and OCRM of its objection. The objection will include a statement informing the applicant of a right of appeal to the Secretary of Commerce, pursuant to the procedures described in 15 C.F.R. § 930, Subpart H. 15 C.F.R. § 930.63 and § 930.64.

Where possible, applicants shall consolidate related federal license and permit activities affecting the coastal area for ODNR review. ODNR will review these consolidated applications as a group to minimize duplication of effort and avoid unnecessary delays. An ODNR objection to one or more of the license or permit activities submitted for consolidated review shall not prevent the applicant from receiving those licenses or permits for activities found to be consistent with the approved program. 15 C.F.R. § 930.59.

*Mediation of Conflicts*

If a disagreement between a federal agency and the state regarding whether a listed or unlisted federal license or permit activity is subject to consistency review remains unresolved after discussions between the agency and the state, either party may seek mediation by the Secretary of Commerce as provided for in 15 C.F.R. § 930.55, described at the end of this chapter, and the applicant shall be notified of the mediation request. Pending final resolution of the conflict, the federal agency may not approve a license or permit application for an activity on the OCMP list or

for an unlisted activity for which the Assistant Administrator, NOAA, has approved the OCMP's review request. 15 C.F.R. § 930.55.

The state shall request that the federal agency take appropriate remedial action in case of a federally licensed or permitted activity that was:

a. Determined to be consistent with the OCMP but which ODNR maintains is being conducted in a manner different from that originally proposed, or has coastal effects different from those originally envisioned, and therefore is no longer consistent with the OCMP, or

b. Determined not to be an activity affecting the coastal area, but which ODNR maintains is being conducted or has coastal effects substantially different from those originally envisioned, and therefore is not consistent with the OCMP. 15 C.F.R. § 930.66

The request shall include supporting information and propose recommended action, and a copy of the request shall be provided to the applicant. If ODNR is still in serious disagreement with the federal agency after a reasonable time for remedial action, either party may seek mediation by the Secretary of Commerce, as provided for in 15 C.F.R. Part 930, Subpart G.

3. Consistency for Federal Assistance to State and Local Governments

All applications by state and local governments or any related public entity, such as a special-purpose district, for federal financial assistance for projects affecting Ohio's coastal area must be reviewed for consistency with the OCMP by ODNR, pursuant to 15 C.F.R. Part 930, Subpart F. Federal assistance programs subject to the consistency requirement are listed at the end of this chapter. The list may be modified subject to the provisions of the Coastal Zone Management Act (CZMA). Pursuant to 15 C.F.R. § 930.98, ODNR may also monitor applications for federal assistance in areas outside of the coastal area but that affect the coastal area. The area outside the coastal area within which ODNR will monitor such applications is defined as the Lake Erie watershed in Ohio (see Figure 6).

Federal agencies shall notify ODNR of applications for federal financial assistance as listed. If ODNR determines the proposed project to be inconsistent with the OCMP, the state's formal objection will be provided within the standard 60-day review period, except for any programs requiring a 30-day review period, in which case ODNR will respond within that time limit. The state's objection shall describe:

a. How the proposed project is inconsistent with specific enforceable policies of the OCMP, and

b. Alternative measures (if they exist) that, if adopted by the applicant agency, would permit the proposed project to be conducted in a manner consistent with the OCMP.

ODNR may object based on the failure of the applicant to provide necessary information. If the state objects on grounds of insufficient information, the objection must describe the nature of the information requested and the necessity of having such information to determine consistency. The objection shall include a statement informing the applicant agency of a right of appeal to the Secretary of Commerce pursuant to 15 C.F.R. Part 930, Subpart H. ODNR shall then notify the applicant agency, the federal agency, and the Director, OCRM, of the objection (15 C.F.R. § 930.96). The federal agency may not grant the financial assistance if the state determines it to be inconsistent with the OCMP. If ODNR objects to a consistency certification, only upon appeal by the applicant and a finding by the Secretary of Commerce that the proposed activity is consistent with the objectives or purposes of the CZMA or is necessary in the interest of national security may the federal agency approve the activity. 15 C.F.R. § 930.120, 930.97.

If ODNR determines that an application for federal assistance outside of Ohio's coastal area is subject to the consistency requirement, ODNR shall immediately notify the applicant agency, the federal agency, and the Director, OCRM. Any objection by ODNR to the proposed activity shall be made according to the schedule described above. The federal agency may not grant the financial assistance unless the state finds the project consistent with the enforceable policies of the OCMP or except as provided in 15 C.F.R. Part 930, Subpart H.

*Mediation of Conflicts*

If a serious disagreement between a federal agency and Ohio regarding whether a federal assistance activity is subject to consistency review remains unresolved after discussions between the agency and the state, either party may seek mediation by the Secretary of Commerce as provided for in 15 C.F.R. Part 930, Subpart G, described at the end of this chapter. Pending resolution of the conflict, the federal agency may not grant the federal assistance.

If ODNR objects to a proposed project, the federal agency may grant the assistance only upon appeal by the applicant agency and a finding by the Secretary of Commerce that the proposed activity is consistent with the objectives or purposes of the CZMA or is necessary in the interest of national security. 15 C.F.R. Part 930, Subpart H.

ODNR shall request that the federal agency take appropriate remedial action in case of a federally assisted activity that was:

a. Determined to be consistent with the OCMP but which ODNR maintains is being conducted in a manner different from that originally proposed, or has coastal effects different from those originally envisioned, and therefore is no longer consistent with the OCMP, <u>or</u>

b. Determined not to be a project affecting the coastal area, but that ODNR maintains is being conducted or has coastal effects substantially different from those originally envisioned, and therefore is not consistent with the OCMP. 15 C.F.R. § 930.100.

The request shall include supporting information and propose recommended action, and a copy of the request shall be sent to the applicant. If ODNR is still in serious disagreement with the federal agency after a reasonable time for remedial action, either party may seek mediation by the Secretary of Commerce, as provided for in 15 C.F.R. Part 930, Subpart G.

Conflict Resolution

ODNR shall attempt to resolve the dispute directly with the federal agency in case of a dispute between a federal agency and Ohio regarding:

- A determination of whether a proposed activity affects the coastal area and therefore is subject to a consistency review; or
- A determination of the consistency with the OCMP of a proposed activity affecting the coastal area; or
- A determination of whether a listed or unlisted federal license or permit activity is subject to consistency review; or
- A determination that a federal assistance activity is subject to consistency review; or
- Actual compliance with the OCMP of an activity previously determined to be consistent,

If the dispute is not resolved at this level, either party may request informal negotiations by OCRM or formal mediation by the Secretary of Commerce, pursuant to the provisions of 15 C.F.R. § 930, Subpart G.

Federal Activities And Development Projects;
Licenses And Permits; And Assistance
Subject to Federal Consistency Requirements

I. Direct Federal Activities and Development Projects

A federal agency must provide ODNR with a consistency determination for any activity affecting any land or water use or natural resource of Ohio's coastal area whether or not the activity is on this list. The following list is provided to highlight those activities reasonably likely to affect the coastal area.

*Department of Defense, Army Corps of Engineers*

- Dredging, channel improvement, breakwaters, other navigational works, erosion control structures, beach replenishment, dams or flood control works, ice management practices and activities and other projects with the potential to impact coastal lands and waters.
- Land acquisition or disposal for spoil disposal or other purposes.
- Selection of disposal sites for dredged material from federal harbors and navigation channels.

*Department of Defense, Air Force, Army, and Navy*

- Location, design, and acquisition of new or expanded defense installations (active or reserve status including associated housing, transportation or other facilities).
- Plans, procedures and facilities for handling storage use zones.
- Establishment of impact, compatibility or restricted use zones.
- Disposal of Defense property.

*Department of Energy*

- Prohibition orders.

*Environmental Protection Agency*

- Activities conducted under the Resource Conservation and Recovery Act (RCRA) of 1976.
- Activities conducted under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980.

*General Services Administration*

- Acquisition, location and design of proposed federal government property or buildings, whether leased or owned by the federal government.

- Disposition of federal surplus lands and structures.

*Department of the Interior, Bureau of Land Management*

- Oil and gas leasing on federal lands.

*Department of the Interior, Fish and Wildlife Service*

- Management of National Wildlife Refuges; land acquisition.

*Department of the Interior, National Park Service*

- National Park Service unit management; land acquisitions

*Department of Justice, U.S. Marshals Service*

- Disposition of property acquired by the Marshals Service.

*Department of Transportation, Coast Guard*

- Location and design, construction or enlargement of Coast Guard stations, bases and lighthouses.

- Location, placement or removal of navigation devices that are not part of the routine operations under the Aids to Navigation Program (ATON).

- Expansion, abandonment, designation of anchorages, lighting areas or shipping lanes and ice management practices and activities.

*Department of Transportation, Federal Aviation Administration*

- Location and design, construction, maintenance and demolition of federal aids to air navigation.

*Department of Transportation, Amtrak, Conrail*

- Expansions, curtailments, new construction, upgradings or abandonments of railroad facilities or services, in or affecting the state's coastal area.

*Department of Transportation, Federal Highway Administration*

- Highway construction.

II. Federal Licenses and Permits

*Department of Defense, Army Corps of Engineers*

- Construction of dams, dikes, or ditches across navigable waters, or obstruction or alteration of navigable waters required under Sections 9 and 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401, 403).

- Establishment of harbor lines pursuant to Section 11 of the Rivers and Harbors Act of 1899 (33 U.S.C. 404, 405).

- Occupation of seawall, bulkhead, jetty, dike, levee, wharf, pier or other work built by the U.S. pursuant to Section 14 of the Rivers and Harbors Act of 1899 (33 U.S.C. 408).

- Approval of plans for improvements made at private expense under USACE supervision pursuant to the Rivers and Harbors Act of 1902 (33 U.S.C. 565).

- Disposal of dredged or fill material into the waters of the U.S. pursuant to the Clean Water Act, Section 404 (33 U.S.C. 1344).

- All actions for which permits are required pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

*Federal Energy Regulatory Commission*

- Licenses, renewals or amendments to licenses for nonfederal hydroelectric projects and primary transmission lines under Sections 3(11), 4(e), and 15 of the Federal Power Act (16 U.S.C. 796 (11), 797 (11), and 808).

- Orders for interconnection of electric transmission facilities under Section 202(b) of the Federal Power Act (15 U.S.C. 824 a (b)).

- Certificates for the construction and operation of interstate natural gas pipeline facilities, including both pipelines and terminal facilities under Section 7 © of the Natural Gas Act (15 U.S.C. 717 f (c)).

- Permission and approval for the abandonment of natural gas pipeline facilities under Section 7 (b) of the Natural Gas Act (15 U.S.C. 717 f(b)).

- Regulation of gas pipelines, and licensing of import and export of natural gas pursuant to the Natural Gas Act (15 U.S.C. 717) and the Energy Reorganization Act of 1974.

- Exemptions from prohibition orders.

*Environmental Protection Agency*

- NPDES permits and other permits for federal installations, sludge runoff and aquaculture permits and all other permits pursuant to Sections 401, 402, 403, 405, and 318 of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1341, 1342, 1343, and 1328).

- Permits pursuant to the Resource Conservation and Recovery Act (RCRA) of 1976.

- Permits pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980.

- Permits pursuant to the underground injection control program under Section 1424 of the Safe Water Drinking Water Act (42 U.S.C. 300 h-c).

- Permits pursuant to the Clean Air Act of 1976 (42 U.S.C. 1857).

*Department of the Interior, Fish and Wildlife Service*

- Fish and wildlife coordination (17 U.S.C. 661-667).

- Endangered species permits pursuant to the Endangered Species Act (16 U.S.C. 153 (a)).

*Interstate Commerce Commission*

- Authority to abandon railway lines (to the extent that the abandonment involves removal of trackage and disposition of right-of-way); authority to construct railroads; authority to construct coal slurry pipelines.

*Nuclear Regulatory Commission*

- Licensing and determination of the siting, construction and operation of nuclear generating stations, fuel storage, and processing centers pursuant to the Atomic Energy Act of 1954, Title II of the Energy Reorganization Act of 1974 and the National Environmental Policy Act of 1969.

*Department of Transportation, Coast Guard*

- Construction of modification of bridges, causeways or pipelines over navigable waters pursuant to 49 U.S.C. 1455.

- Hazardous substances and materials (33 U.S.C. 419).

- Marine event permits (46 U.S.C. 454, 33 C.F.R. 100.15).

*Department of Transportation, Federal Aviation Administration*

- Permits and licenses for construction, operation or alteration of airports.

III. Federal Assistance

(NOTE: Numbers refer to the Catalog of Federal Domestic Assistance Programs.)

*Department of Agriculture*

- 10.025 Plant and Animal Disease and Pest Control
- 10.405 Farm Labor Housing Loans and Grants
- 10.414 Resource Conservation and Development Loans
- 10.415 Rural Rental Housing Loans
- 10.418 Water and Waste Disposal Systems for Rural Communities
- 10.419 Watershed Protection and Flood Prevention Loans
- 10.420 Rural Self-Help Housing Technical Assistance
- 10.422 Business and Industrial Loans
- 10.423 Community Facilities Loans
- 10.424 Industrial Development Grants
- 10.433 Rural Housing Preservation Grants
- 10.854 Rural Economic Development Loan and Grant Program
- 10.901 Resource Conservation and Development
- 10.904 Watershed Protection and Flood Prevention
- 10.906 River Basin Surveys and Investigations

*Department of Commerce*

- 11.300 Economic Development – Grants and Loans for Public Works and Development Facilities
- 11.302 Economic Development – Support for Planning Organizations
- 11.303 Economic Development – Technical Assistance
- 11.304 Economic Development – Public Works Impact Projects
- 11.305 Economic Development – State and Urban Area Economic Development Planning

- 11.307 Special Economic Development and Adjustment Assistance, Sudden and Severe Economic Dislocation (SSED) and Long-Term Deterioration (LTED)
- 11.405 Anadromous and Great Lakes Fisheries Conservation
- 11.407 Interjurisdictional Fisheries Act of 1986
- 11.417 Sea Grant Support
- 11.419 Coastal Zone Management Program Administration
- 11.420 Coastal Zone Management Estuarine Research Reserves
- 11.427 Fisheries Development and Utilization Research/Development Grants/Coop Agreements
- 11.550 Public Telecommunications Facilities - Construction and Planning

*Department of Defense*

- 12.101 Beach Erosion Control Projects
- 12.104 Flood Plain Management Services
- 12.105 Protection of Essential Highways, Highway Bridge Approaches, and Public Works
- 12.106 Flood Control Projects
- 12.107 Navigation Projects
- 12.108 Snagging and Clearing for Flood Control
- 12.109 Protection, Clearing and Straightening Channels
- 12.110 Planning Assistance to States
- 12.610 Joint Military/Community Comprehensive Land Use Plans

*Department of Housing and Urban Development*

- 14.170 Congregate Housing Services Program
- 14.174 Housing Development Grants
- 14.218 Community Development Block Grants/Entitlement Grants
- 14.219 Community Development Block Grants/Small Cities Grants

*Department of the Interior*

- 15.600 Anadromous Fish Conservation
- 15.605 Sport Fish Restoration
- 15.611 Wildlife Restoration
- 15.612 Endangered Species Conservation
- 15.614 North American Wetlands Conservation
- 15.616 Clean Vessel Act
- 15.904 Historic Preservation Fund Grants-In-Aid
- 15.910 National Natural Landmarks Program
- 15.916 Outdoor Recreation – Acquisition, Development and Planning

*Department of Transportation*

- 20.005 Boating Safety Financial Assistance
- 20.106 Airport Improvement Program
- 20.205 Highway Planning and Construction (Including Intermodal Surface Transportation Efficiency Act Programs)
- 20.219 National Recreation Trails Program
- 20.308 Local Rail Service Assistance Program
- 20.500 Urban Mass Transportation Capital Improvement Grants
- 20.509 Public Transportation for Nonurbanized Areas
- 20.801 Development and Promotion of Ports and Intermodal Transportation
- 20.998 Transportation Improvement Program

*General Services Administration*

- 39.002 Disposal of Federal Surplus Real Property

*National Foundation on the Arts and the Humanities*

- 45.007 Promotion of the Arts – State Programs
- 45.023 Promotion of the Arts – Local Programs

*Department of Veterans Affairs*

- 64.005 Grants to States for Construction of State Home Facilities

*Environmental Protection Agency*

- 66.001 Air Pollution Control Program Support
- 66.419 Water Pollution Control – State and Interstate Program Support
- 66.432 State Public Water System Supervision
- 66.433 State Underground Water Source Protection
- 66.435 Water Pollution Control – Lake Restoration Cooperative Agreements
- 66.438 Construction Management Assistance
- 66.454 Water Quality Management Planning
- 66.456 National Estuary Program
- 66.458 Capitalization Grants for State Revolving Funds
- 66.500 Environmental Protection – Consolidated Research
- 66.501 Air Pollution Control Research
- 66.502 Pesticides Control Research
- 66.504 Solid Waste Disposal Research
- 66.505 Water Pollution Control – Research, Development, and Demonstration
- 66.506 Safe Drinking Water Research and Demonstration

- 66.507 Toxic Substances Research
- 66.600 Environmental Protection Consolidated Grants – Program Support
- 66.700 Pesticides Enforcement Program
- 66.701 Toxic Substances Compliance Monitoring Cooperative Agreements
- 66.702 Asbestos Hazards Abatement (Schools) Assistance
- 66.801 Hazardous Waste Management State Program Support
- 66.802 Hazardous Substance Response Trust Fund
- 66.804 State Underground Storage Tanks Program
- 66.805 Underground Storage Tank Trust Fund
- 66.807 Superfund Innovative Technology Evaluation Program (SITE)
- 66.808 Hazardous Waste; Integrated Training and Technical Assistance – Interstate

*Department of Energy*

- 81.041 State Energy Conservation
- 81.049 Basic Energy Sciences, High Energy or Nuclear Physics, Magnetic Fusion Energy, Health and Environmental Research, Program Analysis and Field Operations Management

*Federal Emergency Management Agency*

- 83.503 Civil Defense – State and Local Emergency Management Assistance
- 83.513 State and Local Warning and Communication Systems
- 83.516 Disaster Assistance

# CHAPTER 8

## EROSION MITIGATION PROCESS

Shore erosion is one of the most significant problems facing owners of property fronting Lake Erie. A planning process to provide guidelines for addressing this problem includes:

1. Assessing the rate at which the Ohio lakeshore has receded, due to shore erosion, within historical time and the natural and cultural factors that have influenced those rates.

2. Identifying enforceable policies, legal authorities, and sources of financial and technical assistance to manage the effects of erosion.

### Assessing Erosion

ODNR's Division of Geological Survey studied shore erosion in the eight Ohio counties bordering Lake Erie. Field studies and office studies examined the physical setting (e.g.,shore stratigraphy, shore relief, shore orientation, beach width, nearshore slopes, nearshore sediment, wave climate) and the cultural setting (e.g., land use, shore protection structures) that influence the rate of recession, both through time and along shore. In addition, recession-line maps were prepared using charts from 1876-1877, aerial photographs from the late 1930s and aerial photographs from 1973. These recession-line maps are perhaps the most important aspect of the shore erosion studies because they show how the rate of shore recession changes through time and along shore. By relating these temporal and geographic changes in recession rates to changes observed in the physical and cultural setting, many of the temporal and geographic changes in shore recession can be explained.

As part of the OCMP, an updated recession line map will be used to designate Lake Erie coastal erosion areas. This map, like its predecessor, will also be used to study how changes in the physical and cultural setting affect recession rates. Using information from the earlier study and from the mapping done to designate Lake Erie coastal erosion areas, the State of Ohio will continue to assess the effects of shore erosion and to evaluate techniques for mitigating erosion and restoring areas adversely affected by erosion.

Additional studies of coastal erosion along the Ohio shore of Lake Erie are being conducted under a five-year (1991-1996) cooperative agreement between ODNR's Division of Geological Survey and the U.S. Geological Survey. A major thrust of the study will be to develop a sediment budget for the Ohio lakeshore by tying together many aspects of the geologic framework and coastal processes. Detailed maps of bluff stratigraphy, surficial sediment and subsurface sediment will provide a better picture of the type of sediment introduced to the lake each year and how it is dispersed. Detailed recession-line maps, building on mapping done to designate Lake Erie coastal erosion areas, will be used to better determine how much sediment is annually introduced to the lake.

The results of this five-year study will directly benefit the OCMP, in part by improving the knowledge base used to determine whether and how to mitigate site-specific erosion problems.

In addition to conducting and participating in shore erosion studies, the State of Ohio also cooperates closely with the U.S. Army Corps of Engineers (COE) on erosion control projects such as Section 103 Small Beach Erosion Projects, Section 111 Mitigation Studies, and other specifically authorized projects. Close cooperation and coordination between ODNR and COE will assure that these projects are consistent with the OCMP.

Process to Manage Effects of Erosion

Management of the effects of erosion is addressed through pertinent legal authorities and administrative processes described in the section on "Coastal Erosion and Flooding" in Chapter 5. These include: (1) designation of Lake Erie Coastal Erosion Areas (O.R.C. § 1506.06), (2) enforcement of a permit program for construction activities in coastal erosion areas (O.R.C. § 1506.07), (3) notification of buyers regarding coastal erosion area status of property being transferred (O.R.C. §1506.06) and (4) administration of a permit system for erosion control measures (O.R.C. § 1507.04).

Technical and Financial Assistance

A variety of technical and financial assistance efforts are used to mitigate shore erosion problems. The purpose of the assistance is to provide the information compiled by the state to public and private lake shore property owners and to provide for public information, education and technical guidance on methods of shore protection.

The Division of Geological Survey is directed to identify Lake Erie coastal erosion areas, i.e., the land area anticipated to be lost by Lake Erie-related erosion within a 30-year period if no additional approved erosion control measures are completed within that time (O.R.C. § 1506.06(A)).

The Division of Engineering, ODNR, under O.R.C. § 1507.10, is authorized to prepare a shore erosion plan for Lake Erie (in cooperation with the Division of Geological Survey) and a shore erosion technical assistance program for county and local governments and for lakeshore property owners.

O.R.C. § 1506.07 provides that any county or municipal government may assume administration of the permit requirement if the local government adopts sufficient regulations. To assist local governments in developing such measures, ODNR can provide model ordinances and direct technical assistance to communities upon request.

In areas where erosion control structures are necessary to manage erosion impacts, ODNR will provide technical guidance on methods of shore protection and associated costs. Other technical

assistance efforts will take the form of individual consultations with property owners and local governments on matters relating to shore protection and coastal processes.

Limited financial assistance for erosion control is available through ODNR (O.R.C. § 1507.06). The funds are derived from the granting of leases and the royalties paid pursuant to O.R.C. § 1505.07 for the removal of sand, gravel, stone, gas, salt and other minerals from and from under the bed of Lake Erie. The state, acting through ODNR, may use these funds to construct and maintain projects to prevent, correct and arrest erosion of public property along the Ohio shore of Lake Erie by entering into agreements with counties, municipal corporations, townships, park boards and conservancy districts or any other state or division. The cost shall be prorated on the basis of two-thirds of the cost to the state and one-third of the cost to the benefiting public agency. O.R.C. § 1507.06 does not authorize the State of Ohio to deal directly with private property owners in setting up an erosion control project.

The State of Ohio, through ODNR, encourages and assists local governments and lakeshore residents in establishing conservancy districts for erosion control. Communities interested in establishing conservancy districts will be given technical assistance. Funds from the Ohio Coastal Management Assistance Grant Program may be available to conservancy districts for the purposes of developing erosion control plans and projects. Such studies may include, but will not be limited to, feasibility studies for methods of control, research for overcoming economic and technical impediments to beach nourishment, and incorporation of vegetation into control projects. State financial assistance is available to conservancy districts for erosion control from the special account pursuant to O.R.C. § 1507.06 as described above. It is the policy of ODNR to give financial assistance for operating expenses to conservancy districts when they are first being established. Such "seed money" could be used to organize the district and initiate the plans for controlling erosion.

The Ohio Sea Grant Program provides technical assistance to lakeshore property owners on controlling shore erosion. Sea Grant has four extension agents specializing in Lake Erie matters. These agents work with contractors and lakeshore property owners to educate them about erosion control measures and provide other technical information.

Pursuant to Section 103 of the Rivers and Harbors Act of 1962, as amended, the COE may provide financial and technical assistance to state and local governments to control beach and shore erosion on public property. Unlike many COE projects, Section 103 projects do not need specific authorization from Congress. However, each project must be engineeringly sound, environmentally acceptable and economically justified. The COE designs and constructs the project, and the local government must furnish evidence of legal authorization, financial capability and willingness to provide all necessary local participation and cooperation. The determination of local cost is based upon the value of the property being protected and the use of the property by the public. Federal participation cannot exceed $2,000,000, or 50 percent of the project costs, whichever is lower.

# CHAPTER 9

## SHOREFRONT ACCESS AND PROTECTION PLANNING

Ohio's Lake Erie shore and waters historically have been valued as a unique recreational resource. Increasing numbers of Ohio's citizens and out-of-state travelers visit the area for fishing, swimming, boating, sunbathing, nature watching, hiking, biking, camping and other activities. Most people must rely upon the government (or, in the case of marinas, primarily private industry) for access to areas providing these recreational opportunities. In Ohio, shoreline and water access is provided primarily through state and local parks, natural areas and preserves, wildlife refuges and management areas (federal and state), and fishing access and boat launching sites. Of these, most state and local parks and some preserves encompass public beaches and are managed in part with provision of public beach access as a priority.

An analysis of the supply of existing facilities and properties providing access and an assessment of trends in needs and demand is presented after the description of Ohio's shorefront access planning processes.

To provide special management attention to public beaches and other public coastal areas of environmental, recreational, historic, aesthetic, ecological or cultural value, the OCMP has a shorefront access and protection planning process that entails:

1. Procedures for assessing public beaches and other public areas that require access or protection, and a description of appropriate types of access and protection.

2. An identification and description of policies, authorities, programs and other techniques that will be used to provide such access and planning.

### Procedures

*Special Management Areas*

The OCMP uses the process of nominating and designating Special Management Areas (SMAs) as a means to assess public beaches and other public areas requiring access or protection. As described in Chapter 6, any type of public area requiring access or protection can be nominated as an SMA. State Nature Preserves and Wildlife Areas, Public Parks and Access Areas, Wetlands, and Historic and Archaeological sites are all designated as generic APCs, as described in Chapter 6. As stated in Chapter 6, highest priority shall be given to uses that provide public access and promote public recreation in areas identified as Public Parks and Access Area APCs. Providing public access also may be a priority goal or component of the planning framework for each of the other types of APCs mentioned above, depending upon the particular resource base and existing facilities. OCMP policies and authorities for providing access within these areas are explained in Chapter 5, Policies 13, 21, 22, 23 and 24.

*Statewide Comprehensive Outdoor Recreation Plan*

The Statewide Comprehensive Outdoor Recreation Plan (SCORP) is the major tool in Ohio for assessing recreational needs for public beaches and other access sites and facilities. ODNR, REALM, is the lead office responsible for developing the SCORP. REALM assesses state recreational needs, translates these needs into policy statements, and develops action plans that can be used to implement the policies. Also, SCORP provides estimates of current participation. The estimate of current participation and the need for recreational facilities provides a basis for the projection of future recreational participation and investment in public and private recreational facilities and programs.

The methodology used to assess current and future participation and facility needs involves a comparison of the present supply of facilities with an estimate of participation. The supply of recreational facilities is measured by a statewide recreational facilities inventory. An estimate of demand (participation) is obtained by a citizens user survey, which samples the recreational participation habits of both Ohioans and residents of surrounding states. Facility figures are then computed using supply, demand and facility standards information.

On a statewide or regional level, use of the methodology helps planners determine the relative scarcity or abundance of recreation facilities and resources. The needs analysis cannot, however, be used as the sole basis for informed decision making. Because of the gross levels of analysis that characterize SCORP, local or intraregional variances may be masked by a blanket statement about a particular region or activity. Individual local situations are not addressed in SCORP; regional analysis should be viewed as stepping-off points for local planners and officials. Comprehensive local recreational plans are not required from local communities as a part of SCORP; however, local communities are encouraged to develop comprehensive plans for shoreline recreation. OCMP Program funds can be used to develop such plans.

*Lake Erie Access Program*

In 1983 the Lake Erie Access Program (LEAP) was initiated by ODNR, REALM, as a result of needs identified in the SCORP planning process. The divisions of Watercraft and Wildlife recommended that Lake Erie boating and fishing activities be monitored to establish a database from which trends could be determined. The study included an inventory of all public and private access sites along the Lake Erie shoreline. Also, a survey of sport fishing and boater interests and needs was done to provide comparative data for analysis. The analysis of this data provided insight into the recreation opportunities on Lake Erie.

Once the study results were reviewed, plans began for the development of a public assistance program that would provide up to 50 percent matching funds to local public agencies for the renovation and development of boating and fishing facilities. The original funding source was a combined effort provided by both of the sponsoring divisions until a permanent source could be arranged. After 1986, LEAP was funded by general revenues from the ODNR Capital Improvements

budget. In 1994, with passage of State Issue #1, funding in the amount of $1.75 million was made available through the NatureWorks funding programs.

The Director, ODNR, through REALM, is statutorily charged with providing and maintaining a current inventory of public access facilities on Lake Erie, including parks, cultural resources, natural areas, wildlife refuges, harbors of refuge, launch ramps, fishing areas and beaches. Plans and policy recommendations for enhancing access are required every five years (O.R.C. § 1506.05). This authority provided the basis for a revised Lake Erie Access Study conducted in 1991 (unpublished).

*Refuge Harbors*

The Division of Watercraft in ODNR is the refuge harbor agency for the State of Ohio. The division participates and cooperates with the Corps of Engineers (COE) in planning, acquiring, constructing and maintaining refuge and shallow-draft vessel harbor projects in the State of Ohio. The division will develop refuge harbors only with the cooperation of the COE. Refuge harbor programs proposed by local communities are joint local-state-federal ventures.

The COE has conducted several studies of the Ohio waters of Lake Erie to assess the need for harbors of refuge. Initially, the COE examined the shores of Lake Erie for harbors of refuge for shallow-draft vessels in July 1946. The report recommended additional facilities to serve as harbors and natural shelters along the south shore of Lake Erie. Twenty-two sites were recommended for more detailed study. They were: Ottawa River, Cooley Creek, Turtle Creek, Port Clinton, East Harbor, Put-in-Bay, Hummell Pond (Kelleys Island), Sandusky, Huron, Vermilion, Lorain, Avon Lake, Rocky River, Edgewater Lagoon, Gordon Park, White City Park, Chagrin River, Mentor, Fairport Harbor, Arcola Creek, Ashtabula and Conneaut.

The development of refuge harbors in Ohio has been based on the recommendations of this 1946 Corps report; and, according to the Corps, developed refuge harbors on Lake Erie are now sufficient to accommodate the need.

*Natural Areas*

Although most of Ohio's shoreline is developed, several natural areas exist that need protection and access. The State of Ohio uses its Natural Areas Program managed by ODNR, Division of Natural Areas and Preserves (DNAP), to determine natural area preservation needs in Ohio.

The Natural Areas Program in the DNAP provides for protection of areas through dedication and management of areas as state nature preserves (O.R.C. § 1517.05, 1517.06). There are already several areas dedicated as state nature preserves along the shoreline. The Natural Areas Program uses the information from the Natural Heritage Database to develop a list of areas to be acquired and to prioritize that list.

As a dedicated nature preserve, the area is held in trust for the people of Ohio subject to the terms of the dedication. The chief of DNAP determines the types of uses that the area can support, and therefore regulates the degree of access and protection provided in each nature preserve. For each nature preserve, a master plan is developed that illustrates the degree of access, protection and additional area required to complete the preserve.

The goal of the DNAP is to establish a system of nature preserves through acquisition and dedication of natural areas of state or national significance. The division maintains surveys and inventories of natural areas and habitats of rare and endangered species of plants and animals through its Natural Heritage Database. As resources permit, the division updates and refines this information, locating the elements of the natural world that, if preserved, will preserve diversity. Habitats of vulnerable plant and animal species, representative examples of ecological communities, and unique or outstanding natural features are located. With this information, the Natural Areas Program can evaluate and select the best areas for protection.

The Natural Heritage Database results in a more comprehensive identification of Ohio's biological resources than was possible with previous inventories. This is accomplished through its element-based approach, which focuses first on the components of natural diversity. An element is a natural feature of particular interest because it is exemplary, unique or endangered on a statewide or national basis.

*Boating Facilities*

The State of Ohio relies on several means to assess the needs for public boating facilities for access to Lake Erie other than refuge harbors. ODNR, Division of Watercraft, has two district offices along the Lake Erie coast. The watercraft officers observe the utilization and condition of public boating facilities for access to Lake Erie. Through such field observations and contact with the boating public, the Division of Watercraft assesses the need for additional boating access to Lake Erie.

Many communities along the shoreline have or would like to have developed boating facilities for access. It is the responsibility of the local communities to maintain and improve these facilities, and thus they determine the amount and type of access at these areas. The State of Ohio only becomes involved with local projects as requests are received from the local communities for financial assistance in constructing boating facilities. The division is instrumental in determining the size of the access facility, based on budgetary and design constraints. The State of Ohio also meets the needs for access to Lake Erie for recreational boating by constructing facilities on state-owned lands. For state parks and wildlife areas, master plans have been developed, and needs for access for recreational boating are taken into account. The development of boating facilities is based on demand analysis for each site, taking into consideration other private and public facilities in the area.

*Islands*

The State of Ohio undertook a study in 1977 of the resources of the Lake Erie islands. The report, *Resources of the Lake Erie Island Region,* includes an inventory of the islands' resources and an analysis of the characteristics that contribute to the islands' uniqueness. The report recommends actions for state and local governments to preserve the islands' qualities, to provide access, and to protect specific areas of the islands and several entire islands. The State of Ohio uses the recommendations of that study in terms of its priorities for acquisition of islands and acquisition for access and protection.

*Cultural Sites*

The Ohio Historical Society (OHS) is responsible for maintaining the State Registry of Historic Landmarks and the Registry of Archaeological Landmarks, nominating sites for the National Register of Historic Places, and acquiring and maintaining historic and archaeological sites as state memorials. Through the state registries and the Ohio Historic Inventory, the OHS surveys and assesses the historic and archaeological sites in the coastal area. Two regional offices in the coastal area for both historic and archaeological preservation enhance the inventorying effort. Designation of sites on the State Registry or National Register provides protection to the areas in terms of consideration in publicly funded projects and gives them a high priority for financial assistance.

Local and county historical societies acquire and protect landmarks of local significance. Such areas are eligible for preservation grants from the OHS. The county historical societies develop plans for protection of the areas as a part of the acquisition and restoration functions.

Programs

Management policies governing the extent to which provision for public access and protection is provided for with respect to historic sites, natural areas, wetlands, wildlife areas, development on leased submerged lands and other areas are described in Chapter 5, Policies 12, 13,14, 16, 21-27 and 29. OCMP policies directed toward direct acquisition and/or support for acquisition by other entities specifically for public access are detailed in Chapter 5, Policy 21. The following is a description of financial and technical assistance programs that assist in these efforts.

*Land and Water Conservation Fund and NatureWorks*

Over the years, ODNR has directed Land and Water Conservation Fund (LWCF) monies to specific priority areas, including state park development and community parks and recreation. NatureWorks, created in 1994, serves a similar purpose. Applications for NatureWorks and LWCF assistance are reviewed and projects selected for funding in ODNR, REALM, are subject to the following process:

1. The political subdivisions must submit applications to ODNR by July 1 each year to be considered. Following receipt of the application, it is immediately acknowledged by the department, so that the applicant is aware that processing of the application has been started. The staff reviews the proposal to determine the applicant's eligibility to participate in either the NatureWorks or the LWCF program. The application is checked for adequacy of form and content. If the application is found unacceptable in any area, the applicant will be notified, and all processing stops until the application is in a completed form. It will be to the applicant's advantage to exercise the greatest care in preparation of the application form. If the application is declared acceptable, processing will continue.

2. After the state has received its annual fiscal allocation, all proposals are reviewed by ODNR for qualification and priority rating. The local government will be notified in writing of the approval or disapproval of its application.

3. Selected LWCF project proposals are submitted to the regional National Park Service (NPS) office for possible federal funding. If the project is approved by NPS, a signed agreement is returned to the state.

4. Two legal contracts are signed to assure the project will receive 50 percent reimbursement by the federal government. The first contract is between the State of Ohio and the local government. After the signing of the state and local agreement, a copy of the same and a copy of the federal agreement and the procedural guide will be sent to the local government. The local government can then proceed with the project as described in the contracts. Under NatureWorks projects, only the state and local agreement is used.

*Waterways Safety Fund*

The State of Ohio through the Division of Watercraft administers a financial and technical assistance program to local governments in the development and construction of boat launching areas and other boating access facilities. This program is financed from the Waterways Safety Fund. Eligible projects are funded on a matching basis, with the local government assuming responsibility for continuing operation and maintenance.

The application process to obtain Waterways Safety Fund assistance for watercraft facilities and the process for project construction follow:

1. A letter of application, signed by the person vested with authority to make such request, shall be submitted by the political subdivision desiring such cooperative project; this shall be accompanied by the Division of Watercraft's form, to be fully and accurately filled out. The deadline for submissions is July 1 each year.

2. Upon receipt of such letter and form, the Division of Watercraft will arrange with local officials to inspect the site of the proposed project to ascertain its general feasibility and

the public need for such project. The applicant may be requested to provide additional information.

3. If the project is accepted for funding, an agreement will be signed with the subdivision. The agreement will provide details relating to the construction, operation and maintenance of a project.

4. The executed agreement, accompanied by a Resolution or Act of the governing body of the political subdivision or agency certifying that their share of the funds necessary for the completion of the project as mutually agreed upon is available, will be submitted to the State Controlling Board with a request that the state's share be made available from the Waterways Safety Fund.

5. Plans and specifications to meet cost estimates will be negotiated with the applicant.

6. Final plans, specifications, cost estimates and bid forms to be used, will be approved and signed by the Chief Engineer and the Chief of the Division of Watercraft. Upon state approval, the subdivision will proceed to advertise for construction bids.

7. If an acceptable bid within the estimate is received, the subdivision will submit three copies of the bid tabulations to the Division of Engineering with a recommendation as to the bid to be accepted. The state will review the bidding and authorize the participating agency to award the contract.

8. The subdivision shall award the construction contract to the successful bidder.

9. The subdivision may submit an advance disbursement schedule in accordance with contractor's estimates. The subdivision may request reimbursement from the state in accordance with the approved disbursement schedule.

10. All contractor payment estimates, both periodic and final, are to be submitted by the contractor to the supervising engineer of the cooperating agency or subdivision, who will approve such estimates for payment.

11. The agency or subdivision accepts the responsibility to inspect the work on the project, subject to final approval of the Chief Engineer and the Director of ODNR prior to payment of the contractor's final estimate.

12. The subdivision agrees to operate and maintain the project without cost to the state for the life of the project as stated in the agreement (item 3 above).

The Waterways Safety Fund also provides the state share for projects providing access through the refuge harbor program carried out jointly with the COE.

*Additional Financial and Technical Assistance Sources*

Technical assistance to other state and local agencies is available through the DNAP for the identification of natural areas, sensitive habitats and other areas that need protection. Financial assistance is available to local communities through NatureWorks and LWCF for natural area acquisition.

The Ohio Historical Society offers technical and financial assistance for the protection of historical and archaeological areas. Grants for restoration and preservation projects and survey and planning studies are available through the Ohio Historical Society.

The Lake Erie Office assists local and state governments by advocating public access to Lake Erie, coordinating with local communities on the availability of funds and programs, and assisting in the development of applications. Financial assistance from the Coastal Management Assistance Grant Program will be available to state and local agencies to conduct planning and feasibility studies on access and protection. The State of Ohio intends to use federal Coastal Zone Management Act (CZMA) funds, Sections 315(b) and 306(a), for acquisition of access to shoreline public areas and acquisition of islands.

Existing Facilities, Trends and Needs

Both the 1993 Ohio SCORP and the 1991 LEAP document an increasing demand for recreational access opportunities of all types, both statewide and within the Lake Erie region. Water quality improvements and the comeback of Ohio's waterfront during the 1980s likewise encouraged an increase in the number of boating, fishing, camping and vacation resort facilities and charter boat fishing services. Many sites identified by the 1983 LEAP study as having potential for shoreline fishing or boating access now do provide access, due in part to the impetus of LEAP and the cooperation of local agencies. The following is a list of projects that benefitted from LEAP, LWCF and the Waterways Safety Fund since the 1983 LEAP study.

*Lake Erie Access Program*

Avon Lake, Miller Road Boat Launch
Conneaut Boat Launch
Sandusky Boat Launch
Vermilion, West River Road Boat Launch
Cleveland Lakefront State Park Docks
Fairport Harbor Boat Launch Expansion
Cleveland Metroparks System, Rocky River Boat Launch
Lorain Harbor Fishing Access
Willowick Fishing Pier
Euclid, Sims Park Fishing Access
Ashtabula Township, Lakeshore Park Boat Launch
Sheldon Marsh Expansion

*Land and Water Conservation Fund*

Geneva State Park
Ashtabula, Walnut Beach
Rocky River, Lake Edge Park
Cleveland, Flats Park
Cleveland Lakefront State Park
Lake County, Lake Shore Beach
Willowick, Community Park
Sheffield Lake Boat Launch
Toledo, International and Promenade Parks and Maumee Riverfront Park
Maumee Bay State Park
Toledo Metropolitan Park District, Maumee River
East Harbor State Park
Port Clinton, Lakefront Park

*Waterways Safety Fund*

Geneva-on-the-Lake Boat Ramp
Ashtabula Township Park Boat Ramp
Conneaut Boat Ramp
Cleveland Lakefront State Park, Wildwood Unit Boat Ramp
Willow Point Wildlife Area Improvements
Sandusky Launch Ramp
Vermilion Launch Ramp
Chagrin River Entrance Improvements
Avon Lake Launch Ramp
Cullen Park and Walbridge Park Launch Ramps
East Harbor State Park Breakwater Repairs
South Bass Island State Park Launch Ramp
West Harbor Refuge
Ottawa County West Harbor Launch Ramp
Mazurik Wildlife Access Launch Ramp and Breakwater
East Harbor State Park Boat Ramp
Kelley's Island State Park Launch Ramp
Catawba Island State Park Launch Ramp
Toussaint River Navigation Improvements

*Lake Erie Fisherman Access Program*

Cleveland Lakefront State Park, Edgewater Fishing Access
Rocky River Fishing Access
South Bass Island State Park Dock Repairs

Lorain Boat Ramp
Maumee Bay Fisherman's Access
Portage River Wildlife Access
Magee Marsh Boardwalk
Mazurik Wildlife Access Launch Ramp

The above acquisition and improvement projects primarily provide access within or in proximity to urban areas. In addition, special attention has been given to providing access for urban residents through the state parks planning and development process, as demonstrated by ongoing expansion at the Cleveland Lakefront State Park and improvements at Maumee Bay State Park (1,845 acres), just east of Toledo. The 1991 LEAP study identified 13 priority launching facilities and 21 priority fishing accessing areas for acquisition or improvement.

ODNR completed a study of existing and potential beaches along Lake Erie in Ohio in 1974. Additionally, the Midwest Research Institute completed a Recreation Beaches Inventory for the COE, Buffalo District, in 1979. In the ODNR study, approximately 30 sites were investigated and evaluated at that time, of which seven were recommended for acquisition or protection. Since the study, four of the seven recommended sites were developed for recreation use, as found in the SCORP facilities inventory. Further study of the other three sites resulted in removal from the "Potential" list due to unsuitable conditions, i.e., extensive erosion damage and private property restrictions.

More precise and up-to-date forecasting, particularly in regard to extent and accessibility of beaches, would be clearly beneficial for determining OCMP goals for shorefront access and protection planning.

The following provides an assessment of existing facilities providing access to the Lake Erie shore and to the lake waters:

| | Number | Acreage | Beach Length | Shoreline Frontage |
|---|---|---|---|---|
| **State Parks** | 7 | 5,653 | | 15 miles |
| **Natural Areas** | 6 | 1,849 | | 2 miles |
| **Marinas** | 270 | | | |
| **Managed Wildlife Areas (State, Federal, Private Clubs)** | 13 | 20,400 | | 6 miles (state) |
| **Fishing Access Sites** | 54 | 8,547 | | |
| **Public Boat Launch Sites** | 27 | | | |
| **Hunting Access Areas** | 15 | 7,619 | | |
| **Beaches** | 33* | | 67 miles (< 50 ft. wide)**<br>7 miles (50-100 ft.)<br>7 miles (> 100 ft.) | |

* Number of public beaches sampled by ODH (1993).

** 1980 Ohio Geological Survey file data of all beaches excluding the Lake Erie Islands and Sandusky Bay.

Management Policies and Legal Authorities

Specific management policies and authorities that comprise Ohio's approach to shorefront access and protection planning are described in Chapter 5. Management policies governing the extent to which provision for public access and protection is provided for with respect to historic sites, natural areas, wetlands, wildlife areas, development on leased submerged lands and other areas are described in Chapter 5, Policies 12, 13,14, 16, 21-27 and 29. OCMP policies directed toward direct acquisition and/or support for acquisition by other entities specifically for public access are detailed in Chapter 5, Policy 21. The enforceable components of the above-mentioned policies are as follows: 12A, 14A, 14B, 14C, 16A, 21A, 23A, 24A, 24B, 26A, 26B, 27A, 27B, 27C, 29A and 29B.

To assist in accomplishing direct acquisition goals, ODNR primarily uses fee-simple acquisition through negotiation with private landowners. Acquisition in fee by gift also is used, though less frequently. Deed restrictions and tax advantages make this a desirable option for donors. ODNR is rarely required to resort to using eminent domain to acquire land for public use, because willing sellers and donors are generally found.

Definition of Beach

For the purposes of the OCMP, "beach" shall be defined as the area of unconsolidated material that extends landward from the water's edge to the base of the bluff or to the line of permanent vegetation. Public beaches, then, are those areas that meet this definition and are owned by the local, state or federal government.

Private littoral property rights extend to the point where land and water meet. The public has no right of access across private property to the beaches of the Lake Erie shoreline in Ohio. The public does have access to those beaches owned specifically by the State of Ohio, subdivisions of the state and private shoreland recreational facilities open for public use. And the State of Ohio does hold in trust for the people of the state the waters of Lake Erie and the lands underlying the waters of Lake Erie. As stated in Policy 16, Public Trust Lands, the public uses that the State of Ohio has been entrusted with upholding include that of recreation, as provided by common law. Any improvements extending into public trust waters or onto the lands underlying them require a lease from the State of Ohio. The administrative rules that govern granting of such leases provide that "the potential impact of any development, improvement or activity upon the public right of recreation, including present or prospective recreational uses by the public during the term of the lease will be evaluated. Provision for public access may be required as a condition of a lease or permit depending upon historic use patterns and suitability of the lease site for existing or prospective recreational uses" (O.A.C. § 1501-6-03(3)).

# CHAPTER 10

## ENERGY FACILITY PLANNING PROCESS

The energy facility planning process considers energy related facilities likely to be located in or that may significantly affect the coastal area, including but not limited to, a process for anticipating and managing the impacts from such. The discussion of energy facility planning includes:

1. Identification of energy facilities that are likely to locate in or that may significantly affect the coastal area;

2. Procedures for assessing the suitability of sites for such facilities;

3. Articulation of state policies for managing energy facilities and their impacts, including a clear articulation of policies regarding conditions that may be imposed on site location and facility development;

4. Identification of how interested and affected public and private parties may be involved in the planning process, and a discussion of the means for continued consideration of the national interest, in planning for an siting of energy facilities that are necessary to meet more than local requirements;

5. Identification of legal authorities and management techniques that will be used to implement state policies and procedures.

The process encompasses any equipment or facility that will be used or expanded primarily in exploration for; or the development, production, conversion, storage, transfer, processing, or transportation of any energy resource; or for the manufacture, production, or assembly of equipment, machinery, products, or devices that are involved in any activity described above. More specifically, this includes, but is not limited to, the following types of facilities:

1. Electric generating plants;

2. Petroleum refineries and associated facilities;

3. Gasification plants;

4. Facilities used for transportation, conversion, treatment, transfer, or storage of liquefied gas;

5. Uranium enrichment or nuclear fuel processing plants, storage depots, tank farms, crew and supply bases, and refining complexes;

6. Facilities including deepwater ports for the transfer of petroleum;

7. Pipelines and transmission facilities; and

8. Terminals that are associated with any of the foregoing.

Inventory of Existing And Planned Energy Facilities in Ohio's Coastal Area

Two factors dominate the energy facility siting picture in Ohio's coastal area: (1) the role of Ohio's Lake Erie ports in transshipment of coal and lignite, and (2) the generation and transmission of approximately 6,000 megawatts of electricity for a population of approximately 3 million and a vast industrial and commercial complex. Facilities that provide and support these activities impact Ohio's coastal region. Considerations regarding such facilities will be emphasized in the siting process and policy articulation.

*Existing*

There are three major electric utilities serving Ohio's coastal area: Toledo Edison in the west, Ohio Edison centrally, and Cleveland Electric Illuminating (CEI) in the eastern counties. Each of these utilities belongs to the Central Area Power Coordination Group (CAPCO), a consortium of five utilities that participated in the joint development of power generation and transmission facilities. Nine generation plants owned by CAPCO member utilities are completed and serve Ohio's coastal area. Additionally, the City of Painesville owns and operates a fossil fuel generating plant within the coastal area.

*Projected*

O.R.C. § 4935.04 requires long-term forecasting to allow for orderly development of environmentally acceptable, reliable and economic electric service for Ohio's citizens. Any utility directly supplying more than 25 consumers must provide the following: (1) electric power demand forecasts, (2) forecasts for electric generation plants, and (3) forecasts for electric power transmission lines. Such reports are filed annually and apply to the 10-year period succeeding the reporting date. O.R.C. § 4935.04 requires that such reports ". . . shall be made available to the public and furnished upon request to municipal corporations and governmental agencies charged with the duty of protecting the environment or of planning land use." As a member of the Power Siting Board, the Director of ODNR receives and reviews all Long-Term Forecasts annually.

No new generation facilities are planned for the coastal area.

Coal Storage and Transshipment Facilities

Coal represented 35.2 percent of the total cargo volume through Ohio's Lake Erie ports in 1992, accounting for the movement of slightly more than 21.2 million tons. The volume of coal is forecast

to decline slightly in coming years. Canadian markets play a major role in Ohio's coal transshipment. Canadian customers took 66 percent of Lake Erie coal shipments in 1992.

All coal storage and handling facilities in Ohio's coastal area are located in port areas. Four ports handle coal on Lake Erie. In 1992, Toledo shipped 6.4 million tons, while Sandusky shipped 5.1 million tons, Ashtabula shipped 5.6 and Conneaut shipped 4.1 million tons.

Oil and Gas Pipelines, Refineries, and Associated Facilities

Activity related to oil and gas in Ohio's coastal area primarily involves (1) transport of refined petroleum products through Lake Erie ports, (2) storage of refined petroleum products at two ports and (3) distribution of natural gas for local consumption. Transport of crude oil represents a very minimal activity at Ohio's ports. Refineries are likewise limited; generally, economics dictate that refining of crude oil takes place near the point of recovery or entry into the United States.

With the exception of natural gas transmission lines, all oil and gas facilities are directly associated with three of Ohio's lake ports: Toledo, Lorain and Cleveland.

*Existing*

The Port of Toledo has five waterfront facilities equipped to receive and/or ship petroleum products. These facilities are: Sun Oil Docks, Acme Edison Plant, BP Oil Docks, Ashland Docks and Westway Docks.

The petroleum trade at Cleveland Harbor represents a very minimal percentage of the port's total cargo movement. However, two facilities that are equipped to receive and/or ship petroleum products are LTV Steel Co. and Marathon Oil Co.

Seven pipeline systems bring refined petroleum products into the Cleveland Harbor area, while six service the Toledo Harbor. Three of the latter include pipelines that bring crude oil into the refineries.

Natural gas is supplied to the coastal region by two companies: Columbia Gas of Ohio in the west and central coastal area and the East Ohio Gas Company in the east. No new transmission lines, associated facilities or substantial additions to existing facilities are planned. Early notice of planned gas transmission lines of capacity greater than 125 pounds per square inch pressure is provided through the Long-Term Forecast process described earlier for electricity generation and transmission.

As mentioned previously, the demand for oil refining sites on Lake Erie is minimal due to the desirability of refining at the point of recovery or entry into the U.S. The following three refineries are located in Ohio's coastal area: Gulf Oil at Rossford, BP Oil – Otter Creek on the waterfront, and Sun Oil – Otter Creek Inland.

*Projected*

It is anticipated that energy activities related to oil and gas will remain largely unchanged. Future development of storage and handling capacity is expected only in the form of expansion at existing facilities. No additional oil refinery facilities are projected at present.

Gasification Plants

There are no coal gasification plants currently in Ohio's coastal area, and no development of such facilities is planned or projected. Current price estimates suggest that this will be contingent upon market price of conventionally produced natural gas as well as pending federal incentives for such facilities. Coal gasification and liquefaction facilities are not likely to be located in the Great Lakes basin in general, with the possible exception of low-BTU gasification facilities that can be located at or near the site of use, due to the higher cost of transporting coal relative to the cost of transporting substitute or synthetic natural gas.

Liquefied Natural Gas Facilities

Location of major large-volume ports for the delivery of imported liquefied natural gas (LNG) in the coastal area of Ohio is an unlikely possibility in the near future, due in part to the dimensions of standard ocean-going LNG tankers. The dimensions of the 125,000 cubic meter LNG ship (standard for the industry) are:

Length – 936 feet
Breadth – 144 feet
Depth – 82 feet
Draft – 36 feet

The St. Marys, St. Clair-Detroit, and St. Lawrence Rivers, Lake St. Clair, and the Welland Canal are designed to maintain 25.5-foot vessel draft. Vessels of 730 ft. x 76 ft. are currently in use in the St. Lawrence Seaway. There is some likelihood that channels and port facilities will be enlarged in the future, but vessels of ocean-going LNG tanker breadth and draft are unlikely to be facilitated.

Under one scenario, small LNG tankers would be used for large-volume transport into the Great Lakes. Should constraints on the construction of proposed ocean terminals or overland pipeline transportation develop, the use of smaller tankers delivering directly to the Ohio market via the Seaway may be necessary. This is not probable as long as present LNG transportation economics, available natural gas transmission pipelines and ocean terminal developments continue.

Other Energy Related Activities

*Coal Slurry Pipelines*

A 108-mile, nonoperational coal slurry pipeline with a 1.3 million-ton capacity per year now connects the CEI generation stations on Lake Erie with coal mines near Cadiz, Ohio. The pipeline operated from 1957 to 1963, when operations were suspended for economic reasons. The system is not completely intact at this time but could be made operational with some capital investment. However, until such time as high sulphur Ohio coal may be more fully utilized and/or rail transportation rates increase, its renewed use is doubtful.

Procedures for Assessing Facility Site Suitability

As stated above, electric generation/transmission and coal handling associated with Ohio's major ports are the two energy-related activities with greatest impact in the coastal area. Discussion of site suitability assessment procedures will begin with these activities and proceed to other energy activities.

*Electric Generation/Transmission*

**Long-Term Forecast –** Assessing the suitability of energy facility sites is a continual process in Ohio, beginning with the Long-Term Forecast system. Through this means, each utility serving more than 20 consumers must provide to the Public Utilities Commission of Ohio (O.R.C. § 4935.04) the following:

1. Electric power demand forecast;

2. Resource forecasts and site inventories for electric generating plants; and

3. Resource forecasts and site inventories for transmission facilities.

The utility must use five years of historical data, the current year's actual and forecast data, and a 10-year forecast of loads. Also required are a description of the extent of coordination with other systems, consideration of prices, availability and potential development of alternate energy sources, and an inventory of prospective sites for generating plants subject to the certification process. Relative to the last item, each utility must provide a detailed site description, ecological data, a description of likely socio-economic impacts, and a brief discussion of alternate sites.

The Long-Term Forecast process, by providing continual and up-to-date information on utilities' future plans, is an "early-warning" system leading directly into the certification process.

**Certification Process** – O.R.C. Chapter 4906 established the Power Siting Board (PSB) as the agency for certification of electric generation plants and transmission facilities. The PSB is composed of the Directors of the Departments of Health, Natural Resources, Agriculture, and Development, Ohio Environmental Protection Agency, the Public Utilities Commission; a public member (an engineer appointed by the governor); and four legislators (nonvoting). PSB actions relate to the following facilities:

1. All electric generation plants of greater than 50 megawatt capacity,

2. Electricity transmission lines of greater than 125 kilovolt capacity, and

3. Gas transmission lines and associated facilities capable of transporting gas at greater than 125 pounds per square inch.

In reviewing an application for certification the PSB must determine and base its decision of approving the application on the following guidelines (O.R.C. § 4906.10):

1. The basis of the need for the facility;

2. The nature of the probable environmental impact;

3. That the facility represents the minimum adverse environmental impact, considering the state of available technology; the nature and economics of various alternatives; and other pertinent considerations;

4. In the case of an electric transmission line, that such facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems; and that such facilities will serve the interests of electric system economy and reliability;

5. That the facility will comply with O.R.C. Chapters 3704 (permits to install and operate a source of air emissions), 3734 (permits to dispose of solid wastes), and 6111 (permits for all discharges into receiving waters (NPDES), and all regulations and standards adopted thereunder;

6. That the facility will serve the public interest, convenience and necessity;

7. What its impact will be on the viability as agricultural land of any land in an existing agricultural district established under O.R.C. Chapter 929 that is located within the site and alternative site of the proposed major utility facility; and

8. That the facility incorporates maximum feasible water conservation practices as determined by the board, considering available technology and the nature and economics of the various alternatives.

Procedurally, the certification process begins with a preapplication conference at the request of the company, to provide the utility with guidance from the PSB staff regarding possible major environmental, social and public policy factors that could result in disapproval.

The utility may then prepare and submit an application for certification. The rules and regulations that govern operation of the PSB set forth data requirements that must be supplied by the utility company. Of major importance to the resources of the coastal area are the following data requirements:

1. Two sites for each generation plant and for each transmission line and associated facility. The two are designated preferred and alternate; both must be viable sites and be accompanied by fully developed information and summaries of advantages and disadvantages.

2. Technical data including:

    a. Geographic and topographic contours, surrounding land use, vegetative cover, surface and ground water, transportation routes and utility corridors;

    b. Geology, soils, and seismic information;

    c. Hydrology including water budgets, cooling water availability, flood and wind analysis;

    d. Site preparation and layout, including clearing and landscaping activities; future plans for expansion at each site;

    e. Emission control and safety equipment, including alternatives and their environmental merits and drawbacks;

    f. Fuel use, including environmental merits of alternative fuels; and

    g. Procedures for coping with oil spills and fuel storage.

3. Environmental data for preconstruction, construction and operation including:

    a. Data sufficient for determination of compliance with regulations regarding solid waste disposal, discharges into receiving waters, and installation and operation of new air emissions sources;

b. Detailed assessment of thermal and chemical effects;

c. Detailed information of radioactive emissions and noise;

d. Detailed information describing irreversible commitments of irreplaceable resources, including land, minerals, fuels, energy and ground water; and

e. Potential for erosion and plans to mitigate, using EPA's "Guidelines for Erosion and Sediments Control."

4. Social and environmental impacts:

a. Preconstruction surveys of vegetation, terrestrial and aquatic animal life, habitats, and endangered, threatened and rare species;

b. Estimated losses to crops, vegetation and other terrestrial biota;

c. Estimated losses to aquatic organisms;

d. Potential loss of habitat;

e. Survey and assessment of impacts on landmarks of historic, religious, archaeological, scenic, natural or other cultural significance registered with the National Register of Historic Places, the Historic American Building Survey, the National Register of Natural Landmarks, the Ohio Historical Society and the Ohio Department of Natural Resources.

Review by the PSB of applications considers the merits of each individual case. Specific standards apply in the case of review of individual state permits. The agency with the authority for the permit reviews and makes a determination for that permit. These state permits are:

1. Permit to install and operate new air emission sources (O.R.C. Chapter 3704);

2. Permit to dispose of solid wastes (O.R.C. Chapter 3734);

3. Permit for discharge into receiving waters (O.R.C. Chapter 6111);

4. Permit for shore protection structures (O.R.C. § 1507.03); and

5. Lease for development and improvements in Lake Erie (O.R.C. § 1506.10).

The PSB directs each applicant to the appropriate agencies for their review against standards and criteria established for each permit. Certification will not be allowed by the PSB if requirements pursuant to these permits cannot be met.

The criteria for a permit to install and operate new sources of air pollutants, new source treatment works or solid waste disposal facilities are detailed in O.A.C. § 3745-31-05.

The Director of Ohio EPA must determine that the installation or modification and operation of the source does not prevent or interfere with the attainment or maintenance of applicable ambient water quality standards or ambient air quality standards; does not result in a violation of any applicable laws; does not cause significant degradation of the air or water if, at the time of installation or modification, either the ambient air or the receiving water meets or is better than applicable air or water quality standards. In deciding whether to grant a Permit to Install, the Director of Ohio EPA may take into consideration the impact of the installation or modification process itself upon environmental quality; the short- and long-term impact of the source of air pollutants, treatment works or solid wastes disposal facility on environmental quality; and the social and economic impact of granting or denying the Permit to Install. See O.A.C. § 3745-31-05 for the additional criteria used in the process.

The standards for granting a permit to operate an air contaminant source are promulgated in O.A.C. § 3745-35-02. Pursuant to these rules, the applicant must demonstrate that the standards are met. Briefly, the source must be in compliance with applicable rules and regulations. The source must operate without preventing or interfering with the attainment or maintenance of any applicable state or national ambient air quality standard. If required by the Director of Ohio EPA, the source is equipped with instrumentation and sensing devices to monitor and record emission data and other information about the operation of the source. If required by the director, performance tests – which are to be conducted after the application was made at the applicant's expense and in accordance with methods prescribed by Ohio EPA – must demonstrate that the source is in compliance with applicable emission regulations and other applicable laws.

The Director of Ohio EPA determines whether or not to issue a permit to discharge into receiving waters (Ohio NPDES permit) using criteria published in O.A.C. § 3745-33-04. Briefly, the authorized discharge levels specified in Section 3745-33-04(B) cannot be exceeded. Adequate provisions for monitoring to obtain required pollutant discharge information must be made. If required by Ohio EPA, performance tests must demonstrate that the discharge is in compliance with authorized discharge levels. Anchorage or navigation cannot be impaired thereby, as determined by the Secretary of the Army. The proposed discharge or source cannot conflict with an areawide waste treatment management plan. If the Administrator of Region V, U.S. EPA, objects in writing to the issuance or renewal of the permit in accordance with Section 402(d) of the Clean Water Act, the Director of Ohio EPA will deny the permit. The application cannot be for the discharge of any radiological, chemical, or biological warfare agent, or high level radioactive waste into waters of the state.

Beyond the specific standards to be met by these permit requirements, the Power Siting Board (PSB) staff is responsible for the initial review of the applicant's certification report. The board staff places strong emphasis upon considering the detailed information of the application on a case-by-case basis, examining the two proposed sites and considering various mitigation schemes. It is during this time that early consideration can be given to concerns of interested local, state and federal agencies.

As a commission member, the Director of ODNR reviews all applications to the PSB. ODNR's comments may become part of the board's staff report of investigation in which the staff recommends to the Board whether or not the proposed facility should be licensed and, if so, with what conditions. The following objectives are used by ODNR in its review:

1. Determine the validity of the applicant's predictions of ecological and other impacts resulting from construction, operation and maintenance of the proposed facility.

2. Determine which of the proposed routes/sites will least adversely affect department programs or resources.

3. Determine what mitigation of adverse effects, beyond that described in the application, is necessary or prudent to reduce to a reasonable level the adverse effect of constructing, operating and maintaining the proposed facility on the route/site identified in (2).

The following is the review procedure by ODNR for PSB applications.

1. Identify and report the applicant's major conclusions.

2. Indicate which conclusions are valid.

3. Identify conclusions that are (a) <u>incorrect</u> (derived improperly or with poor data), (b) <u>unsubstantiated</u> (not supported by data) or (c) irrelevant. (If none, proceed to (7).)

4. Present rationale for each of the contentions in (3).

5. Describe the ways in which the applicant's methodological and other errors leading to the conclusions specified in (3) should have been avoided (i.e., how studies should have been performed, how conclusions should have been derived or what data should have been used).

6. If possible, correct deficiencies noted in (3) and discussed in (4) by supplying missing data or developing conclusions properly. If not possible, describe potential remedial actions, if any, that the applicant could take to remedy deficiencies.

7. If sufficient data are at hand, describe what departmental programs or resources managed by the department will be affected by the proposed project and how they will be affected. Specific coastal-related concerns to be addressed during ODNR review are:

   a. Degree of coastal dependency,

   b. Impact on environmentally sensitive areas and Special Management Areas (SMAs),

   c. Compatibility with adjacent uses and activities,

   d. Coastal access,

   e. Visual impact (mainly in regard to alignment of transmission lines) upon adjacent areas, and

   f. Degree of erosion and flood hazard involved.

8. Recommend which route/site, if any, should be licensed by the Commission and what mitigation should be employed to reduce impacts to an acceptable level.

Following filing of the staff report, which incorporates OCMP agency comments, public hearing and opportunities for aggrieved parties to intervene take place. The PSB makes a decision to grant a certificate of environmental compatibility at an open meeting, stating its reasons for taking such action. The final decision is based on a majority vote of the board.

*Coal Storage and Transshipment Facilities*

As mentioned above, coal storage and transshipment facilities are associated only with major ports in the coastal area: Toledo, Sandusky, Ashtabula and Conneaut. Commercial transportation uses will be considered high priority within the immediate port area, and funding and technical assistance from ODOT will be available for proper port planning to assure consideration of all port-related needs.

Site suitability will be assessed through review of various state and local permits and plans. Ohio EPA administers Clean Air Act (CAA) standards for coal dust levels; and National Pollutant Discharge Elimination System (NPDES) permits. A lease from ODNR is required if developments or improvements related to such facilities involve the waters or bed of Lake Erie (O.R.C. § 1506.10). Authority with regard to activities in wetlands resides directly with Ohio EPA and indirectly with the OCMP.

Local, county and municipal zoning regulations can be used to assure compatible uses in harbor areas adjacent to port holdings as well as to provide for necessary expansion of harbor-dependent development and storage. Toledo, a major coal handling port, has established an overlay zoning

district. A comprehensive plan formed the basis of the district and its regulations provide for public hearings and review by the Toledo-Lucas County Plan Commissions for land use changes, excavation, filling construction and new occupancies.

*Oil and Gas Pipelines, Refineries and Associated Facilities*

**Gas Pipelines** – Interstate transmission of natural gas is regulated at the federal level by the Federal Energy Regulatory Commission; authorities pertain to rate structures, construction activities, and general safety requirements. The federal Department of Transportation (DOT) regulates some safety matters. In the State of Ohio, the Public Utilities Commission (PUCO) acts as the enforcing agent for DOT over such interstate lines and enforces its own safety code relative to intrastate lines (O.R.C. Chapter 4901). Siting of intrastate gas lines and associated facilities that exceed 125 pounds per square inch capacity and that are not regulated by federal authority are covered by the PSB procedures detailed above.

**Oil Pipelines** – Major petroleum pipelines in Ohio's coastal region are interstate and, as such, are regulated by the federal government. Environmental Impact Statements for such lines are prepared by U.S. Department of Energy and are reviewed by state agencies. Safety standards pursuant to the Federal Pipeline Transportation Act are enforced by the federal Department of Transportation, while the Interstate Commerce Commission sets interstate rates. No state regulatory authorities apply to location of interstate or intrastate petroleum pipelines in Ohio's coastal area.

**Offshore Oil and Gas Drilling** – As of 1985, oil and gas drilling in Ohio waters of Lake Erie is administratively prohibited by the Council of Great Lakes Governors' "Statement of Principle Against Oil Drilling in the Great Lakes," of which Ohio is a signatory state.

**Refineries and Storage Facilities** – The siting of new refineries requires permits to install and operate a new emission source and an NPDES permit, all granted by the Ohio EPA. A permit from the Division of State Fire Marshal, Ohio Department of Commerce, is required for any facility that handles flammable or combustible liquids (O.R.C. § 3737.17). Plans for such facilities must be in conformance with standards set by the Fire Marshal in the State Fire Code (O.A.C. § 1301:7- 7-16). Storage facilities must develop a Spill Prevention Control and Countermeasure Plan prior to operation to comply with U.S. EPA regulations. This applies to above-ground storage facilities of greater than 1,320-gallon capacity and underground storage facilities of greater than 42,000-gallon capacity.

**Gasification Plants, LNG and Nuclear Fuel Processing Facilities** – No such facilities are expected to locate in Ohio's coastal region.

Articulation of State Policies

The siting of certain large-scale energy facilities in Ohio's coastal area can be expected to have significant economic and environmental impacts on a regional level. To address these impacts, the

OCMP has set forth policies (in Chapter 5) regarding siting and planning for such facilities. The basic intent of these policies is threefold: provision of reliable energy sources to the citizens of Ohio, maintenance of a healthy economic climate in the region, and insurance of prudent use of land resources and protection of coastal air and waters and their resources.

As described in Chapter 5 and the three sections above in this chapter ("Electric Generation/ Transmission"; "Coal Storage and Transshipment Facilities"; and "Oil and Gas Pipelines, Refineries and Associated Facilities"), Ohio's policies with respect to energy facility siting are as follows:

1. To protect the health, safety and welfare of the state's citizens and natural resources by minimizing adverse environmental impacts and considering (1) the degree of coastal dependency, (2) impacts on environmentally sensitive areas and SMAs, (3) compatibility with adjacent uses and activities, (4) coastal access and visual impact, and (5) coastal erosion and flood hazards through the certification of major energy facilities. The certification process applies to (1) electric generating plants and associated facilities designed for, or capable of, operation at a capacity of 50 megawatts or more; (2) electric transmission line and associated facilities of a design capacity of 125 kilowatts or more; and (3) gas and natural gas transmission lines and associated facilities designed for, or capable of, transporting gas or natural gas at pressures in excess of 125 pounds per square inch (O.R.C. Chapter 4906).

2. To protect the health, safety and welfare of the state's citizens and natural resources by requiring 10 year demand, resource and site inventory forecasts for all energy generation and transmission activity in the state (O.R.C. § 4935.04).

3. To assure safe and efficient use of energy-related resources and attainment of environmental standards through regulation of the storage of coal, oil and gas. Such storage facilities associated with the types of facilities described in item 1 above are addressed through the certification process described therein.

   Impacts from proposed coal storage and transshipment facilities associated with Ohio's four major ports are addressed through Ohio EPA's administration of NPDES permits, CAA coal dust level requirements, and Section 401 Water Quality Certifications, where applicable; submerged lands lease requirement if development of public trust lands is involved; and federal consistency review of Section 10 and 404 permits. New refineries are regulated through permits to install and operate new emission sources, NPDES permits, permits from the Ohio Department of Commerce for handling flammable or combustible liquids, and the requirement for developing a Spill Prevention Control and Countermeasure Plan. Gas and natural gas transmission lines exceeding 125 psi are regulated by the PSB certification process as noted above. Major oil pipelines in the coastal region are interstate and regulated at the federal level; no state regulatory authorities apply to location of such pipelines in Ohio's coastal area.

4. To protect public safety and welfare and the environment by regulating oil and gas drilling onshore through a permit from ODNR and by opposing oil and gas drilling offshore as signatory to the 1985 Council of Great Lakes Governors' "Statement of Principle Against Oil Drilling in the Great Lakes." (See Policy 36, Chapter 5.)

Public Participation and Consideration of the National Interest in the Energy Facility Siting Process

Although the major role regarding energy facility siting lies with the Ohio Power Siting Board (PSB), the proper hearing of concerns of local citizens and governments and federal interests is essential to ensure provision of reliable energy sources in an environmentally sound manner.

Development of the OCMP thus has involved substantial input from both local and federal entities throughout the policy development and review phases. Federal government contacts were provided copies of all working documents for review. Comments pursuant to such reviews were incorporated into the draft document.

*Local Public Participation*

Prior to establishment of PSB review procedures, local citizens and governmental entities had little, if any, recourse with regard to location of energy facilities since the principal local control method (zoning ordinances) could not be exercised to regulate such facilities. Through PSB procedures, citizens and governments now have an orderly and open process through which their concerns are aired, recorded and resolved.

*The National Interest*

National concern is now focused primarily on developing increased energy self-sufficiency and strengthening conservation efforts. These issues have been established as national energy priorities by the Federal Energy Policy and Conservation Act. These factors are routinely considered and incorporated into Ohio policies.

Consideration of the national interest is additionally provided for through federal agency review during permit and certification processes as in the case of local citizen and governmental participation. Points at which such review is provided are described within the following text, and consideration of the national interest is discussed further in Appendix Q.

*The Processes*

Two major processes are provided legally to allow participation of citizens and other affected public parties, including federal agencies, in the planning process for energy facilities. These are the Ohio Power Siting Law, which applies to electric generation and transmission facilities and gas transmission lines, and the notice and hearing procedures of the Ohio EPA and the Environmental Board of Review (EBR) regarding new air emission sources and discharges into receiving waters.

Public participation in the power siting process for electric generation/transmission and gas transmission is specifically provided for in the Power Siting Board's Rules and Regulations (O.A.C. Chapter 4906). General provisions are that all meetings of the board at which any formal action is to be considered are open to the public. No resolution, rule, regulation or formal action of any kind shall be adopted at any executive session of the board. With the exception of internal rules and matters unrelated to specific application, all board files are open to the public. Beyond these general operating procedures, the board also provides for active public input at various stages of the power siting process.

Upon filing of an application by a utility, copies are distributed to all parties and to public libraries. A public notice summarizing the application is required to be published in newspapers of general circulation in the area within seven days of receipt of application.

Formal participation rights are conferred upon all parties as defined below:

1. Chief executive officers of each municipal corporation and county and the head of each public agency (state, local or federal) charged with the duty of protecting the environment or planning land use in the area in which any portion of a facility is located, and

2. Any person or agency who, within 30 days after public notice is given, requests and is granted leave to intervene as a party (i.e., proves an interest in land use). Such parties may give written or oral testimony as well as call and examine witnesses at hearings. Any person may present oral or written testimony.

The above process encompasses federal agencies and as such provides opportunity for appraising and considering the national interest.

Public participation procedures of the Ohio EPA, which also involve appeal procedures to the EBR, apply to permits to install and operate new air emission sources (O.R.C. Chapter 3734) and to permits applicable in the siting (O.R.C. Chapter 6111). These permits are applicable in the siting of the following types of energy facilities:

1. Electric generation and transmission and gas transmission lines (permit review by EPA during PSB process),

2. Oil refineries and storage facilities, and

3. Coal storage and transshipment facilities.

O.A.C. Chapter 3745 specifies the procedures to be adhered to for hearing public concerns regarding issuance of such permits. Upon receipt of a permit application, the Director of Ohio EPA prepares and gives public notice of the proposed action, i.e., the director's intended action with regard to issuance, denial, renewal, modification or revocation of the permit. Within 30 days of

notice, any person may request or petition for a public meeting for presentation of evidence, statements or opinions. If sufficient public concern is voiced, Ohio EPA may hold such a meeting. After the public meeting, an adjudication hearing may be requested by parties to the action or by any person or agency who requests and is granted by the director a Leave to Intervene.

At the close of the adjudication hearing, the director issues a Statement of Final Action. If a party is not satisfied with the decision, an appeal is made to the Environmental Board of Review (EBR). The board issues the final decision as to whether a request for a permit will be granted or denied.

Again, since federal agencies may become parties during these procedures, consideration of the national interest is an integral part of the permit hearing and appeal process.

The Long-Term Forecast system, whereby utilities annually report to the PUCO projections of new facilities for the upcoming decade, requires that concerned federal, state and local agencies receive such reports (O.R.C. § 4935.04).

Additional public input, particularly with regard to port-related energy storage and transshipment facilities, is provided for through local zoning ordinances and development plans, and local, county and regional planning commission projects.

# CHAPTER 11

NOTE TO READERS: This chapter was taken verbatim from the DEIS, and is included in this document because some commenters referred to this DEIS Chapter. Any references in this chapter to future hearings are references to the public hearings on the DEIS, held September 30, October 1, October 2 and October 3, 1996 in various locations in Ohio. No additional hearings will take place.

## INTERIM RESPONSE TO PUBLIC COMMENTS

In the Spring of 1992, the Ohio Department of Natural Resources (ODNR) circulated for public review and comment, a draft policy document for the OCMP. The review, by coastal area citizens, local governments, planning agencies and other interests, provided ODNR with essential input for the development and refinement of coastal management policies. This has set the stage for publication of the OCMP document and Draft Environmental Impact Statement (DEIS).

Four public hearings will be conducted in the coastal area to give the public the opportunity to make comments and recommendations regarding its terms. ODNR's federal counterpart, the National Oceanic and Atmospheric Administration (NOAA), Office of Ocean and Coastal Resource Management (OCRM), will join ODNR in conducting at least two of these hearings to obtain comments and concerns regarding the DEIS. When public review of the DEIS and OCMP document is completed, ODNR and OCRM will consider the comments received and prepare a responsiveness summary to be included with the Final EIS.

This chapter is organized in two parts: response to public comments on the 1992 draft OCMP document and comments responding to NOAA's notice of intent to publish the environmental impact statement regarding federal approval of Ohio's coastal management program.

### Response to Comments on 1992 Draft OCMP Document

Many comments that were fact-specific and provided correction or updating have been incorporated in the program document. This summary does not attempt to summarize all of the input ODNR received during and after publication and review of the first draft OCMP document. Public comments and concerns are addressed in the following discussion, organized by distinct issue areas, with occasional reference to other chapters in this document.

#### *Prospective Nature of the OCMP*

Concern was expressed that original language stating that the OCMP is prospective in nature and not applicable to existing uses had been removed in the February 1992 document. It was never intended that any new authorities would be retroactively applied to existing activities. It should be noted that a future addition to an existing permanent structure (a building) may be subject to the coastal erosion area permit rules if located in a designated coastal erosion area.

*Coastal Area Boundary*

Several issues arose regarding the extent of the coastal area subject to the OCMP. In some cases, there were concerns that the boundary extended too far inland, and in others concern arose that transitional, Lake Erie-associated wetland complexes and other aquatic areas were not sufficiently included. Research into the wetlands issues and negotiations with local jurisdictions with respect to the boundary in urban areas continued during the period of revising the OCMP document. Several adjustments to the proposed boundary were made as a result.

Specifically, the coastal area was constricted in several urban areas of Erie County (Maps 6 and 7, Appendix B) and expanded in other areas along the coast to include: (1) lowland marshes south of Point Place near Toledo, in part known as the Manhattan Marsh area of the Buckeye Basin (Map 1), (2) an expanded area in the vicinity of the Old Woman Creek State Nature Preserve and National Estuarine Research Reserve (Map 7), (3) Marsh and Heisley Creeks and additional wetland acreage associated with the Mentor Marsh State Nature Preserve (Map 12), and (4) all Lake Erie coastal erosion areas, both currently and prospectively (see Chapter 3 for an explanation). The controlling criterion in determining the extent to which these alterations should be made was whether the uses of these areas could have a "direct and significant impact on coastal waters" (O.R.C. § 1506.01(A) and 16 U.S.C. 1451, Sec.304).

Additionally the two-tiered boundary approach described in the 1992 document was eliminated as a result of input from the public and from NOAA. The entire nine-county region was viewed as too inclusive (incorporating areas where uses do not significantly affect coastal waters) and had the potential for causing confusion. Use of the two-tiered system has not proven useful in other states. Reference to the two-tiered approach has been deleted in this document.

The coastal management boundary and the process that led to defining it are discussed in Chapter 3. Appendix A contains a complete narrative description of the boundary, and Appendix B contains boundary maps.

*OCMP Organization and Administrative Mechanisms*

There were objections that the document lacked clarity with respect to how a comprehensive and coordinated OCMP would actually work. Chapter 4, "Program Organization," has been significantly revised and reorganized to strengthen the description of ODNR's and other agencies' roles and responsibilities and to clarify the mechanisms by which networking, consistency and coordination will be achieved. In addition, the policy statements within Chapter 5, "Management Policies," have been reconfigured, with textual descriptions letter-keyed to specific individual policy statements and authorities cited.

In conjunction with these revisions, much of the redundancy that was also a concern has been eliminated as well. However, due to requirements that certain sections or chapters of the document

must stand alone to fully describe planning processes, some portions of the document, particularly Chapters 8, 9, and 10, are duplicative with respect to Chapter 5.

*Allocation of Grant Funds and Priorities*

Questions arose regarding what priorities would guide the allocation of federal and state money for coastal area administration activities and projects. Federal Coastal Zone Management Act (CZMA) implementation funds and state matching funds will be used for ODNR's administration and coordination of the OCMP and for other state-networked agencies' relevant coastal administrative responsibilities. ODNR will also administer coastal management assistance grants in accordance with O.R.C. § 1506.02(C) (see Appendix C) and will provide funding assistance for projects in accordance with Section 306A, Resource Management Improvement Grants, of the CZMA. Chapter 5 of the OCMP document and Draft Environmental Impact Statement, pages 5-2 and 3, now lists priority coastal management issues to serve as a guide for prioritizing funding assistance through the OCMP. As explained in the "Program Overview," specific actions to address these six issues or "areas of strategic emphasis" will be detailed in a separate OCMP strategic action plan.

*Clarity of OCMP Consistency Requirements*

The consistency requirements and mechanisms are now described in greater detail in Chapter 4 for state consistency and in Chapter 7 for federal consistency. Some questioned the ability of applicants to certify the consistency of proposed activities with the OCMP. ODNR and state agencies networked in the coastal management program have taken steps (e.g., procedures outlined in memoranda-of-understanding) to avoid requiring such from applicants in many instances. To assist applicants, ODNR will publish guidance for understanding program requirements prior to implementation of the OCMP. Policy guidance will be included with permit and financial assistance applications and procedural guides.

*Lake Erie Redevelopment*

ODNR was asked to adopt within the OCMP the assumptions of the Lake Erie Shore Area Redevelopment Task Force, which was established by the Ohio legislature and represented a broad range of local jurisdictions, interest groups, industry and concerned citizens. While not explicitly stating its endorsement of the Task Force's 1989 findings and recommendations, the OCMP did, in fact, consider and broadly incorporate the major issues into the February 1992 *Public Review Draft Document.* The Task Force's assumptions, particularly as they pertain to water quality and multiple use, are of importance to successful implementation of the OCMP. Therefore, the OCMP policy document now explicitly adopts those assumptions in the introduction to Chapter 5, "Management Policies." The resource protection, management and development policies contained in this document reflect the goals of the Task Force report.

*Lake Erie Submerged Lands*

Policy 16, Public Trust Lands, has been revised to reflect final rules promulgated in April 1992.

*Public Access*

Concern was expressed that private property rights would be compromised by allowing public access in conjunction with submerged land leases administered pursuant to O.R.C. 1506.10 and 1506.11. As explained in Policy 16, landowners have the right to use navigable waters adjacent to their lands, but that right is subject, in part, to the State of Ohio's property rights as proprietor in trust of the waters of Lake Erie and the lands under them for the people of Ohio. Those public trust rights of the state have been interpreted by several court cases to extend to public recreational uses. Under the submerged lands leasing rules (O.A.C. § 1501-6-01 to -06, see Appendix L), the history of public use in the area and the potential impact of the proposed development upon public recreation must be considered. In its review of submerged land lease applications and in accordance with the mandate of O.R.C. § 1506.11(G), the OCMP strives to retain access where it has been traditionally available and to assure that present or prospective public recreational uses are not adversely affected. However, no coastal management policy states or implies that access must be provided to obtain a lease. Each lease application is evaluated on its individual merits. Policy 21(B) has been revised to avoid any implication that lessees of submerged lands are unwillingly required to provide public access on private property.

Concern also arose that public ownership and increased public access should be a higher priority. "Recreational opportunities" has been specifically identified (in the introduction to Chapter 5) as one of the highest priorities for OCMP implementation funding. ODNR will continue its own efforts to acquire additional public lands and to promote public/private partnerships and cooperative projects with local governments to improve public access and recreational opportunities. Coastal management policies that specifically address these issues are policies 12-14, 16, 21-27 and 29.

*Lake Erie Coastal Erosion Area Identification and Enforcement*

A concern was expressed that the original owner retains title where there is an "avulsive loss of land," that there is a significant legal distinction between erosion and avulsion, and that ODNR's rules cannot be allowed to create a legal presumption regarding land ownership. Existing rule 1501-6-10(H), Ohio Administrative Code defines "erosion" as "the loss or displacement of land along the lakeshore due to wave attack, ice scour, mass wasting, or other related erosion processes." ODNR has clearly stated in presentations to local officials during 1993-1995 consultation meetings and in informational materials prepared for public release, that all of these processes may be involved in Lake Erie-related erosion.

ODNR will ensure that there is a solid legal foundation for state or local enforcement of coastal erosion areas in accordance with the state coastal management law (see Chapter 5, Policy 1). Administrative rules adopted by ODNR in June 1996 are included in Appendix H of the draft OCMP

document. These rules were subject to extensive public review. In enforcing coastal erosion areas, ODNR will evaluate each permit application on a fact-specific basis with no presumptions regarding title or right to reclaim property.

Concern has been raised that ODNR's methods for delineating coastal erosion areas do not acknowledge filled-land areas, some which have sufficient construction to be classified as erosion protection structures. This concern also arose more explicitly and from many participants in public meetings and meetings with local officials during 1993. Please see a detailed response and chronology of changes regarding this issue in the following "Response to Comments on Notice of Intent" Section.

*Wetlands*

There were a variety of comments regarding wetlands and proposed OCMP policies and enforceable authority.

One comment indicated erroneously that financial assistance is proposed for shore erosion but not wetlands. A concern was expressed that OCMP priorities are not ecologically based. The wetlands policy discussion has been expanded (see Chapter 5, Policy 12) to provide a clearer view of the OCMP's enforceable authority and enhancement policies. The OCMP will continue to hold wetlands conservation as a high priority in all areas of program implementation – protection through regulation, planning, technical assistance and financial assistance. The OCMP is now exploring the feasibility of increased incentives and assistance to private owners who conserve and manage coastal area wetlands.

The state's control of activities in wetlands through Ohio EPA's authority to issue or deny water quality certifications is detailed in the revised draft document.

The OCMP has been and will continue to be active in securing federal and other available financial assistance for the acquisition-protection of wetlands, wetlands restoration and other conservation measures.

<u>Response to Comments on Notice of Intent</u>

The following addresses comments submitted in response to the November 4, 1993 Federal Register Notice of Intent to publish the Draft Environmental Impact Statement.

1. Concerns Regarding Inland Boundary of the Coastal Area

   - Two-tiered boundary – This issue is addressed in the "Response to 1992 Public Review Draft Document."

- Geographic boundary goes beyond the statutory mandate – This is discussed in the "Response to 1992 Public Review Draft Document."

2. Concerns Regarding OCMP Implementation

- Understaffing of ODNR -- The OCMP is a networked program and as such relies upon the resources and expertise of numerous divisions within ODNR as well as other state agencies for full program implementation. Upon federal approval, the state will receive federal funds that will be matched by state dollars. This will assure adequate resources to implement and enhance the OCMP.

- Whether OCMP policies can be enforced against municipalities -- The state can enforce its coastal management laws against home rule municipalities. First, the General Assembly specifically included municipalities in the definition of "person" in the coastal management statutes (O.R.C. § 1506.01(B)). Second, Ohio's coastal management laws are "general laws" of the state that are enforceable against municipalities even when in conflict with local policy, sanitary or general welfare ordinances and regulations. Therefore, the laws delineated in the OCMP, most of which are existing state laws of general application, are fully enforceable against home rule municipalities.

- Involuntary taking -- The issue of whether or not a taking has occurred or may occur cannot be determined at this time. Courts have consistently ruled against facial takings challenges, i.e., they have said that laws, regulations and policies do not in and of themselves effect a taking. Takings claims are heard and determined on an "as applied" basis after a specific regulatory action has been rendered with respect to a specific property. It is highly unlikely that requiring a permit for construction would result in the total loss of economic use of a property. In the unlikely eventuality that such a circumstance would arise, any ODNR decision under O.R.C. § 1506.07 is appealable under O.R.C. § 1506.08. The availability of appeals processes generally allows inverse condemnation situations to be averted.

- The state does not have the power to zone -- The OCMP does not entail any zoning activities.

- Undue addition to the permit process in violation of tenets of the federal Coastal Zone Management Act -- The CZMA does not prohibit Ohio's addition of one permit requirement (coastal erosion area enforcement). In fact, the CZMA regulations mandate adequate regulation of development in coastal erosion and flood hazard areas. It is important to note that permit process consolidation to be provided under the OCMP will assure that permit processes are less burdensome than at present.

3. Concerns Regarding Coastal Erosion Area Policies

- The OCMP's draft rules promote structural erosion control measures -- ODNR's administrative rules do not encourage structural measures to the exclusion of other methods. In rule 1501-6-21(G), "erosion control measure" is defined to include slope stabilization and beach nourishment. Published technical reports on Lake Erie erosion and recession by ODNR's Division of Geological Survey have shown circumstances where combinations of structural and nonstructural measures work effectively. The OCMP will continue to promote nonstructural measures where appropriate.

- Promotion of piecemeal approach to erosion management -- The OCMP presents both enforceable policies and enhancement policies. Coastal erosion area management should not be thought of narrowly, i.e., the requirement to obtain a permit for a new permanent structure when located within a coastal erosion area. ODNR routinely provides technical assistance to property owners and developers on avoiding geologic hazards or managing the erosion risk when avoidance is not or cannot be undertaken. The coastal erosion policies have been revised substantially (see Chapter 5, Policies 1 and 2) to provide a clearer picture of Ohio's approach to Lake Erie coastal erosion area management.

  Property owners have joined in cooperative projects in the past and would be expected to continue to do so. The OCMP also encourages early coordination in project planning and pre-application consultation with ODNR and other agencies, both to avoid problems with regulatory requirements and to identify opportunities and alternatives that may be advantageous to property owners, developers and neighbors.

- Lack of criteria or guidance regarding effective erosion control measures -- The Lake Erie coastal erosion area enforcement rules provide guidance regarding effectiveness of erosion control measures in rule 1501-6-24(A). Discussions with engineers and others involved in designing and building erosion control measures has underscored the need for flexibility and evaluating proposed measures on a case-by-case basis. Technical information regarding erosion and erosion control methods may be obtained from the Lake Erie Geology Group, Division of Geological Survey or the Division of Engineering.

- Coastal erosion area identification extends beyond statutory intent -- See response to that same issue, "Regulation of the entire lakefront," below.

- Program may cause more erosion -- There is no evidence to support this contention. Criteria in rule 1501-6-24(A) state that acceleration of erosion and impacts on sand resources and coastal processes will be considered in the evaluation of erosion control measures. Refer to responses to comments on 1992 Draft OCMP document above regarding coastal erosion area policies. Erosion is a natural process in coastal areas. The coastal management program will assist greatly in reducing property damages through better informed decision making by state and local government, and the encouragement of

strategic retreat and selective fortification to protect development vulnerable to rapid erosion. There will be a net benefit to property owners and local governments as losses are prevented or lessened.

- Concern about regulation of the entire lakefront -- This concern was heard at meetings held with public officials and with shoreline residents throughout 1993, as well as in response to NOAA's publication of its NOI to prepare a DEIS on Ohio's CMP. Following those meetings, it became clear that modifications to the Ohio Coastal Management Law would be necessary to allow ODNR to effectively address this issue and allow for greater consideration of substantially filled and protected areas.

  The passage of Amended Substitute Senate Bill 182 in 1994 and subsequent revisions to the previously adopted coastal erosion area designation rules have allowed the OCMP to incorporate consideration of substantially filled and protected areas into the identification of coastal erosion areas. The law now provides that the determination of recession rates "shall take into account areas where substantial filling, (or) protective measures . . . ha(ve) significantly reduced recession." ODNR's coastal erosion area designation rules, as adopted in October 1995, now recognize the accuracy limits in mapping: a fixed error rate of 5 feet over the time period for which recession rates are calculated has been used in the preliminary determination of the landward extent of coastal erosion areas. As a result, areas eroding at less than 9 feet over a 30-year period will not be included as coastal erosion areas. This effectively addresses extensive protected and filled areas. In addition, the rules provide that the landward extent of coastal erosion areas will be calculated using the lakeward edge of substantial fill as the baseline rather than the landward-most recession line as in the previous rules. The previous method resulted in inclusion of all substantial fill areas lakeward of the historic bluff line. Also, coastal erosion areas as now preliminarily delineated by ODNR have been based upon average annual recession rates calculated over the period of time from 1973 through 1990, rather than 1876 through 1973, as previously calculated. This, in effect, mathematically increases the weight given to substantial fill and protection placed in more recent years.

  The OCMP believes that this approach to addressing this concern raised by the public in 1993 is a scientifically valid and fair method of determining the extent of coastal erosion areas. It accurately reflects the extent to which substantial fill has served to abate erosion. At the same time, it allows ODNR to appropriately focus administration of the coastal erosion area management component of the OCMP, while still fulfilling the mandate of the Ohio Coastal Management Law.

  Please refer to the text below regarding public participation for discussion of the manner in which these changes were accomplished with the involvement of public officials, shoreline property owners and others.

- No meaningful public participation or consultation with local jurisdictions --

**Public participation and consultation prior to rules adoption in 1991** -- Considerable thought and effort went into the preparation and adoption of the rules for designating the Lake Erie erosion hazard area, as adopted in 1991. (NOTE: Although ODNR now refers to "coastal erosion areas," the terminology "erosion hazard area" was previously used to be consistent with language in the law. The latter terminology is retained in the following text, with reference to previously adopted rules.) The rules were drafted after reviewing coastal programs from Great Lakes states and other coastal states. During development of the rules, preliminary copies were sent to Pennsylvania, New York, Michigan and the Province of Ontario for review. The draft rules were also reviewed by other ODNR divisions and by attorneys from Cleveland and Sandusky. The methodology for identifying the Lake Erie erosion hazard area reflected many years of experience dealing with coastal erosion along the Ohio shore of Lake Erie.

While the law did not require ODNR to promulgate and adopt rules for designating the erosion hazard area, this was done to maximize the opportunity for public scrutiny and involvement. The draft rules for designating the Lake Erie erosion hazard area were discussed at numerous meetings, hearings, open houses, and workshops with local officials and the public.

Presentations on the draft rules for "Designating the Lake Erie Erosion Hazard Area" were given to the Northeast District of the Ohio Association of County Recorders on October 4, 1989, and to the Erie County Board of Realtors on September 4, 1990. The rules were also presented at a Shoreline Management Workshop held in Cleveland on June 21-23, 1990, and at a conference on "Managing Lake Erie's Coast - The 1990's and Beyond," which was held in October 1990 and sponsored jointly by the Ohio Coastal Resource Management Project (OCRMP) and the Ohio Lake Erie Office. Details of the proposed designation process for the erosion hazard area were also published in the OCRMP newsletter.

On November 2, 1990, the proposed rules were filed and legal notices were mailed for public hearings. Legal notices regarding the rules were published in the *Toledo Blade* on November 2, 1990, the *Sandusky Register* on November 9, 1990, the *Cleveland Plain Dealer* on November 11, 1990, and in the *Port Clinton News Herald* on November 12, 1990. A news release announcing the schedule of hearings and open houses was distributed on November 15, 1990. Open houses were held in Huron on November 19, 1990; Toledo on November 27, 1990; Cleveland on November 28, 1990; and in Ashtabula on December 11, 1990. A Joint Committee on Agency Rule Review (JCARR) hearing was held December 6, 1990, and another hearing was held December 17, 1990. Final rules were adopted, effective September 8, 1991.

**Public participation and consultation after rules adoption in 1991** -- Mapping of the erosion hazard area based on the previously adopted rules did not begin in a concerted manner until federal funding for coastal program development was secured in late 1992. As program development proceeded and draft preliminary maps neared completion, the OCMP began meeting regularly again with local communities to explain the mapping process and draft enforcement rules. In June, 1993, ODNR conducted three meetings in the coastal area for local officials and planning agencies from all of the shoreline counties. Additional meetings were conducted as requested by local jurisdictions. ODNR conducted consultation meetings in each of the eight shoreline counties and in Put-in-Bay in November and December 1993 to review with local officials and planning agencies both the proposed preliminary identification of the erosion hazard area and proposed administrative rules for enforcement. Some members of the general public attended most of these meetings as well.

"Erosion hazard area" maps were displayed and discussed at length at the Fall 1993 meetings. Maps were subsequently made available upon written request. Copies of the already-adopted rules for designating the hazard area and proposed rules for enforcing the hazard area were distributed to all local officials both in advance of all meetings as well as at those meetings. In addition, relevant sections of the revised draft OCMP document were shared at many of these meetings.

Comments at the above-mentioned meetings focused primarily on the broad extent of the erosion hazard area, the inclusion of substantially filled and protected areas, the 30-year effectiveness standard that was required for erosion control measures, time periods allowed for public review and objection to the preliminary identification of the erosion hazard area, and the requirement that the status of property in the hazard area be recorded with the property owner's deed. As additional meetings were held within the coastal area and negotiations continued with property owners and their representatives, it became apparent that modifications to the Coastal Management Law would be necessary to achieve more focused and reasonable administration of the coastal erosion management component of the OCMP. To that end, ODNR worked with local officials and their representatives during the Spring of 1994 to achieve mutually agreeable statutory amendments. These amendments, passed by the Ohio General Assembly in May:

a. Increased the number of public hearings to be conducted for both the Coastal Management Program document and the erosion hazard area identification.

b. Allowed for consideration of protected and filled land in the erosion hazard area identification process, resulting in exclusion of some shoreline reaches from the hazard area. (All changes of "area" to "areas" and "<u>the</u> Lake Erie erosion hazard area" to "<u>a</u> Lake Erie erosion hazard area" relate to this modification.)

c. Extended the time period during which property owners may object to the preliminary hazard area delineation. (The second review period for ODNR is slightly shortened so as to avoid unduly lengthening the entire process.)

d. Changed the requirement for deed recordation that a property is included in the hazard area to requirement for written notice in accordance with Ohio Disclosure Law (O.R.C. § 5302.30).

e. Deleted the requirement that erosion protection measures required to obtain a permit under § 1506.07 be effective for 30 years. (Effectiveness standards will be included in rules.)

f. Modified the hardship provision in Division (B) of § 1506.07.

g. Limited the permit requirement to only those properties directly fronting Lake Erie.

h. Required ODNR review of local enforcement of erosion hazard area programs every two years rather than every year.

i. Clarified the requirement for state consistency by specifying in § 1506.03 that projects or activities subject to consistency must directly affect the coastal area.

Following the effective date of the amendments, October 20, 1994, ODNR worked with local officials to assemble an external working group to advise the department regarding changes, in addition to those required by the statutory revisions, to the previously adopted designation rules and the draft enforcement rules. A broadly representative group was formed, comprised of shoreline property owners, local officials, non-ODNR geologists, engineers and a state representative. That group met six times from December 1994 through May 1995. ODNR used the comments and recommendations of this group to modify the previously adopted designation rules and draft enforcement rules prior to filing those rules on July 24, 1995. The group elected not to write official recommendations, stating that the changes ODNR was making as their worked progressed reflected their recommendations.

During the period of time between enactment of the Ohio coastal law amendments and publication of this document, the OCMP continued to conduct numerous meetings and consultations with the public, local officials, state legislators and real estate professionals to advise them of the OCMP's progress and direction on this issue and to obtain input from these groups and individuals. Specifically, meetings were held in Jerusalem Township (Lucas County), Cleveland, Avon Lake, Erie County, Sandusky, Bay Village, Geneva, Rocky River, Lakewood, Willowick, Jefferson (Ashtabula County) and with the Cedar Point Property Owners Association. OCMP and ODNR's Division of Geological Survey staff met with Boards of Realtors in Sandusky and in western Cuyahoga County and with

the Peninsula Chamber of Commerce (Ottawa County). Three meetings were held with coastal area legislators. The City of Bay Village was particularly active in working with OCMP staff, establishing an ad hoc committee and conducting regular meetings with ODNR. Five meetings were held there between March 1994 and June 1995. The OCMP considered advice from all of these consultations, in addition to the recommendations of the external working group, in its rules revisions.

One issue, that of the terminology "erosion hazard area" arose on several occasions. An expressed concern was that the terminology conveyed an undue sense of alarm. This, coupled with the coastal law's disclosure requirement, was particularly worrisome to shoreline property owners. ODNR agreed with the external working group that the term "coastal erosion areas" conveys the intent of ODNR's intended objectives and that the publication of maps and recession rate tables more accurately portrays the relative risks of erosion along the shoreline. The Ohio General Assembly has now passed H.B. 119, an amendment to the state coastal management law to statutorily effect this terminology change. H.B. 119 became effective May 8, 1996, and is included in Appendix C of this document.

Upon filing the rules on July 24, 1995, ODNR mailed legal notices for two public hearings to the *Cleveland Plain Dealer*, the *Sandusky Register*, the *Toledo Blade*, the *Port Clinton News Herald*, the *Lorain Morning Journal*, the *Willoughby News Herald* and the *Ashtabula Star Beacon*. A news release announcing the hearings schedule and open houses for more informal comment and discussion was distributed on August 14. Open houses and public hearings were conducted in Huron on August 24 and in Cleveland on August 28. The rules were considered at the August 29 Joint Committee on Agency Rule Review (JCARR) meeting. The rules were refiled, following additional coordination with local governments, in February 1996 and filed in final form on June 3, 1996. The designation rules became effective on June 14, 1996, and the enforcement rules will become effective August 1, 1997.

Public participation and consultation with local authorities have been and will continue to be essential elements of policy making in the development and implementation of the OCMP. Eight additional public hearings will be scheduled for public comment on the preliminary identification of the coastal erosion areas. And the OCMP will continue to consult with local officials, property owners, coastal legislators, realtors and other organizations during the entire process of program development.

- Cost analysis -- ODNR evaluated the potential effects of the identification and enforcement of coastal erosion areas upon property values and future development. Based upon research and consultation conducted during June through August 1993 and again in Spring 1995, ODNR concluded that the identification and enforcement of coastal erosion areas will not negatively impact property values or development interests.

In part, ODNR has relied upon research conducted by the Ohio Sea Grant College Program. That research has concluded that the existence of erosion at given property sites is factored into buyers' decisions. Many buyers know that erosion can reduce the benefits of owning lake shore property. They perceive that erosion can cause a capital loss. It is reasonable to assume the buyer knows that the risk of capital loss can be reduced by installing erosion protection measures, which involves a capital expense. Erosion risk can also be reduced by choosing a property that is physically more immune to erosion damage (Kriesel, Lichtkoppler, Ohio Sea Grant Fact Sheet 044). ODNR prepared an economic impact assessment in September 1993 for inclusion with the anticipated original filing of coastal erosion enforcement rules. That analysis was widely distributed to local officials, planning agencies and other coastal area interests.

A fiscal analysis was again conducted in Spring of 1995, using a broad literature search and a second round of contacts made with coastal erosion managers in Great Lakes states. Research was completed on the extent of losses incurred by the public and shoreline property owners as a result of erosion processes. The intent of the latter analysis was to estimate the extent of potential cost savings if new development is encouraged outside coastal erosion areas.

Experience in other states continues to show that shoreline property values fluctuate with the extent of visible erosion, the real estate market and changing lake levels.

Potential costs to property owners, where an entirely new erosion control measure is required, were estimated using cost estimates from engineers compiled by ODNR's Division of Engineering. Those costs would be offset to varying degrees by value added to a coastal property through increased erosion protection. Many property owners would be fiscally affected only to the extent that modifications to an existing erosion control structure would be required to ensure that it is effective. It would not be possible to determine a range of costs of hypothetical modifications that might be required on the vast array of types of erosion control structures of varying age.

- Failure to consider avulsion -- The relationship of avulsive events and property ownership rights to ODNR's mandate to regulate construction of new permanent structures within the Lake Erie erosion hazard area was not made clear in the comments provided in response to the Notice of Intent. Without clarification of the concern in this regard, response is not possible. However, it is hoped the response in the section on responses to the 1992 *Public Review Draft Document* will address this concern.

4. General concerns regarding the OCMP

- ODNR's decision not to issue an interim revised draft OCMP document in advance of publication of the DEIS -- Revisions have not been completed until just prior to publication of this document. Portions of the document relevant to the coastal erosion area

management program have been shared and discussed with coastal interests, since that was the issue regarding which interest in the document was expressed. The revised draft document is reflective of the continuing input and participation in policy making by the public and coastal area interests.

- No funding at state or local level for implementation -- Federal funding will be provided for program implementation. This funding is required to be matched by state funds in increasing amounts over the first four fiscal years of program administration, after which the federal/state contribution will be 1-to-1. Grants to local communities will be available through the coastal management assistance grant program in accordance with O.R.C. § 1506.02(C).

- Limited input from local communities -- Please refer to comments in item 3 regarding participation and consultation. In addition to ODNR's efforts mentioned above, four public meetings, two of which were conducted as hearings, were held in the coastal area following publication of the *Public Review Draft Document*. Input from those meetings and from written responses from the public, local communities, and state and federal agencies has been considered and incorporated, as appropriate, into this revised document. All of this effort is in addition to the considerable public involvement component of earlier program development activities in the late 1970s and 1980s, as described in detail in Chapter 2. OCMP development has been significantly aided as well by the Coastal Resources Advisory Council since passage of the Coastal Management Law. All advisory council meetings are open to the public. The National Environmental Policy Act (NEPA) process and ODNR's requirement to conduct at least four public hearings will now be another opportunity for the public to participate and provide input regarding the complete OCMP document.

# PART III

# REQUIREMENTS OF THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

## A. Purpose and Need for Action

NOAA has prepared this final environmental impact statement (FEIS) pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq. to assess the environmental impacts associated with the approval and implementation of the coastal management program submitted to NOAA by the State of Ohio. The State of Ohio has submitted its Coastal Management Program to the Office of Ocean and Coastal Resource Management (OCRM) for approval pursuant to section 306 of the Federal Coastal Zone Management Act (CZMA) of 1972 as amended, 16 U.S.C. 1451.

The proposed action on the FEIS is approval of the Ohio Coastal Management Program (OCMP). The OCRM has made an initial determination that the program meets the requirements of the CZMA, as amended. Federal approval of the Ohio program will enable the State of Ohio to receive Federal grant assistance for program implementation and will require that Federal actions in or affecting the Ohio coastal zone be consistent with the Ohio program. The OCMP is described in Part II of this document. A table cross-referencing CZMA requirements with sections from this document may be found in Part I.

Approval and implementation of the OCMP will enhance governance of Ohio's coastal land and water uses according to the coastal policies and standards contained in the existing statutes, authorities and rules. Federal alternatives to program approval include delaying or denying approval, if certain requirements of the CZMA have not been met. The state could modify parts of the program or withdraw its application for Federal approval if either of the above Federal alternatives results from circulation of this document. This final program EIS includes responses to comments received on the draft EIS.

### 1. The Coastal Zone Management Act (CZMA)

In response to the intense pressures upon coastal areas of the United States, Congress passed the Coastal Zone Management Act (P.L. 92-583). This Act was signed into law on October 27, 1972. The Act authorized a Federal grant program to be administered by the Secretary of Commerce, who in turn delegated this responsibility to the National Oceanic and Atmospheric Administration's (NOAA) Office of Ocean and Coastal Resource Management (OCRM). The Coastal Zone Management Act of 1972 was substantially amended on July 26, 1976 (P.L.94-370) and again on November 5, 1990 (P.L.101-58). It was reauthorized in June 1996 (P.L. 104-150) for a three-year period with minor changes. The Act and its amendments affirm a national interest in the effective protection and development of the coastal zone by providing assistance and encouragement to coastal states to develop and implement rational programs for managing their coastal zones.

Broad guidelines and the basic requirements of the CZMA provide the necessary direction for developing these state programs. These guidelines and requirements for program development and approval are contained in 15 CFR Part 923, as revised and published June 28, 1996 in the Federal Register. In summary, the requirements for program approval are that a state develop a management program that:

- Identifies and evaluates those coastal resources recognized in the Act that require management or protection by the state.

- Reexamines existing policies or develops new policies to manage these resources. These policies must be specific, comprehensive and enforceable, and must provide an adequate degree of predictability as to how coastal resources will be managed;

- Determines specific uses and special geographic areas that are to be subject to the management program, based on the nature of identified coastal concerns. The basis for managing uses, or their impacts, and areas, should be based on resource capability and suitability analyses, socio-economic considerations and public preferences;

- Identifies the inland and seaward areas subject to the management program;

- Provides for the consideration of the national interest in planning for the siting of facilities that meet more than local requirements; and

- Includes sufficient legal authorities and organizational structure to implement the program and to ensure conformance to it.

## B. Alternatives to the Proposed Action

Introduction

Given the nature of the proposed Federal action, approval, delay and denial of the Ohio Coastal Management Program, are all alternatives available to OCRM. In approving a coastal management program (the preferred alternative), the Assistant Administrator for Ocean Services and Coastal Zone Management must find that a state has met the federal approval requirements of the CZMA at 15 C.F.R. Part 923. Delay or denial of program approval could be based on failure of the Ohio Coastal Management Program to meet any of the requirements of the CZMA, as amended. During the development of the Ohio Coastal Management Program in the 1970s, a variety of alternatives to specific program elements, e.g. boundary, management structure, and policy content, were discussed by county advisory groups and coastal program staff. No substantive or fundamental organizational alternatives were seriously considered, however.

In an effort to elicit public and agency comment and to assure that the Assistant Administrator's determination will be appropriate, this section identifies possible programmatic reasons for delaying or denying approval of the OCMP identified through the public review process to date.

Federal Alternatives

Three alternatives to the proposed action are available to the Assistant Administrator: approve, delay, or take no action/deny. The Assistant Administrator's approval must be based upon affirmative findings for all of the requirements of the CZMA.

1. Alternative 1: The Assistant Administrator could approve the OCMP. This is the preferred alternative.

Approval of the Ohio CMP would be based on an affirmative finding that the program meets all requirements of the CZMA and its regulations. The benefits of the OCMP implementation would include improved regulation and enforcement; balanced coastal community development; improved economic development for water dependent uses; better natural resource and hazardous areas management; improved intergovernmental coordination and greater public awareness. Additional benefits are review by Ohio of federal and federally-permitted and funded projects for consistency with its coastal management program and consideration of the national interest in state decision-making.

2. Alternative 2: The Assistant Administrator could deny approval (take no action) on the OCMP.

OCRM could deny approval if the program is found to not meet all requirements. With respect to the "no action" alternative, the Office of Ocean and Coastal Resource Management considers Federal denial or state withdrawal from the program and "no action" as synonymous. State participation under the CZMA is voluntary: when a state participates in program development, it determines whether or not program approval and implementation is in its best interest. The impacts of "no action" are described below:

A. Loss of federal funds to administer the program: Under section 306 of the CZMA, Ohio would receive about $800,000 annually to administer its coastal management program.

B. Loss of consistency review of federal actions: This will mean that federal actions would not be reviewed by Ohio for consistency with the OCMP as required by section 307, CZMA.

C. Loss of adequate consideration of the national interest in the siting of facilities which are other than local in nature as required by section 306(d)(8) of the CZMA. By delaying or denying program approval, the State of Ohio and local governments would be under no obligation under section 306(d)(8) to give adequate consideration to coastal facilities that are of national interest. This could result in loss of public benefit that the use of such facilities provide.

3. Alternative 3: The Assistant Administrator could delay approval of the OCMP.

OCRM could delay its approval if any element of the OCMP necessary for program approval does not meet approval requirements and requires some modification. In the opinion of OCRM, the following three issues might be the most prominent in terms of reviewing the adequacy of the OCMP meeting specific CZMA requirements. These basic concerns, the relevant CZM requirements, and OCRM and state options are described below under three alternative headings:

Alternative 3A: Delay program approval if the State does not have the organizational structure to implement the coastal management program.

The OCMP is a "networked" program consisting of several Ohio natural resource protection and hazard management programs. Ohio's coastal management law requires that all state agency actions affecting the coast be consistent with the OCMP. Responsibility within ODNR for implementing the relevant statutes and coordinating the overall program falls to the Division of Real Estate and Land Management (REALM). Other state agencies such as the Ohio DOT need to act consistently with the OCMP. The Assistant Administrator could delay program approval if the coordination and consistency provisions of the OCMP including the draft interagency MOUs included in Part II, Appendix E are insufficient to effectively network state agencies and divisions into an overall coastal management program.

Alternative 3B: Delay program approval if the State does not have the necessary authorities to protect wetlands under its section 401 water quality certification authority.

Ohio relies on Ohio EPA's section 401 water quality certification authority and other aspects of Ohio EPA's water quality standards program to protect the State's coastal wetlands (see Part II, Chapter 5). The Assistant Administrator could delay approval of Ohio's program if these authorities are not strong enough to protect coastal wetlands. In making this determination, NOAA will examine information on the activities currently affecting wetlands in Ohio, the Ohio EPA's regulations and guidelines for decision-making for section 401 water quality certifications, as well as judicial actions interpreting Ohio EPA's authority.

Alternative 3C: The Assistant Administrator could delay program approval if ODNR regulation for erosion management purposes either is not appropriate to the erosion problem in Lake Erie or do not contain enough specificity to allow for predictable decision-making.

Ohio DNR has issued draft maps identifying the Lake Erie coastal erosion areas pursuant to O.R.C. §1506.06. These proposals reflect several years of work on the part of the ODNR to identify that portion of the Lake Erie shoreline that is likely to be lost to shoreline erosion over the next 30 years if no additional erosion control measures are implemented. More detailed information on these proposals is found on pages 5- 8 through 5-12 in Part II of this document. In developing these proposals ODNR consulted extensively with affected interests including local governments, landowners, and OCRM.

Significant changes were made in the process used to designate coastal erosion areas in areas that already are filled and/or bulkheaded. The process was also changed to account for accuracy limits in calculating recession rates. The effect of these changes was to significantly reduce the areas that are preliminarily designated as coastal erosion areas.

Another issue related to the coastal erosion component of the OCMP is the criteria that ODNR will use to permit permanent structures and erosion control measures. These criteria require an assessment of the effects of proposed erosion control measures, both structural and nonstructural, on coastal processes, in particular erosion along the adjacent shoreline. There is some concern regarding whether ODNR should require or show a preference for nonstructural measures if the site and the adjacent shoreline area will be better protected by such nonstructural measures, or if the nonstructural measures would be more effective to maintain the natural functions of beaches, dunes, bluffs and littoral zones.

Before taking final action approving the OCMP, OCRM will review the complete record of comments and responses on this document.

State Alternatives Considered During Program Development

Throughout the early effort to develop a program in Ohio, preference was always given to using a networked approach based on existing authorities rather than creation of a new CZM superagency. Ohio's General Assembly, in unanimously passing the Coastal Management Law, made clear and specific choices about the manner in which Ohio's coastal management program would be developed and implemented, whether or not federal approval under the CZMA would be pursued. The law establishes a networked program, with ODNR as lead agency assuring consistency in implementation of existing authorities.

An alternative approach to the inland boundary was considered during the 1990s. The delineation of the Ohio coastal management boundary was proposed as a two-tiered boundary, with a "management tier" and a more extensive nine-county planning tier. As proposed in the 1992 public review draft document, the first tier was to be the geographic area subject to all program authorities and the federal and state consistency provisions. The second tier was envisioned as a means of facilitating planning and administration provisions. This alternative was eliminated as a result of comment on the 1992

document indicating that such arrangements have not worked well in other states administering coastal management programs.

There have been, however, significant changes in the ODNR's proposal to implement the coastal erosion area management provisions of the 1988 Ohio Coastal Management Act. Considerable public debate has ensued on that issue, resulting in several significant changes to the Ohio Coastal Management Law in 1994 and regulations that identify coastal erosion areas. Changes are discussed in detail in Chapter 11 of Part II of this document, which was reproduced verbatim from the DEIS. The coastal erosion area management policies set forth in Chapter 5 of Part II of this document have been modified in accordance with those statutory changes. Environmental effects of the erosion area management policies are discussed on pages 23-24 of this section.

Consultation and Coordination

All local, state and federal agencies referenced in Part II of this document and Volume II Appendices were consulted during initial development of the 1992 public review draft document. ODNR consulted each agency again in 1993 and in 1995 in order to incorporate necessary revisions prior to publication.

## C. Description of the Affected Environment

Overview

Special among the Great Lakes is Lake Erie, the only Great Lake to border Ohio. Population density in the Lake Erie basin is the greatest among the Great Lakes, yet Lake Erie is smaller by volume than the other Great Lakes, and only Lake Ontario is smaller in area.

Lake Erie is the shallowest of the Great Lakes, and the relatively warm waters contribute to its being one of the most productive freshwater lakes in the world. In fact, the walleye populations of the western Lake Erie basin have helped Ohio earn a reputation as the "Walleye Capital of the World." In addition, while loss of coastal wetlands along Lake Erie has been profound, the remaining Lake Erie marshes have international importance for North American waterfowl and serve other important wetland functions.

Ohio annually uses more than one trillion gallons of Lake Erie water for industrial processing, electrical generation, public consumption and domestic purposes. About 9 million tons of cargo are annually shipped to and from Ohio ports on Lake Erie. From May to September each year, tourism pumps some $200 million into the local economies of Ottawa, Erie and Lorain counties, while more than 10 million visitors enjoy year-long fun and outdoor recreation at Ohio's seven Lake Erie state parks. Sport harvest of walleye and yellow perch on Lake Erie in 1993 was 5.5 million fish. Meanwhile, the lake area's numerous wineries produced some 620,000 gallons of wine.

Coastal Area

State law defines Ohio's coastal area as "the waters of Lake Erie, the islands in the lake, and the lands under and adjacent to the lake, including transitional areas, wetlands, and beaches. The coastal area extends in Lake Erie to the international boundary line between the United States and Canada and landward only to the extent necessary to include shorelands, the uses of which have a direct and significant impact on coastal waters as determined by the director of natural resources" (O.R.C. § 1506.01(A)).

The proposed coastal area boundary includes portions of the four Areas of Concern (AOCs) designated by the International Joint Commission. They are the Maumee, Black, Cuyahoga and Ashtabula Rivers AOCs. AOCs are areas that were identified as having severe water quality problems and a high degree of use impairments resulting from a broad array of point and nonpoint sources.

For purposes of organization, this chapter concerning the environment affected by Ohio's coastal management program is described under the broad categories of Physical Characteristics, Socio-Economic Characteristics, Environmental Quality, and Natural Resources.

1. Physical Characteristics

a. Lake Erie

Lake Erie divides naturally into three major basins: western, central and eastern. The western basin, extending from Toledo to Huron, includes the Lake Erie Islands of Ohio. The most developed and populated islands are Kelleys Island and North, Middle and South Bass Islands. Rattlesnake and West Sister islands are smaller and less developed. The central basin extends from Huron to the Pennsylvania border where the eastern basin begins. In total, Ohio has 262 miles of Lake Erie shoreline and 2.25 million surface acres of water within Lake Erie's western and central basins.

Ohio's portion of the western basin of Lake Erie includes about 450,000 surface acres of water and approximately 137 miles of shoreline. The area has numerous reefs and shoals, rocky islands, and sandy beaches. It is the most productive fish spawning and nursery grounds in the Great Lakes. Maximum water depth in the western basin is 46 feet, with an average depth of 24 feet. Bottom types range from sand and silt to hard packed clay and limestone bedrock.

Ohio's portion of central Lake Erie includes 1,783,000 surface acres of water and approximately 125 miles of shoreline. Maximum depth of the central basin is 80 feet, with an average depth of 56 feet. The bottom is made up of a gravel and shale bedrock covered in most areas by mud and sand.

Lake Erie water levels vary naturally over time in cyclical fluctuations, ranging from the record historical low of 568.31 feet (IGLD 1985) in February 1936 to the record high of 574.16 feet in June 1986. Long-term average level of Lake Erie is 571.16 feet (IGLD 1985). Lake level varies naturally through precipitation and evaporation in the basin, inflow from the upper Great Lakes via the Detroit River, and outflow into the Niagara River. Although four man-made diversions and two regulatory structures have some minor effect on Great Lakes water levels in general, no water level control structures exist specifically on Lake Erie. Flow is naturally constricted at the meeting point of the Niagara River and Lake Erie, limiting the rate at which water leaves the lake. Relatively small amounts of water are diverted through the Welland Canal, New York Barge Canal, and Black Rock Lock in the Niagara River.

b. Erosion and Flooding

Erosion along the Ohio shore of Lake Erie is a serious problem, especially in areas of high bluffs and erodible sand, clay and till. The two primary erosional processes are wave erosion and mass wasting. Natural factors such as beach distribution, near shore depths, storm frequency, lake level and shoreline orientation contribute to variations in rates of erosion over time and from place to place. Erosion control structures and offshore disposal of sand dredged from harbors also contribute to variations and have exacerbated erosion problems in some areas. Recession rates vary from nominal along dolomite and limestone island areas to as much as twelve feet annually in portions of Lake and Ashtabula counties for the period 1973 through 1990. Of the 262 mile shoreline, approximately 157 miles (60%) are eroding at a rate greater than 0.3 feet per year.

Two problems associated with fluctuating lake levels and developments located in flood- and erosion-prone areas are damages and property loss due to flooding and Lake Erie-related erosion. Nearly 1.6 million tons of material is eroded annually along Ohio's lakeshore, with significant and far-reaching implications for public safety, health and welfare. Only 20 percent of this 1.6 million tons is sand-sized sediment that remains along the shoreline. The remainder is fine-grained sediment that disperses in the lake, increasing water turbidity and sedimentation rates.

While the areas subject to flooding are well known, the timing and occurrence of such flooding along the lake is highly unpredictable, often resulting from sudden storms and short-term fluctuations in barometric pressure. More predictable flooding along rivers and streams takes place in the spring when rainfall and snowmelt occur, the ground is either saturated or frozen, and runoff is high. Ice jams also compound the flooding problem at these times. Direct flood damages averaged $20 million to $25 million annually in the late 1960s, but these costs have escalated to more than $100 million today and are expected to rise even further.

c. Geology

Lake Erie's geology is primarily the product of sedimentation, erosion and glacial activity. The area's geologic foundation consists of ancient igneous and metamorphic bedrock which was periodically covered by shallow seas and subsequent sediment deposits. These sediments hardened into layers of sandstone, shale, limestone and dolomite that were, in turn, carved into wide valleys by river systems and advancing glacial ice. The less resistant shales and fractured limestones were scraped out to form lake areas, leaving more resistant shale cliffs in the east and a chain of limestone and dolomite islands to the west.

Geologic processes are continually reworking Lake Erie and its shore. While these processes generally act very slowly to yield almost imperceptible changes, the combination of beach and bluff erosion associated with above average lake levels has caused dramatic changes along the Ohio lakeshore. The effects of Lake Erie's fluctuating water levels can reach far into adjoining flood plains and low-lying areas. The 1980s saw record high lake levels over the entire Great Lakes Basin. While the other Great Lakes have receded to their long-term average levels since the record high levels of the 1980s, Lake Erie has remained about one and one-half feet above its long-term average.

d. Physical Shoreline

From Toledo to Huron, Ohio's shoreline consists of low-relief (less than 2 meters) barrier beaches and laminated clay banks, except for the Marblehead-Catawba Island area that is made up largely of moderate-relief (3 to 6 m) dolostone and limestone slopes and bluffs. From Huron to Conneaut, the shore consists of moderate-to-high relief (3 to 20 m) shale and/or till slopes and bluffs commonly capped by stratified drift. Shale makes up most of the shore between Cleveland and Avon Point. Excluding manmade structures and fill, about 47 percent of the length of shore in the wave erosion zone is till, 26 percent is rock, 22 percent is sand, and 5 percent is laminated clay.

A century ago, sand beaches fronted most reaches of Ohio's Lake Erie shore. Now, beaches make up a fragmented band that fronts about 80 miles of the shore. The beaches are commonly narrow (less than 15 m wide) and consist primarily of sand, although there are cobble, pocket beaches in places where the shore is composed of rock. Shore-protection structures, e.g., groins and seawalls adjoin many beaches. In general, the longest continuous beaches are found where there are the fewest groins.

Nearshore slopes are gentle; the slopes within 600 m of the shoreline are usually less than one degree. The bottom is generally made up of sand and gravel less than 2 m thick near the shore. Farther offshore, rock, till, till lag, glaciolacustrine clay, and silt are found.

More than 80 percent of Ohio's shoreline is developed, and approximately 2,300 permanent structures are located within 50 feet of the bluff line.

The following is a description of the physical shoreline by county:

The 22-mile shoreline of Lucas County, including the Maumee River estuary, is composed of lacustrine clay deposits around the Maumee River and Bay, while sand and marshes front the lake proper. Sand beaches are small or nonexistent along Maumee Bay, whereas discontinuous beaches front approximately 45 percent of the lakeshore. Maumee Bay has numerous shore protection structures, and riprapped dikes protect much of the wetland habitat along the lake. Approximately 7 miles of the Lucas County shoreline are expected to be preliminarily identified as coastal erosion areas.

Ottawa County's 79 miles of shore, including Sandusky Bay and the islands, is characterized by low-relief sand slopes and marshes along the county's western shore, while the shoreline of the islands and lakeward portion of Marblehead Peninsula areas are composed primarily of bedrock limestone. Shore protection structures front much of the shore. Approximately 36 miles of the Ottawa County shoreline, exclusive of the islands, are expected to be preliminarily identified as coastal erosion areas.

The south shore of Sandusky Bay in Sandusky County extends for 5 miles plus several miles along Muddy Creek Bay. The shore consists of low clay banks, and beaches are narrow to nonexistent. The western part is predominantly wetlands. Approximately 4 miles of the Sandusky County shoreline are expected to be preliminarily identified as coastal erosion areas.

Erie County's shore consists of 46 mainland miles, (including Sandusky Bay), and 11 miles on Kelleys Island. Kelleys Island's shore is bedrock limestone. Sandusky Bay's shore is primarily low clay banks with narrow to nonexistent beaches. Along the open lake, the shore varies from beaches and low dunes at Cedar Point to low-relief till and clay banks, to higher (7-10m) till bluffs farther east. Approximately 30 miles of the Erie County shoreline are expected to be preliminarily identified as coastal erosion areas.

Lorain County has 22 miles of lakefront, where erosive 25-foot bluffs and slopes characterize part of the shore, with lower till bluffs in other areas. Discontinuous beaches less than 50 feet wide and groins and seawalls are common. Approximately 14 miles of the Lorain County shoreline are expected to be preliminarily identified as coastal erosion areas.

The 29-mile shoreline in Cuyahoga County has 50- to 60-foot shale bluffs and slopes west of Cleveland; the Cleveland lakefront is entirely protected by structures; and 25-foot till bluffs characterize the eastern shore. Approximately 12 miles of the Cuyahoga County shoreline are expected to be preliminarily identified as coastal erosion areas.

Lake County's 30 miles of shoreline is characterized by 30- to 40-foot shale bluffs overlain by clay, sand, and till, except near Ashtabula County where the bluffs are lower. Discontinuous sand beaches and shore-protection structures front the shore. Approximately 24 miles of the Lake County shoreline are expected to be preliminarily identified as coastal erosion areas.

Ashtabula County's 28 miles of shorefront is composed largely of till banks, bluffs, and slopes which increase from heights of 15 feet in the west to 65 feet near Pennsylvania. Isolated sand beaches, 50 to 100 feet wide, and shore protection structures are common. Approximately 21 miles of the Ashtabula County shoreline are expected to be preliminarily identified as coastal erosion areas.

e. Soils

Generally, the soils on the shoreline west of Sandusky Bay are very poorly drained and formed in clayey, high lime sediments. Toledo has the most common soil series in this area, and it commonly occurs just slightly above the lake level. Northwest of Cleveland, the soils on the shoreline generally formed in sandy, loamy or silty sediments, or glacial till with a low content of lime. Many beaches are included, but the most common soil series above the bluffs is Conneaut, a poorly drained soil.

Between Sandusky Bay and Cleveland, the soils are much more variable. Soils in the Marblehead area are relatively shallow to limestone bedrock. East of the Huron River, soils that are only moderately deep to acid shale bedrock are common. Soils that formed in medium-lime glacial till are on some of the bluffs. Sediments ranging from sandy to clayey textures are common along the shoreline in Erie County east of Sandusky.

f. Climate

The overall climate of Ohio is continental in character, which is marked by large annual, daily and day-to-day ranges in temperature. However, the waters of Lake Erie tend to lower daily high temperatures in summer and raise temperatures in winter along Ohio's coastline. Summers are moderately warm and humid in this region of the state with average temperatures around 72 degrees Fahrenheit. Winters are reasonably cold and cloudy with average temperatures around 23 degrees Fahrenheit. Weather changes occur every few days from the passing of cold or warm fronts and their associated centers of high and low pressures.

Average annual precipitation varies from 31 inches in the western lake basin to between 34 and 35 inches east of Cleveland. Precipitation can vary widely from year to year, although it is normally abundant and well-distributed throughout the year with winter being the driest season.

2. Socio-economic Characteristics

a. Demographics

According to 1990 U.S. Census figures for the state of Ohio, approximately 2.75 million people, 25 percent of Ohio's total population, inhabit the nine counties in Ohio's coastal area. This represents a nine percent decline in population since 1970, when the population of these nine counties was 3.02 million. Over this time period, population in the two most urban and densely populated counties, Lucas and Cuyahoga, experienced a population decrease while all seven other counties increased in population. The smallest increase was 1.4% (Erie County) and the largest was 16% (Wood County).

b. Commerce and Industry

Water ports are a boon for commercial activity, and Ohio is fortunate to have nine ports along its north coast, from which nearly $18 billion is annually exported. These ports--located in Toledo, Marblehead, Sandusky, Huron, Lorain, Cleveland, Fairport Harbor, Ashtabula, and Conneaut--are as diverse as the cargoes they handle. Marblehead serves only the limestone industry, while Cleveland and Toledo have trading links worldwide.

Cargoes of iron ore, limestone and coal make up the majority of the commerce handled by U.S.-flagged lake carriers, with coal being the single largest commodity. Iron ore, mostly extracted from mines in Minnesota, is delivered to the ports of Toledo, Lorain, Cleveland, Ashtabula and Conneaut. Limestone is a key commodity for the construction and steel-making industries and is handled in some form by every Ohio port. The ports of Toledo, Sandusky, Ashtabula and Conneaut are the export points for all of the Appalachian coal shipped on the lakes to domestic and international markets.

Ohio's share of the international trade through the St. Lawrence Seaway is mostly handled by the public docks of the Cleveland-Cuyahoga and Toledo-Lucas County Port Authorities. The port of Cleveland is the first major general-cargo port west of the St. Lawrence Seaway, and its business is dominated by the steel-making industry. Iron ore and ferrous metal alloys are moved through the port for steel-making firms throughout northeast Ohio. The Cleveland Foreign Trade Zone boasts a steel warehousing facility that handles import and export products for area steel-making, automotive and electrical manufacturing businesses.

The Port of Toledo offers the largest Foreign Trade Zone on the Great Lakes at 487 acres. This includes the Port of Toledo at 150 acres and the Toledo Express Airport at 337 acres. International commerce through this port includes steel products and a wide range of general cargo, such as newsprint, soap, paint and furniture products.

Passenger vessels also are an important part of Lake Erie maritime industry. The increasing popularity of the Lake Erie Islands has resulted in additional services throughout the region. A new, larger vessel is in service from Sandusky to Pelee Island and Leamington, while additional vessels connect from the mainland to Kelleys Island and South Bass Island.

c. Water Usage

More than three billion gallons of water are withdrawn from Lake Erie each day, of which approximately 89 percent is used for industrial processing and electrical generation. Electrical generation alone accounts for 74 percent of lake water withdrawals. Water withdrawal systems have expanded to such an extent that approximately 75 percent of the water supplied in the basin comes from Lake Erie. Twenty-eight community water systems, serving the coastal area's 2.8 million residents, use Lake Erie as the source of their raw water. Because of the lake's shallowness and near-shore water quality problems, water supply development regulations require that intake pipelines extend at least 1,500 feet into the lake. In total, these systems daily produce more than 473 million gallons of treated and disinfected water.

d. Industrial Mineral Extraction

Offshore from Painesville, 2,000 feet below the surface of Lake Erie and covering an area of 1.25 square miles, are located the salt mining operations of Morton International. Approximately 2.8 million tons of salt are produced from Lake Erie each year. In addition, the State of Ohio permitted approximately 300,000 cubic yards of sand and gravel to be extracted from the lake for industrial purposes in 1991 and 1992. In 1993, a total of 110,563 cubic yards of sand and gravel was extracted.

e. Agriculture

Agriculture of Ohio's coastal area can be characterized as a series of contrasts. The prolonged growing season along the lake, combined with the highly urbanized character of the region, make it an ideal area for growing truck produce. A variety of fruits, vegetables is berries is grown in the region. Truck farming is most prevalent in the urban counties of Lucas, Erie, Lorain and Cuyahoga. The urban-oriented nursery and greenhouse business is the most important form of agriculture in Lake County. The soils and terrain of Ashtabula County are not ideally suited for growing crops, although dairy farming occurs because of the county's close proximity to the densely populated urban areas of Cleveland, Akron and Youngstown.

Lake Erie crops contribute greatly to Ohio's agricultural economy. Of Lake Erie basin specialty crops, nursery stock production contributes $115 million annually to the state's economy, while fruit and vegetable production contributes $25 million annually.

It is estimated that 90 percent of Ohio's grapes are grown in the Lake region, with grapes and grape products contributing $35 million to the economy. Over half of Ohio's commercial wineries are located in Lake, Ashtabula, Erie and Ottawa counties. The largest wine vineyard in the state is located on North Bass Island and is home to nearly 200 acres of European-type grapevines. In Ohio's coastal region, there are three Appellations of Origin. (Appellations of Origin identify recognized U.S. grape growing regions.) The Lake Erie Appellation extends along the lake shoreline from Toledo into New York State. There are 21 Ohio wineries within this appellation. The Isle St. George and Grand River Valley Appellations lie within the Lake Erie Appellation, with the former encompassing North Bass Island and the latter following the Grand River in Lake, Ashtabula and Geauga counties.

f. Recreation and Tourism

Lake Erie is considered by many to be the key to tourism in Ohio. It is estimated that Erie, Ottawa and Lorain counties annually attract between 6 and 8 million tourists during the peak summer season, contributing to more than $200 million in travel revenue to the state's economy.

The Lake Erie coastal area provides great opportunities for the outdoor recreational pursuits of Ohioans, visitors and tourists. Shorelands of the coastal area contain recreational areas that range from specially managed wildlife areas and nature preserves to developed parklands managed for multiple recreational uses. The State of Ohio's recreational emphasis in the coastal area is on satisfying statewide and regional recreation needs through the provision of facilities and services by the public and private sectors.

The following table provides an assessment of existing recreational facilities that provide access to Lake Erie:

| | Number | Acreage | Shoreline Frontage |
|---|---|---|---|
| State Parks | 7 | 5,653 | 15 miles |
| Natural Areas | 6 | 1,849 | 2 miles |
| Marinas | 270 | | |
| Managed Wildlife Areas | | | |
| State, Federal, Private Clubs | 13 | 20,400 | 6 miles (state) (federal and private unknown) |
| Fishing Access Sites | 54 | 8,547 | |
| Public Boat Launch Sites | 27 | | |
| Hunting Access Areas | 15 | 7,619 | |
| Beaches | 33 | | |

The Ohio Department of Natural Resources is the leading public agency in providing outdoor recreational services. The agency operates seven lakefront state parks and six state nature preserves and ten wildlife areas in the coastal area:

| State Parks | Nature Preserves | Wildlife Areas |
|---|---|---|
| Maumee Bay | DuPont Marsh | Metzger Marsh |
| Crane Creek | Sheldon Marsh | Magee Marsh |
| East Harbor | Old Woman Creek | Little Portage |
| Erie Islands | Headlands Dunes | Toussaint |
| Headlands Beach | Mentor Marsh | Pickerel Creek |
| Cleveland Lakefront | Lakeside Daisy | Pipe Creek |
| Geneva | | Willow Point |
| | | Mallard Club |
| | | Green Island |
| | | Resthaven |

g. State Parks and Public Beaches

Maumee Bay State Park near Toledo is a full service resort facility that includes a lodge, cabins, 18-hole Scottish-style golf course, camping areas, trails, beach, bicycle trail and amphitheater. A modern interpretative center opened in 1992, and includes a facility that offers views of wetlands and wildlife habitats from remote cameras.

The most visible and popular public areas on Lake Erie are state parks. Shorefront camping is found at East Harbor, Kelleys Island and South Bass Island, while Catawba Island provides boating access, picnicking and fishing. Boating, fishing and swimming are enjoyed at Headlands Beach, Geneva and Cleveland Lakefront. Geneva also provides an important refuge harbor in Ohio's eastern Lake Erie zone.

Unique among Ohio's state parks is the urban setting of Cleveland Lakefront. The park is being expanded and developed through implementation of a long range waterfront plan. Acquisition of 43 acres of shoreland between Euclid Beach and Wildwood in 1991 allowed for development of the Villa Angela property, which has increased public access to the lake, expanded the swimming beach and provided additional trails that link parks and other lakefront recreational facilities.

h. Wildlife Areas and Nature Preserves

In addition to the wildlife areas listed above, the Ohio Division of Wildlife operates the Dempsey and Mazurik Lake Erie Access Areas and the Put-in-Bay Hatchery Aquatic Resource Education Center. Wetlands restoration is a primary concern in the coastal area, and the Division is participating in cooperative restoration projects on both public and private lands. Some 3,800 acres of coastal wetlands have been protected, restored or enhanced under the guidelines of the North American Waterfowl Management Plan.

Nature preserves in the coastal area offer opportunities to enjoy unique environmental settings and coastal resources. Of the six coastal nature preserves, Old Woman Creek is exceptional.

Old Woman Creek State Nature Preserve, near Huron, offers compatible public uses, such as hiking and nature observation, in a setting where important scientific research and education is being conducted. Old Woman Creek is also a National Estuarine Research Reserve, the only such designated area on the Great Lakes, under the oversight of the National Oceanic and Atmospheric Administration.

Federal facilities in the coastal area include the U.S. Fish and Wildlife Service's 8,300-acre coastal wetlands of the Ottawa National Wildlife Refuge in Lucas and Ottawa Counties, and the National Park Service's Perry Victory and International Peace Memorial on South Bass Island. Other federal agencies holding or managing parcels of land in the designated coastal area are listed in Appendix P of Part II.

i. Hunting and Fishing

Ten to 15 million pounds of fish are harvested annually from the Ohio waters of Lake Erie in sport and commercial fishing activities. Two-thirds of these fish are harvested from the Lake's western basin. Ohio consistently ranks among the top ten states in the number of fishing licenses sold annually. Of the more than 1 million fishing licenses sold in Ohio each year, an estimated 60 percent are sold to anglers who fish Lake Erie. Lake Erie sport fishermen generate approximately $243 million in revenue annually, with charter boat fishing alone boosting local economies by nearly $9 million. In 1993, Lake Erie sport anglers caught 8.6 million fish, including 2.7 million walleye.

Ohio traditionally ranks among the top three states each year in trapping activity, much of which is conducted on the Lake Erie marshlands. Duck hunting is also popular in the coastal marshes. Mallards, black ducks, wood ducks and blue-winged teal comprise approximately 70 percent of Ohio's annual harvest of more than 100,000 ducks. Mallards and black ducks are late migrants into Ohio and make up more than half of the waterfowl reported on hunter bag checks in the Lake Erie marsh region.

j. Historical Sites and Structures

Historically, many diverse groups of people have passed through or settled in Ohio's Lake Erie region. Prehistoric and historic Indians, the French, British, and Eastern Europeans left their mark upon the land through a variety of sites and structures. The following is a general summary of the types of historic resources each county has to offer:

Many historic commercial buildings and districts can be found in Lucas County, primarily in Toledo and Maumee. The list includes the oldest yacht club in the area and a portion of the old Miami-Erie canal.

Wood County boasts three historic districts and a fort that is now a state historical museum. The greatest diversity of historic sites exists in Ottawa County, where the Marblehead Lighthouse, a log cabin, a battle site, and a Civil War prison and fort on Johnson's Island are located.

Millions of summer tourists are familiar with Erie County's famed Cedar Point Amusement Park, which is home to several structures listed on the National Register of Historic Places. Included among these are the Cedar Point Light, the Coliseum located on Cedar Point's midway, and Hotel Breakers. Other historic sites located in Erie County include a winery, train depot, an engine house, and a portion of Kelly's Island.

Lorain County lists the 103rd Ohio Volunteer Infantry Barracks, the Lorain Lighthouse, and two houses dating back to the 1800s on its list of historic sites. Cuyahoga County has the largest number of historic sites registered in the coastal area. Most of the sites are located in Cleveland and include an old water-pumping station still in working condition.

Lake County claims the only Great Lakes lighthouse museum, while Ashtabula County has some early nineteenth century homes and a passenger depot presently maintained as a museum. The Ashtabula waterfront is on the National Register of Historic Places and is of particular importance to the OCMP.

3. Environmental Quality

a. Water Quality

Historically, one of the most serious problems adversely affecting the coastal area has been the pollution of Lake Erie and its tributaries. Water pollution has accelerated the lake's natural eutrophication process. Because of its shallowness, relative warmth and the high fertility of the surrounding basin's soils, Lake Erie is naturally more eutrophic than the other Great Lakes. However, these natural conditions in combination with human activities resulted in a Lake Erie characterized by excessive plant nutrients, sediments, bacteria, and toxic substances.

Several commentators declared Lake Erie "dead" in 1970 from its serious pollution problems. Excessive nutrient loadings caused mats of floating algae, odors, poor aesthetics, and the creation of oxygen-depleted areas at the lake bottom. Tributary silt loadings increased turbidity, choked biological communities and carried contaminants adhering to sediment particles into the lake. Bacteria from poorly or untreated sewage created health hazards and closed beaches. Toxic chemicals accumulated in fish, wildlife and sediment, leading to the issuance of fish consumption advisories.

Lake Erie water quality has greatly improved since passage of the federal Clean Water Act. Effluent concentrations of phosphorus that had averaged 7 mg/l before 1972 are now averaging less than 1 mg/l. Conservation tillage practices have increased by nearly 200 percent in the Maumee River basin since 1989, and throughout the Lake Erie basin, county phosphorus reduction committees have actively worked to meet phosphorus reduction goals established in the Ohio Phosphorus Reduction Strategy. The purpose of this strategy is to quantify phosphorus loadings into Lake Erie from Ohio, and to identify mechanisms for reducing such loading.

Sediments, some of which are contaminated, remain a source of pollution to the lake, with river and shoreline erosion being a primary cause. Estimates of sediment loads for Ohio's portion of Lake Erie indicate roughly 2 million tons are derived annually from tributaries and 1.6 million tons from the shoreline. These sediments clog shipping channels, damage fish habitat, complicate water supply treatment, contribute to nutrient enrichment and adversely affect recreational use of the Lake. In Ohio alone, the U.S. Army Corps of Engineers spends approximately $10 million annually to dredge an estimated 2 million cubic yards of sediments from the shipping channels and harbors of Lake Erie.

Toxics are also a serious concern for Lake Erie, although contaminant levels in fish flesh are not as high as in some of the other Great Lakes. Currently, it is advised that Maumee Bay catfish should not be eaten, and consumption limitations for other species are advised. Stage 1 Remedial Action Plan (RAP) reports have been developed for four Lake Erie tributaries in Ohio that were identified by the International Joint Commission as Great Lakes "Areas of Concern" (AOCs) due to poor water quality

and environmental degradation. These impaired areas are the Maumee, Black, Cuyahoga and Ashtabula Rivers.

The Maumee River AOC is impaired primarily because of nonpoint source pollution and leaching landfills. Contaminated sediments from past industrial activity has adversely affected the Ashtabula River AOC, while the Black River is targeted due to past and present industrial contamination, municipal wastewater treatment plants and nonpoint source pollution. The Cuyahoga River AOC is a highly industrial, urbanized area with both point and nonpoint source pollution problems.

b. Aquatic Nuisance Species

No discussion of the environmental quality of Ohio's Lake Erie region would be complete without considering the impact of zebra mussels and other exotic species. Zebra mussels are believed to have entered the lower Great Lakes Basin in 1986 through the discharge of ship ballast water but did not appear in the Lake Erie coastal area until 1989. The exotic freshwater mussels have managed to spread rapidly in a very short time throughout the Great Lakes and into major river systems, causing economic damage by clogging pipes in water treatment, utility and manufacturing plants. Currently at least two species of zebra mussels are present in Lake Erie with densities exceeding one million/square meter at water intakes.

Zebra mussels have been shown to accumulate contaminants and can pass those contaminants up the food chain. During the summer of 1995, they were implicated as the probable cause of a large bloom of toxic algae in the western basin. Study continues regarding the human and ecological health implications of these factors.

The common carp is another problem species. Carp were apparently introduced in the Cincinnati area and around Fremont in the late 1800s. They are often present in great numbers and may contribute to turbidity, which adversely affects the germination and growth of aquatic plants and interferes with the spawning success of other fish species.

While the ruffe is not yet in Ohio waters, it appears that it is only a matter of time. Judging from the experience in western Lake Superior, where this Eurasian percid has become established, adverse impacts on Ohio's Lake Erie fishery are possible.

The round goby has proliferated in the benthic areas of the central basin adjacent to Lake and Ashtabula counties. This raises concern because of potential negative impacts on native organisms and possible bioaccumulation of contaminants.

Purple loosestrife (*Lythrum salicaria*) is another exotic species causing adverse effects in the coastal area. This plant invades marshes and grows in profusion, creating monoculture habitat to the detriment of wildlife and other plants and plant communities. The plants are unsuitable as cover, food or nesting sites for a wide range of native wetland animals.

c. Air Quality

Ohio's lakeshore counties contain many of the state's largest industrial complexes, including coal-fired electric-generating facilities with 17 percent of the statewide coal-fired generating capacity. In the past 10 years, emissions from the numerous air pollution facilities have decreased substantially. However, air quality standards are not being met in the industrialized regions of Lucas, Lake, Lorain and Cuyahoga counties. Atmospheric deposition contributes to the total pollutant load of certain toxics to Lake Erie and is currently being studied to determine its extent.

4. Natural Resources

a. Fish and Habitat Management

The history of Lake Erie fisheries has included human-induced changes in both the extent and variety of lake habitats. Generally, the diversity of sport and commercial fish species has declined in conjunction with loss of habitat. Those habitats most greatly reduced in size include deep, oxygenated cold water areas, vegetated areas, clean bottom sand and gravel areas, estuaries, and wetlands used for spawning, feeding, migration and refuge. Increased sedimentation from land-based source uses, higher nutrient levels in the lake from point and nonpoint pollution sources, dredging and filling activities, and chemical and thermal pollution have all had their impacts.

Important fish habitat areas of Lake Erie include all nearshore waters out to a depth of 20 feet, bays and estuaries, and offshore shoal areas. Specifically, there are five habitat areas of critical concern: Maumee Bay, the Toussaint-Locust Point reef complex, the Islands area, the Ruggles reef complex, and Sandusky Bay (including Muddy Creek Bay).

A few remaining coastal coldwater streams east of Cleveland offer important seasonal habitat for salmonids because they are the closest suitable habitat near summer feeding areas of Lake Erie. These species are adapted to colder water temperatures provided by such streams and thus it is important that such habitat is not degraded or warmed.

These varied habitats support a world class fishery. Approximately $750 million is generated in the regional economy annually from recreational fishing activity. This may have declined recently as a result of reduced fishing effort documented since 1988. Fishing effort steadily rose beginning in 1975, when statistics were first kept, until peaking in 1988 when a 30% decline was recorded. Since that year, it has been relatively stable. The peak of commercial Lake Erie harvest, factoring in inflation, most likely occurred in the 1950s, and a steady decline has been observed since then. In recent years, the dock value of commercial fish has averaged about $2 million, with a high value of $3.6 million in 1990 and a low of $1.4 million in 1993. Commercial value over the long term is difficult to assess because of the variability of the species harvested.

i. Lake Erie Walleye

Walleye fishing in Lake Erie has increased steadily in popularity since the mid-1970s. The Ohio Division of Wildlife indicated in its Strategic Plan for 1990-95 that population abundance was expected to remain above the historical average (21.5 million). Walleye produced exceptional year classes in 1990 and 1991.

ii. Yellow Perch

Yellow perch are the principal target species for Lake Erie anglers, especially during September and October. However, over-harvesting of the species by commercial fisheries has been a cause of concern and deliberation between the Province of Ontario and Lake Erie states, most notably Ohio. An agreement was initiated in March, 1993, that will by 1997 base the commercial harvest of yellow perch equally on historical harvest rates and percentage of surface water area owned by the state or province. It is hoped this strategy will result in a reduced total mortality in the fish stock compared with the past 25 years.

b. Wildlife and Habitat Management

Human activity in the Lake Erie basin has dramatically reduced wildlife habitat in the coastal area. This habitat loss is the major reason for an overall reduction in Ohio's coastal wildlife population. Nearly ninety percent of the Lake Erie coastal area's original 300,000 acres of wetlands and swamp forests have been drained, filled, cut or paved over for various purposes. Recent high water and erosion have caused an additional loss of shoreline wetlands. Recently, overall losses of wetlands have been reduced to due to public and private wetland regulatory, acquisition, and restoration programs (see Chapter V of Part II). Typical endangered species that reside in such areas include king rails and blue spotted salamanders.

Wildlife habitat areas that remain relatively undisturbed still face the threats of pollution, soil erosion and siltation. Loss of habitat and degraded environmental quality have harmed migratory waterfowl, for which the Great Lakes serve as an important link between Canada and southern destinations. In particular, the marshes of the western Lake Erie basin are known as significant migration resting areas. This area is the most concentrated migration stop in the world for black ducks. The 2,600-acre Magee Marsh Wildlife Area near Oak Harbor supports more than 300 species of migratory birds in the spring and fall.

Common fur-bearing animals in the coastal area include foxes, white-tailed deer, muskrat, mink, raccoons, skunks, opossums, cottontail rabbits, woodchucks and fox squirrels.

One of Ohio's most notable wildlife management success stories from the Lake Erie region has been the recovery of the state's bald eagle population. As recently as 1979, Ohio had only four breeding pairs of bald eagles statewide. Through a strategy involving rehabilitation, education, nest stability and population augmentation, state wildlife officials have managed to increase the statewide total number of breeding pairs to 33 in 1996. Eighteen of those nests are located in the Lake Erie marshes, which accounted for 18 of the 35 eaglets hatched in 1996.

## D. Environmental Consequences

In enacting the CZMA, Congress declared that "it is national policy to preserve, protect, develop, and where possible, restore or enhance the resources of the Nation's coastal zone for this and succeeding generations." States are to achieve these potentially conflicting goals by improving governmental coordination, incorporating consideration of long term implications of development decisions, and instituting a more rational decision-making process which conforms to CZMA policies. Such actions have the potential to substantially affect future coastal area activity and have a significant positive environmental impact. The CZMA mandates giving full consideration to ecological, cultural, historic and aesthetic values as well as to needs for economic development when considering various development proposals.

Thus many factors and diverse, often conflicting values, between resource protection and development must be weighed. The CZMA requires that a balance must be achieved which allows or encourages development, while still protecting unique and critical resources.

It is the intent of the OCMP to carry out these legislative mandates of the CZMA. Therefore, the environmental, institutional and socio-economic effects are expected to be primarily beneficial. The OCMP will provide more coordinated decision-making with a greater focus on critical coastal issues such as wetland protection, hazard management and nonpoint source pollution.

Impacts associated with approval of the OCMP are of two types: (1) impacts resulting from federal approval and (2) impacts resulting from implementation of Ohio's coastal protection statutes embodied within the program. In general, such impacts are discussed in the following sections with respect to direction of change (positive or beneficial, negative or neutral) and with respect to duration (long-term or short-term). Because the proposed action is approval of a broad ranging program, quantification of net effects is not possible. Impacts of denying or delaying federal approval are discussed below as well.

1. Positive Impacts Directly Resulting from Federal Approval

Section 306 Funding

Federal approval will enhance the State of Ohio's financial ability to carry out its various coastal management efforts in accordance with OCMP policies. The state will rely to a considerable degree on the program funding made available in annual grants under Section 306 of the CZMA, both for program administration and for the coastal management assistance grants program mandated in O.R.C. § 1506.02. Program administration funding will support additional staff, contracts and other resources to enhance implementation of core OCMP laws. Local governments as well as a broad range of other entities will benefit from activities funded by the OCMP assistance fund. Section 306 funding for the coastal management assistance grant program will be used for environmentally and socio-economically beneficial efforts, such as the following:

(1) Feasibility studies and engineering reports for projects that are consistent with the policies in the coastal management program document;

(2) The protection and preservation of wetlands, beaches, fish and wildlife habitats, mineral, natural areas, prime agricultural land, endangered plant and animal species, or other significant natural coastal resources;

(3) The management of shoreline development to prevent loss of life and property in coastal flood hazard areas and coastal erosion areas, to set priorities for water-dependent energy, commercial, industrial, agricultural, and recreational uses, or to identify environmentally acceptable sites for dredge spoil disposal;

(4) Increasing public access to Lake Erie and other public places in the coastal area;

(5) The protection and preservation of historical, cultural or aesthetic coastal resources;

(6) Improving the predictability and efficiency or governmental decision making related to coastal area management;

(7) Adopting, administering, and enforcing local zoning ordinances or resolutions relating to coastal flood hazard areas or coastal erosion areas;

(8) The redevelopment of deteriorating and underutilized waterfronts and ports; and

(9) Other purposes approved by the director. (O.R.C. § 1506.02).

Funding for such efforts is expected to have direct beneficial impacts on the natural and socio-economic environment of the coastal region, through protection of natural areas and other sensitive resources, waterfront revitalization, comprehensive planning, streamlining of permits and the monitoring of their effects, and conflict resolution. The integrated management approach of a coordinated cooperative OCMP is expected to result in direct benefits to the environment through a heightened proactive focus on coastal resource management. The OCMP provides the framework for a partnership among state and local agencies and other entities, public and private, to cooperate to preserve, protect, develop and restore the region's unique values.

Federal Consistency Review

Federal approval and implementation of the OCMP will have effects upon federal agency actions. Approval will activate the federal consistency review provisions of Section 307 of the CZMA. The OCMP federal consistency process and relevant provisions of 15 CFR Part 930 are described in Chapter 7. Because federal consistency entails early coordination and closer cooperation in planning as well as review of project proposals, it is presumed that federal consistency will provide another means to minimize the potential for adverse environmental impacts. This is considered to be a desirable impact and one of the main purposes of the CZMA.

The OCMP has been developed with the assistance and input of numerous federal agencies having responsibility for activities in or affecting the coastal area. Therefore, conflicts between the OCMP's

enforceable policies and federally permitted or conducted activities should be minimal. Federal activities will not be excluded but rather will be required to be consistent with the OCMP's policies.

National Interest

Appendix Q of the OCMP describes how the siting of land and water uses of regional benefit, coordination with federal agencies, and consideration of national interest are integrated in the program. As the Ohio coastal management program includes formal procedures for considering national and regional interests in comprehensive planning and decision making for the coastal area, the potential for conflicts between state, regional and National goals is reduced. In implementing the OCMP, Ohio will provide such avenues for considering the national interest in program decisions.

2. Impacts (of Approval) Attributable to the OCMP

Several new coastal management authorities established by O.R.C. Chapter 1506 add to and strengthen Ohio's coastal management efforts to prevent adverse impacts on coastal resources, manage coastal hazards, protect public trust submerged lands, and coordinate various state efforts in a consistent state coastal program. These additional authorities are necessary for Ohio to meet minimum requirements for program approval by NOAA, and Section 306 program implementation funding will enhance implementation of these core programs.

The Ohio Department of Natural Resources (ODNR) is statutorily designated as the lead agency for development and implementation of the OCMP. The functions and authorities of ODNR with respect to OCMP administration, described in detail in Chapter 4, provide a cohesive framework for improved and integrated decision making regarding coastal issues. The Coastal Management statute additionally mandates that all agencies of the state cooperate with ODNR in program implementation (O.R.C. § 1506.02). Memoranda of Understanding between ODNR and other agencies as well as state consistency review by ODNR further foster unified coordination. Decisions and activities of federal, state and local agencies as well as those within ODNR will be monitored, coordinated and mediated by one office within ODNR (REALM) to assure compliance with the OCMP. Greater consistency, a central focus and streamlining of the decision-making process is expected to improve the predictability of that process and bring about beneficial environmental and institutional impacts.

Assuring state agency consistency with the coastal management program will help maintain program strength. As with federal consistency provisions and mechanisms, the impacts are expected to be positive. Improved coordination and cooperation throughout project planning and review will serve to minimize adverse impacts and to enhance predictability of decision making regarding state projects that may affect coastal resources. The OCMP's structure and the means to assure state consistency are described in Chapter 4.

The Coastal Resources Advisory Council will continue as a principal means of providing public participation in the OCMP. The council informally serves as liaison to outside organizations and as

advisor and "watchdog" to ODNR's coastal management activities. These functions help to assure that public concerns regarding the environment are emphasized in the state's decision making.

Submerged lands

Pursuant to O.R.C. § 1506.11, administration of submerged lands leasing was transferred to ODNR from the Department of Administrative Services. This change places decisions on lease applications and enforcement within the ODNR, the lead state agency for coastal management. The transfer of responsibility has resulted in the passage of rules governing the leasing of Lake Erie submerged lands with strong emphasis on the environmental aspect of submerged lands management. These rules have allowed ODNR to review and modify applications to protect the environment and to increase predictability in the leasing process. ODNR's administrative rules governing submerged lands leasing specify clear criteria for determining potential impacts of each lease project.

The rules and background information on the state's public trust responsibilities are provided to each applicant in advance of the leasing process. Rules mandate water dependency of the project and an evaluation of impacts upon the right of public recreation. Also considered, as stipulated in the rules, are littoral property owners' rights, conformance with locally permitted land uses, and potential impairment of public uses. Review of lease applications is coordinated with the Corps of Engineers' 404 permit process and ODNR's erosion control project permit process as well as Ohio EPA's State Water Quality Certification. Chapter V, Policy 16 provides a detailed description of Ohio's policies and authorities regarding submerged lands administration, and administrative rules that amplify this authority are included in Appendix L.

Hazards

Identification of Lake Erie coastal erosion areas and proposed implementation of rules requiring permits to erect permanent structures therein pursuant to O.R.C. §1506.06 through 1506.09 will minimize new construction that could ultimately be damaged or destroyed by coastal erosion. Thus, coastal erosion area management will bring about positive socio-economic impacts through reduction of property damage and investment losses in new development and shore protection. Costs to the public should also decrease with less investment in public infrastructure in erosion prone areas. With more coordinated planning and permit review to ensure effectiveness of protection measures, the number of structures lost to erosion should decline, with a corresponding decrease in the amount of hazardous debris in the lake and on the shore. Pollutant levels should be reduced as well, as fewer septic tanks and sewer lines are washed into the lake.

Some site-specific increases in adverse impacts on aquatic habitat and shoreline processes may occur as a result of landowner efforts to protect their property by installing erosion control measures in the littoral zone. These impacts may include localized acceleration of erosion, disruption of littoral sand movement, temporary siltation from construction, and minor habitat displacement. Such effects however will be minimized by the resource protection policies of O.R.C. Chapter 1506 and the environmental review criteria established in O.A.C. §1501-6-24 (review of permit application, rules

for enforcing coastal erosion areas). Again these are limited site-specific effects and impacts that, in balance, are expected to be positive as a result of heightened coordinated review.

The potential exists that erosion management may result in decreased property values for some individuals who own shorefront property with extremely high erosion rates. In addition, costs of development that does occur will increase in the short term due to the requirements for owners to install effective erosion control measures or to site permanent structures further inland. Such costs are expected to be short term with property values generally increasing over the long term due to improved protection and decreased risk.

The law establishes the authority for municipal corporations and counties to adopt coastal erosion area ordinances and resolutions. ODNR can provide model zoning regulations to assist local jurisdictions in the adoption of coastal erosion area ordinances or resolutions. Counties are authorized to enact coastal erosion areas standards as part of the local building code by O.R.C. §307.37. A permit from the Director, ODNR, "is not required within the territory of any county or municipal corporation that has adopted and is enforcing a Lake Erie coastal erosion area resolution or ordinance within its zoning or building regulations if the resolution or ordinance has been reviewed by the Director . . . and meets or exceeds the standards established under division (B) of this section" (O.R.C. §1506.07(c)(1)). If local controls are approved by the Director of ODNR, then the county or municipality will be the permitting authority for construction projects in coastal erosion areas. The director retains the authority to review the local implementation and enforcement of local standards every two years. If the director determines that the local standards are inadequately enforced, permitting authority reverts back to ODNR for the territory of the affected county or municipal corporation.

Public safety and awareness will also be facilitated by the statutory requirement that owners of property within the coastal erosion areas provide notice to a purchaser that the property lies in such an area.

Counties or municipal corporations with land in designated coastal flood hazard areas are required to participate in the National Flood Insurance Program (NFIP) or adopt resolutions or ordinances meeting or exceeding NFIP requirements. Because all but three affected communities were in compliance with this requirement when it became law, the immediate impact of this was minimal. All affected communities now participate. For the long term, this will assure that the minimum federal standards are always in effect in the Lake Erie coastal flood hazard area.

Wetlands

Ohio programs to protect coastal wetlands will also continue to be refined through implementation of various elements of the state wetland strategy, including adoption of water quality standards for wetlands, and enhanced reporting of wetland status, through increased use of GIS capabilities and project and permit tracking. These efforts should provide comprehensive assessment of coastal wetland status and ensure progress toward attaining a net gain in coastal wetlands from appropriate restoration efforts.

Access

Implementation of the OCMP will facilitate consistent updating of the Lake Erie Access Study to comprehensively inventory access needs and potential sites. Enhancing the existing Lake Erie Access Program (LEAP) through better coordination of agency programs and policies will improve public access to Lake Erie, consistent with the provisions of the OCMP. Technical assistance to and coordination with local communities will further promote the utilization of the recreational potential of urban waterfronts through urban river and waterfront development program. Enhanced acquisition, planning and development efforts for state nature preserves, state park facilities and the Statewide Trails System would also benefit public access to and enjoyment of Lake Erie. The aforementioned programs would all benefit from increased resources and funding through OCMP implementation.

3. Impacts Resulting from Denying Federal Approval

Several environmental, economic and social impacts could result if OCRM decided to deny approval of the OCMP. An obvious economic impact is the loss of federal funds to administer the program. Under Section 306 of the CZMA, Ohio would receive about $800,000 annually to implement its coastal management program. Consistency of federal actions, as required by Section 307 of the CZMA would be lost to Ohio. Adequate consideration of the national interest in siting facilities of national interest, as required by CZMA Section 306(d)(8), would be lost and could result in loss of public benefit from use of those facilities. Further, the environmental status quo would prevail regarding resource protection and use in Ohio's coastal zone, and the technical assistance available to Ohio from OCRM would be lost without Federal approval of the program.

4. Impacts Resulting from Delaying Federal Approval

The environmental, economic and social impacts listed above, that result from denial of Federal approval of the OCMP, also apply to delaying approval of the Program. Further, continued delay at this juncture may make it impossible, due to limits in program development funding, for Ohio to enter the Federal program in the future.

## E. Unavoidable Adverse Environmental Effects

The probable effects of the Ohio Coastal Management Program implementation will, on the whole, be environmentally beneficial. Certain localized adverse environmental impacts may result, however, as the state seeks to balance the conservation of coastal resources with the recognized need for rational economic growth.

With or without the program, adverse impacts associated with the siting of major facilities for purposes of defense, transportation, and energy requirements in which both the state and federal governments have interest, will continue. It is important to note, however, that under the Coastal Management Program and related federal laws (e.g., National Environmental Policy Act), such projects will be evaluated as to the impacts on the natural coastal environment. That is, investigations will be made, alternatives considered, etc. The Program also makes provisions for consideration of the national interest in the siting of these facilities.

No new energy generation facilities are planned in Ohio's coastal area, and it is anticipated that oil and gas facilities will remain largely unchanged.

## F. Relationship between Short-Term Uses of the Environment and the Maintenance and Enhancement of Long-Term Productivity

While approval of the Ohio Coastal Management Program will restrict some local, short-term, uses of the environment, it will also provide long-term assurance that the natural resources and benefits provided by the Ohio Lake Erie coast will be available for future use and enjoyment, by more effectively administering existing resource protection laws.

The Ohio Coastal Management Program recognizes in the short-term that some coastal-dependent developments have adverse environmental consequences, but that they may still have to be located in the coastal zone to protect the inland environment as well as help provide for orderly economic development, and meet national interest.

Regarding the long-term use of the environment the OCMP recognizes the coastal zone as a delicately balanced ecosystem; establishes a process of balanced management of coastal resources; allows growth to continue while protecting key resources; and provides a framework which can protect regional, state and national interests by assuring the maintenance of the long-term productivity and economic vitality of coastal resources necessary for the well-being of the public. Beneficial changes will likely promote avoidance of long-term costs to the public and a diminished quality of life resulting from the misuse of coastal resources.

## G. Irreversible and Irretrievable Commitments of Resources

The only irretrievable or irreversible commitment of resources that will result directly from the approval of the Ohio program is the commitment of state and Federal funds and personnel for the purpose of achieving the goals and objectives of the program. It is presumed that irretrievable and irreversible commitments of economic and environmental resources will occur during the implementation of the Ohio program. This program is designed to balance the need for development with the need for the protection and enhancement of coastal environmental resources by avoiding, minimizing and mitigating the consequences of coastal development on resources such as wetlands and shallow water lacustrine habitats.

The program ensures that any such proposed activities which commit coastal resources are subjected to comprehensive review as individual actions and as an action contributing to the cumulative impacts taking place on coastal resources. Such review will ensure that those irretrievable and irreversible commitments of resources which are undertaken under the Ohio Coastal Management Program are made with full awareness of the consequences of those commitments.

# Part IV
# LIST OF PREPARERS

Richard S. Bartz - Assistant Chief, Division of Water, Ohio Department of Natural Resources. Mr. Bartz received his B.A. and his Masters in Environmental Science from Miami University, Oxford, Ohio. He worked on Lake Erie Programs from 1974 to 1988 and was instrumental in passage of the Ohio Coastal Management Law. He has served on various committees and work groups addressing water management and planning in the Great Lakes region.

Kenneth E. Bentfeld - Natural Resource Specialist, Division of Real Estate and Land Management, Ohio Department of Natural Resources (August 1995 to January 1996). Mr. Bentfeld received his B.S. degree in Natural Resources with a specialty in Environmental Science and Engineering from The Ohio State University.

Ellen L. Brody - former Acting Regional Manager, Great Lakes Region, Coastal Programs Division, Office of Ocean and Coastal Resource Management. Ms. Brody received her M.S. and her B.S. in Natural Resource Policy and Management from the University of Michigan School of Natural Resources. Ms. Brody worked in the Great Lakes Region in OCRM from 1987 to 1995, including acting as the Great Lakes Regional Manager from 1992 to 1995.

Michael J. Colvin - Coastal Management Administrator, Division of Real Estate and Land Management, Ohio Department of Natural Resources. Mr. Colvin received his M.A. degree in Public Administration with a Specialty in Urban Policy from The Ohio State University, School of Public Policy and Management. Mr. Colvin has a B.S. degree in Zoology from OSU's College of Arts and Sciences. Mr. Colvin has been working in the Ohio Coastal Management Program since 1991. From 1978 to 1991 Mr. Colvin administered ODNR's Environmental Review Program.

Anna M. Gantt - Executive Secretary to the Chief of ODNR's Division of Real Estate and Land Management. Ms. Gantt has worked with ODNR since 1984 and has been involved with the OCMP since 1992.

Thomas J. Grever - Assistant Attorney General, State of Ohio, representing ODNR, now representing Ohio EPA. Mr. Grever received his J.D. from The Ohio State University and his B.A. from Northwestern University.

Donald E. Guy, Jr. - Senior Geologist, Division of Geological Survey, Ohio Department of Natural Resources. Mr. Guy has worked on Lake Erie since 1973 when he joined the Lake Erie Geology Group of ODNR's Division of Geological Survey. He has a B.A. in Geology from Earlham College in Richmond, Indiana, and an M.S. in Geology from Bowling Green State University in Bowling Green, Ohio.

Daniel Halterman - Environmental Planner, Ohio EPA, Division of Environmental and Financial Assistance. Mr. Halterman holds a B.S. in Conservation from Kent State University and an M.S. in Resource Policy and

Planning from The Ohio State University. He previously worked as a Water Resources Specialist with the Ohio Department of Natural Resources, Division of Water.

Christine L. Kasselmann - Coastal Management Assistant Administrator, Division of Real Estate and Land Management, Ohio Department of Natural Resources. Ms. Kasselmann received her B.S. in Natural Resources (Resource Development) and her M.S., as a University Fellow, in Natural Resources and Environmental Policy from The Ohio State University. She previously worked as a manager in private industry and as a Researcher for the Ohio Department of Natural Resources.

Pamela B. Lawrence - Attorney-Advisor, Office of the Assistant General Counsel for Ocean Services, NOAA. Ms. Lawrence received her J.D. from Harvard Law School and her B.A. from New York University.

Julie Letterhos - Lake Erie Unit Supervisor, Division of Surface Water, Ohio Environmental Protection Agency. The unit is responsible for development and implementation of Remedial Action Plans (RAPs) for Ohio's Lake Erie Areas of Concern (AOCs) and the Lake Erie Lakewide Management Plan (LaMP). Ms. Letterhos received her B.S. from Bowling Green State University with an emphasis on Aquatic Biology and Chemistry. She worked with The Ohio State University's Center for Lake Erie Area Research for six years, monitoring Lake Erie water quality. She has been with Ohio EPA since 1984.

Kurt Maurer - Mr. Maurer was employed by The Ohio Department of Natural Resources from 1991 through 1994 as a Legislative Liaison and Special Projects Assistant for the Director of ODNR. Mr. Maurer previously was an aide to former Senator Paul Pfeifer and is currently a Public Affairs Counselor in Albuquerque, New Mexico.

William Millhouser - Regional Manager, Pacific Region, Coastal Programs Division, Office of Ocean and Coastal Resource Management. Mr. Millhouser earned his Masters of Urban and Regional planning at George Washington University and completed his B.S. in Psychology at the University of Illinois. Mr. Millhouser has worked at OCRM since 1976 and has worked with state programs in the Gulf, South Atlantic, and Pacific regions and, at the staff level, been involved in CZM program development issues in several Gulf states. He also has considerable experience in working on NEPA issues as they relate to the impacts of local coastal programs in Alaska on various types of development. Mr. Millhouser has served as CPD's section 305 program development coordinator since 1993.

Diana K. Olinger - Program Specialist, Great Lakes Region, Coastal Programs Division, Office of Ocean and Coastal Resource Management. Ms. Olinger received her B.A. in Biology from Kenyon College and completed her Masters of Marine Policy, on academic scholarship, at the University of Delaware. She worked as Special Assistant to the Under Secretary for Oceans and Atmosphere, U.S. Department of Commerce, during her year as a Dean John A. Knauss Marine Policy Fellow. She also worked for one year at the NOAA, National Marine Fisheries Service, Chesapeake Bay Office, prior to joining the staff at OCRM in April 1994.

Kandie D. Parkman - Executive Secretary, Coastal Management Program, Division of Real Estate and Land Management, Ohio Department of Natural Resources. Ms. Parkman has worked with ODNR since 1981 and has been involved with the OCMP since 1996.

Richard R. Pavey - Coordinator, Environmental and Surficial Geology Group, Division of Geological Survey, Ohio Department of Natural Resources. Mr. Pavey received his B.S. and M.S. degrees in Geology from Purdue University. Mr. Pavey has worked at the Ohio Geological Survey since 1984 and served as Acting Head of the Lake Erie Geology Section (ODNR) from 1989 to 1992.

Eugene Wright - Manager and Program Administrator of the Old Woman Creek National Estuarine Research Reserve (OWC NERR) since the Program began in 1978. He was co-author of the OWC NERR management plan and was senior author of the Old Woman Creek Watershed Spill Response Plan. Prior to joining the Ohio Department of Natural Resources as manager of OWC NERR, Mr. Wright was associated with the Robertshaw Controls Co. in Columbus, Ohio as manager of the engineering design drafting department and later as assistant sales promotion and advertising manager. He holds a B.S. degree in wildlife management and a M.S. degree in natural resource management from The Ohio State University.

## Part V
## LIST OF AGENCIES, ORGANIZATIONS AND INDIVIDUALS RECEIVING COPIES OF FEIS

Federal Agencies

Council on Environmental Quality
Department of Agriculture
    Farm Service
    Forest Service
    Natural Resources Conservation Service
Department of Commerce
    National Marine Fisheries Service, NOAA
    Economic Development Administration
Department of Defense
    Air Force
    Army Corps of Engineers
        --headquarters
        --district office
    Marine Corps
    Navy
Department of Energy
Department of Health and Human Services
Department of Housing and Urban Development
Department of the Interior
    Fish and Wildlife Service
    U.S. Geological Survey
    National Park Service
Department of Justice
Department of Transportation
    Federal Aviation Administration
    Federal Highway Administration
    Maritime Administration
    U.S. Coast Guard
Environmental Protection Agency
    Office of Federal Activities
    Assessment and Watershed Protection Division,
    Office of Wetlands, Oceans and Watersheds
    Nonpoint Source Coordinator, Region V
Federal Emergency Management Agency
Federal Energy Regulatory Commission
Federal Maritime Commission
General Services Administration
Interstate Commerce Commission

National Aeronautics and Space Administration
Nuclear Regulatory Commission

State and Regional Agencies and Local Governments

Coastal county offices and planning agencies
Coastal municipalities and townships
Great Lakes Commission
Hazardous Waste Facility Board
Local public libraries in the coastal counties
Northeast Ohio Areawide Coordinating Agency (NOACA)
Ohio Departments of Agriculture, Development, Health, Transportation and the Ohio Environmental Protection Agency
Ohio Department of Natural Resources Division Chiefs
Ohio Department of Natural Resources Integrated Management Team
Ohio Historical Society
Ohio Lake Erie Office
Ohio Office of Budget and Management
Ohio Water Development Authority
Public Utilities Commission of Ohio
State and Local Government Commission
Toledo Metropolitan Area Council of Governments (TMACOG)

[Note: In addition, the Ohio DNR has mailed copies to its congressional delegation, Ohio coastal area legislators, individuals, groups and organizations on their mailing lists.]

National Interest Groups

American Association of Port Authorities
American Bureau of Shipping
American Farm Bureau Federation
American Institute of Planners
American Petroleum Institute
American Planning Association
American Sport Fishing Association
Association of State Floodplain Managers
Boat U.S.
Boating Industry Association
Center for Marine Conservation
Chambers of Commerce of the U.S.
Clean Water Network
Coast Alliance
Coastal States Organization
Conservation Fund

Environmental Defense Fund, Inc.
Environmental Law Institute
Environmental Policy Center
Friends of the Coast
Friends of the Earth
Isaak Walton League of America
Lake Carriers Association
League of Women Voters of the U.S.
National Association of Conservation Districts
National Association of Counties
National Association of Home Builders of the U.S.
National Association of Realtors
National Audubon Society
National Fisheries Institute
National League of Cities
National Parks and Conservation Association
National Recreation and Parks Association
Natural Resources Defense Council
National Wildlife Federation
Shore and Beach Protection Association
Sierra Club National Coastal Committee
Society of Real Estate Appraisers
Soil Conservation Society of America
Sport Fishing Institute
The Nature Conservancy
U.S. Sailing Association
World Wildlife Fund

Individuals and other Interested Parties

Upon request, copies were sent to all individuals and other interested parties not listed as receiving copies of the DEIS.

# Part VI
# REFERENCES--FEIS

## A. Sources Consulted for Preparation of the Description of the Affected Environment Portion of the DEIS


Bartz, Richard. 1995. Ohio Department of Natural Resources - Division of Water. Interview by Kenneth E. Bentfeld, 18 August. Ohio Department of Natural Resources, Coastal Management Program. Columbus, Ohio.

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U. S. Department of Agriculture. 1979. Soil Survey of Lake County, Ohio. Washington, D.C.: Soil Conservation Service.

U.S. Department of Agriculture. 1976. Soil Survey of Lorain County, Ohio. Washington, D.C.: Soil Conservation Service.

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Wager, Jerry. 1995. Ohio Department of Natural Resources--Division of Soil and Water Conservation. Interview by Christine L. Kasselmann, September. Ohio Department of Natural Resources, Coastal Management Program. Columbus, Ohio.

## B. Sources Consulted for Preparation of Ohio Coastal Management Program Document

All agencies referenced in Volume I, Part II of this document and Volume II, Appendices were consulted during initial development of the 1992 public review draft document. ODNR consulted each agency again in 1993, 1995, and 1996 in order to incorporate necessary revisions prior to publication.

# PART VII

## COMMENTS ON DEIS AND RESPONSE TO COMMENTS

### INDEX TO WRITTEN COMMENTS

| No. | Commenter | Date |
|---|---|---|
| 1 | U.S. Department of Health & Human Services | November 7, 1996 |
| 2 | Mary Wood, Private Lakefront Property Owner | October 20, 1996 |
| 3 | Mr. and Mrs. H. L. Gobeille, Private Lakefront Property Owners | October 20, 1996 |
| 4 | Malcolm B. Wood, P.E., Private Lakefront Property Owner | October 28, 1996 |
| 5 | David S. McIlvain, Private Lakefront Property Owner | October 21, 1996 |
| 6 | Shirley Heck, Private Lakefront Property Owner | October 21, 1996 |
| 7 | James W. Heck, Private Lakefront Property Owner | October 21, 1996 |
| 8 | Richard J. and Linda M. Hemmer, Private Lakefront Property Owners | November 12, 1996 |
| 9 | James J. Manns, P.E., Private Lakefront Property Owner | November 13, 1996 |
| 10 | Kathleen Heck | undated (received November 15, 1996) |
| 11 | Roger L. Alexander, Private Lakefront Property Owner | November 4, 1996 |
| 12 | Charles J. Meyer, Private Lakefront Property Owner | November 13, 1996 |
| 13 | City of Rocky River | November 8, 1996 |
| 14 | Edwin Pivcevich, Private Lakefront Property Owner | November 13, 1996 |
| 15 | Nuclear Regulatory Commission | November 4, 1996 |
| 16 | Ottawa County Landfill, Browning-Ferris Industries of Ohio, Inc. | November 13, 1996 |
| 17 | Ohio Home Builders Association, Inc. | November 4, 1996 |
| 18 | G. Alan Barth and Richard E. Walker Private Lakefront Property Owners | November 11, 1996 |
| 19 | Alan J. Olson, Private Lakefront Property Owner | November 14, 1996 |
| 20 | Cuyahoga Soil and Water Conservation District | November 15, 1996 |
| 21 | James E. Evans, Associate Professor of Geology Bowling Green State University | November 7, 1996 |
| 22 | City of Bay Village | November 12, 1996 |

## INDEX TO WRITTEN COMMENTS (continued)

| No. | Commenter | Date |
|---|---|---|
| 23 | Ohio Coastal Resources Management Project | November 22, 1996 |
| 24 | U.S. Department of the Interior | November 19, 1996 |
| 25 | William Charles Steuk | November 22, 1996 |
| 26 | City of Cleveland | November 21, 1996 |
| 27 | Coast Alliance | November 22, 1996 |
| 28 | City of Lakewood | November 22, 1996 |
| 29 | Amy Kellogg, Attorney | November 19, 1996 |
| 30 | Toledo Metropolitan Area Council of Governments | November 22, 1996 |

## INDEX TO ORAL COMMENTS

| No. | Commenter | Date |
|---|---|---|
| 1 | Kurt Erichsen, Director of Environmental Planning for Toledo Metropolitan Area Council of Governments DEIS Public Hearing Testimony, Toledo, Ohio | September 30, 1996 |
| 2 | Bill Steuk, DEIS Public Hearing Testimony, Huron, Ohio | October 1, 1996 |
| 3 | J.T. Lendrum, DEIS Public Hearing Testimony, Huron, Ohio | October 1, 1996 |
| 4 | Mike Tann, City Manager of Huron, DEIS Public Hearing Testimony | October 1, 1996 |
| 5 | Representative Darrell Opfer, State Representative DEIS Public Hearing Testimony, Huron, Ohio | October 1, 1996 |
| 6 | Gary Boyle, Chief Planner, City of Sandusky DEIS Public Testimony, Huron, Ohio | October 1, 1996 |
| 7 | Walt Wehenkel, Ottawa County Planning Commission DEIS Public Hearing Testimony, Huron, Ohio | October 1, 1996 |
| 8 | Amy Kellogg, Cities of Avon Lake and Cleveland DEIS Public Hearing Testimony, Cleveland, Ohio | October 2, 1996 |
| 9 | Edith Chase, Ohio Coastal Resource Management Project (OCRMP) DEIS Public Hearing Testimony, Cleveland, Ohio | October 2, 1996 |

**INDEX TO ORAL COMMENTS** (continued)


| No. | Commenter | Date |
|---|---|---|
| 10 | Kathryn Brock, Cuyahoga Soil and Water Conservation District DEIS Public Hearing Testimony, Cleveland, Ohio, | October 2, 1996 |
| 11 | Brian Ulm, Northeast Ohio Sierra Club DEIS Public Hearing Testimony, Cleveland, Ohio | October 2, 1996 |
| 12 | J. W. Cowden, DEIS Public Hearing Testimony Cleveland, Ohio | October 2, 1996 |
| 13 | Mary Wood, Private Lakefront Property Owner DEIS Public Hearing Testimony, Cleveland, Ohio | October 2, 1996 |
| 14 | Malcolm Wood, DEIS Public Hearing Testimony, Cleveland, Ohio | October 2, 1996 |
| 15 | Kathleen Barber, Citizen, DEIS Public Hearing Testimony Cleveland, Ohio | October 2, 1996 |
| 16 | Lee Ann Stein, DEIS Public Hearing Testimony, Ashtabula, Ohio | October 3, 1996 |
| 17 | Tim Bojanowski, DEIS Public Hearing Testimony, Ashtabula, Ohio | October 3, 1996 |
| 18 | Andrew Branik, DEIS Public Hearing Testimony, Ashtabula, Ohio | October 3, 1996 |
| 19 | Lou Lehman, DEIS Public Hearing Testimony, Ashtabula, Ohio | October 3, 1996 |
| 20 | Keith Rader, Lakefront Property Owner DEIS Public Hearing Testimony, Ashtabula, Ohio | October 3, 1996 |
| 21 | Leonard Eames, Ashtabula Port Authority Member and Lakefront Property Owner, DEIS Public Hearing Testimony Ashtabula, Ohio | October 3, 1996 |

## INTRODUCTION

On September 30, and October 1, 2, and 3, 1996, the Ohio Department of Natural Resources (ODNR) and the National Oceanic and Atmospheric Administration (NOAA) held four joint public hearings to hear comments on Ohio's proposed Coastal Management Program document and the Draft Environmental Impact Statement (DEIS) published jointly by ODNR and NOAA. NOAA's hearings were conducted to fulfill, in part, the requirements of the National Environmental Policy Act of 1969 and the Coastal Zone Management Act of 1972, as amended (CZMA). ODNR's hearings were conducted to provide an opportunity for the public to comment and make recommendations regarding Ohio's proposed program document, in compliance with O.R.C. §1506.02(A)(1). Comments received at those public hearings and written comments submitted during the open comment period, which ended November 22, 1996, were primarily addressed toward ODNR's program. The following is a record of all written and oral comments and responses from both ODNR and NOAA.

DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Centers for Disease Control
and Prevention (CDC)
Atlanta, GA 30333

November 7, 1996

Joe Uravitch
Coastal Programs Division
SSMC-4, Room 11109
1305 East-West Highway
Silver Spring, MD 20910

Dear Mr. Uravitch:

We have completed our review of the Draft Environmental Impact Statement (DEIS) for the Ohio Coastal Management Program. We are responding on behalf of the U.S. Public Health Service.

We believe our interests and concerns have been addressed in this draft document. We concur with the proposed Coastal Management Plan, which recognizes the coastal zone as a delicately balanced ecosystem; establishes a process of balanced management of resources; allows growth to continue while protecting resources; and provides a management framework which can protect regional, state, and national interests. We concur that beneficial changes will likely promote avoidance of a dimished quality of life resulting from the misuse of coastal resources.

Thank you for the opportunity to review and comment on this DEIS. We would appreciate receiving a copies of the Final EIS, and any future environmental impact statements which may indicate potential public health impact and are developed under the National Environmental Policy Act (NEPA).

Sincerely,

Kenneth W. Holt

Kenneth W. Holt, M.S.E.H
Special Programs Group (F29)
National Center for Environmental Health

RECEIVED
1 3 1996

WRITTEN COMMENT #1: U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
November 7, 1996

Response to Comments:

Comment noted. No change required.

October 20, 1996

Acting Director,
Office of Ocean and Coastal Resource Management
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
1305 East-West Highway, N/ORM3
Silver Spring, Maryland 20910

RE: The Draft Ohio Coastal Management Program & Draft EIS
Draft Document Review (OCMP)

Dear Acting Director:

The OCMP reads as if it were a rushed production. In addition, it was released to the public on September 10, 1996, with the first hearing on September 30, 1996 and written comments by November 15, 1996. However, the ODNR has been working on the OCMP document since 1992. So, why are they in such a rush?

The text has enough imprecise statements of intention which raise serious concerns as to what the ODNR really intends to do. For example, the OCMP suggests that all licenses and permits within the Coastal Area must be approved by the ODNR. Also, the OCMP suggests that "shore protection will be discouraged and relocation facilitated." In addition, the "ODNR will emphasize and encourage strategic retreat and selective fortification."

Lastly, the OCMP suggests that the ODNR will require public access as a condition for granting a submerged land lease or erosion control permit.

I believe that the lakefront property owners have the right to know just what the ODNR means by these statements. In addition, does the ODNR have the statutory authority to implement and enforce these proposals?

I must conclude that this document was really written to get power for the ODNR, not protect the coastal area. I recommend that the Acting Director, Office of Ocean and Coastal Resources Management take no action on this document.

Yours truly,
Mary Wood
Lakefront property owner

22740 Lake Rd.
Rocky River, OH 44116

RECEIVED
OCT 30 1996

WRITTEN COMMENT #2: MARY WOOD, PRIVATE LAKEFRONT PROPERTY OWNER, October 20, 1996

Response to Comments:

1. Comment (regarding apparent speed of document production and length of public comment period) noted. No change required.

The State of Ohio has been working on developing the OCMP for more than twenty years, with considerable public input, as described in the program document. In 1992, ODNR circulated for public review a draft OCMP policy document. Publication of the draft program document and DEIS took three yeas in addition to what was originally anticipated when the 1992 public review draft was published. ODNR embarked upon a process of reassessing methods for coastal erosion mapping in 1994. This was in direct response to issues raised by private property owners regarding coastal erosion area rules, maps and policies. That led to amendments to Ohio's Coastal Management Law in 1994, as negotiated with property owners, local governments and their representatives over a period of approximately nine months. The subsequent two year -long process involved the revision of administrative rules and mapping based upon those mutually-agreed-to changes in the law. During that two years, extensive consultation occurred with property owners, local governments and their representatives. This consultation included the opportunity to review relevant sections of interim drafts of the program document and direct involvement with ruled draft revisions. The draft document published in August 1996 was reflective of issues resolved during and after the 1992 public review. The draft document contains no major substantive changes from the public review draft presented in 1992, other than incorporating revisions in response to public comments, updating various agency statutory and regulatory citations, and including NOAA's draft environmental impact statement.

The procedures for public notification are clearly prescribed in the Ohio Coastal Management Law (O.R.C. Chapter 1506) and in the state's administrative procedures statute, O.R.C. Chapter 119. To announce the availability of the draft OCMP document plan and DEIS, ODNR placed seven-and-one-half-inch public notices in nine coastal area newspapers and the Columbus Dispatch on August 30, 1996. However, ODNR went beyond requirements of both state and federal law by directly distributing the draft OCMP document and DEIS itself to nearly 200 individuals and organizations. It was made available in public libraries and governmental offices throughout the coastal area and in Columbus. Several hundred copies were mailed to the State of Ohio Library and directly to coastal area libraries with a request to make it available for public inspection. The document was also sent directly to each local community and each county and regional planning agency as well as to all coastal area legislators. Further, ODNR sent individual copies of the document directly to approximately fifty lakefront property owners and local officials who had actively worked with ODNR and their local communities on the coastal erosion area management issue and policies. News releases that referenced publication of the OCMP draft document and DEIS were also issued regarding the preliminary coastal erosion area identification. ODNR officials additionally met with the media in all shoreline counties to discuss the issues.

ODNR wanted to ensure that there would be ample opportunity for review and comment by the public, and therefore requested that the customary 45-day review period for a draft environmental impact statement be lengthened. As noted above, public notice of the availability of the OCMP draft program document and DEIS was given on August 30, 1996. A public review period of 77 days after August 30 was provided. This was extended by one week to a total of 84 days. The official NOAA Federal Register notice was published on September 6, providing a 70-day review period (extended to 77 days). This is significantly longer than the normal review period for a draft environmental impact statement, as provided under the National Environmental Policy Act (NEPA). The public review period was extended beyond the usual 45-day time period in order to encompass the notification of property owners and the public hearings regarding coastal erosion areas.

Four public hearings were held during the 84-day comment period. These were in addition to eight public hearings conducted on the preliminary coastal erosion area identification, two public hearings held in 1995 on the rules for designating and enforcing coastal erosion areas, and two public hearings and two public meetings held on the 1992 public review draft. Additional. between 1993 and the publication of the revised document , more that 40 public meetings were held with local citizens, with well over 1,000 individuals attending. Please refer also to Part, Chapter 11, pages 11-8 through 11-11 for further information regarding the extent of public involvement in this process.

2. Comment (regarding consistency provisions, that is approval by ODNR of licenses and permits) noted. No change needed. The consistency review procedure is described in Part II, Chapter 4, pages 4-27 through 4-31 of the program document. O.R.C. §1506.03 mandates that no project or activity directly affecting the coastal area that is "subject to the approval of any agency of the state" shall be approved until the director of ODNR determines that it is consistent with policies stated in the OCMP document. As Chapter 4 of the program document describes, this does not entail an additional ODNR approval of all permits and licenses. Rather, it is a process for assuring that all existing enforceable policies of the State of Ohio are in fact met. As stated on p. 4-29, "ODNR will base its consistency determination upon the approvals of the state agencies enforcing the policies and authorities in the coastal management program document." In other words ODNR will rely on the responsible agency for granting or denying permits within its own area of statutory and regulatory authority and will not apply its own separate judgement to second guess the decisions of that agency. Rather, the department and other agencies with relevant regulatory authorities will, in the process of reviewing for consistency with OCMP policies, assure that applicants are aware that issuance of one permit does not guarantee that the project will proceed if other state agency approvals are necessary. All other applicable permits and authorizations will be required. For example, Ohio EPA may issue a Permit to Install for a new source of air contaminants, but if the proposed facility were to be located within a coastal erosion area, the project may not proceed until the required permit for new construction within coastal erosion areas is obtained. This process will both streamline and improve the predictability of permitting processes to the benefit of both agencies and applicants by identifying all approval requirements earlier in the process. In many cases, through execution of procedures detailed in MOUs with participating state agencies, this will be accomplished within those agencies.

3. Comment (regarding "strategic retreat and selective fortification") noted. No change needed. These policies are described at Part II, Chapter 5, pages 5-8 through 5-12. The context of ODNR's statement reflects the reality of Ohio's Lake Erie shoreline. Where the lakefront is substantially developed, additional structural protection may be required to further protect existing structures. In many instances, building farther from the shoreline is advisable. In some circumstances, moving structures landward or relocating outside of erosion prone areas will be considered by a property owner, developer or local government. ODNR will encourage relocation but will not, and does not have the authority to, require it. These are not enforceable policies. As described in the introduction to Chapter 5 MANAGEMENT POLICIES, policies not underlined are not enforceable policies. However, in providing financial and technical assistance for shoreline protection under other statutory authorities described in Part II, Chapter 5, ODNR will not assist or promote structural protection where such measures would undermine natural protective features and foster additional development in coastal erosion areas.

4. Comment (regarding public access requirements for submerged lands leases and ) noted. No change needed. Under the Ohio Administrative Code (O.A.C. 1501-06-03), and consistent with Ohio's public trust law (O.R.C. §1506.10 and 1506.11), ODNR must consider historic public recreational use of a proposed lease area. The waters of Lake Erie and the lands underlying them belong to the state by law as proprietor in trust for the people of the state. ODNR therefore must assure that the public's right to use those waters is not improperly foreclosed by the issuance of a lease to a private property owner. Therefore, if historic or prospective (per Squire ex rel Brown v. Newport Concrete Co. [1975] 44 Ohio App. 2d 121 and State ex rel Squire v. Cleveland [1948] 150 OS 303) public recreational use would be impaired, the department may, in exercising its public trust responsibility, provide for such use when public trust property is converted to other private or public uses.

Public recreation generally is not an issue with respect to submerged lands leases for structures attached to private residential properties. However, in other locations such as ports, harbors and urban waterfronts, it can be a significant issue. Administrative rules for leasing Lake Erie submerged lands amplify the law and direct the department to consider the present or prospective recreational uses by the public during the term of the lease. Providing for public use or access would depend on historic use patterns and suitability of the lease site for existing and prospective recreational uses.

There is no requirement for public access with regard to erosion control measure permits.

5. Comment (regarding imprecise statements of intention) noted. No change required. NOAA has thoroughly reviewed the policy statements set forth in the OCMP document and concludes that sufficient clarity exists to achieve predictability of decision making regarding proposed activities within the Lake Erie coastal region. Statutory and regulatory citations and procedures are precisely described as required by federal regulations, and clear and thorough detail is provided with respect to enhancement policies.

6. Comment (regarding ODNR having statutory authority) noted. No change required. The OCMP is submitted by the State of Ohio, rather than ODNR. The statutory authorities are cited

clearly in Part II, Chapter 5 of the OCMP draft document with respect to each enforceable authority for the respective agency.

7. Comment (regarding rationale for program development) noted. No change required. The state statutory mandate for development of the OCMP contained in the Ohio Revised Code Chapter 1506 is clear. The Ohio Department of Natural Resources is charged with developing and adopting a comprehensive program " . . . to preserve, protect, develop, restore or enhance the resources of the coastal area and to ensure wise use of the land and water resources of the coastal area." This is the purpose for which the program document was developed. Participation in the national program will bring several benefits to the citizens of the State of Ohio, including additional funding to better manage and protect these resources for the benefit of all.

8. Comment (recommending that OCRM take no action on the document) noted. No change required. For the reasons stated in the DEIS, NOAA's preferred alternative is to conclude that the OCMP meets the requirements of the CZMA and its implementing regulations, and to approve the program.

October 20, 1996

Acting Director,
Office of Ocean and Coastal Resource Management
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
1305 East-West Highway, N/ORM3
Silver Spring, Maryland 20910

RE: The Draft Ohio Coastal Management Program & Draft EIS
Draft Document Review (OCMP)

Dear Acting Director:

The OCMP reads as if it were a rushed production. In addition, it was released to the public on September 10, 1996, with the first hearing on September 30, 1996 and written comments by November 15, 1996. However, the ODNR has been working on the OCMP document since 1992. So, why are they in such a rush?

The text has enough imprecise statements of intention which raise serious concerns as to what the ODNR really intends to do. For example, the OCMP suggests that all licenses and permits within the Coastal Area must be approved by the ODNR. Also, the OCMP suggests that "shore protection will be discouraged and relocation facilitated." In addition, the "ODNR will emphasize and encourage strategic retreat and selective fortification."

Lastly, the OCMP suggests that the ODNR will require public access as a condition for granting a submerged land lease or erosion control permit.

I believe that the lakefront property owners have the right to know just what the ODNR means by these statements. In addition, does the ODNR have the statutory authority to implement and enforce these proposals?

I must conclude that this document was really written to get power for the ODNR, not protect the coastal area. I recommend that the Acting Director, Office of Ocean and Coastal Resources Management take no action on this document.

Yours truly,

Lakefront property owner

Mr & Mrs H L Gobrille
23116 Roberts Run
Bay Village, O
44140

WRITTEN COMMENT #3: MR. AND MRS. H. L. GOBEILLE, PRIVATE LAKEFRONT PROPERTY OWNERS, October 20, 1996

Response to Comments:

Comments noted. No change required. See response to comment #2 (Mary Wood, same letter).

*WOOD Engineering and Design*
*22740 Lake Road, Rocky River, Ohio 44116-1022*
*phone (216) 331-1349* *fax (216) 331-1187* *mwood@en.com*

October 28, 1996

Acting Director,
Office of Ocean and Coastal Resource Management
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
1305 East-West Highway. N/ORM3
Silver Spring. Maryland 20910

RE: The Draft Ohio Coastal Management Program & Draft EIS
Draft Document Review (OCMP)

Dear Acting Director:

I have lived on Lake Erie's shore at the above address for fifteen years, during which time I've constructed an erosion control structure and obtained all the relevant permits as well as a submerged land lease. I'm a professional engineer, registered in two disciplines (petroleum and environmental engineering) with an advanced degree in economics.

To me. the lake is a continual source of pleasure, either from watching it and its many varieties of wild life, or from using it to swim or sail. Even during periods of inclement weather. I still find it fascinating. It is also my source of drinking water and a vital transportation artery. I appreciate Lake Erie and agree it needs protection, but with appropriate regulations, especially for the people who live by it and use it.

However, having reviewed the above referenced document, I'm forced to conclude that it is not the instrument for this task. The OCMP is, in many ways, a flawed document that need further refinement. I'll share with you my reasons for believing so.

The OCMP contains vague or imprecise assertions and inaccuracies - almost as if it were a rushed production. It seems that the process for obtaining input is being done in a fashion so as to minimize the public's comments. For example, the document was submitted to the Federal Government in July. 1996, but wasn't shipped out to the public until September 10, 1996, with the first hearing on September 30, 1996. A document of this size requires careful reading and thoughtful review. but two weeks (especially for those of us who do this in their after-work hours) is simply not enough time. After all, the ODNR has been working on the OCMP document since 1992.
So. why the big rush now?

There was one particular item that I found particularly disturbing. It was the misrepresentation of the Working Group that was assembled to advise ODNR on the

Coastal Erosion Area Regulations. Since I was a part of the Working Group, representing lake front property owners, I know this first hand.

Specifically: Part II, ch.11 - p.11 (end of 2nd paragraph) states: "The (working) group elected not to write official recommendations, stating that the changes the ODNR was making as their work progressed reflected their recommendations."

That is just not true.

In fact, the Working Group was so frustrated with the ODNR's refusal to address issues raised by the Working Group that the majority of members sent a letter containing their recommendation (attached) to Mr. Michael Colvin, Coastal Management Administrator, ODNR who ignored it. Subsequently, JCARR deferred approval of the draft rules as submitted by ODNR, due in part, to opposition from Working Group members. The Ohio Legislature (through H.B. 119) subsequently enacted many of the changes sought by the Working Group, over the opposition of the ODNR.

This made two things clear: First, the ODNR does not want input with which it does not agree, particularly from the regulated community; secondly, the ODNR has its own agenda, often quite different from the will of the people and the legislature.

If for no other reason than the above, the ODNR must reissue a revised OCMP for review and comment by the public.

The text of document contains fuzzy or imprecise statements of intention, some of which raise serious concerns as to what the ODNR really intends to do. The following are examples intended to illustrate this point, rather than being an all-inclusive list:

Part I - p.1, 3rd para:
What is meant by: "...enhanced its management capability"? In what way? What specific management tools or techniques are being employed?

Specific managerial techniques can provide economies in use of human and financial resources. However, the appropriate (chosen) techniques should be identified for specific situations or organizational structures. This was not done.

Part I - p.3,
In what fashion does the ODNR speak for the OEPA? Yes, I know there is a Memorandum of Understanding. But it is <u>unsigned</u>, and until it is signed, it signifies nothing, because it represents no commitment.

Part I - p.7, item #6
Please tell me how the ODNR intends to "...Include sufficient legal authorities..." etc., <u>if</u>

the OCMP has pledged no new regulations or laws (see Part I - p.1, 1st paragraph, second sentence).

Part II, ch.1 - p.2:
Coastal Area Boundary - apparently this is defined by the ODNR Director. However, there is no mention of any review or appeal process for those affected by the designation. Is this consistent with legislative intent? If a company or individual believes that its property was incorrectly included within the coastal area boundary, why wasn't the procedure for appealing that decision included in the OCMP?

Part II, ch.3 - p.1; 4th para.
Some of the defined coastal areas contain land which is used for activities other than those specified by Federal Regulations (urban areas, landfills, upland areas, etc). Yet these lands are still included within the Coastal Area Boundary. Why?

Part II, ch.3 - p.1; 5th para.
The defined Coastal Area Boundary still include lands with no direct impact upon coastal waters: why?

Part II, ch. 4 - p.23 (4th para):
This states "...The MOUs describe actions that will be undertaken by each agency to minimize duplication and delays while ensuring that activities affecting the coastal area are adequately reviewed." Yet, in the unsigned MOU with the OEPA (Appendix E - 2, 6th para), the last sentence reads "...The OEPA will include for the applicant's signature a statement that the applicant understands and agrees that the activity may not proceed until a determination of consistency with the policies of the OCMP has been made by the ODNR."

This suggests that the ODNR wants to have veto power over all regulatory OEPA activities in the coastal area. What happens to the regulated community? Has this expansion in regulatory authority been approved by JCARR? What if the applicant declines to sign that statement? (if I had an option, I certainly wouldn't). And, how will this expedite things, to make the permitting process more predictable (as promised in Part II, ch.4 - p.26, under **Benefits to developers and project sponsors**)? Somehow, this doesn't sound like it will make things simpler or more efficient.

Part II, ch.4 - p.26 & p.27;
Consistency:
Please tell me how this process works in practice. The explanation in the OCMP just does not make sense.

(a) If the procedures are changed by the information generated, how can they meet the criterion of being consistent?

(b) If the ODNR puts each project through a review and comment period <u>before</u> making a consistency determination, how can there be any consistency?

Coordinating (p.27 - 4th para);
How will this procedure simplify the process (of obtaining permits, seeking approvals from the OEPA (or other agencies), when more offices are involved? Streamlining and simplification is usually achieved by placing responsibility with a single office or agency.
This paragraph contains many assertions (...will benefit...; ...will be...) with no explanation of HOW the simplification and consolidation will work. Elsewhere (see above Part II, ch.4 - p.23), the specific details of administration suggest increased complexity and even lengthier permitting processes.

Part II, ch.4 - p.29; (#5 - Notify ODNR)
Does this mean ANY license, permit or approval (for any activity) within the Coastal Area must be approved by the ODNR? And does that mean that all activities require an additional 30 days wait until cleared by the ODNR?
- even routine changes in, for example, PTI (approved) construction? Building Permits? Any permitted construction activity?

Does the ODNR intend to become larger? This part of the OCMP suggests the ODNR plans to review all license, permit and approval activities within the Coastal Area? Who pays? How will this take less time?

Part II, ch.4 - p.30; (Annual Audits of State Agencies)
This alone sounds like it will eat up a significant portion of any Federal (Section 306) grant monies available. Does the ODNR plan to charge other state agencies a fee to perform its audit?

What happens to an Agency when it is no longer approved to make Consistency Determinations? What happens to that agency's regulated activities within the Coastal Area during the six month period that it takes to get its Approval status back? Does that mean all licenses, permits and other activities in the Coastal Area must come to a halt? If not, what's the mechanism to get all of these documents approved and issued?

Please spell out how this procedure simplifies and streamlines the permitting process.

Part II, ch.5 - p.4; (Erosion - last para),
The reference to beach erosion is a bald statement of fact with no mention of the causes.

Perhaps the ODNR should comment on the effect the sand dredging (permitted by the

State) which disturbed the dynamic equilibrium between the offshore sand bars and the beaches protecting the shoreline. And now, lakefront property owners face the consequences of those actions, left to pay the cost, both in the financial and regulatory burdens of living in an area which is now undergoing accelerate erosion due to the loss of beaches.

Part II, ch.5 - p.5 (4th para)

Why did the ODNR select Mentor Dunes as an example of a non-structural erosion control measure?

Even those not schooled in the litoral processes know that the beach and dunes at Mentor Headlands owe their existence to the long groin that reaches out to the lighthouse at the mouth of the Grand River. This structure traps the sand in the litoral drift (west to east), thus starving the cliffs of Painesville Township (much cited by the ODNR as a reason for regulation of erosion prone areas) of the sand needed to protect the highly erodible glacial till cliffs. (See copy of news article - attached)

If the ODNR is serious about reducing erosion with non-structural measures, then it should give serious consideration to eliminating the sand trap at the mouth of the Grand River and allow the sand to be carried to the east, to give the cliffs of Painesville Township their beaches back. If the ODNR feels that this is impractical, then it should cite this structure as an example of what NOT to do. It should NOT point with pride at the Mentor Dunes as an example of non-structural erosion control measure. It is actually a shameful robbery of one party (Painesville Township lakefront property owners) to enrich another (the state park at Mentor Headlands). Take away the groin, and the sand dunes <u>will</u> disappear. Take away the groin, and a much cited erosion problem will fade.

Part II, ch.5 - p.6 (3rd para)
Why is the word <u>HAZARD</u> in this paragraph?
The intent of the legislature (in H.B. 119) has been made perfectly clear that erosion processes are a natural phenomenon and represent a normal risk of living on the lakefront; not a hazard. This is an alarmist word, much used by the ODNR to describe coastal erosion. In this context, it is a violation of legislative intent.

Part II, ch.5 - p.11 (3rd para)
Please give an example of enforcement on unauthorized construction activities. From personal experience, it appears as though the ODNR does not enforce the existing regulations. Even when egregious examples of unauthorized filling of Lake Erie are brought to the ODNR's attention, they do not enforce the requirement for a submerged land lease or removal of unauthorized fill. If they have too much on their plate, perhaps they need fewer regulations to monitor.

Part II, ch.5 - p.12 (3rd para)
Define process for determining areas where: "...it would be more effective to maintain natural functions of beaches and dunes.... or where construction would measurably increase erosion elsewhere, construction and related shore protection will be discouraged and relocation facilitated." Is the ODNR referring to the groin at the mouth of the Grand River, or is the ODNR referring to lakefront owned by home owners? This paragraph concludes: ODNR will emphasize and encourage strategic retreat and selective fortification.

Now this sounds like a strategy dreamed up by someone who DOES NOT LIVE ON THE LAKEFRONT! If you live on the lakefront (and your home is the most significant item of your net worth), the above statement is alarming.

What specific areas has the ODNR targeted to encourage strategic retreat? What areas will be emphasized for selective fortification? I believe that the lakefront property owners have the right to know which areas the ODNR has selected under this policy.

Please explain the basis of this strategy, the process of determination of selected areas for strategic retreat, including the rights of the affected property owners and their avenues of appeal. In addition, please explain what type of compensation will be paid to those participating in this "strategic retreat." Lastly, please cite the statutory authority that mandates such a strategy.

If for no other reason than the above, the ODNR must reissue a revised OCMP for review and comment by the public.

Policy 2 - Shore Erosion Control

Part II, ch.5 - p.13 (1st para)
Have the administrative rules required by O.R.C. 1507.04 and 1507.10 been developed and adopted? Surely if the legislature saw fit to change the O.R.C. to require permits, should not the ODNR have done so already?

Part II, ch.5 - p.55 (last para)
Describe the ODNR's actions under O.R.C. 1501.01. What mechanism exists for valuation and appeal from such an eminent domain action?

Part II, ch.5 - p.71 (2nd para. Item 3)
If the state requires public access as a condition for granting a lease or permit, will the state compensate, indemnify and protect the leaseholder from any action by a member of the public using said leased lands? After all, the state requires those who lease submerged lands from the state to prove that they have adequate insurance to protect

the state.

Part II, ch.6 - p.5 (5th para)
This section is titled: "Coastal Erosion and Flood Hazard Areas."
This implies that Coastal Erosion Hazard Areas. The legislature has made its intent clear in this area, that Coastal Erosion Areas shall not be designated as Hazards.

Part II, ch.6 - p.5 (last para)
Last line of this paragraph refers to "erosion hazard area." See above.

Part II, ch.6 - p.13 (last para)
This section is titled: "Coastal Erosion and Flood Hazard Areas."
This implies that Coastal Erosion Hazard Areas. The legislature has made its intent clear in this area, that Coastal Erosion Areas shall not be designated as Hazards.

If for no other reason than the above, the ODNR must reissue a revised OCMP for review and comment by the public.

Part II, ch.11 - p.6;
Under staffing of the ODNR.

The ODNR seems to spend significant amount of resources trying to get rules issued but has a great reluctance to get involved with current problems and enforcing current rules & regulations. At public hearings, working groups, etc., I have noted that the ODNR is able to muster more than enough personnel to have a group that sit at these events and not even taking notes. Somehow, I get the impression that they are, in fact, overstaffed.

If not, why do they have so many staffers at the public hearings and working groups? For example, at the public hearing on October 3, 1996, in the Cleveland Metro parks Auditorium, there were six members of the ODNR present. That represented a significant fraction of the total participants (about twenty).
And if they're not understaffed, why no action on problems that the lakefront property owners face?

Part II, ch. 11 - p.13 (1st para)
The section on the economic impact assessment - either redo this (and answer earlier objections) or get rid off it. That analysis, as has been previously demonstrated (in earlier letters to the Director - attached), is seriously flawed. So, why still included it?

Part II, ch.11 - p.13 (2nd para)
Same as the previous comment. Your interpretation of the data would not garner

serious support from a person trained in economics or finance.

Part III, (B) p.3;

There has been no cost-benefit analysis run to justify the adoption of this program. The preceding part of the Draft OCMP has been long on generalities and short on specifics, except for the need to get $800,000 per year from the Federal Govt. to administer the Program. Funding has been mentioned on numerous occasions (about a dozen times in this draft of the OCMP). However, specific benefits have all been couched in hypothetical, conditional or parenthetical terms.

Therefore, I must conclude that this document was really written to get funding, not provide protection to the coastal area. I recommend that the Acting Director, Office of Ocean and Coastal Resources Management take no action on this document, other than require the ODNR attend to its false statements, policy positions that have no statutory authority and statements that violate legislative intent, and resubmit it (with a reasonable review period).

If you have any questions, please feel free to contact me.

Yours truly,

Malcolm B. Wood, P.E.

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July 6, 1995

Mr. Michael Colvin
Coastal Management Administrator
Ohio Department of Natural Resources
Fountain Square
Columbus, Ohio 43224-1387

Re: Erosion Hazard Area Working Group

Dear Mike:

The undersigned have reviewed your communication of June 12, 1995. We believe there are some additional issues that were raised during our final meeting which were not addressed. We believe these issues can be addressed without convening the Working Group again, as you have made it clear that you do not wish to have any further meetings.

We submit the following matters for your attention:

Passage of H.B. 119 - We believe it is imperative that H.B. 119 be adopted. Coastal property owners must be assured that the state is not going to use the mere designation of a coastal erosion area against them in an eminent domain proceeding.

1501-6-23(A) - The matter was discussed at the last meeting as to the application form. Again, we ask that ODNR identify what information will be in the application form specified by the Director. It is the Working Group's intent that the form be very simple and not include the information that was deleted from the original draft of this Rule.

1501-6-23(B)(5)(6) - It was proposed by Wayne Warren that subparagraphs (5) and (6) be deleted, and we were in favor of that. However, after review of the rules, we realize that these subsections remain. We would like to point out that situations can arise where neither subparagraphs (5) or (6) are applicable. For example, an erosion control measure may have been constructed that did not need authorization under R.C. 1507.04. Another example would be that the existing erosion control devise is not owned by the applicant. Thus, requiring "either of the following" is not accurate. We were also concerned that the applicant is responsible for verifying that an application has been filed with the Department of Engineering. What does verification mean? Since Engineering is part of ODNR, doesn't ODNR know, or have easy access to determine, that the application has been submitted?

Also in subparagraph (6), while the terminology has been changed, the requirements of the original "evaluative report" still remain. We understand that information on an existing erosion control measure may be required in order for DNR to effectively evaluate a permit application. However, the cost to the applicant of providing the information should not prove burdensome in relation to the cost of developing property within a coastal erosion area.

1501-6-23(D) and (E) - The first two sentences of this paragraph appear to conflict. On one hand, it says the 30 day review period begins upon receipt of the completed application. A contrary interpretation is received in the second sentence where the 30 day review period begins pursuant to a specific notification from the Department.

We believe it is imperative that these issues be addressed before the rules are filed with JCARR. We are more than willing to provide additional input in regard to these matters.

Very truly yours,

Wm. Charles Steuk

Amy E. Kellogg

Amy E. Kellogg

Michael E. Murman

Samuel M. Savin

Charles E. Herdendorf

Wade Mertz

Wade Mertz

Malcolm B. Wood

Malcolm B. Wood

cc: Jim Morris
Donald C. Anderson
Wayne Warren

22740 Lake Road
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(216) 331-1349

February 5, 1994

Frances S. Buchholzer, Director
Ohio Department of Natural Resources
Fountain Square C-4,
Columbus, Ohio 43224

Dear Director Buchholzer:

Thank you for your January 18, 1994 letter with your answers to my comments of December 7, 1993. It is a good sign that the State of Ohio's administration is concerned and responsive to voter worries. However, I believe that you have not recognized what real concern these issues stir in the lake front property owners. Specifically:

Minimum Proposed Recession Rate:

The reasons used to justify the minimum regulatory recession rate of one foot per year to calculate the extent of the erosion hazard area worry me. The logic upon which the reasons are based seem to make ALL lake front property owners bear the brunt of two phenomena.

First, the geology of the Lake Erie shoreline varies area by area which causes significantly different erosion rates. The fact that some lake front areas are protected by substantial erosion control structures is dismissed by you (in your letter) "...mere presence of an erosion control measure indicates the risk of erosion is high." (Note: there is erosion on all shores except those which are accreting.) Do erosion control measures count for naught? Remember, there are substantial portions of Lake Erie shoreline which have erosion rates FAR LESS than the minimum recession rate proposed by regulation.

The second phenomenon is the unusually high water levels experienced in Lake Erie during the period cited in your letter (1973 to 1990). While I'm not a statistician (I'm an engineer and economist), it is obvious even to me that it is plain bad science to use outlier data (i.e., exceptional values in the data set) to predict future phenomena.

Please, get rid of the minimum recession rate of one foot per year for the regulatory determination of the Erosion Hazard Area. It is just plain WRONG!

Permitting:

I'm quite familiar with the current permitting process for erosion control structures in Lake Erie. The proposed process sounds more involved (as written in the copy of the draft regulations provided by Mike Colvin) and subject to more regulatory review. In addition, the requirement that the erosion control measure must meet a 30 year design life criteria, including proposed maintenance, is not trivial.

First, the science of coastal engineering is replete with caveats as the unpredictable nature of failure modes. Secondly, is there anyone in Ohio State Government who has the training and experience (30 years) in coastal engineering to realistically judge the adequacy of the design of the proposed erosion control measures? If there are specific design standards adopted by the State of Ohio to be used with these proposed regulations (for reviewing submitted designs for compliance), I'd certainly like to see them. Lastly, my comment about design criteria for the erosion control measure exceeding that of the structure that it will protect simply meant: Houses do not have to be built to a 30 year life design criteria including proposed maintenance, and be certified by a registered professional engineer.

Economics:

The Economic Impact Statement prepared by the ODNR (September 1993) did not refer to an infusion of hundreds of millions of dollars in subsequent private and public investment, as you stated in your letter. If there is a revised Economic Impact Statement, I'd appreciate receiving a copy.

I stand by my assertion that there will be no specific economic benefit or monetary value to lake front property owners resulting from the proposed regulation. On the contrary, the regulations will impose a penalty. Let me illustrate my point.

If property owners along Ohio's Lake Erie shore are required to install erosion control measures that meet the 30 year design life criteria, the cost will be staggering. Specifically; assume that 25% of the shoreline already has or does not need erosion control measures, that would leave about 150 miles of lake front requiring protection. At a cost of $200 to $1,000 per lineal foot for erosion control structure installation, plus engineering fees (30 year design life criteria) from $500 to $5,000 per individual installation (such as a private home with 100 feet frontage), this imposes an economic cost of at least $160 million to as much as $830 million on the estimated eight thousand individual lake front property owners.

Put another way, that works out that each property owner will have to pay from $20,000 to $100,000 for these proposed regulations!

All of this so the ODNR can get federal grants of $700,000 to $1 million annually (plus matching state funds)?

Can you now see why I do not buy into the concept that the proposed regulations are a benefit? These regulations will be economically onerous and discriminatory against lake front property owners.

Since you cited Lake County as an example of "devastating" property losses, that's worth some discussion. As you know, Mentor Headlands State Park continues to accrete sand and build a larger beach. The sand comes from the west-to-east littoral drift which is blocked by the light house pier at Grand River. Any elementary text on shoreline processes will tell you that a beach starved for sand, caused either from lower input by streams or reduced sand transport in the littoral drift, will erode. This is exactly what is happening to the shoreline in Lake County to the east of the Mentor Headlands State Park. The beach at Mentor Headlands State Park gets bigger, accumulating more and more sand, while the beaches to the east are starved for sand and thus erode. It's no wonder there were devastating erosion losses in Lake County. Do you honestly believe this justifies pushing the proposed regulations onto all lake front property owners?

Lastly, I will repeat my contention that the Ohio Bankers' Association was mislead by the question put to them. Ask them the real question, "Will you finance a 30 year mortgage on a property that is within a designated 30 year erosion hazard area?" I'll bet their answer to this question will be quite different from the one you received earlier. If lake front properties cannot be sold due to lack of financing, those home values will plummet. Can you understand why we home owners are concerned about the value of our property?

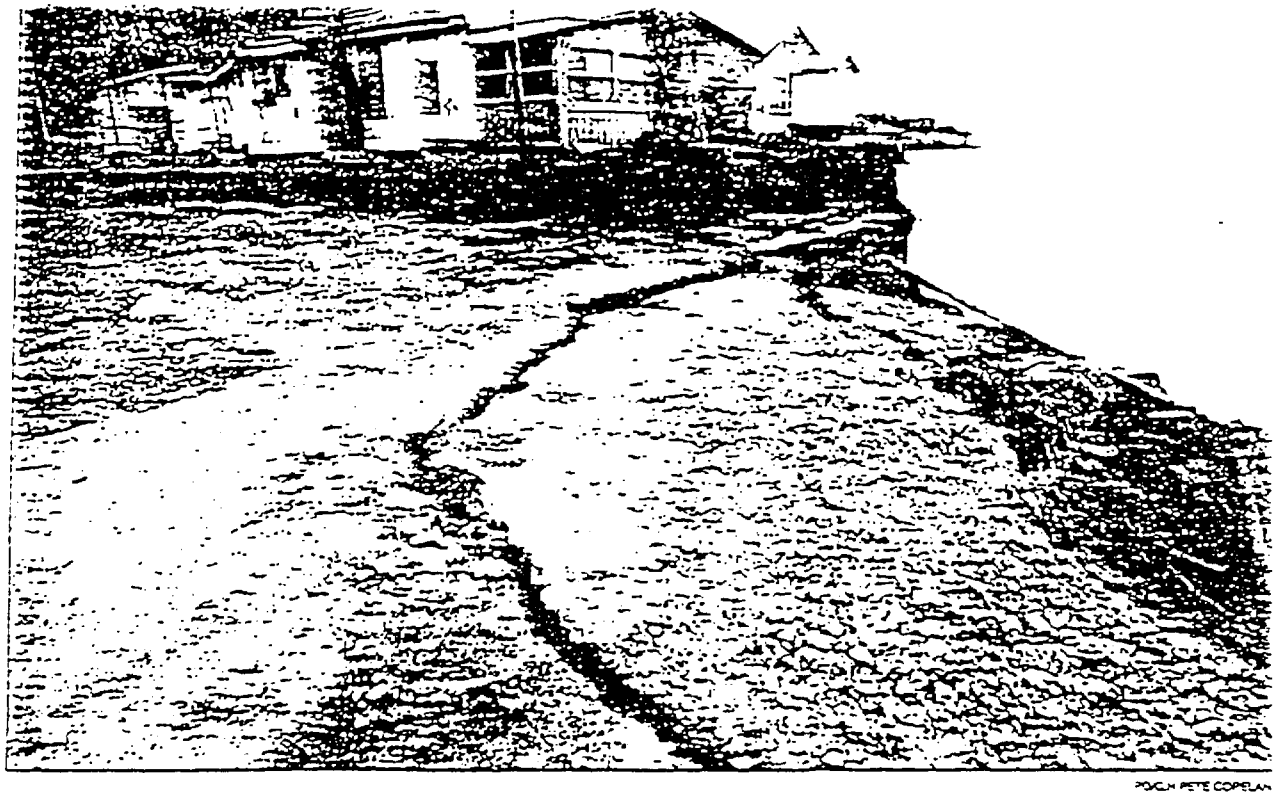
I hope that you now have a better understanding why these proposed regulations are arousing me from political apathy. Believe me, if these regulations are promulgated without the above concerns being addressed, I will pursue political remedies.

Yours truly,

Malcolm B. Wood, P.E.

MBW:

cc: The Honorable George V. Voinovich, Governor
The Honorable Anthony Sinagra, Ohio State Senator
The Honorable Gary Suhadolnik, Ohio State Senator
Michael Colvin, ODNR
Scudder D. Mackey, Ph.D. ODNR - Sandusky



PLAIN DEALER PHOTO PETE COPELAND

New erosion cracks appearing along the Lake Erie shoreline in Painesville Township may mean two condemned houses teetering on the edge of the cliff will have to be torn down.

# Houses destined for a fall

## Bulldozer may beat lake to the punch

By STEPHEN KOFF
PLAIN DEALER REPORTER

PAINESVILLE TOWNSHIP

After their yards fell over the bluff, two Lake Rd. homeowners were left last week with dangerously positioned houses, too close to the edge.

The houses may be next to go, if not from the gnawing Lake Erie erosion then from a bulldozer. Painesville Township wants to demolish the two small houses before they meet the same fate as an abandoned blue car that landed upside down beneath the cliff last Wednesday.

"We will begin looking this week at steps to get both houses demolished. We would like to get rid of them for safety's sake before they fall into the lake," township administrator Frank Svegel said yesterday.

Both houses, with front yards perched along the soft-soil bluffs above Lake Erie, were condemned by Lake County officials last week as unsafe after their front yards dropped over the edge and onto the shoreline. The abandoned blue car went over with the crescent-shaped mass of earth. "This is the biggest chunk that I've ever seen go off," said Donald Fox, a Painesville Township Schools custodian who owns one of the homes.

*'We will begin looking this week at steps to get both houses demolished.'*

— Frank Svegel, Painesville Township administrator

Both small homes are now unoccupied. Fox has not lived in his house for five years, and uses it for storage, he said yesterday. He tried selling it, he said, but to no avail.

The township's plans for demolition, he said, are consistent with his own. "Yes, I'm going to tear the house down. I'm not going to let it go over the hill."

The other home is owned by Ronald Henson, who with his brother Charles fled after the earth shook about 1 a.m. Wednesday, signaling that their front yard was breaking off. The brothers could not be reached yesterday.

Svegel said the township would probably seek a court order requiring the homeowners to tear down the houses. If the homeowners do not comply, the township will demolish the houses but will tack the cost onto the homeowners' tax bill, he said.

All of which could raise another issue. "Being realistic," said Svegel, "are they going to pay taxes for property that's good for nothing other than to put up a little picnic table?"

Until last week, the Henson home was assessed for tax purposes at $12,200 and carried a yearly tax bill of $198, according to Deputy Lake County Auditor Mike Evangelista. Because of its precarious position, however, Ronald Henson paid only $2,000 for it. The Fox property was worth $14,100 and had a $235 annual tax bill. But the auditor's office will lower the assessments because of last week's soil slide, and if the houses fall off the bluff or are demolished, the assessments can be lowered to nominal amounts, Evangelista said.

Then, if the property owners fail to pay the taxes, the land can ultimately be given to the state. The state could ask the county to remove the property from its tax rolls.

The abandoned car at the bluff bottom presents a tougher problem. Svegel has asked the U.S. Army Corps of Engineers for advice on how to remove it, and a corps official in Cleveland said he planned to climb down to look at the car soon.

But at corps regional headquarters in Buffalo, the official word is that the car is strictly the property owner's responsibility. The land where the car landed apparently belongs to Fox, although Fox had nothing to do with its landing there.

The corps does not get involved in beached vehicles unless they are in the water — at which point there is probably a violation of the federal Clean Water Act, said corps spokesman John Derovshire.

"And," he added, "we would not like that."

WRITTEN COMMENT #4: MALCOLM B. WOOD, P.E., PRIVATE LAKEFRONT PROPERTY OWNER, October 28, 1996

Response to comments:

1. Comment (regarding apparent speed of document production and length of public comment period) noted. No change required. See response to item #1 of written comment #2 (Mary Wood).

2. Comment (regarding the coastal erosion area working group recommendations) noted. No change required. (For a discussion of the coastal erosion area working group, please see Part II, page 11-11 of the draft program document and DEIS.)

ODNR asked the group whether it would submit written recommendations and received the response that it would not. After the first few meetings of the external working group the subject of whether or not the group would write a report providing its recommendations to ODNR was put forth to the group to decide. The group determined that because the discussions were frank and open, that ODNR was listening with great care and consideration, and that the group's recommendations were being reflected in rules revision drafts, they were comfortable with the manner in which the revisions were proceeding and would not need to submit to ODNR a separate written report. The group clearly stated during the course of latter meetings that ODNR's revisions were accurately and appropriately incorporating the group's comments and their discussion of issues.

Five drafts of the revised coastal erosion area rules incorporating the group's recommendations were distributed over time to the group, starting on March 20, 1995. The working group provided no response indicating dissatisfaction with the re-drafted rules during that time. At the conclusion of the meetings, it was the consensus of the group that the rules were reflective of the group's recommendations.

On April 26, 1995, just prior to the last scheduled meeting, ODNR sent the third draft of the rules, summarizing the group's recommendations and responding to concerns raised at the previous meeting. It was stated that the rules would be filed as revised in late May. Shortly thereafter (on May 11), one public official who served on the working group wrote, "at the request of the Lake Erie Erosion Hazard Area Working Group," to the chair of the Ohio House Agriculture and Natural Resources Committee in support of the provisions of H.B. 119. The letter stated that "the working group has a great deal of respect for the efforts of DNR staff in revising the erosion area designation rules and procedures." Further, it stated "we would like to express our appreciation to Mr. Colvin and the many other DNR staff who have assisted in revising the coastal erosion area designation and enforcement rules. Through this cooperative effort great progress has been made in developing coastal erosion area rules which reflect the goals of the Coastal Management Program while respecting the rights of owners of property abutting Lake Erie." Consistent with the recommendations of the working group in support of H.B. 119, ODNR testified before the legislature in support of the bill.

There was additional one-on-one discussion between ODNR and working group members until the rules filing in July, 1995. On July 18, several days prior to the stated filing date, ODNR received the commenter's enclosed letter dated July 6. The letter raised the following issues: the need for passage of H.B. 119, which ODNR firmly and actively supported; simplicity of the application form, to which ODNR also is committed; two criteria which, by clerical error, had not been deleted as agreed but which (prior to the July 6 letter) had already been deleted from the rules to be filed; requirements of the "evaluative report" which had in fact changed substantially, despite assertions otherwise in the July 6 letter; and an apparent contradiction regarding the 30-day review period, which also had already been clarified in the rules prior to the July 6 letter. None of these issues entailed substantive changes to the rules.

House Bill 119 did not enact any additional changes to the coastal erosion area designation or enforcement rules, as the commenter seems to imply. With regard to the rules, only the terminology was changed from "erosion hazard areas" to "coastal erosion areas." This change would have been incorporated into the rules whether H.B. 119 passed the legislature prior to or after filing of the rules. Working group members, as stated in the July 6 letter, did support passage of H.B. 119. ODNR also strongly supported that bill. ODNR did strongly oppose some proposed amendments that clearly would have imperiled adoption of a coastal management program. The legislative process considered both sides of those arguments, and those amendments were not adopted.

3. Comment (regarding enhanced management capability, Part I, p.1, 3rd para.) noted. No change needed. Passage of S.B. 70 enhanced the state's management authority by requiring development of a comprehensive management program through cooperation of all relevant agencies and local governments, through clear delegation of authority to ODNR to do so, and by requiring all agencies to be consistent in their actions with policies of the state program. It also created the coastal erosion area designation process and transferred administration of submerged lands leasing to ODNR.

4. Comment (regarding ODNR speaking for Ohio EPA, Part I, p.3) noted. No change required. ODNR does not speak for the Ohio EPA. However, the OCMP is submitted to OCRM not just by ODNR but by the State of Ohio and will be implemented by the State of Ohio. Further, by law (O.R.C. §1506.01), the coastal management program document must list state agencies involved in program implementation and describe "their applicable policies and programs" and cite "the statutes and rules under which they may adopt and implement those policies and programs." O.R.C. §1506.02 requires that "every agency of the state, upon request of the director, shall cooperate with the department of natural resources in the implementation of the coastal management program." Ohio EPA personnel wrote and, over time, revised the program document language relevant to their authorities. The page to which the commenter refers is NOAA's summarization of Ohio EPA's authorities. The MOU by which Ohio EPA and ODNR agree to cooperate to carry out the mandates of O.R.C. Chapter 1506 has been signed and is published in the FEIS. The purpose of including the unsigned MOU in the DEIS was to provide continued opportunity for comment on that document.

5. Comment (Part I, p.7) noted. No change needed. The comment is not clear. The referenced wording is a statement by NOAA of the program approval requirements. On page iii of the DEIS, NOAA stated that its purpose in publishing the DEIS was for public review of the agency's

preliminary determination that the proposed program, AS DESCRIBED BASED ON EXISTING AUTHORITIES, meets the program approval requirements, including "whether Ohio management policies and authorities are adequate to implement the program." As stated, no new authorities are proposed.

6. Comment (regarding the inclusion of sufficient legal authorities, Part II, Ch. 1., p. 2) noted. No change required. The "coastal area" is defined in statute, as cited (O.R.C. §1506.01(A)). The original bill that contained this language passed both houses unanimously in 1988. The bill has been amended in the legislature four times in very open processes that involved discussion with coastal area interests. Revising the coastal management boundary language was never suggested.

Considerable public involvement has taken place with respect to how the proposed coastal management boundary was developed. The original coastal management boundary proposal was developed from the efforts of local county advisory groups and was available for public review in the 1992 Public Review Draft Document. ODNR consulted local interests on management boundary issues and concerns following that 1992 public review and made corresponding revisions to the proposed inland boundary. The process by which the extent of the coastal management boundary, as proposed in the draft document, was developed is described thoroughly in Chapter 3 of the program document and DEIS. Following publication of the document, 84 additional days were provided for review and comment on the proposed management boundary. During that time, anyone wishing to make a specific recommendation to modify the extent of the area, as proposed in the DEIS, had the opportunity to do so. One change is being made to the boundary in response to a specific recommendation.

Once the OCMP is adopted by the Director of ODNR and the program is approved by NOAA, boundary modifications will need to be submitted to NOAA as program changes. However, other than the change made in response to a recommendation, the State of Ohio is not contemplating additional changes to the coastal management boundary in the near future.

7. Comment (regarding uses contained within the coastal management boundary, Part II, Ch.3, p.1, 4th para.) noted. No change required. Whether or not a land area is currently used for activities that affect coastal resources is not the criterion for defining a coastal management boundary. Rather, it is land areas, the uses of which can affect such resources.

8. Comment (regarding lands contained within the coastal management boundary, Part II, Ch. 3, p. 1, 5th para.) No change required. The coastal area includes lands that, because of their proximity to or other connection with coastal resources, could support uses that would have direct and significant impacts on those resources.

9. Comment (regarding ODNR processing for consistency review, Part II, Ch. 4, p. 23) noted. No change required. The statement that an applicant agrees to comply with all existing authorities and permit requirements before conducting a project affecting coastal resources in no way implies an ODNR veto power over Ohio EPA. No expansion of ODNR's regulatory authority is involved. That has never been intended, nor would Ohio EPA consider agreeing to such an arrangement.

As stated on p. 4-29, "ODNR will base its consistency determination upon the approvals of the state agencies enforcing the policies and authorities in the coastal management program document." In other words ODNR will rely on the responsible agency for granting or denying permits within its own area of statutory and regulatory authority and will not apply its own separate judgement to second guess the decisions of that agency. Rather, the department and other agencies with relevant regulatory authorities will, in the process of reviewing for consistency with OCMP policies, assure that applicants are aware that issuance of one permit does not guarantee that the project will proceed if other state agency approvals are necessary. All other applicable permits and authorizations will be required. For example, Ohio EPA may issue a Permit to Install for a new source of air contaminants, but if the proposed facility were to be located within a coastal erosion area, the project may not proceed until the required permit for new construction within coastal erosion areas is obtained. By identifying for applicants all approval requirements early in the process, this process will both streamline and improve the predictability of permitting processes to the benefit of both agencies and applicants.

This requirement for consistency with OCMP policies is statutorily mandated (O.R.C. §1506.03). See also response to written comment #2 (Mary Wood), item #2 regarding consistency.

10. Comment (Part II, Ch. 4, pp. 26 & 27) noted. No change required. "Consistency" in the discussion cited by this commenter refers to the legal requirement that "no project or activity directly affecting the coastal area that is proposed by or subject to the approval of any agency of the state shall be implemented or approved until the director of natural resources has determined that it is consistent with the policies in the coastal management document" (O.R.C. § 1506.03). The information generated by agencies and, in appropriate cases, from public comment will assist ODNR in determining if a proposed project is consistent with the policies.

For further discussion regarding consistency, see response to written comment #2 (Mary Wood), item #2 regarding consistency, and item #9 in this response, above. Generally, for federal approval the OCMP must include a description of how state actions will be consistent with OCMP policies. Chapter 4 provides an adequate description of how the state will meet this requirement.

11. Comment (regarding consistency review, Part II, Ch. 4, p. 27) noted. No change required. As noted above in #9, the process will be simplified as a result of up-front notification of and agreement to comply with all relevant requirements in one step. Currently one permit is applied for and later, the applicant learns that another requirement must be met and so forth, leading to sometimes lengthy delays and re-negotiation of additional project specification changes. Avoiding those delays will clearly shorten and streamline the process.

12. Comment (regarding consistency review, Part II, Ch. 4, p. 29) noted. No change required. As stated in the cited text, the notification of ODNR is to take place at least 30 days in advance of expected final action, thus not adding additional time. As described in the text cited, many consistency reviews will be accomplished by other state agencies.

For further discussion regarding consistency review procedures, see response to written comment #2 (Mary Wood), item #2, and item #9 in this response, above.

13. Comment (regarding annual audits of state agencies, Part II, Ch.4, p. 30) noted. No change required. No, ODNR will not charge a fee for its annual review of consistency performance for those state agencies that adopt statements of coastal management policies. If the agency is no longer approved to make the consistency determinations, the procedures described in Chapter 4 apply, as for any agency that has not adopted a statement of coastal management policies. Neither permits nor other types of approval from that agency would be halted. Regarding simplification and ODNR's reviewing all permit activities, see response to written comment #2 (Mary Wood), item#2 and items #9 and 11 in this response, above.

14. Comment (regarding the effect of sand dredging, Part II, Ch. 5, p. 4) noted. No change required. Data from the five year cooperative study of Lake Erie erosion with the U. S. Geological Survey show that significant reductions in beach width have occurred over the last 50 years. This process has accelerated since the early 1970s and is due to significant reduction in sediment supply and higher lake level elevations. Reductions in sediment supply are the result of extensive armoring of the coastline, which reduces the volume of coarse-grained sediment available for beach creation. (Ninety percent of coarse-grained beach sediments are derived from direct erosion of the bluffs.)

Three major areas are currently permitted for extraction of sand from the lakebed. These areas are located 6 to 8 miles offshore from Lorain and Fairport. These areas are isolated and not connected to the littoral system. Extraction of sand from these areas does not affect nearshore sand resources in the littoral zone.

15. Comment (regarding Mentor Dunes, Part II, Ch. 5, p. 5) noted. No change required. The Mentor Marsh/Headland Dunes Coastal Barrier Resources unit extends several miles to the west of the federal harbor jetty at Fairport. Only a small portion of the unit is located adjacent to this structure. In the area of Mentor Lagoons, a natural sand barrier provides nonstructural protection for the natural wetlands and a man-made marina complex immediately landward of the barrier.

Prudent coastal management requires that a balance be struck between resource use and resource protection. Removal of the federal harbor jetty at Fairport (as suggested by the commenter) would have a severe and detrimental impact on Fairport Harbor and associated commercial and economic interests in Lake County.

16. Comment (regarding the use of the word "hazard," Part II, Ch. 5, p. 6) noted. No change required. The word "hazard" remains a universally recognized word used in the context of describing natural erosion and flooding processes and resulting risks to life and property. House Bill 119 changed the terminology regarding areas officially designated by ODNR as anticipated to be lost to erosion over the next 30 years. Many entities, including the Federal Emergency Management Agency, NOAA, nearly all coastal states, and private insurance companies continue to recognize and refer to coastal erosion, flooding and storm events as "coastal hazards."

17. Comment (regarding enforcement of unauthorized construction activities, Part II, Ch.5, p. 11) noted. No change required. No example of enforcement regarding unauthorized construction activities within coastal erosion areas can be given because, as is clear from the much publicized ongoing review process regarding the preliminary identification of coastal erosion areas, the requirement is not yet in effect. As made clear in Chapter 5 and in the insert distributed with the draft document, enforcement of this provision will not occur until after the entire objection process takes place and ODNR makes a final identification of coastal erosion areas. ODNR provides enforcement of its existing programs.

18. Comment (regarding strategic retreat and selective fortification, Part II, Ch. 5, p. 12) noted. No change required. As stated in the document, ODNR will "emphasize and encourage" such action, not require or coerce it. Clearly, when ODNR is asked by property owners or local governments for technical assistance regarding how best to deal with erosion that threatens homes, public properties, or businesses, ODNR may suggest relocation farther landward if that is an advantageous solution. ODNR is not "selecting areas" for strategic retreat, but rather is encouraging that property owners consider this approach. There is no need for appeal or compensation when there is no state action.

There is NO STATUTORY AUTHORITY for this enhancement policy. As stated on page 5-3 of the draft program document, nonunderlined policy statements such as 5.D. are not enforceable policies, i.e. they are not statutorily enforceable. ODNR does not intend to require or coerce these actions, but rather encourage them on a case-by-case basis.

See also the response to comment #2 (Mary Wood) for further discussion regarding encouragement of selective fortification and strategic retreat.

19 Comment (regarding rules under O.R.C. Chapter 1507, Part II, Ch. 5, p. 13) noted. No change needed. Administrative rules to assist implementation of O.R.C. Chapter 1507 have been drafted and are currently being reviewed by ODNR.

20. Comment (regarding eminent domain action, Part II, Ch. 5, p. 55) noted. No change required. All eminent domain actions by the State of Ohio are governed under O.R.C. §163.59.

21. Comment (regarding indemnification of property owners, Part II, Ch. 5, p. 71) noted. No changed needed. The state may not compensate or indemnify private property owners in situations where it is protecting historical or prospective rights to public access in public trust waters and lands. Several Ohio Constitutional provisions would prohibit or prevent the state from indemnifying or compensating a private entity. Refer also to response to written comment #2 (Mary Wood) for discussion of public access requirements for submerged lands leasing.

22. Comment (regarding the use of the word "hazard," Part II, Ch. 6, p. 5) noted. No change needed. The language properly refers to coastal erosion areas and flood hazard areas, with the word "areas" being modified by the words "coastal erosion" and "flood hazard" respectively. The word "hazard" is acceptable when used in the general context, not in reference to O.R.C. Chapter 1506

and thus not governed by H.B. 119. Throughout the document, the term "coastal erosion areas" is used when reference is made to O.R.C. Chapter 1506.

23. Comment (regarding use of the word "hazard," Part II, Ch. 6, p. 5, last paragraph) noted. The text has been corrected to "coastal erosion areas" and to reflect the correct date of final rule filing.

24. Comment (regarding use of the word "hazard," Part II, Ch. 6, p. 13) noted. No change required. See response to comment #21.

The word "hazard" would be acceptable in this context as it is used in the general context, not in reference to O.R.C. Chapter 1506 and thus not governed by H.B. 119.

25 Comment (regarding understaffing of ODNR, Part II, Ch. 11, p. 6) noted. No change required. The public hearings on the OCMP draft document and DEIS were an important opportunity for staff with various areas of responsibility, expertise and interest to hear public comments regarding the proposed program. Regarding the comment that there is "no action" on problems affecting property owners, considerable time, effort, energy, and expertise have been spent meeting with property owners, listening to and addressing their concerns, and providing on-site consultations. Over the five years since release of the draft public review document, a high proportion of available resources has been spent on private property owners' interests, relative to the many important coastal management issues in the OCMP.

26. Comment (regarding the "economic impact assessment," Part II, Ch. 11, p. 13) noted. No change required. ODNR consulted 41 sources to attempt to gain an impartial assessment of overall economic impacts that might result from enforcement of the provisions mandated by O.R.C. §1506.07. This included a thorough literature search through the Natural Hazards Research and Applications Information Center. The 1995 economic assessment was based upon these sources. Very little scientific study of the effects of such rules had (or has) been done, and the studies cited were all subject to various limitations, as acknowledged in the assessment. However, all relevant information that came to light was considered and used. The fact remains that, despite the broad search, absolutely none of the information available indicated possible negative impacts on property values.

The results of those studies have not been refuted. We have carefully considered comments and assertions that property values will be negatively affected. Without data or citation of sources, we cannot conclude that such comments demonstrate that these sources were wrong.

The 1994 letter enclosed by the commenter provided comment on the fiscal analysis that ODNR prepared in 1993. In addition to being based on a 30-year erosion control measure design life criteria that was deleted from the rules, the calculations and conclusions of the commenter were based on an incorrect assumption that every foot of shoreline now unprotected would require protection. In fact, erosion protection would be required only if an owner intended to build a new permanent structure within an identified coastal erosion area on the property.

27. Comment (regarding cost-benefit analysis, Part III, p. 3) noted. No change required. It is unclear to what the commenter refers. The section of Part III referenced is the presentation of alternatives as required by NEPA and discusses the impacts of each of the alternatives. While NEPA requires an environmental impact statement that includes, among other things, an examination of the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, NEPA does not require a cost/benefit analysis. Further, the CZMA does not require a cost/benefit analysis.

28. Comment (regarding rationale for program development) noted. No change required. Please see response to written comment #2 (Mary Wood), item #7.

29. Comment (regarding fuzzy and imprecise statements of policy) noted. Please see response to written comment #4 (Mary Wood), item #5.

30. Comment (regarding recommendation that OCRM take no action on the document) noted. No change required. For the reasons stated in the DEIS, NOAA's preferred alternative is to conclude that the OCMP meets the requirements of the CZMA and its implementing regulations, and to approve the program. See response to written comment #2 (Mary Wood).

October 21, 1996

Acting Director,
Office of Ocean and Coastal Resource Management
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
1305 East-West Highway, N/ORM3
Silver Spring, Maryland 20910

RE: The Ohio Coastal Management Program Draft Document

Dear Acting Director:

Having reviewed the Ohio Coastal Management Program and EIS Draft Document (OCMP), I feel compelled to offer the following comments:

This gives me the feeling that it was written by ODNR office of Real Estate and Land Management for the benefit of the ODNR office of Real Estate and Land Management.

This document makes numerous references to the $800,000 per year the ODNR will get when the OCMP is approved. This single-minded focus on money makes me believe that funding is the main driving force. The rest of the document is unfocused, with vague (some of the proposed management techniques are pathetic) and dated information (the Cuyahoga River burned over twenty-five years ago).

The section on CONSISTENCY requires other agencies (OEPA, DOT, etc.) to force businesses and homeowners to sign away their rights to get a permit. Specifically Part II, chapter 4, page 23 (4th para), which reads as follows (direct quote):
"...The OEPA will include for the applicant's signature a statement that the applicant understands and agrees that the activity may not proceed until a determination of consistency with the policies of the OCMP has been made by the ODNR."
Now that does sound like a power grab

The rest of the CONSISTENCY section sounds like a prescription for administrative gridlock.

Until this document is revised to address the above items, it should not be approved.

Yours truly,

Lakefront property owner

WRITTEN COMMENT #5: DAVID S. MCILVAIN, PRIVATE LAKEFRONT PROPERTY OWNER, October 21, 1996

Response to Comments:

1. Comment (regarding rationale for program development) noted. No change required. The state statutory mandate for development of the OCMP contained in the Ohio Revised Code Chapter 1506 is clear. The Ohio Department of Natural Resources is charged with developing and adopting a comprehensive program " . . . to preserve, protect, develop, restore or enhance the resources of the coastal area and to ensure wise use of the land and water resources of the coastal area." This is the purpose for which the program document was developed. Participation in the national program will bring several benefits to the citizens of the State of Ohio, one of which is additional funding to better manage and protect these resources for the benefit of all. Please see response to written comment #2 (Mary Wood), item #7.

2. Comment (regarding consistency) noted. No change required. It is not clear how the connection is made between the statutorily mandated consistency provision and signing away of rights. Determination of consistency is based, as stated in Chapter 4, upon compliance with all existing licensing and permits requirements currently affecting proposed projects, as described in Chapter 5.

3. Comment (regarding vague, unfocused document and pathetic management techniques) noted. No change needed. See response to written comment #2 (Mary Wood), item #5.

4. Comment (regarding currency of information) noted. References to the burning of the Cuyahoga River have been deleted in the FEIS. Other than information provided to present an historical picture, all information in the document is the most recent available.

5. Comment (regarding approval of document) noted. No change required. For the reasons stated in the DEIS, NOAA's preferred alternative is to conclude that the OCMP meets the requirements of the CZMA and its implementing regulations, and to approve the program. See response to written comment #2 (Mary Wood), item #8.

October 21, 1996

Acting Director,
Office of Ocean and Coastal Resource Management
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
1305 East-West Highway, N/ORM3
Silver Spring, Maryland 20910

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Until this document is revised to address the above items, it should not be approved.

Yours truly,

Lakefront property owner

Shirley Heck
23416 Lake Rd, Bay Vill. Oh. 44140

* As a tax payer, this appears to be the creation of another beaurocracy to drain the coffers of Gov't.
Approval of Ohio Coastal Mgmt. Program will open the door for a multitude of law suits & the lawyers once again will become the winners.

WRITTEN COMMENT #6: SHIRLEY HECK, PRIVATE LAKEFRONT PROPERTY OWNER, October 21, 1996

Response to Comments:

Comments noted. No change needed. See response to written comment #5 (David McIlvain), same letter.

Comment (handwritten, regarding bureaucracy) noted. No change required. See responses to written comment #2 (Mary Wood), item #2, and written comment #4 (Malcolm Wood). items #9 and 11.

October 21, 1996

Acting Director,
Office of Ocean and Coastal Resource Management
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
1305 East-West Highway, N/ORM3
Silver Spring, Maryland 20910

RE: The Ohio Coastal Management Program Draft Document

Dear Acting Director:

Having reviewed the Ohio Coastal Management Program and EIS Draft Document (OCMP), I feel compelled to offer the following comments:

This gives me the feeling that it was written by ODNR office of Real Estate and Land Management for the benefit of the ODNR office of Real Estate and Land Management.

This document makes numerous references to the $800,000 per year the ODNR will get when the OCMP is approved. This single-minded focus on money makes me believe that funding is the main driving force. The rest of the document is unfocused, with vague (some of the proposed management techniques are pathetic) and dated information (the Cuyahoga River burned over twenty-five years ago).

The section on CONSISTENCY requires other agencies (OEPA, DOT, etc.) to force businesses and homeowners to sign away their rights to get a permit. Specifically Part II, chapter 4, page 23 (4th para), which reads as follows (direct quote):
"...The OEPA will include for the applicant's signature a statement that the applicant understands and agrees that the activity may not proceed until a determination of consistency with the policies of the OCMP has been made by the ODNR."
Now that does sound like a power grab

The rest of the CONSISTENCY section sounds like a prescription for administrative gridlock.

Until this document is revised to address the above items, it should not be approved.

Yours truly,

Lakefront property owner

James W. Hart
23416 Lake Rd.
Bay Vil. Oh. 44140

WRITTEN COMMENT #7: JAMES W. HECK, PRIVATE LAKEFRONT PROPERTY OWNER, October 21, 1996

Response to Comments:

Comments noted. No change required. See response to written comment #5 (David McIlvain), same letter.

Received Nov. 21, 1996

November 12, 1996

Acting Director
Office of Ocean and Coastal Resource Management
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
1305 East-West Highway, N/ORM3
Silver Spring, Maryland 20910

Dear Acting Director:

After reading the Ohio Coastal Management Program and the EIS Document, I am starting to wonder what country we live in.

Many things are obvious but one in particular is the reason for this whole process - money, plain and simple. The $800,000 the ODNR will receive once this concept is approved has blinded common sense.

The call for public access for submerged land lease or erosion control permit is totally unreasonable.

The swiftness in which the ODNR has proceeded gives owners of their waterfront property very little time to address these outlandish issues. The public is informed on September 10, 1996, hold their first hearing on September 30, 1996, and then give home owners until November 15, 1996 to send you their comments. I think the correct word here is "Blitz Kreig"; do it, and do it quickly.

This has nothing to do with our best interests; this is about ODNR power and the Ohio Department of Natural Resources' efforts to add $800,000 to their budget. This is wrong and I urge the Acting Director to take no action on this Document.

Yours truly,

Lakefront Property Owners

Richard J. Hemmer
Linda M. Hemmer

RICHARD J. HEMMER
LINDA M. HEMMER
32160 Lake Road
Avon Lake, Ohio 44012

WRITTEN COMMENT #8: RICHARD J. AND LINDA M. HEMMER, PRIVATE LAKEFRONT PROPERTY OWNERS, November 12, 1996

Response to Comments:

1. Comment (regarding rationale for program development) noted. No change required. See responses to written comment #2 (Mary Wood), item #7, and written comment #5 (David S. McIlvain), item #1.

2. Comment (regarding submerged land leasing and erosion control permits) noted. No change required. See response to item #4 of written comment #2 (Mary Wood), regarding submerged lands leasing. There is no such provision for public access with regard to erosion control measure permits.

3. Comment (regarding "swiftness" of ODNR's action in developing the OCMP) noted. No change required. See response to item #1 of written comment #2 (Mary Wood). As noted in that response, the State of Ohio has been working on developing the OCMP for more than twenty years, with considerable public input, as described in the program document.

4. Comment (suggesting no action on document) noted. No change required. For the reasons stated in the DEIS, NOAA's preferred alternative is to conclude that the OCMP meets the requirements of the CZMA and its implementing regulations, and to approve the program. See response to written comment #2 (Mary Wood), item #8.

November 13, 1996

Acting Director,
Office of Ocean and Coastal Resource Management
National Oceanic and Atmospheric Administration
US Department of Commerce
1305 East-West Highway, N/ORM3
Silver Spring, Maryland 20910

Re: The Ohio Coastal Management Program Draft Document

Dear Acting Director:

Having reviewed the Ohio Coastal Management Program and EIS Draft Document (OCMP), I would like to offer the following comments:

The OCMP reads as if it were a rushed production, put together with the primary focus being to get $ 800,000 per year when the OCMP is approved. The document is unfocused, with vague and dated information. The text has numerous imprecise statements of intention that raise serious concerns as to what the ODNR really intends to do.

The ODNR has established the "Coastal Area Boundary" without any public input and is significantly greater than the "Coastal Erosion Area" that the ODNR tried to force on lakefront property owners about a year ago. In that case it took the Ohio legislature enacting H.B. 119 to force ODNR to revise their regulations into a more acceptable form.

The ODNR suggests that all licenses and permits within the Coastal Area must be approved by the ODNR.
The OCMP suggest that "shore protection will be discouraged and relocation facilitated."
The OCMP also suggest that the ODNR will require public access as a condition for granting a submerged land lease or erosion control permit.

To summarize the above items; we have an area of privately owned property along the lake that the ODNR has arbitrarily established that they have control over. They will control what is built and by whom. The ODNR could force an owner to allow pubic access through his property or see the value of his property decrease because he could not obtain a permit for an erosion control system.

Many unanswered questions are obvious. What is ODNR's statutory authority for imposing these conditions? What kind of rights does a lakefront property owner have? Is there any way for a property owner to appeal against any of the above items? Will the ODNR pay fair market value for any property seized under their policy?

Until these and other questions can be addressed and answered, I recommend that the Acting Director, Office of Ocean and Coastal Resources Management take no action on this document.

Yours Truly

James J. Manns -- PE
Lakefront property owner
26052 Lake Rd.
Bay Village, OH 44140

WRITTEN COMMENT #9: JAMES J. MANNS, P.E., PRIVATE LAKEFRONT PROPERTY OWNER, November 13, 1996

Response to Comments:

1. Comment (regarding the primary focus of the OCMP) noted. No change required. See response to written comment #2 (Mary Wood), item #7, and written comment #5 (David S. McIlvain), item #1.

2. Comment (regarding coastal management boundary) noted. No change required. No specific recommendation is made regarding a boundary change. The comment mixes reference to the coastal management boundary and the extent of coastal erosion areas. H.B. 119 had no effect on ODNR's revisions to administrative code regulations regarding coastal erosion areas. See response to item #6 of written comment #4 (Malcolm Wood) regarding the public review process with respect to the proposed coastal management boundary.

3. Comment (regarding review of licenses and permits) noted. No change required. See response to item #2 of written comment #2 (Mary Wood) and item #9 of written comment #4 (Malcolm Wood).

4. Comment (regarding discouragement of shore protection) noted. No change required. It is not clear what the comment is suggesting, but the quote seems out of context if the intent is to suggest that property owners will not be able to protect their shore.

5. Comment (regarding submerged lands lease requirements) noted. No change required. See response to item #4 of written comment #2 (Mary Wood).

6. Comment (regarding statutory authority) noted. No change required. The statutory authorities are cited clearly in Chapter 5 of the OCMP draft document with respect to each enforceable authority. Appendices C and D contain O.R.C. Chapters 1506 and 1507 in their entirety, and Appendices G, H and L contain the Ohio Administrative Code rules with respect to designating and enforcing coastal erosion areas and submerged lands leasing respectively. All of these rules underwent considerable public review. The O.R.C. contains provisions for appealing final actions of the Director of ODNR. See response to item #6 of written comment #2 (Mary Wood) and item #20 of written comment #4 (Malcolm Wood) regarding "seizure" of property and authority governing eminent domain in the State of Ohio.

7. Comment (regarding vague, unfocused document and imprecise statements of intention) noted. No change required. See response to written comment #2 (Mary Wood), item #5.

8. Comment (suggesting no action on document) noted. No change required. For the reasons stated in the DEIS, NOAA's preferred alternative is to conclude that the OCMP meets the requirements of the CZMA and its implementing regulations, and to approve the program. See response to written comment #2 (Mary Wood), item #8.

To: Acting Director
Office of Ocean + Coastal Resource Management
U.S. Dept of Commerce
FX 301-713-4012

Dear Mr. Uranitch,

As a tax payer I strongly object to the Ohio Coastal Management Program Environmental Impact Statement. My reasons are attached on pages 2+3.

The development of this <u>needless</u> bureaucracy is a waste of money!!!

Kathleen Heck
30105-B Center Ridge Rd
Westlake, OH 44145

decided to publicize this new benefit for the public (a certain type of politician would find this irresistible). Combine that with the power of eminent domain... I think you get the picture. Also, note that the state requires the landowner to obtain insurance to protect the state when it leases submerged lands. Do you think the state will indemnify the lakefront property owner from any action by members of the public using the "access." Note that the ODNR is particularly reluctant to anything for lakefront property owners.

5. There are other provisions in the OCMP which are particularly odious, especially for those lakefront property owners that have to deal with the OEPA. For example, one proposed policy states: "... the OEPA will include for the applicant's signature a statement that the applicant understands and agrees the activity may not proceed until a determination of consistency with the policies of the OCMP has been made by the ODNR."

This suggests that the ODNR is seeking to gain power that has not been given them by the legislature. What happens if an applicant refuses to sign such an agreement (and slip a bigger noose around his neck)?

It should also be noted that the Coastal Area Boundary is significantly greater than the Coastal Erosion Area (see the Appendices of OCMP) which the ODNR tried to jam down the lakefront property owners throats only a year or so ago. However, this boundary was established by the ODNR without any public input and includes land which is used for activities other than those specified by Federal Regulations. I think you can guess why.

WRITTEN COMMENT #10: KATHLEEN HECK, undated (received November 15, 1996)

1. Comment (regarding expansion of regulations) noted. No change needed. See response to item #5 of written comment #4 (Malcolm Wood).

2. Comment (regarding power of eminent domain) noted. No change needed.

3. Comment (regarding strategic retreat and relocation) noted. No change required. See response to item #3 of written comment #2 (Mary Wood) and item #18 of written comment #4 (Malcolm Wood).

4. Comment (regarding public access requirements) noted. No change required. See response to item #4 of written comment #2 (Mary Wood).

5. Comment (regarding consistency review procedure) noted. No change required. See response to item #9 of written comment #4 (Malcolm Wood).

6. Comment (regarding coastal management boundary) noted. No change needed. See response to item #6 of written comment #4 (Malcolm Wood) and item #2 of written comment #9 ((James J. Manns).

7. Comment (regarding rationale for program development) noted. No change required. See response to written comment #2 (Mary Wood), item #7, and written comment #5 (David McIlvain), item #1.

22658 Breezevale Cove
Rocky River, Ohio
Nov. 4, 1996

Joe Uravitch
Coastal Programs Div.
SSMC-4 Room 11109
1305 East-West Highway
Silver Spring MD 20910

RECEIVED
NOV 12 1996

Dear Mr. Uravitch,

As a Lake Erie lakefront property owner, the Ohio Coastal Management Program and E-IS Draft Document (OCMP), as written, is very frightening to me.

The OCMP states that the ODNR will encourage strategic retreat. Does this mean that the ODNR wants the homeowner's lakefront property to make more parks? What is their statutory authority for this strategy? What kind of rights does a lakefront property owner have? Is there any way to appeal against this type of takeover? Will the ODNR pay fair market price for those homes "seized" under this strategic retreat policy? What sections of the lakefront has the ODNR targeted under this policy? How are the sections chosen?

Having seen the ODNR's attempt to ram through the Erosion Coastal Area regulations (they turned a deaf ear to lakefront property owners until the Ohio legislature enacted H.B. 119 and forced them to revise their regulations into acceptable form.) I fear that the ODNR is using the OCMP as another attempt to grab power.

If the ODNR can require public access as a condition of granting a lease or permit, will they compensate and protect the lakefront property owners for making their yards into public parks? There was no mention of any mechanism for appeal by the lakefront property owner of any eminent domain action by the ODNR.

The OCMP makes numerous references to the $800,000 per year the ODNR will receive when the OCMP is approved. This single-minded focus on money makes me wonder if funding is the main driving force. The rest of document is unfocused with vague

and dated information. For instance: the Cuyahoga River burned over twenty-five years ago! It seems, too that the process for obtaining input was done in a fashion that minimizes the public's comments. For example: the document was shipped in the middle of September with the first hearing on Sept. 30, 1996. How can any working person read a document of this size in just two weeks? How long has the ODNR been working on the document? Longer than two weeks I would imagine!

Will the ODNR use the Section 306 Grants to help lake-front home owners with the cost of their erosion control construction? If not, why not? And if not, what will the ODNR use these taxpayer supported grants for?

Most of the lakefront property owners in our area

see no need for regulating private property along the lakefront in the first place! This document does not leave me feeling comfortable, because it is biased and flawed and needs further refinement. It appears that this document was really written to get power for the ODNR, not protect the coastal area.

Until some of the previously mentioned questions are answered to the satisfaction of the regulated community, I recommend that no action be taken on this document.

Sincerely,
Roger L. Alexander

cc: Lonna Hitting
Acting Director
Ecology & Conservation

WRITTEN COMMENT #11: ROGER L. ALEXANDER, PRIVATE LAKEFRONT PROPERTY OWNER, November 4, 1996

Response to Comment:

1. Comment (regarding strategic retreat) noted. No change required. See response to item #3 of written comment #2 (Mary Wood) and item #18 of written comment #4 (Malcolm Wood).

2. Comment (regarding submerged lands leasing) noted. No change needed. See response to item #4 of written comment #2 (Mary Wood). Protecting the public's ability to continue to use Lake Erie public trust waters does not constitute an eminent domain action.

3. Comment (regarding public input) noted. No change required. See response to item #1 of written comment #2 (Mary Wood).

4. Comment (regarding use of Section 306 funding for erosion control measure construction) noted. No change required. Federal law and regulations specifically prohibit use of federal funds allocated under the Coastal Zone Management Act for construction purposes or to benefit individual private interests (15 C.F.R. 923.93).

5. Comment (regarding vague and unfocused document) noted. No change required. See response to written comment #2 (Mary Wood), item #5.

6. Comment (regarding rationale for program development) noted. No change required. See response to written comment #2 (Mary Wood), item #7, and written comment #5 (David McIlvain), item #1.

7. Comment (regarding currency of information) noted. References to the burning of the Cuyahoga River have been deleted in the FEIS. Other than information provided to present an historical picture, all information in the document is the most recent available.

8. Comment (suggesting no action on document) noted. No change required. For the reasons stated in the DEIS, NOAA's preferred alternative is to conclude that the OCMP meets the requirements of the CZMA and its implementing regulations, and to approve the program. See response to written comment #2 (Mary Wood), item #8.

11-13-96 Received 11/18/96 1-2

To - Acting Director -
OCRM - NOAA
Subject - Draft Ohio CMP and EIS
Document Review

Dear Sir -
Please do nothing about this document until you have the opinions of all the Lakefront Property Owners.

Briefly, I object to -
1. a grant of $800,000 per yr. for what? This, at a time when Government is being reduced.
2. Strategic Retreat is another way of saying "unlawful property seizure".
3. Public Access is totally against the reasons that people want to buy lakefront property -
   a. uncluttered view
   b. privacy
   c. no noise

4. This whole exercise could be replaced by a common-sense notice - "If you want to build on the shore, it will be at your total risk, with no Disaster Relief, no insurance, and no welfare."

5. This activity has given no thought about the fear and stress introduced into otherwise ordinary Real Estate Transactions.

Yours truly,

Charles J. Meyer
27216 Lake Rd.
Bay Village, OH
44140

WRITTEN COMMENT #12: CHARLES J. MEYER, PRIVATE LAKEFRONT PROPERTY OWNER, November 13, 1996

Response to Comment:

1. Comment (regarding objection to funding) noted. No change required. See response to item #1 of written comment #5 (David S. McIlvain).

2. Comment (regarding strategic retreat) noted. No change needed. See response to item #3 of written comment #2 (Mary Wood) and item #18 of written comment #4 (Malcolm Wood).

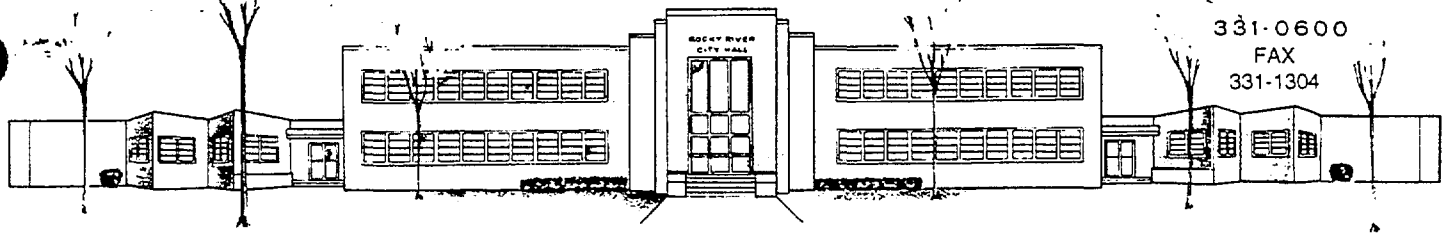
3. Comment (regarding public access) noted. No change required. See response to written comment #2 (Mary Wood), item #4 and item #18 of written comment #4 (Malcolm Wood).

4. Comment (regarding placing risk on landowner) noted. No change required. The purpose of the federal Coastal Zone Management Act, as declared by Congress, is "to preserve, protect, develop, and where possible, to restore or enhance, the resources of the nation's coastal zone for this and succeeding generations." Ohio's Coastal Management Law states a similar comprehensive resource management purpose for the benefit of all Ohio citizens. The recommended alternative approach would be insufficient to address complex resource management challenges.

5. Comment (regarding effect on real estate transactions) noted. No change needed. The process for involvement is well documented in the program document and in response to written comment #2 (Mary Wood), item #1. For additional discussion of possible effects on real estate transactions, see response to written comment #28 (City of Lakewood), item #2.

6. Comment (recommending OCRM take no action) noted. No change required. For the reasons stated in the DEIS, NOAA's preferred alternative is to conclude that the OCMP meets the requirements of the CZMA and its implementing regulations, and to approve the program. See response to written comment #2 (Mary Wood), item #8. For discussion of the extensive public participation, see response to written comment #2 (Mary Wood), item #1.

# CITY OF ROCKY RIVER



331-0600
FAX
331-1304

21012 HILLIARD BLVD. ROCKY RIVER, OHIO 44116

OFFICE of the MAYOR
DON UMERLEY, MAYOR

OCRM REC'D 11/19/96
ACTION: URAVITCH/OLINGER
CC: BENOIT/LAWLESS

November 8, 1996

Acting Director
Office of Ocean & Coastal Resource Management
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
1305 East-West Highway
Silver Spring, MD 20910

RE: Ohio Coastal Management Program Draft Document

Dear Sir:

This is in response to your request for comments on the OCMP Draft Document. I strongly urge that you provide for additional study and input, particularly from lake front communities like Rocky River and those lake front property owners most affected by the document.

I ask that particular emphasis be given to the issue of strategic retreat and to the issue of public access. Both of these issues need to be further clarified. Clearly, Coastal Management is vital. Lake Erie is a treasure and Coastal Management a vital part of maintaining and preserving this valuable resource.

I support your efforts to do this, and I am convinced that it can be accomplished without unduly burdening lake front property owners.

Very truly yours

THE CITY OF ROCKY RIVER

Don Umerley
Mayor

DU/mcc

cc: Mayor Madeline Caine
Mayor Tom Jelepis
Mayor Mike White
Malcolm Wood

WRITTEN COMMENT #13: CITY OF ROCKY RIVER November 8, 1996

Response to Comment:

1. Comment (regarding additional public input) noted. No change required. For discussion of the extensive public participation, see response to written comment #2 (Mary Wood), item #1.

2. Comment (regarding strategic retreat) noted. No change required. For further clarification of this issue, see response to item #4 of written comment #2 (Mary Wood) and item #18 of written comment #4 (Malcolm Wood).

3. Comment (regarding public access) noted. No changed needed. Clarification of coastal management policies in response to some property owners' concerns that ODNR plans to take property for public access against property owners' wishes has been provided in previous responses to comments on the DEIS (written comments #2, 4, 8, 9, and 11).

OCRM REC'D 11/20/96

November 13, 1996

Acting Director
Office of Ocean and Coastal Resource Management
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
1305 East-West Highway, N/ORM3
Silver Spring, Maryland 20910

Dear Acting Director:

What utter and blatant nonsense we find your current EIS coastal erosion policies and procedures. From our experience with the Army Chemical Corps from 1951-53 we can only suspect empire builders within the ranks of government, career people and/or influential parties who stand to gain from this worthless and unbeneficial potential government boondoggle.

We have been owners of Lake Erie shore property for 55 years over two generations. We have constructed a pier and access to it from a bluff 30 feet above the lake. We have also subdivided and sold some of the original property and constructed a new home in 1989 where an old cottage once existed. At all times, the marketplace, our own knowledge and the knowledge of the professionals we employed guided the events, to the satisfaction of ourselves, our local governments and the Army Corps of engineers. The last, as perpetrators of the channelization of streams nationwide and parties to the destruction of many coastal lowlands and estuaries, have not gained our respect and/or admiration but, as your department, have been an evil borne of the good they could have accomplished but failed to execute in the manner envisioned. Enclosed is an item we had written after we first learned of the subject program.

As one whose military duties for a year and a half consisted of writing justifications for additional monies and personnel for divisional empire builders lest funding be withdrawn or reduced in subsequent years, we see that nothing has changed. We have never objected to paying our taxes, but it is a bitter pill indeed to see the monies wasted rather than spent holding our fragmenting society together. End this nonsense and eliminate this program.

Unhappily,

Edwin Pivcevich
31874 Lake Road
Avon Lake, OH 44012

EP/rf
Encl.

WRITTEN COMMENT #14: EDWIN PIVCEVICH, PRIVATE LAKEFRONT PROPERTY OWNER, November 13, 1996

Response to Comment:

Comment (suggesting elimination of the program) noted. No change required. For the reasons stated in the FEIS, OCRM has concluded that the OCMP meets the requirements of the CZMA and its implementing regulations, and will approve the program. See response to written comment #2 (Mary Wood), item #8. The state statutory mandate for development of the OCMP contained in the Ohio Revised Code Chapter 1506 is clear. The Ohio Department of Natural Resources is charged with developing and adopting a comprehensive program " . . . to preserve, protect, develop, restore or enhance the resources of the coastal area and to ensure wise use of the land and water resources of the coastal area."

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

November4, 1996

Mr. Joe Uravitch
Coastal Programs Division
SSMC-4, Room 11109
1305 East-West Highway
Silver Spring, MD 20910

Dear Mr. Uravitch,

The Nuclear Regulatory Commission (NRC) received a copy of the draft Environmental Impact Statement for the Ohio Coastal Management Program (OCMP). The NRC reviewed the document and determined the OCMP boundary includes two nuclear power plant facilities. We contacted the Perry nuclear power plant and the Davis Besse nuclear power plant and the licensees confirmed that the plants are located within the coastal management boundary. The responsible personnel at the utility were made aware of the OCMP. The licensees understand actions inside or outside the coastal boundary that will affect any land or water use or natural resource of the coastal zone will be coordinated with the NRC (if the action requires NRC approval), the State, and NOAA in accordance with the OCMP federal consistency requirements. Thank you for the opportunity to comment on your document.

Sincerely,

David B. Matthews, Chief
Generic Issues and Environmental
Projects Branch
Division of Reactor Program Management
Office of Nuclear Reactor Regulation

cc: Ms. Donna Wieting, Acting Director
Ecology and Conservation Office
U.S. Department of Commerce
Room 5805
Washington, D.C. 20230

RECEIVED
4 1996

WRITTEN COMMENT #15: NUCLEAR REGULATORY COMMISSION November 4, 1996

Response to Comment:

Comment (regarding beneficial effects of the program) noted. No change required.

Waste Systems
BROWNING-FERRIS INDUSTRIES
Ottawa County Landfill

Recycled paper

13 November, 1996

Acting Director,
Office of Ocean and Coastal Resource Management
National Oceanic and Atmospheric Administration
US Department of Commerce
1305 East-West Highway, N/ORM3
Silver Spring, Maryland 20910

OCRM REC'D 11/14/96

RE: The Ohio Coastal Management Program Document

Dear Acting Director:

Ottawa County Landfill, owned and operated by Browning-Ferris Industries of Ohio, Inc., takes pride in being fully compliant with all applicable regulations, following both Company policy and a heartfelt desire to be a responsible member of the community. Normally, new regulations are reviewed and commented upon by our Columbus State Government representative, however the Ohio Coastal Management Program and EIS Draft Document (OCMP) was not sent to that person.

Ottawa County Landfill will be the only landfill falling within the proposed Coastal Boundary. As such, will have to bear the burden of complying with a set of policies that other landfills do not have to follow, which in itself, is reason enough to ask for exclusion from the Coastal Boundary.

In addition, there are specific sections of the OCMP which are troublesome, particularly to a member of the regulated community that faces price competition. Some of the provisions threaten to put Ottawa County Landfill at a disadvantage, vis a vis other Ohio landfills.

The section on CONSISTENCY and the requirement that other agencies (OEPA, DOT, etc.) require a businesses to sign away its rights to get a permit is troublesome. For example, in Part II, chapter 4, page 23 (4th para), it reads as follows:
"...The OEPA will include for the applicant's signature a statement that the applicant understands and agrees that the activity may not proceed until a determination of consistency with the policies of the OCMP has been made by the ODNR."

Ottawa County Landfill enjoys an open and cordial relationship with the Northwest District of the Ohio EPA. There are excellent lines of communication which means that permitting activities proceed in a smooth fashion. Even so, preparing and submitting permit applications can still be a timely process. The requirement state in the above paragraph would impose an additional review period (from thirty to ninety days), as well as having to agree to policies that have not gone through the normal channels of regulatory review, which other landfills do not have to face. In some ways, it appears as though Ottawa County Landfill will not get benefit of equal protection of the law, even

530 NORTH CAMP ROAD • PORT CLINTON, OHIO 43452 • (419) 635-2367 • FAX: (419) 635-2815

thought it operates a fully compliant facility.

The section on the COORDINATING procedure for getting permits suggest that it will simplify the process. However, if more agencies are involved, how does this work? Usually, streamlining and simplification of permitting means placing responsibility within a single source or agency. The promises of simplification and consolidation are not explained as to how they will work. The explanation suggests that there may even be an increase in complexity, which would normally lead to an even lengthier permitting processes. The cost Ottawa County Landfill of complying with the regulations and keeping all permits current, is significant. To have an even greater burden placed upon Ottawa County Landfill, which other landfills are not required to bear, would certainly put a tilt to the playing field.

The fact that Ottawa County Landfill has been included within the Coastal Boundary, does not seem to be consistent with Part II, ch.3 - p.1 (4th para), which cites the CZMA (15 CFR - 923.31). Particularly, since there are significant controls already in place for surface water runoff, as well as the uses of interior portions do not cause direct and significant impact. In addition, Ottawa County Landfill is located well over 1,000 meters from the coast and certainly has no impact upon coastal waters.

For the above reasons, Ottawa County Landfill respectfully requests that the Office of Ocean and Coastal Resources Management require the Ohio Department of Natural Resources revise the Ohio Coastal Management Document, and seek public comment from the regulated community prior to issuing a revised document.

Yours truly,

Michael Burke,
Landfill Manager,
Ottawa County Landfill
Browning-Ferris Industries of Ohio, Inc.

cc: David Vossmer, District Vice-President
Steve White, Vice-President, Government Affairs

WRITTEN COMMENT #16: OTTAWA COUNTY LANDFILL, BROWNING-FERRIS INDUSTRIES OF OHIO, INC., November 13, 1996

Response to Comment:

1. Comment (regarding consistency) noted. No change required. See response to item #2 of written comment #2 (Mary Wood) and items #4, 9, 11, and 12 of written comment #4 (Malcolm Wood).

2. Comment (regarding coastal management boundary) noted. No change required. Ohio's coastal area encompasses bays, embayments and tributaries to incorporate lake-influenced transitional zones and includes the extensive wetlands of the western basin. The boundary includes coastal flood hazard areas and areas along certain tributary stream reaches where potential exists for direct and significant impacts to coastal waters. The Ottawa County landfill is located in such an area and is appropriately included within the coastal area boundary under the criteria by which the inland boundary is established.

The commenter stated that the Ottawa County landfill will be the only landfill falling within the coastal area boundary. This is not so. Several landfills occur along waterways within the coastal area boundary. Some landfills, now inactive, are a continuing source of leachate and contamination that creates polluted sediments, water quality degradation, and adverse impacts to fish and aquatic life. There is the potential for the development and operation of landfills to directly and significantly affect coastal waters when they occur on adjacent lands.

The coastal area boundary where the Ottawa County landfill is located was developed through the work of a county advisory group that included local government officials and county planning commission staff. In the public review of the 1992 draft coastal management program document, and in subsequent consultation with Ottawa County officials, local support for the proposed coastal area boundary was re-affirmed.

OHBA
OHIO HOME BUILDERS ASSOCIATION, INC.

RECEIVED
1 4 1996

November 4, 1996

Mr. Joe Uravitch
Coastal Programs Division
SSMC-4 Room 11109
1305 East - West Highway
Silver Spring, MD 20910

Re: Comments Ohio Coastal Management Program/Environmental Impact Statement

Dear Mr. Uravitch:

This correspondence is submitted in response to the request we received to submit its response to the Impact Statement referenced above.

The report reflects a potential for creation of new levels of bureaucracy. The federal government has directed the State of Ohio to develop a coastal nonpoint pollution control program. Ohio, several years ago, developed the Nonpoint Source Management Program. We believe that the scope of that program need not be broadened inasmuch as current law could accurately manage both coastal and non-coastal nonpoint source pollution. Any additional layer of bureaucracy may further impede the ability of builders and developers to obtain the requisite permits that already govern control of pollution of this nature. The permitting system as it exists today is, in many instances, burdensome and time consuming. For that reason, we believe that any additional regulations are unnecessary.

Similarly, the report reflects that there is an intention to create a State Coordinating Committee on Ground Water. The intention behind the creation of this new committee is reported to be to coordinate agencies' activities and information. Our concerns are that it is unclear whether this would be a statewide program and that this increase in personnel input from various agencies will result in more delays and unnecessary additional regulations to a system that already is the subject of considerable debate concerning its ability to issue the requisite permits in a timely fashion.

Perhaps one example of our concern is found in the portion of the report on the various memoranda of understanding between certain agencies concerning the implementation of aspects of the report and a desire for "consistency." The report

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specifies that the Ohio EPA will notify the Ohio DNR with information concerning the requests that it receives for permitting in coastal areas. ODNR is given the authority to notify the OEPA should it believe that the permit request will result in some "inconsistent" activity. While we recognize that there is a mediation process in the report, this again illustrates the grave potential to slow down the permitting process in system that is routinely criticized for its response time.

The report further specifies that, as a general policy, developers should be encouraged to develop in areas of "compatible" uses. The term "compatible" does not appear to be defined at any point in the report. That leads to confusion and ambiguity, at the very least, for developers. Moreover, it fails to recognize that development is a response to a pattern of identifiable growth in a particular region.

The Ohio Department of Natural Resources and the federal government should be commended for its efforts in the compilation of the report. However, OHBA submits that these concerns should be addressed in a practical and meaningful fashion in implementation of this program.

Thank you for allowing us to participate. Please feel free to contact me should you have any further questions or comments.

Sincerely,

Randy K. Strauss
OHBA 1996 President

RKS:psa
cc: Donna Wieting

WRITTEN COMMENT #17: OHIO HOME BUILDERS ASSOCIATION, INC., November 4, 1996

Response to Comment:

1. Comment (regarding Coastal Nonpoint Pollution Control Program) noted. No change needed. Refer to ODNR Director Donald C. Anderson's July 16, 1996 letter to the Office of Ocean and Coastal Resource Management's Director Jeffrey R. Benoit contained in Appendix J of Volume II of the draft program document and DEIS. As stated in that letter, "the State of Ohio believes that its existing comprehensive Nonpoint Source Management Program contains the authorities, assessment and implementation activities that provide the basis for an approvable coastal nonpoint pollution control program."

2. Comment (regarding the State Coordinating Committee on Ground Water) noted. No change required. The SCCGW, a statewide committee, already exists and meets on a regular basis, as stated in Chapter 5, Policy 11. Additional delays and regulations are therefore not anticipated.

3. Comment (regarding consistency requirements) noted. No change required. See response to items #9, 10, 11 and 12 of written comment #4 (Malcolm Wood).

4. Comment (regarding compatibility of uses) noted. No change required. The language refers to local governments' development and implementation of comprehensive management plans, and compatibility of uses would therefore be determined at the local level.

30960 Lake Road
Bay Village, Ohio 44140
November 11, 1996

Mr. Joe Uravitch, Acting Director
Coastal Programs Division
SSMC-4, Room 11109
1305 East-West Highway
Silver Spring, MD 20910

Dear Mr. Uravitch:

Thank you for the opportunity to review and comment on the Ohio Coastal Management Program Document Draft Environmental Impact Statement (P DEIS). I have asked my neighbor, Allen Barth residing at 31010 Lake Road, Bay Village to work with me in formulating this review. Mr. Barth chairs the Bay Village Mayor's Ad Hoc Committee on Shoreline Erosion. This committee was appointed two years ago at the time that ODNR notified all Bay Village lakefront property owners their properties fell into what they then called an "Erosion Hazard Area" (EHA).

As you will see in our attached comments, our main concern is not with the historic erosion which in our community is well understood. Our concern is with ODNR's inaccurate methods of measuring which lead to an overstatement of annual property recession rates over time.
To complicate the problem, there is uncertainty about the costs and useful life of shoreline protection devices and just how ODNR intends to exercise its regulatory authority. Contrary to ODNR's claim that there is no negative affect of their action on lakefront property values, we have seen major discounting of property values and buyer withdrawal from the market already, directly based upon this overstatement of forecast erosion rates produced by ODNR.

This overstatement of erosion along the five miles of Bay Village shoreline destroys the real estate market for these properties. It will soon reduce property tax valuations, resulting in reduced revenues necessary to operate our local schools and government.

Our state government appears insensitive to the local damage it is inflicting in attempting to gain regulatory control by overstating property losses. We need accurate measurements of actual erosion to lakefront properties over time. According to the letter dated September 30, 1996 addressed to shoreline property owners from Donald C. Anderson, Director of ODNR, "ODNR will review and rule on all objections, and notify those who have filed". It is inappropriate for this body to act as both judge and jury when dealing with objections to the coastal erosion area designations.

Sincerely,

Richard E. Walker

G. Allen Barth

cc: Donna Wieting, Acting Director, Ecology and Conservation Office
Mayor Thomas Jelepis, City of Bay Village, Ohio

15 1996

COMMENTS

The major concern which we wish to address is found in Part II-Chapter 5 - Policy 1 - Lake Erie Coastal Erosion Area Management and Policy 2 - Shore Erosion Control.

1. Coastal Erosion Area Delineation

"Policy 1 - Lake Erie Coastal Erosion Area Management
It is the policy of the State of Ohio to minimize threats to human safety and property due to Lake Erie-related erosion while protecting the functions of natural shore features by:

A. Delineating the boundaries of Lake Erie Coastal Erosion Areas (O.R.C. 1506.06 and O.A.C. 1501:6-10 through 1501:6-13) "

Page Part II 5-9 states "... The delineation of coastal erosion areas is based upon scientific analysis of shore recession conducted by ODNR's Division of Geological Survey. The methodology was developed based upon many years of experience dealing with coastal erosion along Lake Erie and consultation with the public, local authorities and the coastal programs of other Great Lakes states."

The initial notice we received dated May 27, 1994 designated our properties as having an "Erosion Hazard Area Distance" of 93 feet. This was more than 20 times the annual recession rate of 0.15 we had experienced during our forty years of residence. We became an active part of the consultation process referred to above. On September 30, 1996 a second certified letter was received from the Director of the Ohio Department of Natural Resources: "RE: Preliminary Identification of Lake Erie Coastal Erosion Areas". His purpose was to notify us that "....at least a portion of your property lies within a coastal erosion area as preliminary identified ".

The measure of the two transects that enclose our properties remains two to four times greater than our experience and direct knowledge of landmarks and property losses. It was necessary to travel to City Hall to learn that the new measure was 12.9 feet and 16.5 feet as the "Anticipated Distance (defined as) Recession (feet) anticipated during the next thirty years".

As lakefront property owners throughout Bay Village begin to marshall their evidence for appeal, it is consistently revealing from surveys and photographs that the ODNR "scientific analysis" and "methodology" produce incorrect measures. This error overstates thirty year recession losses at double, triple and quadruple actual historic facts.

Effect on Property Values
" Cost analysis --ODNR evaluated the potential effects on the identification and enforcement of coastal erosion areas on property values and future development.

Based upon research and consultation conducted during June through August 1993 and again in Spring 1995, ODNR concluded that the identification and enforcement of coastal erosion areas will not negatively impact property values or development interests." (Part II 11-12)

The existing real estate market traditionally understands and includes the facts of Lake Erie erosion in evaluating real estate transactions. If the ODNR measure were correct, we would expect the above assumption to hold But by exaggerating predicted property losses by several times, ODNR is creating a real estate crisis.

Example:
In his letter of October 15, 1996 to lakefront property owners, Mayor Thomas Jelepis of the City of Bay Village used the following example:

> " An important measure of the impact on value is established by the frequency and prices realized in selling a home. During the past year, the Lake Erie Erosion Ad Hoc Committee has closely monitored the effect of this Coast Erosion Area designation on the sale of the property at 359 Lake Park Drive. Early in 1995, a buyer expressed serious interest in purchasing this home. When he inquired about erosion, he was referred to ODNR. He was told that the erosion area was significant and anticipated considerable property loss over thirty years if no remedial actions were taken. Inquiring into the cost of a protection device, the rule of thumb he found out was $1,000 per front foot with a useful life of ten years. Based upon this information, the buyer withdrew from negotiation.
>
> In November 1995, Scudder Mackey of ODNR attended a meeting of the Erosion Committee. Following this meeting, the seller and Mr. Mackey visited the site where the seller was able to produce convincing evidence that the ODNR figures were seriously overstated.
>
> Subsequently, ODNR declared that this site fell into the category of "No Erosion" and with this assurance, the buyer and seller completed the sale.

Real Estate Economics

The economics of property valuation are straightforward. If the property is being depleted by falling into the lake, it has a certain useful life. If the rate of recession is increased, then the useful life is decreased causing the property value to diminish.

The recession rate can be greatly diminished and erosion nearly eliminated by investing in some form of protective device. This introduces an additional investment a buyer

must make and discount from the seller's price. The protection device also has a useful life and must be replaced or repaired at the end of that time. Further, it will probably be built on the lake bottom adjacent to the shore. In addition to this set of permits and reviews, a fifty year lease commitment to the State of Ohio is required.

By overstating the thirty year prediction of property loss, the necessity for a protective device is advanced. Whether it will be required or not, it must be considered in the buyer's purchase offer. This alone will drive down property values.

But there are further factors that need to be considered. The CMP also has the right to withhold issuing a permit to a buyer or property owner. Or it can make demands upon the owner that are inconsistent with the owner's purpose in exchange for the right to protect this property. The level of uncertainty introduced by a changing management agenda that effects regulatory rules is a major detractor to property ownership and desirability.

Compound Effect

When we consider the real example and the economics that are involved and apply them to the more than two hundred lakefront residences in the City of Bay Village falling within the CMP coastal area northeast of Lake Road, we find that these properties are already slow to sell.

Should we property owners and the city administrators convince the CMP that these measurements must be revised, there will likely be little negative effect upon the real estate market. Correctly predicted, 80 to 90 per cent of Bay Village lakefront properties will have less than nine feet of CEA thirty year loss.

But should CMP management persist in mandating these overstated measurements, in a very few years these same homes will significantly lose value. Since Cuyahoga County designates this same Coastal Area as their real estate taxing neighborhood Number One, appraisal values will also drop significantly since they are based upon actual sales transactions.

The subsequent loss of revenue will directly reduce the income of the school district and municipality. This in turn will affect the value of all real estate in the community and lead to further reduction until the downward spiral stabilizes at some greatly reduced income level.

Remedies

Because of the importance of employing accurate measurements of the rate of erosion, and the fact that CMP administrators mandate overstated measures as CEA designations, we propose:

A. Peer Review of Scientific Analysis
An independent professionally qualified peer review board be established to review the "scientific analysis" and "methodology" here employed.
In addition to the "...using the best available scientific records, data, and analysis of shoreline recession....", (ORC 1506.06) the review should include statistical qualitative evaluation of the methodology.

Currently the nine foot No Erosion Designation is related to an assumption that the results of this methodology are accurate to within plus or minus 2.55 feet which represents the error in measuring erosion loss shown on the two aerial photograph enlargements from 1973 and 1990. The colored wax pencil lines used to draw the outlines of a projected map onto the base map most likely has this much error alone.* Should the errors resulting at each of the 22 steps in the method now employed be considered, this cumulative error will probably be far greater than plus or minus 2.55 feet.

B. Basic Statistical Distribution
A second disturbing statistical observation pointed up by several professionals we have contacted is that in any recurring process, like tossing a coin or plotting transect measurements, the pattern of results should result in as many heads as tails occurring from a large sample. The measures of these statistics have all been heads and no tails. This fact alone demands that the "scientific analysis" be reviewed. **

2. Impartial Jury

In his letter of September 30, 1996 to Lake Erie lakeshore property owners, Director Anderson quotes ' "...any affected municipal corporation, county, township or private landowner may file with the Director (of ODNR) a written objection to the preliminary identification within one hundred twenty days...' " (O.R.C. 1506.06). Then under "Modification and Final Identification: ODNR will review and rule on all objections, and notify those who have filed."

It seems totally incongruent to expect a fair hearing when the creators of this "scientific analysis" and "methodology" become judge and jury to those who challenge their accuracy. Where contradictions exist, an impartial evaluation of the evidence is required.

3. Technical Assistance

"Policy 2 - Shore Erosion Control

It is the policy of the State of Ohio to promote sound decisions regarding control of shore erosion by:

....

B. Providing technical assistance to the public on shoreline erosion control structures . (O.R.C. 1507.10)

C. Developing a plan for the control of shore erosion and making the plan available to the public. (O.R.C. 1507.10) "

"Policy 5 - Shore Erosion and Flood Hazard Mitigation Assistance

It is the policy of the State of Ohio to assist Lake Erie coastal communities experiencing flooding and shore erosion problems to minimize future damages by:

.....

B. Providing technical information and assistance for addressing erosion and flood hazard concerns. (O.R.C. 1507.10)"

"The Chief Engineer is required to establish a technical assistance program on shore erosion protection for local governments and property owners (O.R.C.1507.10). The Division of Engineering provides technical information on the design of shore erosion control structures...."

(Part II 5 - 23)

As a suburban residential community we have repeatedly asked that ODNR establish specific guidelines and recommend preferred structures for the recurring types of protection devices appropriate to our five mile coastline. To date they have refused to do so.

Believing that the purpose of the CMP is to "minimize threats to human safety and property to Lake Erie-related erosion ..." (Policy 1) applied to a fully developed suburban coastline, we hoped that we might begin to explore preliminary designs that would both provide erosion control and create a new amenity within our municipal boundaries. When we asked ODNR how we might become the first "No Erosion" designated city, we were told that ODNR did not want us to become a "No Erosion" City and that ongoing erosion is necessary to create sand. Our community has been given no encouragement whatsoever by CMP administrators to explore a city-wide plan and solution.

4. Eliminate Uncertainty of CMP Regulatory Power

The greatest factor for concern is that the CMP will significantly reduce existing market values of lakefront property by its administration of regulatory powers.

This can be caused by 1)overstating the historic erosion rates. 2) implying or mandating that erosion protection devices must be built by the property owners. or 3) conversely denying permission to construct such a device or lease the requisite underwater land to an owner. Equally important is 4) unreasonable delay of a regulatory ruling since it prohibits the action of property owners in exercising their rights to protect their property.

These uncertainties can be removed if CMP administrators are required to purchase the lakeshore property affected at a fair market value. This value should be based upon the higher of either 1996 pre-regulation market values or the appraised market value at the time of a future permit application. This will establish an alternative purchase option that will stabilize the regulatory effects.

This is similar to the state's use of its Right of Eminent Domain which now responsibly and fairly remunerates property owners whose land is taken for purposes of state policies. If the CMP is held accountable for the disruption created within our lakefront real estate market values and corresponding tax valuations. then the rights of all stakeholders will be protected.

However, should the CMP fail to be held accountable for economic losses caused. it will result in unfavorable publicity. extensive legal battles. and eventually the elimination of O.R.C. Chapter 1506 "Coastal Management" and 1507 "Shore Erosion" by the Ohio State Legislature.

Now is the time to remove regulatory uncertainties and make CMP viable by holding it economically accountable for its actions and responsible to all of the residents of the State of Ohio.

5. Conclusion

It seems clear that the intention of the law. in stating (1506.06) - "(A) the Director of Natural Resources. using the best available scientific records. data. and analyses of shoreline recession. shall make a preliminary identification of the Lake Erie erosion hazard areas..." is to generate accurate and reliable information. Underestimating the extent of the actual errors generated by the current methodology employed is creating an enormous problem for the City of Bay Village and its lakeshore residents.

Appendix

* Footnote 1. The computation deriving the nine foot "No Erosion" designation is the recognized measuring error of plus or minus 2.55 feet described above. This figure is divided by 17 years to produce the recession rate as feet per year between 1973 and 1990, or an annual error of plus or minus 0.15 feet. This figure is then multiplied by 30 years to produce an error of plus or minus 4.5 feet, or a sum of 9 feet of error over the 30 year prediction period.

** Footnote 2. The impact of error determination.

1. The assumption of error in the methodology is based upon the 17 year distance being accurate within a range of plus or minus 2.55 feet. Using these limits, ODNR concludes that of the 282 transects measured in Bay Village (exhibit #1) 108 are classified as No CEA. Of these, the recession rate is 0 for 64 transects and between zero and 9 feet for 44 transects. Most of these transects represent the presence of some form of protective device. No CEA currently comprises 38% of the Bay Village coastal area.

2. Recognizing that all of the statistical measures fall in only one direction as overstatement, and none in understatement of local evidence, we must conclude that the error range is at least twice that which is acknowledged. If we increase this range to plus or minus 5.1 feet, 79% of the Bay coastal area falls into the No CEA designation.

3. Further, historical records indicate that the recess rate in use is three or four times that which can be verified. When the error range is increased to plus or minus 7.65 feet, 96% of the Bay Village coastal area falls into the No CEA designation. And at plus or minus 10.2 feet, four times the ODNR recess rate, 98.2% of these transects qualify as NoCEA while five transects exceed this limit and can be readily reviewed on site

Example 1

# LAKE ERIE COASTAL EROSION AREA
# OHIO COASTAL MANAGEMENT PROGRAM

OHIO DEPARTMENT OF NATURAL RESOURCES
DIVISION OF GEOLOGICAL SURVEY
LAKE ERIE GEOLOGY GROUP
1996

---

## COASTAL EROSION AREA
## TABULATED DATA

17year Error = ±2.55' ±5.1' ±7.65' and greater

### City of Bay Village

| | FRAME# | NoCEA | 9'-18' | 18'-27' | 27'+ | TOTAL |
|---|---|---|---|---|---|---|
| ROCKY RIVER | 419 | 0 | 0 | 0 | 0 | 0 |
| 13RR. | 420 | 4 | 4 | 2 | 4 | 14 |
| | 421 | 14 | 8 | 0 | 0 | 22 |
| MISSING FRAME | 422 | 0 | 0 | 0 | 0 | 0 |
| | 423 | 0 | 16 | 13 | 0 | 29 |
| | 424 | 5 | 21 | 5 | 0 | 31 |
| | 425 | 10 | 14 | 6 | 0 | 30 |
| | 426 | 9 | 10 | 8 | 3 | 30 |
| | 427 | 3 | 14 | 9 | 1 | 27 |
| | 428 | 14 | 5 | 0 | 0 | 19 |
| | 429 | 18 | 6 | 0 | 0 | 24 |
| | 430 | 25 | 10 | 1 | 0 | 36 |
| | 431 | 6 | 6 | 4 | 4 | 20 |
| | | 108 | 114 | 48 | 12 | 282 |
| | | 38% | 41% | 17% | 4% | =100% |

79%

96%

100%

# CUYAHOGA COUNTY

FRAME: CUY419
NO. OF PROFILES: 27

| FRAME | TRANS | MEAS DIST | RECESS RATE | ANTICIPATED DIST | STATUS |
|---|---|---|---|---|---|
| CUY419 | 419- 1 | .2 | .0 | 11.2 | CEA |
| CUY419 | 419- 2 | 3.2 | .2 | 7.8 | NO CEA |
| CUY419 | 419- 3 | 8.2 | .5 | 9.5 | CEA |
| CUY419 | 419- 4 | 3.0 | .2 | 12.3 | CEA |
| CUY419 | 419- 5 | 10.2 | .6 | 17.0 | CEA |
| CUY419 | 419- 6 | 16.9 | 1.0 | 21.7 | CEA |
| CUY419 | 419- 7 | 6.6 | .4 | 24.1 | CEA |
| CUY419 | 419- 8 | 21.6 | 1.3 | 32.2 | CEA |
| CUY419 | 419- 9 | 18.4 | 1.1 | 42.7 | CEA |
| CUY419 | 419-10 | 37.3 | 2.2 | 56.0 | CEA |
| CUY419 | 419-11 | 39.2 | 2.3 | 60.0 | CEA |
| CUY419 | 419-12 | 31.4 | 1.8 | 52.1 | CEA |
| CUY419 | 419-13 | 21.6 | 1.3 | 35.6 | CEA |
| CUY419 | 419-14 | 7.1 | .4 | 17.9 | CEA |
| CUY419 | 419-15 | .0 | .0 | 6.3 | NO CEA |
| CUY419 | 419-16 | .0 | .0 | 3.2 | NO CEA |
| CUY419 | 419-17 | 3.8 | .2 | 4.8 | NO CEA |
| CUY419 | 419-18 | 5.2 | .3 | 5.7 | NO CEA |
| CUY419 | 419-19 | .7 | .0 | 5.3 | NO CEA |
| CUY419 | 419-20 | 2.2 | .1 | 6.9 | NO CEA |
| CUY419 | 419-21 | 9.4 | .6 | 10.0 | CEA |
| CUY419 | 419-22 | 4.6 | .3 | 10.1 | CEA |
| CUY419 | 419-23 | 5.6 | .3 | 9.4 | CEA |
| CUY419 | 419-24 | 3.8 | .2 | 12.6 | CEA |
| CUY419 | 419-25 | 6.0 | .4 | 23.9 | CEA |
| CUY419 | 419-26 | 34.2 | 2.0 | 38.7 | CEA |
| CUY419 | 419-27 | 26.3 | 1.5 | 38.0 | CEA |

DATE: 8/19/1996

Rocky River
No CEA = 7
9'-18' = 9
18'-27' = 3
27' plus = 8

| | |
|---|---|
| FRAME: | Frame number of aerial photograph |
| TRANS: | Transect number |
| MEAS DIST: | Recession distance (feet) between 1973 and 1990 |
| RECESS RATE: | Recession rate (feet per year) between 1973 and 1990 |
| ANTICIPATED DIST: | Recession (feet) anticipated during next 30 years |
| STATUS: | Indicates presence or absence of Coastal Erosion Area (CEA) |
| DATE: | Production date for table |

# CUYAHOGA COUNTY

FRAME: CUY420
NO. OF PROFILES: 27

| FRAME | TRANS | MEAS DIST | RECESS RATE | ANTICIPATED DIST | STATUS |
|---|---|---|---|---|---|
| CUY420 | 420- 1 | 26.3 | 1.5 | 38.0 | CEA |
| CUY420 | 420- 2 | 13.4 | .8 | 24.4 | CEA |
| CUY420 | 420- 3 | .0 | .0 | 11.9 | CEA |
| CUY420 | 420- 4 | .0 | .0 | 12.7 | CEA |
| CUY420 | 420- 5 | 21.3 | 1.3 | 23.5 | CEA |
| CUY420 | 420- 6 | 16.5 | 1.0 | 27.9 | CEA |
| CUY420 | 420- 7 | 17.0 | 1.0 | 27.0 | CEA |
| CUY420 | 420- 8 | 8.0 | .5 | 23.1 | CEA |
| CUY420 | 420- 9 | 19.3 | 1.1 | 21.7 | CEA |
| CUY420 | 420-10 | 5.0 | .3 | 16.5 | CEA |
| CUY420 | 420-11 | 7.4 | .4 | 14.1 | CEA |
| CUY420 | 420-12 | 8.6 | .5 | 12.3 | CEA |
| CUY420 | 420-13 | 6.6 | .4 | 9.0 | CEA |
| CUY420 | 420-14 | .0 | .0 | 5.5 | NO CEA |
| CUY420 | 420-15 | .0 | .0 | 7.6 | NO CEA |
| CUY420 | 420-16 | 12.2 | .7 | 16.2 | CEA |
| CUY420 | 420-17 | 12.8 | .8 | 25.0 | CEA |
| CUY420 | 420-18 | 20.2 | 1.2 | 32.7 | CEA |
| CUY420 | 420-19 | 22.8 | 1.3 | 36.2 | CEA |
| CUY420 | 420-20 | 20.8 | 1.2 | 36.2 | CEA |
| CUY420 | 420-21 | 16.8 | 1.0 | 32.5 | CEA |
| CUY420 | 420-22 | 23.4 | 1.4 | 26.4 | CEA |
| CUY420 | 420-23 | .0 | .0 | 15.1 | CEA |
| CUY420 | 420-24 | 6.2 | .4 | 10.5 | CEA |
| CUY420 | 420-25 | 5.8 | .3 | 9.3 | CEA |
| CUY420 | 420-26 | 5.2 | .3 | 8.9 | NO CEA |
| CUY420 | 420-27 | 5.2 | .3 | 7.1 | NO CEA |

Rocky River

Bay Village

DATE: 8/19/1996

| FRAME TOTAL | RR | BAY VILLAGE |
|---|---|---|
| No CEA = 4 | 0 | 4 |
| 9 - 18 = 10 | 6 | 4 |
| 18 - 27 = 6 | 4 | 2 |
| 27+ = 9 -1 = 6 | 3 -1 = 2 | 4 |
| 27 | 13 | 14 |

less 1 duplicate
= 26

| | |
|---|---|
| FRAME: | Frame number of aerial photograph |
| TRANS: | Transect number |
| MEAS DIST: | Recession distance (feet) between 1973 and 1990 |
| RECESS RATE: | Recession rate (feet per year) between 1973 and 1990 |
| ANTICIPATED DIST: | Recession (feet) anticipated during next 30 years |
| STATUS: | Indicates presence or absence of Coastal Erosion Area (CEA) |
| DATE: | Production date for table |

# CUYAHOGA COUNTY

FRAME: CUY421
NO. OF PROFILES: 23

| FRAME | TRANS | MEAS DIST | RECESS RATE | ANTICIPATED DIST | STATUS |
|---|---|---|---|---|---|
| CUY421 | 421- 1 | 5.2 | .3 | 7.1 | NO CEA |
| CUY421 | 421- 2 | .0 | .0 | 4.8 | NO CEA |
| CUY421 | 421- 3 | 4.9 | .3 | 4.7 | NO CEA |
| CUY421 | 421- 4 | .0 | .0 | 4.0 | NO CEA |
| CUY421 | 421- 5 | 5.0 | .3 | 4.1 | NO CEA |
| CUY421 | 421- 6 | .0 | .0 | 2.5 | NO CEA |
| CUY421 | 421- 7 | .0 | .0 | 2.7 | NO CEA |
| CUY421 | 421- 8 | 3.7 | .2 | 5.1 | NO CEA |
| CUY421 | 421- 9 | 3.5 | .2 | 7.8 | NO CEA |
| CUY421 | 421-10 | 8.8 | .5 | 9.3 | CEA |
| CUY421 | 421-11 | 2.0 | .1 | 7.6 | NO CEA |
| CUY421 | 421-12 | 4.2 | .2 | 7.2 | NO CEA |
| CUY421 | 421-13 | 3.7 | .2 | 8.3 | NO CEA |
| CUY421 | 421-14 | 6.4 | .4 | 10.8 | CEA |
| CUY421 | 421-15 | 9.0 | .5 | 12.2 | CEA |
| CUY421 | 421-16 | 5.2 | .3 | 11.2 | CEA |
| CUY421 | 421-17 | 6.1 | .4 | 10.2 | CEA |
| CUY421 | 421-18 | 4.5 | .3 | 10.1 | CEA |
| CUY421 | 421-19 | 6.3 | .4 | 11.1 | CEA |
| CUY421 | 421-20 | 9.2 | .5 | 10.8 | CEA |
| CUY421 | 421-21 | 3.4 | .2 | 7.7 | NO CEA |
| CUY421 | 421-22 | .0 | .0 | 6.2 | NO CEA |
| CUY421 | 421-23 | 6.2 | .4 | 8.9 | NO CEA |

DATE: 8/19/1996

No CEA = 15 - 1 = 14
9'-18' = 8
18-27' = 0
27'+ = 0
23 - 1 = 22

| | |
|---|---|
| FRAME: | Frame number of aerial photograph |
| TRANS: | Transect number |
| MEAS DIST: | Recession distance (feet) between 1973 and 1990 |
| RECESS RATE: | Recession rate (feet per year) between 1973 and 1990 |
| ANTICIPATED DIST: | Recession (feet) anticipated during next 30 years |
| STATUS: | Indicates presence or absence of Coastal Erosion Area (CEA) |
| DATE: | Production date for table |

# CUYAHOGA COUNTY

FRAME: CUY423
NO. OF PROFILES: 30

| FRAME | TRANS | MEAS DIST | RECESS RATE | ANTICIPATED DIST | STATUS |
|---|---|---|---|---|---|
| CUY423 | 423- 1 | 6.2 | .4 | 8.9 | NO CEA |
| CUY423 | 423- 2 | 7.8 | .5 | 12.1 | CEA |
| CUY423 | 423- 3 | 7.7 | .5 | 14.2 | CEA |
| CUY423 | 423- 4 | 8.6 | .5 | 15.7 | CEA |
| CUY423 | 423- 5 | 10.8 | .6 | 16.8 | CEA |
| CUY423 | 423- 6 | 9.5 | .6 | 16.5 | CEA |
| CUY423 | 423- 7 | 8.0 | .5 | 15.7 | CEA |
| CUY423 | 423- 8 | 9.1 | .5 | 15.2 | CEA |
| CUY423 | 423- 9 | 8.6 | .5 | 13.3 | CEA |
| CUY423 | 423-10 | 6.6 | .4 | 11.1 | CEA |
| CUY423 | 423-11 | .0 | .0 | 10.5 | CEA |
| CUY423 | 423-12 | 13.3 | .8 | 15.1 | CEA |
| CUY423 | 423-13 | 8.6 | .5 | 18.3 | CEA |
| CUY423 | 423-14 | 12.3 | .7 | 21.1 | CEA |
| CUY423 | 423-15 | 15.0 | .9 | 21.5 | CEA |
| CUY423 | 423-16 | 9.6 | .6 | 19.5 | CEA |
| CUY423 | 423-17 | 9.5 | .6 | 18.2 | CEA |
| CUY423 | 423-18 | 10.4 | .6 | 18.0 | CEA |
| CUY423 | 423-19 | 12.0 | .7 | 18.2 | CEA |
| CUY423 | 423-20 | 6.4 | .4 | 17.8 | CEA |
| CUY423 | 423-21 | 13.8 | .8 | 19.6 | CEA |
| CUY423 | 423-22 | 11.2 | .7 | 19.6 | CEA |
| CUY423 | 423-23 | 10.4 | .6 | 18.8 | CEA |
| CUY423 | 423-24 | 9.4 | .6 | 17.8 | CEA |
| CUY423 | 423-25 | 10.6 | .6 | 18.0 | CEA |
| CUY423 | 423-26 | 10.2 | .6 | 17.5 | CEA |
| CUY423 | 423-27 | 10.3 | .6 | 16.7 | CEA |
| CUY423 | 423-28 | 6.2 | .4 | 16.3 | CEA |
| CUY423 | 423-29 | 11.6 | .7 | 18.1 | CEA |
| CUY423 | 423-30 | 13.3 | .8 | 18.8 | CEA |

DATE: 8/19/1996

No CEA = 1 -1 = 0
9'-18' = 16
18'-27' = 13
27'+ = 0
30 -1 = 29

| | |
|---|---|
| FRAME: | Frame number of aerial photograph |
| TRANS: | Transect number |
| MEAS DIST: | Recession distance (feet) between 1973 and 1990 |
| RECESS RATE: | Recession rate (feet per year) between 1973 and 1990 |
| ANTICIPATED DIST: | Recession (feet) anticipated during next 30 years |
| STATUS: | Indicates presence or absence of Coastal Erosion Area (CEA) |
| DATE: | Production date for table |

# CUYAHOGA COUNTY

FRAME: CUY424
NO. OF PROFILES: 32

| FRAME | TRANS | MEAS DIST | RECESS RATE | ANTICIPATED DIST | STATUS |
|---|---|---|---|---|---|
| CUY424 | 424- 1 | 13.3 | .8 | 18.8 | CEA |
| CUY424 | 424- 2 | 6.4 | .4 | 16.8 | CEA |
| CUY424 | 424- 3 | 11.3 | .7 | 15.7 | CEA |
| CUY424 | 424- 4 | 6.3 | .4 | 13.9 | CEA |
| CUY424 | 424- 5 | 7.7 | .5 | 13.1 | CEA |
| CUY424 | 424- 6 | 7.3 | .4 | 12.1 | CEA |
| CUY424 | 424- 7 | 5.8 | .3 | 11.1 | CEA |
| CUY424 | 424- 8 | 6.0 | .4 | 10.4 | CEA |
| CUY424 | 424- 9 | 5.6 | .3 | 9.5 | CEA |
| CUY424 | 424-10 | 5.3 | .3 | 8.9 | NO CEA |
| CUY424 | 424-11 | 2.7 | .2 | 8.6 | NO CEA |
| CUY424 | 424-12 | 7.8 | .5 | 9.7 | CEA |
| CUY424 | 424-13 | 4.4 | .3 | 9.7 | CEA |
| CUY424 | 424-14 | 5.8 | .3 | 9.2 | CEA |
| CUY424 | 424-15 | 6.0 | .4 | 8.2 | NO CEA |
| CUY424 | 424-16 | .0 | .0 | 7.6 | NO CEA |
| CUY424 | 424-17 | 8.8 | .5 | 9.6 | CEA |
| CUY424 | 424-18 | 5.8 | .3 | 11.0 | CEA |
| CUY424 | 424-19 | 2.9 | .2 | 14.1 | CEA |
| CUY424 | 424-20 | 17.1 | 1.0 | 20.1 | CEA |
| CUY424 | 424-21 | 11.7 | .7 | 21.3 | CEA |
| CUY424 | 424-22 | 13.0 | .8 | 20.5 | CEA |
| CUY424 | 424-23 | 5.1 | .3 | 19.2 | CEA |
| CUY424 | 424-24 | 18.9 | 1.1 | 20.7 | CEA |
| CUY424 | 424-25 | 8.6 | .5 | 16.2 | CEA |
| CUY424 | 424-26 | 3.8 | .2 | 10.4 | CEA |
| CUY424 | 424-27 | 3.1 | .2 | 7.6 | NO CEA |
| CUY424 | 424-28 | 3.6 | .2 | 9.2 | CEA |
| CUY424 | 424-29 | 9.4 | .6 | 13.4 | CEA |
| CUY424 | 424-30 | 8.8 | .5 | 16.3 | CEA |
| CUY424 | 424-31 | 11.6 | .7 | 17.3 | CEA |
| CUY424 | 424-32 | 9.8 | .6 | 14.8 | CEA |

DATE: 8/19/1996

No CEA = 5
9'-18' = 21
18'-27' = 6 +1 = 5
27'+ = 0
32

| | |
|---|---|
| FRAME: | Frame number of aerial photograph |
| TRANS: | Transect number |
| MEAS DIST: | Recession distance (feet) between 1973 and 1990 |
| RECESS RATE: | Recession rate (feet per year) between 1973 and 1990 |
| ANTICIPATED DIST: | Recession (feet) anticipated during next 30 years |
| STATUS: | Indicates presence or absence of Coastal Erosion Area (CEA) |
| DATE: | Production date for table |

# CUYAHOGA COUNTY

FRAME: CUY425
NO. OF PROFILES: 31

| FRAME | TRANS | MEAS DIST | RECESS RATE | ANTICIPATED DIST | STATUS |
|---|---|---|---|---|---|
| CUY425 | 425- 1 | 9.8 | .6 | 14.8 | CEA |
| CUY425 | 425- 2 | 4.5 | .3 | 10.2 | CEA |
| CUY425 | 425- 3 | 3.0 | .2 | 6.9 | NO CEA |
| CUY425 | 425- 4 | 2.6 | .2 | 6.3 | NO CEA |
| CUY425 | 425- 5 | 4.6 | .3 | 7.8 | NO CEA |
| CUY425 | 425- 6 | 5.8 | .3 | 9.3 | CEA |
| CUY425 | 425- 7 | 5.8 | .3 | 10.4 | CEA |
| CUY425 | 425- 8 | 5.5 | .3 | 11.8 | CEA |
| CUY425 | 425- 9 | 8.7 | .5 | 14.7 | CEA |
| CUY425 | 425-10 | 10.2 | .6 | 17.4 | CEA |
| CUY425 | 425-11 | 11.2 | .7 | 19.2 | CEA |
| CUY425 | 425-12 | 11.6 | .7 | 20.3 | CEA |
| CUY425 | 425-13 | 11.3 | .7 | 21.4 | CEA |
| CUY425 | 425-14 | 13.9 | .8 | 22.3 | CEA |
| CUY425 | 425-15 | 13.8 | .8 | 21.2 | CEA |
| CUY425 | 425-16 | 8.3 | .5 | 18.6 | CEA |
| CUY425 | 425-17 | 9.4 | .6 | 17.6 | CEA |
| CUY425 | 425-18 | 12.2 | .7 | 17.3 | CEA |
| CUY425 | 425-19 | 7.4 | .4 | 14.8 | CEA |
| CUY425 | 425-20 | 7.4 | .4 | 11.9 | CEA |
| CUY425 | 425-21 | 3.4 | .2 | 10.1 | CEA |
| CUY425 | 425-22 | 5.8 | .3 | 11.1 | CEA |
| CUY425 | 425-23 | 10.0 | .6 | 11.8 | CEA |
| CUY425 | 425-24 | 4.9 | .3 | 9.0 | CEA |
| CUY425 | 425-25 | 1.2 | .1 | 6.2 | NO CEA |
| CUY425 | 425-26 | 2.6 | .2 | 6.4 | NO CEA |
| CUY425 | 425-27 | 7.2 | .4 | 8.6 | NO CEA |
| CUY425 | 425-28 | 4.2 | .2 | 8.4 | NO CEA |
| CUY425 | 425-29 | 5.3 | .3 | 6.4 | NO CEA |
| CUY425 | 425-30 | .2 | .0 | 2.9 | NO CEA |
| CUY425 | 425-31 | .0 | .0 | .8 | NO CEA |

DATE: 8/19/1996

NO CEA = 10
9'-18' = 15 -1 = 14
18'-27' 6
27'+ = 0
31

| | |
|---|---|
| FRAME: | Frame number of aerial photograph |
| TRANS: | Transect number |
| MEAS DIST: | Recession distance (feet) between 1973 and 1990 |
| RECESS RATE: | Recession rate (feet per year) between 1973 and 1990 |
| ANTICIPATED DIST: | Recession (feet) anticipated during next 30 years |
| STATUS: | Indicates presence or absence of Coastal Erosion Area (CEA) |
| DATE: | Production date for table |

# CUYAHOGA COUNTY

FRAME: CUY426
NO. OF PROFILES: 31

| FRAME | TRANS | MEAS DIST | RECESS RATE | ANTICIPATED DIST | STATUS |
|---|---|---|---|---|---|
| CUY426 | 426- 1 | .0 | .0 | .8 | NO CEA |
| CUY426 | 426- 2 | .0 | .0 | .4 | NO CEA |
| CUY426 | 426- 3 | .0 | .0 | 1.0 | NO CEA |
| CUY426 | 426- 4 | 2.5 | .1 | 1.7 | NO CEA |
| CUY426 | 426- 5 | .0 | .0 | 1.6 | NO CEA |
| CUY426 | 426- 6 | .0 | .0 | 3.2 | NO CEA |
| CUY426 | 426- 7 | 4.6 | .3 | 7.9 | NO CEA |
| CUY426 | 426- 8 | 7.4 | .4 | 12.9 | CEA |
| CUY426 | 426- 9 | 12.6 | .7 | 16.7 | CEA |
| CUY426 | 426-10 | 6.5 | .4 | 18.2 | CEA |
| CUY426 | 426-11 | 13.5 | .8 | 20.8 | CEA |
| CUY426 | 426-12 | 16.3 | 1.0 | 20.4 | CEA |
| CUY426 | 426-13 | 4.9 | .3 | 15.1 | CEA |
| CUY426 | 426-14 | 7.3 | .4 | 10.9 | CEA |
| CUY426 | 426-15 | 2.8 | .2 | 8.2 | NO CEA |
| CUY426 | 426-16 | 4.3 | .3 | 8.7 | NO CEA |
| CUY426 | 426-17 | 6.8 | .4 | 10.4 | CEA |
| CUY426 | 426-18 | 6.3 | .4 | 11.3 | CEA |
| CUY426 | 426-19 | 8.2 | .5 | 10.1 | CEA |
| CUY426 | 426-20 | 2.6 | .2 | 8.0 | NO CEA |
| CUY426 | 426-21 | .0 | .0 | 9.2 | CEA |
| CUY426 | 426-22 | 14.8 | .9 | 15.2 | CEA |
| CUY426 | 426-23 | 7.6 | .4 | 17.7 | CEA |
| CUY426 | 426-24 | 12.2 | .7 | 20.2 | CEA |
| CUY426 | 426-25 | 11.3 | .7 | 20.7 | CEA |
| CUY426 | 426-26 | 16.1 | .9 | 20.4 | CEA |
| CUY426 | 426-27 | 3.6 | .2 | 18.3 | CEA |
| CUY426 | 426-28 | 12.4 | .7 | 23.2 | CEA |
| CUY426 | 426-29 | 19.4 | 1.1 | 31.6 | CEA |
| CUY426 | 426-30 | 23.6 | 1.4 | 37.0 | CEA |
| CUY426 | 426-31 | 24.0 | 1.4 | 35.5 | CEA |

DATE: 8/19/1996

No CEA = 10 - 1 = 9
9'-18' = 10
18'-27' = 8
27'+ = 3
31
line 1 = 30

| | |
|---|---|
| FRAME: | Frame number of aerial photograph |
| TRANS: | Transect number |
| MEAS DIST: | Recession distance (feet) between 1973 and 1990 |
| RECESS RATE: | Recession rate (feet per year) between 1973 and 1990 |
| ANTICIPATED DIST: | Recession (feet) anticipated during next 30 years |
| STATUS: | Indicates presence or absence of Coastal Erosion Area (CEA) |
| DATE: | Production date for table |

# CUYAHOGA COUNTY

FRAME: CUY427
NO. OF PROFILES: 28

| FRAME | TRANS | MEAS DIST | RECESS RATE | ANTICIPATED DIST | STATUS |
|---|---|---|---|---|---|
| CUY427 | 427- 1 | 24.0 | 1.4 | 35.5 | CEA |
| CUY427 | 427- 2 | 11.8 | .7 | 29.3 | CEA |
| CUY427 | 427- 3 | 15.8 | .9 | 26.3 | CEA |
| CUY427 | 427- 4 | 14.0 | .8 | 23.5 | CEA |
| CUY427 | 427- 5 | 13.1 | .8 | 21.1 | CEA |
| CUY427 | 427- 6 | 4.8 | .3 | 18.9 | CEA |
| CUY427 | 427- 7 | 17.6 | 1.0 | 20.9 | CEA |
| CUY427 | 427- 8 | 9.0 | .5 | 19.6 | CEA |
| CUY427 | 427- 9 | 11.2 | .7 | 17.3 | CEA |
| CUY427 | 427-10 | 7.8 | .5 | 12.7 | CEA |
| CUY427 | 427-11 | 3.6 | .2 | 8.1 | NO CEA |
| CUY427 | 427-12 | 1.0 | .1 | 5.7 | NO CEA |
| CUY427 | 427-13 | 4.2 | .2 | 7.1 | NO CEA |
| CUY427 | 427-14 | 5.5 | .3 | 9.3 | CEA |
| CUY427 | 427-15 | 8.2 | .5 | 10.8 | CEA |
| CUY427 | 427-16 | 2.8 | .2 | 10.4 | CEA |
| CUY427 | 427-17 | 9.0 | .5 | 12.0 | CEA |
| CUY427 | 427-18 | 5.2 | .3 | 12.8 | CEA |
| CUY427 | 427-19 | 10.8 | .6 | 13.8 | CEA |
| CUY427 | 427-20 | 5.8 | .3 | 12.2 | CEA |
| CUY427 | 427-21 | 5.8 | .3 | 11.7 | CEA |
| CUY427 | 427-22 | 5.5 | .3 | 13.1 | CEA |
| CUY427 | 427-23 | 12.2 | .7 | 17.5 | CEA |
| CUY427 | 427-24 | 9.0 | .5 | 21.0 | CEA |
| CUY427 | 427-25 | 18.9 | 1.1 | 24.3 | CEA |
| CUY427 | 427-26 | 10.8 | .6 | 22.0 | CEA |
| CUY427 | 427-27 | 13.2 | .8 | 17.8 | CEA |
| CUY427 | 427-28 | 2.6 | .2 | 11.8 | CEA |

DATE: 8/19/1996

No CEA = 3
9'-18' = 14
18'-27' = 9
27'+ = 2 - 1 = 1
28
less 1 = 27

| | |
|---|---|
| FRAME: | Frame number of aerial photograph |
| TRANS: | Transect number |
| MEAS DIST: | Recession distance (feet) between 1973 and 1990 |
| RECESS RATE: | Recession rate (feet per year) between 1973 and 1990 |
| ANTICIPATED DIST: | Recession (feet) anticipated during next 30 years |
| STATUS: | Indicates presence or absence of Coastal Erosion Area (CEA) |
| DATE: | Production date for table |

# CUYAHOGA COUNTY

FRAME: CUY428
NO. OF PROFILES: 20

| FRAME | TRANS | MEAS DIST | RECESS RATE | ANTICIPATED DIST | STATUS |
|---|---|---|---|---|---|
| CUY428 | 428- 1 | 2.6 | .2 | 11.8 | CEA |
| CUY428 | 428- 2 | 6.0 | .4 | 11.3 | CEA |
| CUY428 | 428- 3 | 5.7 | .3 | 12.8 | CEA |
| CUY428 | 428- 4 | 15.2 | .9 | 13.4 | CEA |
| CUY428 | 428- 5 | .0 | .0 | 7.0 | NO CEA |
| CUY428 | 428- 6 | .0 | .0 | 2.1 | NO CEA |
| CUY428 | 428- 7 | .0 | .0 | .0 | NO CEA |
| CUY428 | 428- 8 | .0 | .0 | .0 | NO CEA |
| CUY428 | 428- 9 | .0 | .0 | .0 | NO CEA |
| CUY428 | 428-10 | .0 | .0 | .0 | NO CEA |
| CUY428 | 428-11 | .0 | .0 | .0 | NO CEA |
| CUY428 | 428-12 | .0 | .0 | .0 | NO CEA |
| CUY428 | 428-13 | .0 | .0 | .0 | NO CEA |
| CUY428 | 428-14 | .0 | .0 | .0 | NO CEA |
| CUY428 | 428-15 | .0 | .0 | .0 | NO CEA |
| CUY428 | 428-16 | .0 | .0 | .0 | NO CEA |
| CUY428 | 428-17 | .0 | .0 | 1.4 | NO CEA |
| CUY428 | 428-18 | .0 | .0 | 5.6 | NO CEA |
| CUY428 | 428-19 | 10.4 | .6 | 12.1 | CEA |
| CUY428 | 428-20 | 10.1 | .6 | 15.0 | CEA |

DATE: 8/19/1996

No CEA = 14
9-18' = 6 -1 = 5
18-27' = 0
27+ = 0
20
final = 19

| | |
|---|---|
| FRAME: | Frame number of aerial photograph |
| TRANS: | Transect number |
| MEAS DIST: | Recession distance (feet) between 1973 and 1990 |
| RECESS RATE: | Recession rate (feet per year) between 1973 and 1990 |
| ANTICIPATED DIST: | Recession (feet) anticipated during next 30 years |
| STATUS: | Indicates presence or absence of Coastal Erosion Area (CEA) |
| DATE: | Production date for table |

# CUYAHOGA COUNTY

FRAME: CUY429
NO. OF PROFILES: 25

| FRAME | TRANS | MEAS DIST | RECESS RATE | ANTICIPATED DIST | STATUS |
|---|---|---|---|---|---|
| CUY429 | 429- 1 | 10.1 | .6 | 15.0 | CEA |
| CUY429 | 429- 2 | 6.8 | .4 | 13.9 | CEA |
| CUY429 | 429- 3 | 8.2 | .5 | 11.4 | CEA |
| CUY429 | 429- 4 | 2.8 | .2 | 9.6 | CEA |
| CUY429 | 429- 5 | 3.6 | .2 | 11.7 | CEA |
| CUY429 | 429- 6 | 14.4 | .8 | 15.0 | CEA |
| CUY429 | 429- 7 | 8.4 | .5 | 12.0 | CEA |
| CUY429 | 429- 8 | .0 | .0 | 6.0 | NO CEA |
| CUY429 | 429- 9 | .0 | .0 | 3.7 | NO CEA |
| CUY429 | 429-10 | 4.6 | .3 | 5.4 | NO CEA |
| CUY429 | 429-11 | 5.3 | .3 | 6.0 | NO CEA |
| CUY429 | 429-12 | 1.2 | .1 | 3.6 | NO CEA |
| CUY429 | 429-13 | .0 | .0 | 1.2 | NO CEA |
| CUY429 | 429-14 | .0 | .0 | .2 | NO CEA |
| CUY429 | 429-15 | .0 | .0 | .0 | NO CEA |
| CUY429 | 429-16 | .0 | .0 | .7 | NO CEA |
| CUY429 | 429-17 | .0 | .0 | 2.8 | NO CEA |
| CUY429 | 429-18 | 4.9 | .3 | 6.3 | NO CEA |
| CUY429 | 429-19 | 5.9 | .3 | 7.6 | NO CEA |
| CUY429 | 429-20 | 3.9 | .2 | 5.7 | NO CEA |
| CUY429 | 429-21 | .0 | .0 | 2.9 | NO CEA |
| CUY429 | 429-22 | .0 | .0 | 3.0 | NO CEA |
| CUY429 | 429-23 | 4.2 | .2 | 5.2 | NO CEA |
| CUY429 | 429-24 | 5.7 | .3 | 5.6 | NO CEA |
| CUY429 | 429-25 | .0 | .0 | 4.2 | NO CEA |

DATE: 8/19/1996

No CEA = 18
9'-18' = 7 - 1 = 6
18'-27' = 0
27'+ = 0
25
less 1 = 24

| | |
|---|---|
| FRAME: | Frame number of aerial photograph |
| TRANS: | Transect number |
| MEAS DIST: | Recession distance (feet) between 1973 and 1990 |
| RECESS RATE: | Recession rate (feet per year) between 1973 and 1990 |
| ANTICIPATED DIST: | Recession (feet) anticipated during next 30 years |
| STATUS: | Indicates presence or absence of Coastal Erosion Area (CEA) |
| DATE: | Production date for table |

# CUYAHOGA COUNTY

FRAME: CUY430
NO. OF PROFILES: 37

| FRAME | TRANS | MEAS DIST | RECESS RATE | ANTICIPATED DIST | STATUS |
|---|---|---|---|---|---|
| CUY430 | 430- 1 | .0 | .0 | 4.2 | NO CEA |
| CUY430 | 430- 2 | .0 | .0 | 5.8 | NO CEA |
| CUY430 | 430- 3 | 9.3 | .5 | 11.1 | CEA |
| CUY430 | 430- 4 | 9.0 | .5 | 13.1 | CEA |
| CUY430 | 430- 5 | 7.8 | .5 | 10.2 | CEA |
| CUY430 | 430- 6 | .0 | .0 | 4.4 | NO CEA |
| CUY430 | 430- 7 | .0 | .0 | 1.1 | NO CEA |
| CUY430 | 430- 8 | .0 | .0 | .0 | NO CEA |
| CUY430 | 430- 9 | .0 | .0 | .0 | NO CEA |
| CUY430 | 430-10 | .0 | .0 | .0 | NO CEA |
| CUY430 | 430-11 | .0 | .0 | .0 | NO CEA |
| CUY430 | 430-12 | .0 | .0 | .2 | NO CEA |
| CUY430 | 430-13 | .0 | .0 | 1.9 | NO CEA |
| CUY430 | 430-14 | 1.2 | .1 | 5.4 | NO CEA |
| CUY430 | 430-15 | 10.5 | .6 | 8.4 | NO CEA |
| CUY430 | 430-16 | 1.8 | .1 | 5.7 | NO CEA |
| CUY430 | 430-17 | .0 | .0 | 2.2 | NO CEA |
| CUY430 | 430-18 | .0 | .0 | .3 | NO CEA |
| CUY430 | 430-19 | .0 | .0 | .0 | NO CEA |
| CUY430 | 430-20 | .0 | .0 | .0 | NO CEA |
| CUY430 | 430-21 | .0 | .0 | 1.3 | NO CEA |
| CUY430 | 430-22 | .0 | .0 | 5.0 | NO CEA |
| CUY430 | 430-23 | 9.3 | .5 | 10.8 | CEA |
| CUY430 | 430-24 | 8.7 | .5 | 14.6 | CEA |
| CUY430 | 430-25 | 7.4 | .4 | 16.5 | CEA |
| CUY430 | 430-26 | 14.0 | .8 | 18.3 | CEA |
| CUY430 | 430-27 | 7.2 | .4 | 16.5 | CEA |
| CUY430 | 430-28 | 11.9 | .7 | 12.9 | CEA |
| CUY430 | 430-29 | .0 | .0 | 6.5 | NO CEA |
| CUY430 | 430-30 | .0 | .0 | 4.8 | NO CEA |
| CUY430 | 430-31 | 4.9 | .3 | 6.8 | NO CEA |
| CUY430 | 430-32 | 8.6 | .5 | 7.8 | NO CEA |
| CUY430 | 430-33 | .0 | .0 | 4.2 | NO CEA |
| CUY430 | 430-34 | .0 | .0 | 2.6 | NO CEA |
| CUY430 | 430-35 | .0 | .0 | 5.4 | NO CEA |
| CUY430 | 430-36 | 10.3 | .6 | 11.3 | CEA |
| CUY430 | 430-37 | 8.8 | .5 | 12.6 | CEA |

DATE: 8/19/1996

No CEA = 26 - 1 = 25
9'-18' = 10
18'-27' = 1
27 + = 0
37

| | |
|---|---|
| FRAME: | Frame number of aerial photograph |
| TRANS: | Transect number |
| MEAS DIST: | Recession distance (feet) between 1973 and 1990 |
| RECESS RATE: | Recession rate (feet per year) between 1973 and 1990 |
| ANTICIPATED DIST: | Recession (feet) anticipated during next 30 years |
| STATUS: | Indicates presence or absence of Coastal Erosion Area (CEA) |
| DATE: | Production date for table |

WRITTEN COMMENT #18: G. ALAN BARTH AND RICHARD E. WALKER, PRIVATE LAKEFRONT PROPERTY OWNERS, November 11, 1996

Response to Comment:

1. Comment (regarding "coastal erosion area delineation) noted. No change required. In large part, the comment constitutes an objection to the preliminary designation of coastal erosion areas. These objections are being handled in the manner prescribed by O.R.C. §1506.06. In fairness to all affected property owners, ODNR will continue to handle the objections of Mr. Barth and Mr. Walker through that statutorily defined process. That process was described in Chapter 5 of the draft document and DEIS and in literature distributed to every affected property owner.

Regarding effects on property values, see response to item #27 of written comment #4 (Malcolm Wood) and to item #2 of written comment #28 (City of Lakewood). The information cited by the commenter regarding recent real estate transactions is anecdotal and not based on research that controlled for additional variables that contribute to sales and prices. Statements that revenue losses will occur and further affect property values are speculation and clearly not in line with the substantial long-term experience in other states where similar regulations have been in place for as long as 20 years. The assertion underlying the discussion of compound effects is that ODNR has overstated the erosion rates; again, this objection to ODNR's calculations and any resolution of it must be addressed through the official process for objecting to the preliminary identification of coastal erosion areas.

Regarding the "example" distributed by the City of Bay Village to lakefront property owners, the "example" does not accurately reflect what occurred with regard to the property in question. In fact, the erosion mapping was revised immediately after ODNR geologists reviewed additional documentation provided by the property owner and made additional physical measurements, and **not** as a result of actions taken by the ad hoc erosion committee. Although ODNR revised the map, thus lessening the coastal erosion area distance, it did not declare the site a "no erosion area" as stated incorrectly in the "example." The property in question did, and still does, in fact, lie in part within a coastal erosion area, as now preliminarily identified by ODNR. The sale did take place despite this fact.

The peer review process suggested has, in effect, been conducted twice already. Establishment of yet another review board was proposed before the Ohio Senate Energy and Natural Resources Committee in November 1995 and unanimously defeated. This was in light of the fact that ODNR had conducted considerable research, consulting with non-ODNR geologists and other states' geological surveys and coastal management programs, while drafting the rules promulgated in 1992. The work of the independent working group that met from December 1994 through May 1995 to redraft those rules was also an important factor in the state legislature's rejection of yet another process to provide additional outside review of its methodologies. In addition, the rules underwent public review for the second time when they were filed in July 1995 and refiled in February 1996. During the public hearings, no substantive comments recommended specific changes to limit the extent of coastal erosion areas as defined in the rules.

2. Comment (regarding "impartial jury") noted. No change required. ODNR has, over the past four years, demonstrated that it will provide fair and objective consideration of data and information provided by property owners. ODNR has worked closely with residents and the City of Bay Village to ensure that the identification of coastal erosion areas is as accurate as possible. As with other reaches of the Lake Erie shore, revisions to the preliminary mapping were made prior to formal release of the preliminary CEA maps in response to Bay Village concerns. Additional revisions will be made after all formal objections by coastal property owners have been reviewed (as required by O.R.C. §1506.06). ODNR has demonstrated a level of responsiveness to property owner concerns, including a separate ongoing comprehensive review of preliminary mapping, that far exceeds that required by statute or rule. Please also see above response regarding the suggestion of additional peer review.

3. Comment (regarding "technical assistance") noted. No change required. ODNR has been actively involved in meeting directly with the citizens of Bay Village and its coastal erosion working group. During one meeting, representatives of Bay Village were told:

a. Erosion is, and will continue to be, a problem along the Lake Erie coastline and therefore a "no erosion" designation is difficult to achieve.

b. The impacts of erosion can be mitigated by the use of erosion control measures but (along certain reaches of coastline) there is a price to pay in terms of shutting off the sand supply to beaches.

c. Guidelines for erosion control measures are under development by ODNR's Division of Engineering.

d. ODNR is mandated to develop a comprehensive erosion control plan for the Lake Erie coastline.

e. ODNR encourages a community-based approach to erosion control and erosion management.

At the meeting, ODNR offered to provide technical support and assistance to the City of Bay Village and Bay Village residents, including site evaluations and other technical data on erosion related issues. To date, the City of Bay Village has not submitted a specific request for development of a comprehensive coastal erosion management plan.

4. Comment ("eliminate uncertainty of CMP regulatory power") noted. No change required. It is possible that the protracted negotiations and review of this issue over the past four years have contributed to an atmosphere of uncertainty in some locales. The process for reviewing and objecting to ODNR's preliminary designation is now ongoing, and the level of uncertainty should decrease as this process draws to its statutorily defined resolution. ODNR's action of carrying out its statutory mandate of identifying coastal erosion areas does not constitute a taking of private property.

OCRM REC"D 11/15/96


# Alan J. Olson
## 24624 Lake Road
## Bay Village, OH 44140


November 14, 1996

Acting Director
Office of Ocean and Coastal Resource Management
National Oceanic and Atmospheric Administration
U.S. Dept. of Commerce
1305 East-West Highway, N/ORM3
Silver Spring, MD 20910

Re: The Draft OHIO Coastal Management Program
and
Draft Environmental Impact Statement Draft Document Review (OCMP)

Dear Acting Director,

I am commenting on the Draft OCMP document as a homeowner on the Lake Erie shoreline, and as a registered professional engineer. I have been involved with reviewing the Ohio Dept. of Natural Resources regulations and calculations for establishing shoreline erosion on Lake Erie.

I believe that there should be appropriate regulation of the Lake Erie shoreline. I am concerned that the OCMP draft document and draft EIS will lead to regulations that are inappropriate and that are enforced by those who do not have the expertise to do so. The result is growth of government bureaucracy at the expense of the taxpayer, without benefit to the homeowner, the public or the environment.

My experiences with the Ohio Dept. of Natural Resources over the past two years includes technical challenges to ODNR's methods for estimating future shoreline erosion. ODNR's first projections for shoreline erosion in Bay Village were overestimated by a factor of at least 8 to more than 10 times reasonable expectations. ODNR refused publication of the critique of the Working Group which was assembled to examine the first set of estimates. ODNR did heed the input of members of the Working Group and input from many homeowners, and revised the draft regulations and the projections. However, the projections still appear to be consistently high by a factor of about 4 for Bay Village. Ohio law requires ODNR to use the best scientifically available methods to project the actual erosion rate. The law does not imply that a conservative figure or that a safety factor be included in the projection. I make note of this because although geologists at ODNR may be working diligently on this project, these same geologists admit that this is not their area of expertise. ODNR has lobbied successfully against formal peer review of this process.

This is the exact opposite of my experiences with the USEPA and the NSF International, when I developed protocols and equations now in use to test every type of pipe, fitting and joining material used to convey drinking water in the U.S. It is also the opposite of Ohio law and regulations concerning professional engineering, which prohibit working beyond an area of expertise. On the other hand, I have had good experiences with NIST, the Consumer Product Safety Commission and the FDA on a number of matters involving the public health, safety and welfare.

Many parts of the OCMP smack of lack of expertise. For instance, beach and cliff erosion west of Cleveland (where Bay Village is located) can be traced to the dredging of sandbars, as opposed to ODNR's theories. ODNR does not have staff who are expert in the area of erosion control, either natural or manmade. ODNR has dictated that the Coastal Management Area extends to the road or highway, which in my case, is about 600 feet from the water. The thought of ODNR potentially requiring a permit and review

for any activity within this Area is ridiculous. Current ODNR regulations require ODNR to approve permits for erection of erosion control devices, which has proven to be an impossible task for some residents of Bay Village because of bureaucratic bungling. Because of ODNR's lack of expertise, I do not put much faith in any ODNR approval of a permit. Further, the lack of expertise may make erosion rates worse because the reviewer may at best have a superficial knowledge of erosion control devices.

If the general thrust of the OCMP and EIS is to secure federal grant money, the chances of that grant money ending up as more regulations and bureaucracy is high. And as I have witnessed, part of that bureaucracy will continue to lobby state legislators to oppose peer review or oversight. Unfortunately, the chance of harming the environment, the homeowner and the general public is also high. As a further example, strategic fortification may reduce erosion rates, but ruin aesthetics. Or, if ODNR approaches erosion control devices on a case by case basis, the result is likely a hodgepodge of regulations and inconsistent breakwalls.

When new environmental or food and drug regulations are proposed, there is a great deal of scrutiny by many parties. In the instant case, the draft proposals do not impinge upon large industries or disenfranchised sectors of the public. However, these proposals do impinge on taxpayers and on the communities in which they live and pay real estate taxes. Because of the rush to publish these documents, there are errors, omissions and misstatements. My strong recommendation is to extend the comment period, require a more thorough description of the documents by ODNR to the affected public, and most importantly, subject the documents to peer review. This is no less than the scrutiny that federal regulations undergo, and since we are dealing with geological processes, there are ample reasons to take our time to ensure that what we promulgate is technically and environmentally correct.

Please feel free to call me at 216-930-3068 if you have any questions or comments. Perhaps NOAA should hold public hearings in Ohio on this matter.

Sincerely,

Alan J. Olson

Alan J. Olson, P.E.

24624 Lake Road
Bay Village, OH 44140

cc: U.S. Senator Mike DeWine
U.S. Rep. John Kasic
OH Senator Gary Suhaldolnik
OH Rep. Edward Kasputis

WRITTEN COMMENT #19: ALAN J. OLSON, PRIVATE LAKEFRONT PROPERTY OWNER, November 14, 1996

Response to Comment:

1. Comment (regarding expertise and procedure for defining coastal erosion areas) noted. No change required. The comment regards insufficient expertise within ODNR regarding erosion control and the lack of peer review of ODNR's methods in determining the extent of anticipated erosion to define coastal erosion areas. See response to item #1 of written comment #18 (G. Allen Barth and Richard E. Walker) regarding the latter.

The rules and methodology have not changed since rules were filed and adopted. Those rules, as filed, were thoroughly reviewed by ODNR's external working group and many others including the commenter. It seems that the commenter's concern is not with the methodologies per se but rather with the calculations and/or historic data used in arriving at specific coastal erosion area distances within the Bay Village area. As with written comment #18, this constitutes an objection to the preliminary identification of coastal erosion areas, which as stated in the response to that comment must be handled through the statutorily defined process.

ODNR's expertise with respect to coastal erosion is well documented. The department's Division of Geological Survey is highly regarded and has on location in Sandusky, Ohio professionals with a combined total of 77 years experience in rigorous study of coastal processes on Lake Erie. The Lake Erie Geology Group is nationally recognized and has just completed a five year Cooperative Study of Lake Erie Coastal Erosion with the U.S. Geological Survey.

2. Comment (regarding additional public) noted. No change required. For description of the extensive comment period, please see response to written comment #2 (Mary Wood), item #1.

**Cuyahoga Soil and Water Conservation District**

6100 West Canal Road • Valley View, Ohio 44125-3330 • Phone: 216/524-6580 • FAX: 216/524-6584

November 15, 1996

Mr. Joseph A. Uravitch, AICP
Acting Director
Coastal Programs Division
Office of Ocean and Coastal Resource Management
National Oceanic & Atmospheric Administration
SSMC - 4, Room 11109
1305 East - West Highway
Silver Springs, MD 20910
Fax: 301-713-4012

Re: Comments on the Ohio Coastal Management Program and Draft Environmental Impact Statement

Dear Mr. Uravitch:

The following comments are to augment my testimony given on behalf of the Cuyahoga Soil and Water Conservation District on October 2, 1996, at the Public Hearing in Cleveland, Ohio, on the Ohio Coastal Management Program and Draft Environmental Impact Statement for Lake Erie.

In general, I believe the Ohio Coastal Management Program and Draft Environmental Impact Statement prepared by the Ohio Department of Natural Resources are a good beginning, but I would like to see an increase in the number of enforceable policies in the program. Much of the program is suggestion, which could easily be ignored without the clout of enforcement.

I would liked to have seen the Coastal Erosion Area document in place and submitted in final form with the Ohio Coastal Management Program. However, since the Coastal Erosion Area Rules have not been finalized, I would like to see them strengthened. For example, the formula for determining the landward extent of any identified coastal erosion area should be 100 times the average annual rate of recession measured from the edge of the bluff. The proposed 30 years is not long enough, because the average home lasts 80 to 100 years. A one foot per year minimum erosion rate should be used in the calculation to figure the erosion area.

Structural erosion control measures that may reduce erosion must be vigilantly maintained, generally at considerable expense. There is also the problem that one property owner's erosion control structure may actually increase erosion on the property down current. Nonstructural erosion control measures should be encouraged.

There should be final public review and comment of the final revised draft of the Coastal Erosion Areas Rules after property owners appeal.

Public access to the Lake Erie shore needs to be increased, since less than 20 percent is publicly held, and public access is generally denied to privately owned beach front property. Perhaps Ohio could try enacting policies used in other states to allow greater access to the shoreline.

A better definition of wetlands is needed, because with over 90 percent of Ohio's wetlands already lost, all remaining wetlands are important and should be protected. Wetlands restoration should be encouraged, and conservation easements should definitely be encouraged in environmentally sensitive coastal areas.

Nonpoint source pollution is a significant source of pollution in both agricultural and urban areas. More attention should be paid to air pollution and its effect on surface water quality. Air pollution is the second largest source of pollution to Lake Erie, second only to water entering through the Detroit River.

The environmental impacts of energy plants should be closely scrutinized. In particular, any change in use of nuclear power plants should be prohibited. Enclosed is an article that appeared on the front page of the Cleveland daily paper, *The Plain Dealer*, on Saturday, June 29, 1996. It relates that Centerior Energy, the financially troubled parent company of the Davis Besse and Perry nuclear power plants, offered to sell the Perry nuclear power plant "to the Department of Energy to make the H-bomb component tritium." This is a potentially grave source of pollution to Lake Erie, source of drinking water for millions of people.

I am concerned about coordination of agencies which will participate in the administration and enforcement of the Ohio Coastal Areas Program. Perhaps there is need for a coordinating body. There is also a need for consistency between state agencies.

Thank you for the opportunity to submit these comments.

Regards,

Kathryn P. Brock

Kathryn P. Brock
Board Supervisor

Enclosure

Copy to: Donna Wieting, NOAA
Michael Colvin, ODNR

# Perry wants to use bomb-grade fuel

## Centerior also offers to sell the Lake County nuclear plant to DOE

p.1A Sat. 29 Jun. '96

By JIM NICHOLS
PLAIN DEALER REPORTER

The Perry nuclear power plant in Lake County and 40 other civilian nuclear reactors are interested in using plutonium from dismantled nuclear-bomb warheads as reactor fuel.

Centerior Energy Corp., which operates Perry, also has told federal officials it would consider selling the plant to the Department of Energy to make the H-bomb component tritium.

Centerior expressed interest in both possibilities in recent letters responding to DOE queries. Centerior also told the DOE that Perry could be hired as a contractor to generate tritium along with electricity, if the government didn't buy the plant outright.

The financially troubled utility told DOE it would consider any of a range of options being contemplated, if the price were right. The Perry plant's poor operating record, along with other problems, has left Centerior fighting for survival.

The use of bomb material to fuel civilian reactors is an option the DOE is considering as a way to destroy warheads being decommissioned under post-Cold War disarmament treaties. The government also is weighing the use of civilian reactors to make tritium, which needs to be replaced occasionally in remaining warheads because it decomposes over time and the government facilities that once made it were deemed too unsafe to operate.

1/2 life = 12.6 yrs

The scenarios have nuclear non-proliferation activists worried about the security of bomb-grade nuclear materials. Some environmental groups are worried as well about possible accidental releases of intensely radioactive and toxic plutonium during delivery, use or storage.

SEE PLANT/11-A

The Plain Dealer

## PLANT FROM 1-A 29 Jun. '96

"To incorporate allegedly civilian facilities into the military complex raises serious questions about theft or diversion of the material from the reactors and during transport," activist group Greenpeace told the DOE. "The public will be quite hesitant to embrace the idea that their local reactor has become a storage site for nuclear weapons material."

Centerior spokeswoman Irene Prezelj said yesterday the utility holding company only meant to indicate to DOE that Centerior would be amenable to discussing the issues further.

"We are not saying that we definitely are going to do this," she said. "All we're saying is that we want more information ... We would certainly take a closer look at it if the economics were there."

Either option would require approval from the Public Utilities Commission of Ohio and the Nuclear Regulatory Commission. PUCO spokesman Dick Kimmons said the commission has heard nothing about the options.

The Perry plant could produce tritium by replacing some fuel rods with metal tubes filled with a lithium isotope and bombarding them with neutrons during normal electricity-generating operations.

Tritium, a toxic gas, is one of the two forms of hydrogen that give the hydrogen bomb its name.

Assuming tritium in dismantled warheads continues to be recycled, the DOE estimates it will need a new supply by 2011.

In December, Energy Secretary Hazel O'Leary announced the department may buy or hire one or more commercial reactors to make tritium, while the DOE researches the feasibility of building a new multibillion-dollar plant to make tritium. Centerior was one of 14 U.S. utilities and a Canadian reactor owner who expressed interest in selling their plants.

"Never in the history of the nuclear age has there been such a blatant, unabashed link between nuclear weapons and commercial nuclear power," said local anti-nuclear activist Connie Kline. "Atoms for peace and war are now one and the same."

The DOE must dispose of 42 tons of plutonium from dismantled warheads in a way that keeps it out of the hands of terrorists. In March, it polled utilities about the possibility of using it as reactor fuel, as France and other countries now do.

To do so, the agency would have to build a new plant to process plutonium and dilute it with uranium. But unlike reactor-fuel uranium — the usual fuel — the diluted plutonium could still be easily returned to a weapons-usable state, said Marvin Miller, a nuclear physicist at the Massachusetts Institute of Technology.

Some environmental groups argue that plutonium is too toxic for commercial use and disposing of irradiated plutonium and material exposed to it would create new problems.

Mary Olson, a spokeswoman for the anti-nuclear group Nuclear Information and Resource Service, said the DOE should focus on encasing the plutonium in existing highly radioactive material to deter theft, then store it safely.

"The idea that the plutonium should be rendered unusable for bombs is one we support," she said. "But it can be done without the complications at a commercial reactor that come with putting plutonium in it."

WRITTEN COMMENT #20: CUYAHOGA SOIL AND WATER CONSERVATION DISTRICT, November 15, 1996

Response to Comment:

1. Comment (regarding additional enforceable policies) noted. No change required. No specific recommendation is made regarding an identified policy that ought to be supported by statutory underpinnings. An increase in the number of enforceable policies is not warranted.

2. Comment (regarding coastal erosion area definition) noted. No change needed. Since coastal erosion area rules have, in fact, been finalized, rules revisions are not being considered at this time.

3. Comment (regarding encouragement of nonstructural erosion control measures) noted. No change required. Nonstructural erosion control has limited applicability in the Lake Erie environment. However, assessment of potential impacts of structural measures and the consideration of opportunities for using nonstructural measures is always included in ODNR's review of permit applications and in technical assistance provided by ODNR.

4. Comment (regarding additional public input on coastal erosion areas) noted. No change required. The procedure regarding public review of changes ODNR makes in the process of making a final coastal erosion area identification is very clearly and definitively prescribed in the Ohio Coastal Management Law (O.R.C. §1506.06). That law requires that ODNR allow property owners affected by ODNR's preliminary identification and by modification to it to object. ODNR must rule on objections based upon verifiable evidence or documentation submitted by the objecting party. All information related to this process, including the preliminary identification and maps are public records. O.R.C. Chapter 1506 does not provide for additional public review and comment such as that recommended by the commenter.

5. Comment (regarding public access) noted. No change required. ODNR agrees regarding the need for public access. This is a priority issue that will be pursued during program implementation. However, unlike other states, Ohio's shoreline is substantially developed, and limited opportunities exist for increased public access. The State of Ohio will pursue property acquisition only with willing sellers. The focus must be on exploring and facilitating innovative solutions that enhance access opportunities within existing publicly owned areas. ODNR will assist local governments in local public and private initiatives to increase and enhance access in the coastal area.

6. Comment (regarding definition of wetlands) noted. No change required. The definition of wetlands is governed by current federal wetlands delineation manuals and not by the OCMP. Wetlands restoration is encouraged, as described within the draft document and DEIS.

7. Comment (regarding air pollution) noted. No change required. The OCMP will address the issue of effects of air pollution on Lake Erie water quality.

8. Comment (regarding nuclear power plants) noted. No change required. Any change in use of a nuclear power plant that would have the potential to affect coastal resources would be subject to the federal consistency provisions described in Chapter 7 of the draft program document and DEIS. However, as required by the CZMA and described in Part II, Chapter 10, the OCMP must provide for adequate consideration of the national interest in planning for the coastal area, including the siting of energy facilities which are of greater than local significance.

9. Comment (regarding coordination of agencies) noted. No change needed. Coastal management will be coordinated using the Integrated Management Team within ODNR, the Policies and Programs Coordinating Committee comprised of all relevant state agencies' staff, and the Lake Erie Commission, as described in Chapter 4 of the draft program document and DEIS. There is not a perceived need for an additional coordinating body. Consistency among state agencies is governed by the procedures for state consistency described in Chapter 4 of the draft program document and DEIS.

Bowling Green State University

Department of Geology
Bowling Green, Ohio 43403-0218
Telephone: (419) 372-2886
Fax: (419) 372-7205

November 7, 1996

Mr. Joe Uravitch
Coastal Programs Division
SSMC-4, Room 11109
1305 East-West Highway
Silver Spring, MD 20910

Dear Mr. Uravitch:

Thank you for the opportunity to review and comment upon the Ohio Coastal Management Program and Draft Environmental Impact Statement (P/DEIS) of 1996. I commend you and the responsible parties for your work. I also request that I receive my own copy of the P/DEIS and the final product.

I wish to voice one concern. I believe that the P/DEIS retains a piecemeal approach to integrated sediment management. This theme persists throughout the document. Integrated sediment management is responsible for: (1) soil erosion and loss of agricultural productivity, (2) impairment of fisheries and recreation, because of siltation, turbidity, and changing stream temperatures, (3) reduction of water quality, because of the translocation of agricultural chemicals via suspended sediments, (4) loss of reservoir capacity and reduction of the effectiveness of flood control structures on rivers within the drainage basin due to siltation, (5) problems with contaminated sediments including recycling of micro-contaminants due to biological or physical disturbance of sediments, (6) dredging burdens, (7) disruption of nearshore sediment budgets within Lake Erie, (8) changes in longshore transport rates, and (9) resulting coastal erosion problems.

To chose one example, the Ballville reservoir (Sandusky River at Fremont, Ohio) is at approximately 20% capacity due to sediment infilling over the 85 year history of the reservoir. Reservoir drawdown and sediment release could imperil one of the best remaining walleye fisheries in the Lake Erie basin. In addition, some of the sediments may contain micro-contaminants. Failure to do anything has its own concerns. For example, the IVEX Corp. reservoir (Chagrin River at Chagrin Falls, Ohio) was a smaller reservoir, at capacity, that failed catastrophically in 1994 following heavy rains. I am involved in cooperative studies with ODNR on both of these examples.

I suggest that a new section needs to be added to the P/DEIS that introduces the concept of integrated sediment management as a goal to be endorsed by the involved agencies. Priorities actions toward this goal should include basic research, application of new

technologies (including geological remote sensing, sediment transport mechanics, and use of Geographical Information Systems), development of best management practices, and interagency cooperation.

I once served on a National Academy of Sciences panel concerning contaminated sediment management. Our study showed that sediments represent the key player in understanding the dynamics of the Lake Erie (and other) environmental systems. Unfortunately, our study also documented that there is a lack of statutory authority and focus on this key player. I respectfully suggest that this P/DEIS is the appropriate place to make a new start.

Best wishes in your endeavors.

Sincerely,

James E. Evans

James E. Evans
Associate Professor of Geology

Telephone: 419-372-2414
FAX: 419-372-7205
e-mail: evansje@bgnet.bgsu.edu

cc: Ms. Donna Wieting
Acting Director, Ecology & Conservation Office

WRITTEN COMMENT #21: JAMES E. EVANS, ASSOCIATE PROFESSOR OF GEOLOGY, BOWLING GREEN STATE UNIVERSITY, November 7, 1996

Response to Comment:

Comment noted. No change required.

NOAA and ODNR agree regarding the importance of integrated sediment management, and ODNR is committed to pursuing focused efforts to address the issues raised. As the commenter mentioned, several of the cited problems are currently being addressed through cooperative projects with ODNR. In addition, ODNR and Ohio EPA are committed to mutually developing integrated sediment management strategies within their update of the Ohio Nonpoint Source Management Program that will be done in close coordination with the OCMP.

City of Bay Village

THOMAS L. JELEPIS
MAYOR

350 Dover Center Road
BAY VILLAGE, OHIO 44140

216/899-3415
Fax 216/871-5751

OCRM REC'D 11/20/96

November 12, 1996

Acting Director
Office of Ocean & Coastal Resource Management
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
1305 East-West Highway
Silver Springs, MD 20910

RE: Ohio Coastal Management Program Draft Document

Dear Sir:

This correspondence is to officially inform you that we are protesting a number of issues regarding your Coastal Management Policy.

We will send you a detailed explanation within a week, however, we wanted it on record that we disagree with your methodology, conclusions and findings regarding this very important issue, and wanted you to be aware of our position.

I support your efforts in the area of coastal management, however, I believe it can be accomplished without unduly burdening lake front property owners.

Very truly yours,

Tom Jelepis

Thomas L. Jelepis
Mayor, City of Bay Village

TLJ:jev

cc: Mayor Madeline Cain, City of Lakewood
Mayor Michael White, City of Cleveland
Mayor Don Umerley, City of Rocky River
Bay Village Lake Erie Erosion Control Ad Hoc Committee

WRITTEN COMMENT #22: CITY OF BAY VILLAGE, November 12, 1996

Response to Comment:

Comment (disagreeing with methodology, conclusions and findings on unspecified issues) noted. No change needed. NOAA received no additional information.

Received 11/22/96 CPD Office

# OHIO COASTAL RESOURCE MANAGEMENT PROJECT

OCRMP
P.O. Box 3160
Kent, OH 44240

330/673-1193

November 20, 1996

Joe Uravitch
Coastal Programs Division
SSMC-4, Room 11109
1305 East-West Highway
Silver Spring, MD 20910

Dear Mr. Uravitch:

At the OCRMP annual meeting on November 20, 1996, the board voted unanimously to support Ohio's Coastal Management Program and Draft Environmental Impact Statement, as published in August 1996, and to urge its approval by the National Oceanic and Atmospheric Administration and other federal agencies. This letter is in addition to our statement at the October 2, 1996 hearing in Cleveland.

Sincerely yours,

Edith Chase

Edith Chase
President

WRITTEN COMMENT #23: OHIO COASTAL RESOURCES MANAGEMENT PROJECT, November 22, 1996

Response to Comment:

Comment (supporting approval of the program) noted. No change required.

Received 11/22/96 [illegible]
CPD: Olinger

# United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

In Reply Refer To:
ER-96/594

NOV 19 1996

Mr. Joe Uravitch
Coastal Programs Division
NOAA-U.S. Department of Commerce
SSMC-4, Room 11109
1305 East-West Highway
Silver Spring, Maryland 20910

Dear Mr. Uravitch:

The Department of the Interior (Department) has reviewed the Combined Coastal Management Program and Draft Environmental Impact Statement (EIS) for the State of Ohio (Volumes I and II), dated August 1996. The documents adequately describe the fish and wildlife resources of the coastal zone and the potential impacts of the proposed action and reasonable alternatives upon these resources. With the exception of our concerns regarding consideration of federally listed threatened and endangered species, as discussed below, we find the proposed action acceptable.

The U.S. Fish and Wildlife Service (FWS), the Ohio Department of Natural Resources, Division of Real Estate and Land Management (ODNR-REALM), and the National Oceanic and Atmospheric Administration (NOAA) have been working together for a number of months to complete a Memorandum of Understanding (MOU) outlining the roles and responsibilities of each of the three agencies for consideration of federally threatened and endangered species under Ohio's Coastal Management Program. By letters dated March 8, 1996, and July 1, 1996, the FWS indicated that it could not provide programmatic endangered species concurrence regarding Ohio's proposed Coastal Management Program until the MOU is finalized and signed. In a July 1, 1996, phone call between the NOAA, the FWS, and the ODNR-REALM, the agencies agreed that a final, signed version of the MOU would be included in the Final EIS.

We request that NOAA not publish a final EIS and not make a final decision on approval of Ohio's Coastal Management Program until the MOU is finalized and signed by each participating agency, or a mutually agreeable alternative is developed to ensure adequate consideration of federally threatened and endangered species in implementation of the program. Provided the MOU is finalized, included in the final EIS, and implemented, Ohio's Coastal Management Program will be in programmatic compliance with

the Endangered Species Act of 1973, as amended. With the incorporation of the finalized MOU, or other mutually agreeable alternative, the Department would support NOAA's approval of Ohio's Coastal Management Program.

The FWS's Reynoldsburg, Ohio, Field Office will continue to be the primary point of contact for further coordination regarding the MOU and other fish and wildlife resource issues relating to Ohio's Coastal Management Program. Under separate cover, the FWS will be providing to the NOAA and the ODNR-REALM additional comments and recommendations concerning the draft version of the MOU presently under review.

We appreciate the opportunity to provide these comments. If you have any questions regarding these comments, please contact Ken Havran in the Office of Environmental Policy and Compliance at (202) 208-7116.

Sincerely,

Willie R. Taylor
Director
Office of Environmental Policy
And Compliance

cc: Mr. Clement Lewsey, Chief
Coastal Programs Division
Office of Ocean and Coastal Resource Management
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
Silver Spring, Maryland 20910

Ms. Donna Wieting, Acting Director
Ecology and Conservation Office
Room 5805, PSP
U.S. Department of Commerce
Washington, D.C. 20230

Mr. Mike Colvin
Coastal Management Office, 4th Floor
ODNR-Div. Real Estate and Land Mgmt.
Fountain Square
Columbus, Ohio 43224

WRITTEN COMMENT #24: U.S. DEPARTMENT OF THE INTERIOR, November 19, 1996

Response to Comment:

Comment noted. The referenced MOU has been signed by ODNR and the U.S. Fish and Wildlife Service. It is included in a Appendix Q. It was mutually agreed in December 1996 that it was unnecessary for NOAA to be a signatory to that MOU.

# FLYNN, PY & KRUSE

A LEGAL PROFESSIONAL ASSOCIATION

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115 WEST PERRY STREET
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JAMES F. FLYNN (1887-1963)
JOHN R. PY (1908-1969)
RICHARD R. KRUSE, RETIRED
RAYMOND N. WATTS, RETIRED

MELVYN J. STAUFFER
WM. CHARLES STEUK
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*ALSO LICENSED IN TEXAS


November 22, 1996

Mr. Joe Uravitch
Acting Director
Office of Ocean and Coastal
Resource Management
National Oceanic and Atmospheric
Administration
1305 East-West Highway, N-ORM3
Silver Spring, MD 20910

RE: The Draft State of Ohio Coastal Management Program and Draft Environmental Impact Statement

Dear Sir:

The process leading to the Ohio Coastal Management Program (Program) while long in the legislative and statutory evolution has provided only a limited opportunity for public comment. The Ohio Revised Code specifically provides in Section 1506.02 that the Director of The Ohio Department of Natural Resources was to adopt the Program no later than December 31, 1994. That statutory mandate has expired.

It is further provided in the statute that the Program shall be administered in accordance with the Ohio Coastal Management Program Document (Document). Therefore, without the approval of the Document the Program as defined by statute is not subject to administration or enforcement.

The critical aspect of the Program is proper notification to the public and the opportunity to respond. It is unfortunate that the official responses to the public comments relating to the hearings held in the spring of 1992 were not published until the present draft Document was made available in September of this year. There has been no procedure to provide for an adequate response to public comments pertaining to this Draft Management Program Document. The Program will not be an efficient tool unless sufficient opportunity is given to consider all elements of public comment.

As an example of the timing concern, it should be noted that the last scheduled public hearing pertaining to the preliminary identification of Lake Erie Coastal Erosion Areas was held on Thursday, November 21st in Cleveland. It is somewhat hard to imagine that the very next day is the final day in which comments can be made pertaining to the Document when one of the essential elements is still under public review the day before comments are due. The coastal erosion area

aspect of the Program contained in Ohio Revised Code Sections 1506.06 and 1506.07 is a matter of specific concern to a majority of property owners on the south shore of Lake Erie. Surely it would seem that an adequate time frame should be allowed for that aspect of the Program to be resolved before the final Program Document is approved. This is even without concern to the legislative directive that the Document was already to be adopted no later than December 31, 1994.

While the citizens of Ohio are still going through the process of examining and eventually identifying Lake Erie Coastal Erosion Areas, the first maps that were available for the identification of the coastal area for the purpose of the Program were not generally available until September of this year. The importance of the Program is based not only upon adequate rules and regulations but upon public notification and the opportunity for education prior to enforcement.

The essential element of the Document is composed of the forty-one policy statements. The policies are classified as enforceable and enhancement policies. An enhancement policy is defined to provide "guidance or preferences regarding certain activities, but is not legally binding. It may be a formal state policy or recommendations, or statute with discretionary authority." (Part II 5-3) I will leave it to your speculation as to how the public is to interpret what is meant by an enhancement policy. A further consideration is what does an enhancement policy mean to local government agencies.

The Ohio Coastal Management Law was enacted by the adoption of Senate Bill 70, which was effective on March 15, 1989. Section 1506.02 originally required that the Document was to be adopted no later than twenty-four (24) months after the effective date. The statute was then amended to change the adoption to no later than December 31, 1994. It has taken from 1989 to September of 1996 to prepare the Draft Program Document for public review. There now should be a sufficient period of time, not just a matter of months, to provide full information to those within the coastal area and to property owners directly affected by being located on the shoreline of Lake Erie.

Sincerely,

Wm. Charles Steuk

WCS/dsm

cc: State Representative Darrell Opfer
State Senator Elect Bob Latta
Gary Boyle, Chief Planner City of Sandusky
Alex McNichol, Erie County Regional Planner
Darcy Schee, Director of Greater Erie Marketing
Donna Weiting

WRITTEN COMMENT #25: WILLIAM CHARLES STEUK, November 22, 1996

Response to Comment:

1. Comment (regarding statutory mandate to develop the OCMP) noted. No change required. The Ohio Department of Natural Resources interprets the language, nature, context and object of O.R.C. Chapter 1506 to be such that the time frame provided in O.R.C. §1506.06 is directory rather than mandatory. Therefore, noncompliance with the December 31, 1994 date does not undo the effectiveness of the statute. Noncompliance does not give rise to the invalidation of the underlying charge by the General Assembly to develop and adopt the OCMP document.

2. Comment (regarding public review) noted. No change required. See response to item #1 of written comment #2 (Mary Wood). The comment period did remain open for 53 days following the certified mail notice to private lakefront property owners. ODNR provided extensive public review and involvement during development of and in conjunction with the filing of the administrative rules for designating coastal erosion areas. Neither the CZMA nor the Ohio Coastal Management Law specifies that the comment period must remain open beyond the dates of public hearings on the preliminary coastal erosion area designation.

It should be clearly noted that, especially with respect to comments regarding coastal erosion areas and the events described in the last paragraph, that intensive and extensive public review by private property owners has been provided throughout that entire time period. This has included the opportunity to review relevant sections of interim drafts of the program document and direct involvement with rules draft revisions. The commenter raised a concern that official responses to comments relating to the 1992 draft program document were not published until the present draft document. ODNR initiated a consultation process immediately following the 1992 review and worked directly with constituents who raised specific issues. The draft document published in August of 1996 was reflective of issues resolved during and after the 1992 public review.

3. Comment (regarding enhancement policies) noted. No change required.

Received 11/22/96

CITY OF CLEVELAND
Michael R. White, Mayor

Cleveland City Hall
601 Lakeside Avenue
Cleveland, Ohio 44114
216/664-2220

B-CENTENNIAL CLEVELAND

November 21, 1996

Mr. Joseph A. Uravitch
Associate Director
Office of Ocean & Coastal Resource Management
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
Room 11537, N-ORM
1305 East-West Highway
Silver Spring, Maryland 20910

**RE: Ohio Coastal Management Program Draft Document**

Dear Director Uravitch:

I am writing in regard to your request for comments regarding the Ohio Coastal Management Program (OCMP) Draft Document. I appreciate you giving me an opportunity to respond to the OCMP Draft Document. There are two main concerns I would like to with share you.

First, I strongly object to references made within the OCMP Draft Document regarding "the burning of the Cuyahoga River"(Part II, sections 2-4, 5-24). As you are aware since that time, the Cuyahoga River has undergone a significant renaissance and now serves as a focal point for both economic development and recreational activity not only for Cleveland residents but for the millions of tourists that visit the "Flats" area throughout the year. While I realize that this sad incident did occur in Cleveland's past, I believe the referencing of this incident serves no relevant purpose as it pertains to the content of the OCMP Draft Document. I respectfully request that these references be removed.

Second, I am concerned that the public has not had the proper amount of time to review the OCMP Draft Document before submitting their comments. For example, the OCMP Draft Document was available only two weeks prior before the first public hearing. A document this extensive takes time to review properly and therefore the public needs to be given sufficient time to examine the OCMP Draft Document in order to provide comprehensive input.

Equal Opportunity Employer

Again, thank you for giving me an opportunity to present theses concerns.

Sincerely,

Michael R. White
Mayor

MRW:dcf

cc: The Honorable Don Umerley, Mayor, City of Rocky River
Hunter Morrison, Director, City Planning
Michael Konicek, Director, Department of PublicUtilities
Amy Kellogg

WRITTEN COMMENT #26: CITY OF CLEVELAND, November 21, 1996

Response to Comment:

1. Comment (regarding the Cuyahoga River) noted. The references have been deleted in the FEIS.

2. Comment (regarding public comment period) noted. No change needed. See response to item #1 of written comment #2 (Mary Wood). In addition, the attorney for the City of Cleveland has been actively involved in reviewing and commenting on rules revisions and other draft elements of the program document over the past four years. The city submitted lengthy comments on the 1992 draft public review document. ODNR carefully considered those comments and incorporated them into the draft program document and DEIS. The latter document has not changed materially since that time other than to update agency policy language, incorporate public comments, and revise statutory language and rules changes that the City of Cleveland actively participated in negotiating.

ODNR wanted to ensure that there would be ample opportunity for review and comment by the public, and therefore requested that the customary 45-day review period for a draft environmental impact statement be lengthened to 70 days from the date of the Federal Register notice of September 6, 1996. This period was later extended by one week to allow for a total of 77 days from date of publication of the Federal Register notice. Also, the document was mailed directly to many constituents as well as provided to public libraries and many other accessible locations.

coast alliance

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November 22, 1996

Mr. Joe Uravitch
Coastal Programs Division
SSMC-4, Room 11109
1305 East-West Highway
Silver Spring, MD 20910

**Via Facsimile and First Class Mail**

Dear Mr. Uravitch:

Enclosed please find our comments on the *State of Ohio Coastal Management Program and Draft Environmental Impact Statement Volume I*. The comments are submitted on behalf of the Coast Alliance and twelve Ohio citizen groups and individuals. (For the names and addresses of endorsers, see attached.)

We recognize that the State of Ohio has been trying for many years to develop a plan that is acceptable to both the National Ocean and Atmospheric Administration and its citizens. It is understood that many aspects of this plan have been met, in the past, with much opposition from developers and land owners. However, it is of opinion that this Program's main goal should be to protect Lake Erie's shoreline and its resources. With this mind, the following comments are focused on those areas that we feel are of the utmost importance in defining goals and enforcement capabilities for the Ohio Coastal Management Program.

It is our hope that the Ohio Department of Natural Resources and the National Oceanic and Atmospheric Administration examine these comments and address our concerns and recommendations. Without additions to the draft Ohio plan, it is our fear that the Ohio Coastal Management Program will not have the enforceablity nor the substance to maintain and protect the coast from overdevelopment and pollution.

We would like to acknowledge the hard work done by the State of Ohio, and we hope that it continues its effort to protect the Lake Erie shore.

Sincerely,

Sue Veres

Sue Veres

cc: Ms. Donna Wieting

Dioxin-free, acid-free paper made from 50% hemp & 50% cereal straw, printed with soy ink

## Names and Addresses of Endorsers

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# COMMENTS ON:

# STATE OF OHIO
# COASTAL MANAGEMENT PROGRAM
# AND
# DRAFT ENVIRONMENTAL IMPACT STATEMENT
# VOLUME I

Submitted by:

Coast Alliance
and

Audubon Society of Ohio
Cool Running Bassmasters
Earth Day Coalition
Great Lakes Regional Office, National Audubon Society
Izaak Walton League
League of Ohio Sportsmen
Northeast Ohio Sierra Club
Ohio Environmental Council
Ohio Public Interest Research Group
Sierra Club, Great Lakes Program

(These comments do not supersede
comments submitted by individual groups)

Prepared by:
Sue Veres
Coast Alliance

# INTRODUCTION

The Coastal Zone Management Act (CZMA) was signed into law by President Nixon in 1972 in response to growing national concern over coastal and ocean pollution. The message behind the CZMA is clear. Increasing and competing demands caused by population growth and economic development are destroying sensitive, irreplaceable coastal resources, and it is in the nation's interest to do something about it.

A state and federal partnership is established through the CZMA. States develop comprehensive coastal management programs meeting federal standards in exchange for federal funding and a say over federal actions affecting their coastal zones.

The Department of Commerce's National Oceanic and Atmospheric Administration (NOAA) administers the CZMA program. To qualify for federal funding, states must include in their programs protection of natural resources including wetlands, estuaries, beaches, dunes and barrier islands. Coastal development is to be managed, especially that in flood- and erosion-prone areas. And the public is to be provided access to the coasts for recreation.

Along with federal funding, the CZMA also gives states a tool to ensure that activities that affect a state's coast are consistent with the state's own plans for its coast. The consistency provision requires the federal government, and private parties using federal licenses or permits, to abide by state laws, regulations and policies that are part of a state's coastal management program. The consistency provision ensures input over dredging and dumping activities, offshore oil and gas development, and other activities that affect the lands and waters of a coastal state.

The following states have federally approved coastal zone management plans: Alabama, Alaska, American Samoa, California, Connecticut, Delaware, Florida, Guam, Hawaii, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Northern Marianas, Oregon, Pennsylvania, Puerto Rico, Rhode Island; South Carolina, Virginia, Virgin Islands, Washington, and Wisconsin.

We realize that Ohio is anxious to join the aforementioned states in having a federally approved Coastal Management Program. While we commend the state agencies and the Governor for their efforts, we have serious concerns with the management policies as set forth in this program, as is discussed in the following section.

Our comments are presented on behalf of the Coast Alliance and twelve other organizations and citizens. The comments track the topics covered in the draft Ohio Coastal Management Program.

# I. COASTAL EROSION AND FLOODING

There are many concerns pertaining to the coastal erosion and flooding policies in the Ohio Coastal Management Program (OCMP).

## 1. Lack of Setback Requirements

The issue of greatest concern is that the Program lacks setback requirements. It is understood that proposed setback requirements were deleted from the draft Program a few years ago, but it is very important that they will be incorporated in the OCMP in the future.

Many resources are exhausted helping to protect structures in the coastal erosion and flood-prone areas, which could be used for other policy implementation. OCMP should design and implement setback guidelines, and prohibit further development within these areas. OCMP should also manage those houses and buildings currently situated in flood hazard areas. Any further development or additions to the buildings should require a permit. These permits should require that any and all construction be built landward from the home or building.

Upon setting guidelines, OCMP should look at North Carolina's post-storm policy on the replacement/reconstruction of structures. Any structure which suffers over 50 percent damage in North Carolina must comply with the current required setback and construction guidelines.

## 2. Structural Erosion Control Devices Are Encouraged

Another major concern with the Ohio Coastal Management Program is that of structural erosion control measures which appear to be encouraged in the Program. When seeking authorization and permits to construct any home or building within the delineated erosion area, OCMP states that it is necessary to have erosion control measures in place. The Program indicates that these control measures will be evaluated by determining if any adverse effects will transpire, but it does not explain what the state of Ohio's definition of adverse effects include.

Cumulative impacts do not appear to be a criteria when evaluating the potential of erosion control measures to accelerate erosion along the shoreline. The OCMP should take into account the fact that certain devices, such as seawalls, have been proven to increase the erosion rate along adjacent shorelines.

The cumulative impacts of coastal erosion control measures may be further accelerated by a lack of a state-wide coastal erosion area program. Currently, the OCMP does not mention any plans to develop a regional management program. Ohio may want to model a program after that of the state of Wisconsin. In an attempt to reduce the cumulative

effects of varying coastal erosion areas' ordinances, the state has developed, under the Wisconsin Coastal Management Program (WCMP), a department within the WCMP that will provide hazards analysis and management suggestions to local governments. This department also acts as a coordinator between local governments and state agencies. By assisting the local governments, Wisconsin hopes to move toward a state-wide comprehensive hazards management program.

3. Use of Non-Structural Erosion Control Devices Needs More Support

Along with a state-wide erosion control structure ordinance, OCMP needs to include incentives for the utilization of non-structural techniques for erosion control. The Program indicates that the state encourages this utilization, yet it provides no catalysts to encourage non-structural over structural means. If a permanent erosion control device costs more than the building it is meant to protect, it is a certain indication that the building should not be placed there to begin with. OCMP should formulate regulations prohibiting the construction of structural erosion control devices if their cost to construct is greater than the value of the building they are designed to protect. OCMP also needs to include such incentives as tax breaks or tax credits for the use of non-structural erosion control measures.

Another option would be to follow the lead of North Carolina. North Carolina does not permit the use of permanent erosion control devices such as seawalls, wooden bulkheads, or concrete breakwalls. The preferred measures for dealing with long-term erosion are either relocation of the threatened building or soft approaches. At the very least the OCMP should clearly pronounce that it will not enter into agreement nor financially assist the construction or maintenance of hard erosion control devices. It would be best for coastal resources if OCMP eventually banned structural erosion control devices.

If, at this time, the state does not feel that banning structural erosion control devices is feasible, the state should enact a plan similar to that of Michigan. The Michigan Great Lakes Submerged Lands Act authorizes the state's Department of Natural Resources to regulate the construction and placement of erosion control devices along the shoreline. Approval of a project is not granted unless it is determined that the adverse effects to the environment, public trust and riparian interests of adjacent owners are minimal and will be mitigated to the extent possible, and that there is no feasible or prudent alternative to the applicant's proposed activity. To avoid the use of hard erosion control devices, the Michigan Coastal Management Program (MCMP) offers grants for the re-establishment and stabilization of foredunes, dune grass planting, dune fencing, and the establishment of native vegetable cover on steep slopes. Ohio could take this another step and offer grants for wetland preservation and restoration.

4. Permits for Erosion Control Devices Unclear

Another concern regarding the coastal erosion area is that of current buildings situated within the delineated erosion zone. OCMP has again neglected to specifically state whether or not a current property owner is affected by the policies set forth in this document. The Program asserts that any construction within the delineated erosion zone must be approved, and a permit received by the Director of the ODNR, but it does not indicate if this includes those areas where construction has already taken place.

The Program also claims that issuance of these permits must meet certain criteria unless the applicant will suffer an extreme hardship without the permit. OCMP should define which situations will be classified as hardship cases. Ohio could model a rebuttal against economic hardship after a Michigan statute that is specifically designated to protect dunes. Ohio could expand this legislation, applying it to all construction permits. The Michigan Sand Dunes Protection and Management Act requires alternative construction methods in order to minimize the impact on dunes. Referring to hardship cases, the Act analyzes the cost of compliance with the construction requirements in an attempt to refute claims of economic hardship. Ohio needs to establish a solid, well-defined method in which to refute false hardship cases. This needs to be done to ensure that developers do not use hardship claims as a loophole to get around the permit guidelines set forth in the OCMP.

The state should utilize grants, and local and state shared costs, to encourage compliance with the erosion goals and policies. Without incentives, it is possible that individuals may follow the easiest and least expensive methods to meet regulations, thus negating all of the enhancement policies set forth in the OCMP. It is recommended that the state offer incentives to restore natural buffers, such as wetlands, or legislate regulations prohibiting additional development within the coastal erosion area. The Ohio Coastal Management Program must take into account that 25 percent of the state's population lives within the coastal area, and it is expected to increase to 9,006 people per square mile by the year 2010.[1] Additional residents will increase the pressure to develop within the coastal erosion area. Now is the time for the state to take precautionary measures to prevent overdevelopment and protect the erosion-prone areas along Lake Erie's coastline.

5. Coastal Erosion Area Delineation Not Included in OCMP

It is understood that the rules for designating the Lake Erie coastal erosion area and the rules for enforcing the Lake Erie coastal erosion area are found in the OCMP Appendices G and H respectively, but the OCMP still lacks the coastal erosion maps. This lack of information makes it difficult to put the erosion management policies proposed by OCMP into context. Because the coastal erosion delineation was written as separate document than the OCMP it was difficult for organizations to conduct an in-depth review of both documents.

6. General Public Should Have the Opportunity to Comment on the Coastal Erosion Area Delineation

It is imperative that the public be able to vocalize their concern over the inclusion or exclusion of land in the coastal erosion area. According to OCMP, only the property owners and jurisdictions delineated will be notified of their identification within the coastal erosion area. It is also indicated in the OCMP that the property owners will be the sole individuals who have the opportunity to object to the delineation, thereby excluding the general public from the comment period. Every citizen who has concerns regarding the delineation of the coastal erosion area should have the opportunity to testify at the public hearings and have their comments heard.

If the general public is excluded from this process, the comments received will be biased in opinion. It is probable that the property owners would prefer that their homes not be included in the delineation, as it will be increasingly difficult for those individuals to sell their homes or obtain private insurance. OCMP must hear from those individuals who would not only like to see their coast protected, but are not directly impacted by the designation of the coastal erosion area. It is requested that a final public review and comment period be granted to the general public following the property owner's appeal of the coastal erosion area delineation.

## II. MANAGEMENT AND ENFORCEMENT OF POLICIES

There are many concerns pertaining to the management and enforcement of the policies set forth in the Ohio Coastal Management Program.

1. Lack of Enforceability

The issue of gravest concern is the lack of enforceability of these policies. Less than half of the policies proposed in the Program, 43 percent to be exact, are enforceable, legally binding policies.

A fundamental example of the lack of enforceability of this Program is located in the Recreation and Cultural Resources section. This section consists of Policies 21 through 26. There are twenty-five "sub-policies" within these six principal policies; of these twenty-five "sub-policies", only six are enforceable. This example represents a 24 percent enforceability quotient which is less than one-quarter of the proposed policies.

Due to the fact that the state lacks legislative authority to curb development, urban sprawl is a primary concern. OCMP must re-evaluate these policies to determine the plausibility that developers and private land owners will forfeit profits for the sake of the environment without legally binding policies. There are little or no incentives for these parties to follow the guidelines specified in the enhancement policies. OCMP makes no mention of incentives, such as tax reductions or credits, which can be used to entice land owners to comply with the policies which are not enforceable by law.

Ohio may want to model a program after states that use legislation concerning issues such as restricting hazardous development along the coasts. New York developed a Regional Coastal Management Programs (RCMP). This program analyzes development trends along the shoreline. The program directs new growth to areas which are already developed. The OCMP should use existing regulations or formulate additional regulations that prohibit unwise activities in the coastal area. Additional regulations may be needed to modify the proposed enhancement policies into legally binding, enforceable policies.

Another example of the lack of enforceability of the OCMP may be found at Part II 5-1: "The OCMP encourages local governments to exercise their responsibilities and may also provide funding assistance for the development of port and waterfront master plans...". This type of policy creates uncertainty about the stipulations set upon the local governments; it is unclear whether local governments are required to develop port and waterfront master plans if financial assistance is not offered by the state. OCMP could require local governments to do so, regardless of the state's involvement. Clear regulations would assist local governments in determining in which areas development will be permitted, and in which areas development will be prohibited. These determinations would facilitate local government efforts in developing zoning regulations and alleviate local pressures they may feel from developers. The state should lead in the protection of the coast, as it is a resource of all citizens living in Ohio.

The OCMP needs to identify the fact that the coast is a valuable resource for the entire state, not just developers and coastal property owners. ODNR states that the Program was written with the assumptions that "Multiple use of the resource as a whole is inherently in the public interest" (Part II 5-2). The enactment of this policy is directly affected by the state's definition of "the public", which is not clearly defined in the OCMP. It is not apparent if the public encompasses developers, private land owners, commercial fishermen, environmentalists, conservationists and/or future generations. OCMP needs to take into account that various members of the public have differing opinions of what is in their best interest and what activities should account for "multiple use."

It is also an assumption of the OCMP that the enforcement of this Program may require the examination of user fees and public/private initiatives. When examining the plausibility of user fees, OCMP needs to involve those individuals whose financial situation would prohibit their ability to use public facilities should a user fee be enacted. Perhaps low-income individuals could obtain "free monthly passes" to public parks, beaches, etc. in a direct effort not to exclude those individuals who would otherwise be unable to use public resources.

Another concern regarding the differential among income status is the guidelines, set forth in the OCMP, for local health departments. While OCMP encourages local health departments to establish permitting systems for operation of public beaches and to develop regulations regarding water quality, it does not indicate that the state will provide any funding to do so. In addition, in order to gain some enforcement capabilities, it would be practical for OCMP to provide guidelines for local health departments. The state should provide funding for those local governments who do not have adequate funds to test the water frequently. If the state does not grant these communities the necessary capital, some municipalities might suffer from low standards and less frequent testing, which could result in an increase of health problems.

Although the OCMP states clearly that it will manage many important activities and projects in the coastal area, such as the water quality of the resources, and the manner in which resources are used, it does not provide enforceable policies regarding the loss of available coastal resources. The enforceable policies set forth in the OCMP that pertain to water quantity, Policies 39 through 41, deal only with the permitting and registration of water withdrawal. These policies do not give the OCMP any authority to maintain the Lake's current water quantity. This exclusion needs to be corrected, after all, the reduction and eventual loss of coastal resources would negate the necessity of the established management practices. These management policies should include clear language establishing policies for the maintenance and restoration of the current resource base.

Another concern regarding the management approach incorporated in the OCMP is that it focuses only on the impact of activities, not the activities themselves, that affect Lake Erie. The state should concentrate on the land use activities that cause the pollution rather than

using resources, which are both valuable and scarce, to clean up the pollution after it has contaminated the coastal area. If land use practices were the focus of regulations it would lead to a reduction in the amount of funds and efforts needed to protect the coastal area.

2. Additional Initiatives Which Need to be Incorporated Into the OCMP

- It is understood that under the Coastal Zone Act Reauthorization Amendments, Section 6217, Ohio is required to address land use practices that cause degradation of the coastal waters, such as urban runoff and agricultural runoff. Upon approval, it will be extremely important for the OCMP to incorporate Ohio's Coastal Nonpoint Pollution Control Program (Section 6217 of the Coastal Zone Act Reauthorization Amendments) into both the Ohio Coastal Management Program and its Clean Water Act. Upon incorporation, the OCMP should maintain its concentration on addressing those land use practices that not only cause coastal water degradation, but also those activities that diminish habitat and public access to the coastline.

- Another, separate plan, which needs to be incorporated into the OCMP is the wetland water quality standards. It is imperative that those standards be incorporated into the OCMP and that their enforcement be directed by the OCMP.

  A study conducted by the National Audubon Society, Great Lake Regional Office, has found that Ohio is experiencing a net loss of wetlands. This net loss is found when looking strictly at the permits which were given to developers, it does not take into account the amount of wetlands lost due to failed mitigation efforts. Therefore it is extremely important for the OCMP to strictly monitor mitigation projects when enforcing the wetland water quality standards. The OCMP should ensure that mitigation projects do not take place outside of the immediate watershed in which a wetland was lost. It is desired that OCMP ultimately coordinate "all [state agencies] to institute a minimum on-the-ground, excluding enhancement and preservation, mitigation ratio of [2-1] for all projects in order to replace already destroyed wetlands, both in acreage and in function, and to offset the possibility of mitigation failures. [The OCMP should establish mitigation criteria that preserve all types of wetland systems]. The preservation of existing wetlands should not be recognized as a form of mitigation."[2]

  When incorporating the water quality standards, it is consequential that OCMP identify and clearly define who the general public is. This definition needs to be examined when considering the public's long-term benefits regarding financial assistance given to private landowners for restoration, enhancement and management of existing wetlands. Ohio has already lost 88-90 percent of its presettlement wetlands, making it second only to California in percent of original wetlands converted.[3] It is hoped that OCMP will eventually prohibit any further destruction of wetlands in the coastal area, and use incentives to restore wetlands.

- Sensitive areas other than wetlands also need enforceable policies within the OCMP. It is understood that, although the Director of ODNR creates, supervises, operates, protects and maintains wild, scenic and recreational rivers, he/she does not restrict land use of a property owner within the area surrounding the designated river. If the state cannot or will not regulate activities within area surrounding the designated rivers, OCMP should utilize incentives to encourage land owners to properly care for the areas.

- There are a number of other separate policies that need to be incorporated into the OCMP. Without them there is little to no enforcement capabilities for the proposed policies.
    - The lake-wide management plan (LaMP) that is being developed should be incorporated into the OCMP as soon as it is finished. The LaMP will address many of the same concerns as the OCMP--such as the impacts of exotic species and loss of habitat-- and should therefore be an integral part of an updated, future volume of the OCMP..
    - Another plan that is currently not available but should be coordinated with the OCMP is the State Aquatic Nuisance Species Management Plan. This plan will give the state the enforcement capabilities it needs to combat such problematic species as the zebra mussel.
    - OCMP should also incorporate the long-term water resources plan, when complete, which should be utilized to administer the state's water management policies.
    - In 1988, there was a state law that mandated the creation of a water conservation law, this law has not been implemented. The OCMP should encourage that this law be followed and a water conservation law be created; once completed this law should be incorporated into the OCMP.
    - A long-term sediment management plan for harbor and navigation channels need to be incorporated into the OCMP as well. Without a coordinated effort with the Army Corps of Engineers, the state has little enforceable regulations over the dredging projects within Lake Erie's ports. Without the legal requirements of these additional plans, the OCMP is left with little enforcement capabilities.

3. <u>Updating the Ohio Coastal Management Program</u>

As new local, state and federal regulations develop, it is suggested that the OCMP be updated on a regular basis, perhaps every 3-5 years. The public should be provided the opportunity to participate in a periodic review that would allow for an analysis of the strengths and weaknesses of the OCMP. It will also allow ODNR to update the Program in accordance with new environmental problems.

## III. PUBLIC ACCESS

Currently, Ohio's coastal area has a population of 2,736,00, or 8,892 people per square mile. This is 25 percent of the state's total population. In 1988, 8,892 people per mile lived along Ohio's coast. The number is expected to increase to 9,006 by the year 2010.[4] Along with the influx of population will come an increase in the pressure to develop along the Lake Erie shore. While OCMP mentions that plans should be designed to reduce the effects of continued residential development along the coast, it has not developed the coordinating policies.

It should be a goal of future, revised editions of the OCMP to design and coordinate plans that would limit further development of the state's coastal area. Development along the coast impedes public access to the Lake and its resources. Ohio may want to develop a program modeled after states that use legislation as a means to restrict development that blocks public access along the shoreline.

New York, an example of such a state, developed a Regional Coastal Management Program (RCMP). This program analyzes development trends and then directs new development to areas that are already developed. Ohio could create incentives--for instance, tax abatements for business and industry to redevelop shoreline brownfields.

Another state that is taking a legislative approach to counteract overdevelopment of the shoreline is Wisconsin. The state has developed a department within the Wisconsin Coastal Management Program (WCMP) that will provide hazards analysis and management suggestions to local governments, and will act as a coordinator between local governments and the state agencies. By assisting the local governments, Wisconsin hopes to move towards a state-wide comprehensive hazards management program. Ohio could adopt this strategy and apply it to a state-wide zoning regulation. Because activities taking place in one coastal municipality affect adjacent municipalities, state-wide and regional planning is of great necessity when attempting to protect public access. It is imperative that the OCMP utilize this method of planning in future endeavors.

While the primary goal of the state should be to maintain or create public access to the shore for recreational and public uses, it should not provide any financial assistance for those activities which may potentially cause damage to the Lake resources. When creating public access points for recreational use, the OCMP should maintain and restore all available green spaces. Activities which should not be funded by the state include paving areas near the lakeshore for parking and constructing additional public access points for personal watercrafts such as JetSkis. JetSkis should be strictly limited because of nonroad sources, the EPA has determined that gasoline marine engines are one of the largest average contributors of hydrocarbon exhaust emissions to the atmosphere and to water pollution.[5] Improved engines are to be phased in from 1998 to 2007 but until then, the state should limit the amount of public points for such watercrafts.

The OCMP should apply a coordinated approach of regulations and incentives in order to protect the areas along the Lake that are still accessible to the public. The state should protect and add to the natural areas through multiple financing opportunities. For example, the OCMP could provide funding to buy private land before the real estate rates increase further due to the increase of population along the coast. The state could also utilize a private and state initiative funding method to protect natural areas that are available for public use. Tax incentives could be given for public access point maintenance or creation. Lake Erie is a resource and treasure which should be available to all citizens of the state.

## IV. EDUCATION

Regarding the education of state and local officials, an oversight appears to have been made in the Ohio Coastal Management Program. It is very important that all of the state agencies become educated about the Ohio Coastal Management Program. Increased knowledge of the importance of the coast and of its fragile existence is imperative to help resolve of inter-agency conflicts. It is very important that the staff administering OCMP work closely with such agencies as the Ohio EPA and the Army Corps of Engineers. Without the expertise and support of other key state agencies, the OCMP staff will have to use precious resources, including time, to mediate inter-agency misunderstandings.

A formal body should eventually be developed and incorporated into the OCMP to ensure cooperation among the varying ideas and interests of the state agencies. The Lake Erie Commission could be used to fulfill this position. Currently, the Commission has no power, but if given sufficient authority it could act as the coordinating body among the agencies.

Along with state employees, local officials, including the planning commissions, should be educated about the requirements and objectives of the OCMP. This is of great importance given the fact that, within OCMP, such important factors as zoning regulations are left up to local governments. These decision-makers need to be informed of the hazards that accompany the construction of new development. They also need to made aware of other key issues, such as the environmental benefits of using non-structural erosion control measures within the coastal zone. Because OCMP has left the ultimate decisions to the local officials, these individuals must be educated about the goals, strengths and weaknesses of this program. OCMP should mandate education for all city, municipal and county officials within the coastal zone.

These individuals should then do outreach to the public to inform citizen groups and other entities of the environmental hazards associated with development along the shore, as well as the benefits of having a healthy coast in relation to human health and the economy.

OCMP needs to work with other decision-makers to disseminate information that it collects to guarantee that as many individuals as possible become educated about the importance of protecting and preserving the Lake.

It is very important that state, local and federal officials work together to coordinate the OCMP planning process. Agencies should include interest groups, experts and universities when planning and initiating the various policies of the Program to ensure that the agenda is fulfilled.

With education comes compassion. Knowledge will encourage more individuals to participate in the decision making process, and hopefully begin to take a more active role in protecting and conserving the Lake Erie coast. The more individuals who know about the fragile ecosystem of Lake Erie, the more likely they are to feel personal responsibility

and identification with the Lake. This new insight could help stir individuals to protect the resources and not exploit them. OCMP needs to develop its role as an educator for the Lake and its ecosystem.

## Endnotes

[1] Coast Alliance, *State of the Coast: A State-by State Analysis of the Vital Link Between Healthy Coasts and a Healthy Economy.* Coast Alliance: Washington, D.C. June 1995. page143.
[2] Sibbling, Julie M., "Wetland Mitigation Requirements in Ohio", *Great Lakes Wetlands.* Volume 7, Number 3. Tip of the Mitt Watershed Council: Conway, MI. October 1996,. page 5.
[3] Sibbling, Julie M., "Wetland Mitigation Requirements in Ohio", *Great Lakes Wetlands.* Volume 7, Number 3. Tip of the Mitt Watershed Council: Conway, MI. October 1996. page 4.
[4] Coast Alliance, *State of the Coast: A State by State Analysis of the Vital Link Between Healthy Coasts and a Healthy Economy.* Coast Alliance: Washington, D.C. June 1995. page 143.
[5] "EPA issues air rules for outboards, personal watercraft", *Great Lakes Commission Advisor.* Great Lakes Commission: Ann Arbor, MI. September/October 1996. page 9.

WRITTEN COMMENT #27: COAST ALLIANCE, November 22, 1996

Response to Comment:

I. 1. Comment noted. No change needed. This would require amendment to O.R.C. Chapter 1506. O.R.C. Chapter 1506 was passed (as Senate Bill 70) unanimously by the Ohio General Assembly and has since been amended on four occasions. Throughout the history of development of the OCMP in accordance with that law and during those amendment processes, there has not been any apparent support for changes to that law to prohibit, rather than require a permit for, development within coastal erosion areas. Further, CZMA program approval requirements do not mandate that states impose setback requirements.

I. 2. Comment noted. No change needed. The requirement for providing erosion control measures in conjunction with a permit for new construction within coastal erosion areas is also statutorily mandated by O.R.C. 1506 and as such would require an amendment to the law. Cumulative impacts are, in fact, addressed in the evaluative criteria established by O.A.C. 1501-6-24, as cited in Chapter 5, Policy 1 of the draft program document. ODNR's Strategic Action Plan for Coastal Management has identified development of a comprehensive Lake Erie coastal erosion management plan as a high priority action step. The department will accomplish this through integration of technical data and expertise with coastal management objectives, assisting local government to develop plans consistent with the state's, and developing demonstration projects.

I. 3. Comment noted. No change needed. The State of Ohio must recognize the realities of Ohio's Lake Erie shoreline and tailor its policies to that environment. While policies employed by other states may be relevant as guides in principle, they must be adapted on a case-by-case basis in addressing Ohio's erosion challenges. The fact remains that Ohio's Lake Erie shoreline is dramatically different from that in Michigan and North Carolina. Among other things, it lacks extensive undeveloped and unarmored stretches and is severely sand-starved and not subject to significant seasonal fluctuations in sand movement. ODNR has made it clear that in providing technical and financial assistance, it will focus its efforts on encouragement of selective fortification and strategic retreat. Investing public money to provide financial incentives for nonstructural protection in areas where it is not appropriate and has a clear potential for allowing increased losses would be fiscally unwise. ODNR will continue to assess these opportunities on a case-by-case and reach-by-reach basis while keeping in mind the basic principles of proper maintenance of natural coastal processes and functions.

I. 4. Comment noted. No change required. O.A.C. 1501-6-22 clearly states that a permit is not required for erection, construction or redevelopment of a permanent structure for which another permit was issued or plan was approved prior to the final identification of coastal erosion areas, the effective date of the enforcement rules, or the director's adoption of the OCMP document. The draft program document also clearly refers to "construction," "erection" and "redevelopment," language which cannot be construed to pertain to preexisting development.

ODNR will review hardship claims on a case-by-case basis and establish parameters through a clear and well-documented administrative record. The state does intend to administer its grants program in a manner that fulfills and fosters coastal management policies and goals.

I. 5. Comment noted. No change required. ODNR has carefully followed the public notice requirements of O.R.C. §1506.06, including making all maps available for public inspection at all coastal county, municipality and township offices. O.R.C. §1506.06 clearly states that any **affected** locality or landowner may object regarding the preliminary designation of coastal erosion areas. ODNR, while not required to, did promulgate rules defining the methodology for erosion area designation, and organizations were provided the opportunity to review and comment at that time.

I. 6. Comment noted. No change required. See response to item #5 above and to item #4 of written comment #20 (Cuyahoga Soil and Water Conservation District). Again, this would require an amendment to Ohio's coastal management law.

II. 1. Comment noted.

Insufficient number of enforceable policies - NOAA has determined that Ohio meets the CZMA program approval requirements with respect to its enforceable policies. Not only would "additional regulations" be required to accomplish the results suggested by this comment, ambitious new statutes would be required as well. Sufficient support for enacting additional aggressive state environmental and land use statutes does not appear to exist currently. The comment is made that the OCMP makes no mention of incentives to entice landowners to comply with nonenforceable policies. The State of Ohio is highly successful in using incentives and disincentives to achieve protection of its natural resources. Nonpoint source management is one example of a highly successful program in which measurable progress is being made in protecting and restoring water quality and aquatic resources. The OCMP will build upon this success.

Definition of "the public" - The OCMP has, in fact, made clear the value of our coast for the entire state. It is clearly stated in the Program Overview that the focus of the OCMP is upon managing coastal resources, controlling activities that affect them, and fostering sustainable use "for the benefit of **all citizens of this state**." Further, the overview acknowledges that benefits derive beyond the geographic and cultural borders of the state by stating that the document describes "the OCMP for Ohio citizens and **for all who benefit from Lake Erie's resources."** ODNR will clearly use that underlying assumption when assessing the need for development of user fees, incentives and additional funding with respect to the issues cited.

Insufficient regulation of water quantity - The Division of Water requires the registration of all facilities that have the capacity to withdraw 100,000 gallons per day or greater. These facilities must report their annual withdrawal as part of the Water Withdrawal Facility Registration Program. This data is used by Ohio and other Great Lakes states to facilitate the proper development and management of water resources that are shared within and between the states. Water rights are governed by common law in Ohio. To date there has not been a demonstrated need to pursue a permitting program for the withdrawal of water in Ohio. Water rights laws in Ohio are similar to

those in other Great Lakes states. Further, Ohio does have a permit requirement (see Policy 39) that does regulate diversions of water out of the Great Lakes basin. This statute was established to protect the resource base.

Focus on impacts of activities - The fact that the OCMP focuses upon impacts of activities is not meant to imply that the state will wait to see what will happen as a result of a given activity and then subsequently expend resources to fix it. Rather, the potential for impacts of given activities has been the impetus for development of the statutes and regulations that form the basis of the OCMP. The OCMP does not intend to apply enforceable or enhancement policies to activities that do not cause impacts that affect coastal resources.

II. 2. Comment noted.

CZARA Section 6217 - See letter from Donald C. Anderson to Jeffrey R. Benoit in Appendix regarding Ohio's stated intent to submit its updated nonpoint source management program to NOAA within 30 months of program approval. This will become part of the OCMP.

Wetlands water quality standards - These are incorporated in the OCMP, as administered by the Ohio EPA.

Wild, scenic and recreational rivers - The OCMP will work in cooperation with local governments and landowners and use incentives to promote enhanced stewardship in all watersheds. One stated objective of ODNR's Strategic Action Plan is to "focus greater attention and resources on the rehabilitation of urban waterways." Three specific action steps identified are to: (1) "work with coastal planning agencies to encourage retention of open space and promote environmentally compatible land uses along streams," (2) promote the protection or acquisition of riparian corridors and flood plain areas for open space, park land, and recreational areas," and (3) "initiate an urban streams program. . .to maximize local volunteer support and partnerships in stream restoration. . . ."

LaMP, ANS Plan, water resources plan, water conservation law, and long-term sediment management plan - Both the LaMP and ANS plans have been and are being developed through cooperation with the OCMP, and both will be incorporated into it. So also will the long-term water resources plan, as stated in Policy 41. It is not clear to what the comment regarding a water conservation law is referring. ODNR and Ohio EPA are also participating in development of a long-term sediment plan.

II. 3. The final program document and FEIS has been published in a format that allows for regular updating. ODNR will also facilitate public involvement on a regular basis with respect to specific policy issues and special areas management.

III. Comment noted. No change required. ODNR does not disagree regarding the need for public access. This is a priority issue that will be pursued during program implementation. However, unlike other states, Ohio's shoreline is substantially developed, and limited opportunities exist for increased public access. The State of Ohio will pursue property acquisition only with willing sellers. The focus must be on exploring and facilitating innovative solutions that enhance access

opportunities within existing publicly owned areas. ODNR will assist local governments in local public and private initiatives to increase and enhance access in the coastal area. For further discussion regarding existing requirements for public access in submerged lands leases, please see response to written comment #2 (Mary Wood).

IV. Comment (regarding education and coordination) noted. No change required. Regarding education of state, local and federal officials, both ODNR and NOAA agree that enhanced outreach and information dissemination are essential to improved management of our coastal resources. Both ODNR's strategic plan for coastal management and the OCMP implementation plan call for a strong emphasis on education and coordination among local communities, organizations, and the State of Ohio and its OCMP implementing agencies. This will include but not be limited to providing an active liaison service; conducting workshops, forums and seminars for local governments, planning agencies and organizations; developing a coast watch program; and preparing educational and informational materials.

Coastal management will be coordinated using the Integrated Management Team within ODNR, the Policies and Programs Coordinating Committee comprised of all relevant state agencies' staff, and the Lake Erie Commission, as described in Chapter 4 of the draft program document and DEIS. There is not a perceived need for an additional formal coordinating body. Consistency among state agencies is governed by the procedures for state consistency described in Chapter 4 of the draft program document and DEIS. With respect to federal agencies and consistency of their actions with the OCMP, guidance materials will be prepared and consultations conducted on a regular basis to assure understanding and cooperation

Received Dec 2, 1996

LAKEWOOD OHIO

12650 DETROIT AVENUE • 44107 • 216/529-6600 • FAX 216/521-1379

MADELINE A. CAIN
MAYOR

November 22, 1996

Ms. Diana Oliger
Office of Ocean and Coastal Resource Management
NOAA - U.S. Department of Commerce
1305 East-West Highway, N/ORM3
Silver Spring, Maryland 20910

Re: Ohio Coastal Management Programs Draft Document

Dear Ms. Oliger:

This is in response to your request for comment on the OCMP Draft Document.

First, I support your efforts to control the erosion of Lake Erie's shoreline. Coastal Management is a vital part of maintaining and preserving one of our City's most valuable resources.

Secondly, I have concerns as to how this document will affect lakefront property owners. Namely, what is the projected impact on property values? Also, the issue of public access needs both further study and clarification.

Finally, I need assurance that ODNR has provided adequate public notice to all lakefront residents. As much public comment as possible should be solicited on this important document.

Thank you for your consideration.

Very truly yours,

THE CITY OF LAKEWOOD,

Madeline A. Cain

MAC:DPD:seg

RECEIVED
2 - 1996

WRITTEN COMMENT #28: CITY OF LAKEWOOD, November 22, 1996

Comment noted. No change required.

1. Comment (regarding support for erosion control efforts) noted. No change required. ODNR appreciates Mayor Cain's support for its efforts to control Lake Erie erosion.

2. Comment (regarding potential impact on property values) noted. No change required. It is very difficult to determine what property value impacts may result from ODNR's actions to identify coastal erosion areas and administer a permit system for new construction. However, the Coastal Management Program staff has researched this issue and has found evidence to support the conclusion that property values would at worst be unaffected. Some of what little information exists on this subject indicates that property values may increase.

Four Great Lakes states (Michigan, Wisconsin, Pennsylvania and New York) administer programs similar to the provisions established by Ohio's Coastal Management Law. Generally speaking, however, these states completely prohibit development in eroding areas and have used a much less objective system for identifying such areas. ODNR consulted with its counterparts in all of these states, and found a distinct correlation between erosion itself and property values, but no indication that property values have been negatively affected by their programs.

Aside from the contacts with other states, a literature search was performed, and contacts made with fourteen other individuals with experience or expertise in coastal erosion and economics of natural hazards. Forty-one non-ODNR sources were consulted. The Natural Hazards Research and Applications Information Center in Boulder, Colorado was also consulted. None of the individuals or other sources gave any indication of potential lowering of property values as a result of programs that discourage or prohibit development in erosion-prone areas.

Two sources do point to potential increases in property values. An Ohio Sea Grant College Program analysis (summarized in Fact Sheet 044 by Kriesel and Lichtkoppler) did find a positive correlation between property values and the distance between the home and the bluff (and/or the added lifetime of the home derived by effective erosion control measures). This seems to indicate that the provisions of O.R.C. Chapter 1506, which encourage locating structures farther from the bluff or providing control measures, would over time enhance property values. Another study found a positive correlation between floodplain regulations and property values (Federal Emergency Management Agency, 1981, Evaluation of the Economic, Social and Environmental Effects of Floodplain Regulations).

Damage costs have been extraordinarily large and will continue to be if development continues unabated in coastal erosion areas. The Potential Damages Task Group report to the International Joint Commission estimated Ottawa County could suffer $110 million over the next 50 years, and the Lake County Planning Commission foresees nearly $11 million within the next 30 years just for reconstruction of public facilities. Certainly, locating structures away from the hazard or protecting

them with control measures should lessen these costs to both public and private entities. Over time, reduced damage to infrastructure could lower taxes as a result.

Some of Ohio's lakefront property owners firmly believe that ODNR's actions will lower property values. They point to a slowing of lakefront property sales during certain periods over the past three to four years, associating this with this program. There is no way to determine what factors or combinations of factors may be affecting lakefront property sales. For instance, tax assessments have increased dramatically in some locations. As this program is implemented, more certainty should result, and Ohio's experience could be expected to be much like that of other states. Please refer to Part II, Chapter 11, pages 11-12 and 11-13 for further information on the assessment of cost and property value impacts.

3. Comment (regarding clarification of public access) noted. No change required. The comment is assumed to be related to the State of Ohio's submerged lands leasing authorities and requirements for preserving public rights of access to Lake Erie waters, since it is expressed in the context of effects on lakefront property owners. See response to written comment #2 (Mary Wood), item #4.

4. Comment (regarding adequacy of public notice) noted. No change required. See response to written comment #2 (Mary Wood), item #1. As noted in this response, ODNR placed seven-and-one- half-inch public notices in nine coastal area newspapers and the Columbus Dispatch regarding the publication of the OCMP draft document and DEIS on August 30, 1996. Notice also appeared in the Federal Register on September 6. In addition, several hundred copies of the document were mailed to the State of Ohio Library and directly to coastal area libraries with a request to make it available for public inspection. The document was also sent directly to each local community and each county and regional planning agency as well as to all coastal area legislators. News releases that referenced publication of the OCMP draft document and DEIS were also issued regarding the preliminary coastal erosion area identification. ODNR officials additionally met with the media in all shoreline counties to discuss the issues. Further, ODNR sent individual copies of the document directly to approximately fifty lakefront property owners and local officials who had actively worked with ODNR and their local communities on the coastal erosion area management issue and policies.

Four public hearings were held during the 77-day comment period beginning with publication of the Federal Register notice, which exceeded the normal 45-day comment period length for environmental impact statements. These were in addition to eight public hearings conducted on the preliminary coastal erosion area identification, two public hearings held in 1995 on the rules for designating and enforcing coastal erosion areas, and two public hearings and two public meetings held on the 1992 public review draft. Additionally, between 1993 and the publication of the revised document, more than 40 public meetings were held with local citizens, with well over 1,000 individuals attending. Please refer also to Part II, Chapter 11, page 11-8 through 11-11 for further information regarding the extent of public involvement in this process.

Received Dec. 2, 1996

3329 W. 144th Street
Cleveland, Ohio 44111

November 19, 1996

Acting Director
Office of Ocean and Coastal
Resource Management
National Oceanic and Atmospheric
Administration
1305 East-West Highway, N-ORM3
Silver Spring, MD 20910

Re: **The Draft State of Ohio Coastal Management Program and Draft Environmental Impact Statement**

Dear Sir:

I have been following the development of the Ohio Department of Natural Resources Coastal Management Program for six years, and it has been an extremely frustrating journey. All that the communities and property owners have been requesting from ODNR during this period has been some cooperation and common sense. Sadly, the communities and property owners have gotten neither. While it is true that ODNR has had several meetings with the public concerning this Program, those meetings are irrelevant if one does not listen to what is being said.

I have taken my free time to read ODNR's Coastal Management Program and, frankly, I am disappointed. The overall goal of protecting our lakefront is a laudable one, but this Program is a bureaucratic nightmare... This document, while long on platitudes, is short on substance. There is no meaningful analysis of the costs involved in this Program and what little analysis can be found is severely flawed. Why do I know this? I took the time to review and analyze the information upon which ODNR relied when it was preparing its analysis, and I prepared a written analysis which I provided to both ODNR and Ohio's Joint Committee on Agency Rule Review. The citizens of the State of Ohio deserve better--a better cost/benefit analysis and a better program.

I was also a member of the working committee that made recommendations regarding the coastal erosion and which ODNR mentions several times in its narrative. In Part II, page 11-11, ODNR states that "The group elected not to write official recommendations, stating that the changes ODNR was making as their work progressed reflected their recommendations." This statement is utterly untrue. The truth is that the working group wrote two letters to ODNR objecting to ODNR's changes. Such blatant misrepresentation makes one wonder about the veracity of the other statements contained in this Coastal Management Program.

After six years it has become very clear that ODNR's sole motivation in this process is to get the federal money no matter what the cost or the potential damage is to the local communities or to the lakefront property owners. That is sad because if done properly, this Program could be a positive benefit to the State of Ohio. During this six-year journey, ODNR has shown that it has neither the expertise nor the skills necessary to make this Program work. I would hope that NOAA would expect more from a state's Program before it would grant its approval. If you would like to discuss this in more detail, I would be more than willing to talk with you. During the day I can be reached at (216) 861-7982.

I appreciate your serious consideration of these comments. I am sure my letter will not be the only one that you receive expressing these same concerns. In addition to the letters that you receive, I urge you to review the comments made at the various public hearings held in late September and early October (my comments can be found in the transcript for the October 2, 1996 public hearing held in Cleveland) where lakefront property owners, community representatives and other interested parties, such as the Sierra Club, voiced their concerns about this Program.

Very truly yours,

Amy E. Kellogg

Amy E. Kellogg, Attorney

AEK3780:10766:96001:AEK-15.LTR
ich 11/19/96

WRITTEN COMMENT #29: AMY KELLOGG, ATTORNEY, November 19, 1996

Response to Comments:

More than 40 meetings have been held with property owners and local communities. Those meetings have resulted in significant substantive change over a four year period. The Coastal Management Law has been amended twice in that time pursuant to changes recommended by these groups. The rules for designating and enforcing coastal erosion areas have been substantially revised as a result of the numerous meetings held with local communities and property owners. The record clearly demonstrates that ODNR has listened and responded to these citizens' concerns. It is not clear from these general comments what additional changes are being sought at this time.

ODNR's written cost analysis to which the commenter refers was done with respect to enforcement of the permit authority for coastal erosion areas only, not for implementation of the OCMP. The written analysis to which the commenter refers as her own more accurate fiscal analysis is not on record, either with ODNR or the Joint Committee on Agency Rule Review (JCARR).

The commenter also states that "the truth is that the working group wrote two letters to ODNR objecting to ODNR's changes." Because such letters were not on file, they were requested from the commenter. In response to that request, NOAA received the July 6, 1995 letter, which contained recommendations for several minor rules modifications that had already been incorporated (see response to item #2 of written comment #4 [Malcolm Wood]) and a letter to Senator Gary C. Suhadolnik, Chair of the Senate Environment, Natural Resources and Energy Committee regarding recommended amendments to H.B. 119. This latter letter was entirely unrelated to the administrative rules. Neither the commenter nor the erosion area working group recommended changes to the rules at either of two ODNR public hearings or at the JCARR hearing at which the rules were considered.

Please refer to oral comments from the October 1 DEIS public hearing at Huron, Ohio from other members of the coastal erosion working group as well as oral comment #7 (Amy Kellogg, DEIS public hearing, Cleveland, Ohio, October 2, 1996). Those comments pertain to both the rules revision process and the revisions made through the process.

Regarding comments that the proposed program lacks substance, please refer to response to written comment #4 (Mary Wood), item #5.

Regarding the comment that ODNR's motivation is to get federal funding, no change is required. See response to written comment #2 (Mary Wood), item #7, and written comment #5 (David S. McIlvain), item #1.

Regarding the comment that NOAA should expect more before granting program approval, no change required. For the reasons stated in the DEIS, NOAA's preferred alternative is to conclude that the OCMP meets the requirements of the CZMA and its implementing regulations, and to approve the program. See response to written comment #2 (Mary Wood), item #8.

TMACOG
Toledo Metropolitan Area Council Of Governments
LEADING REGIONAL PROGRESS

postmarked
November 22, 1996

300 Central Union Plaza
Toledo, OH 43602

P.O. Box 9508
Toledo, OH
43697-9508
419/241-9155
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**Chair:**
Mark L. Pietrykowski
Commissioner
Lucas County

**Vice-Chair:**
Stephen J. Pauken
Mayor
City of Maumee

**2nd Vice-Chair:**
James F. Carter
Commissioner
Wood County

**Executive Director:**
William L. Knight

Joe Uravitch
Coastal Programs Division
SSMC-4, Room 11109
1305 East-West Highway
Silver Spring MD 20910

Dear Mr. Urvitch:

Enclosed please find TMACOG Resolution No. 1996-27, supporting Ohio Department of Natural Resources' Coastal Zone Management Program.

This resolution, which originated in the Maumee River Remedial Action Plan Implementation Committee, (MRIC) supports this program. It does request the ODNR to consider minor alterations to the plan. These requests include that the program be managed from a Lake Erie county and that they increase the coastal boundary area to include the seiche area of Swan Creek.

TMACOG and the Maumee RAP Implementation Committee look forward to working with the Ohio Department of Natural Resources and other agencies to implement this program. If you or your staff have any questions or would like further information, please feel free to contact Kurt Erichsen, Director of Environmental Planning at TMACOG at 419-241-9155 extension 126.

Sincerely,

William L. Knight, AICP
Executive Director

JC:pf

Enclosure

cc Edwin Hammett, Chief, OEPA NWDO w/enclosure

a:stormwater 5210

# A RESOLUTION OF THE TOLEDO METROPOLITAN AREA COUNCIL OF GOVERNMENTS SUPPORTING THE OHIO COASTAL MANAGEMENT PROGRAM

WHEREAS, the Toledo Metropolitan Area Council of Governments (TMACOG) is designated as an Areawide Water Quality Management Planning Agency by the U.S. Environmental Protection Agency (USEPA) under the provision of Section 205(j) of the Federal Water Pollution Control Act, as amended (USC 446 et seq) and by the Ohio Environmental Protection Agency (OEPA); and

WHEREAS, the Ohio Department of Natural Resources has completed its Draft Environmental Impact Statement for the Ohio Coastal Zone Management Program, and requests input and support from local jurisdictions; and

WHEREAS, this resolution was approved by the Maumee River Remedial Action Plan Implementation Committee on October 10, 1996;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOLEDO METROPOLITAN AREA COUNCIL OF GOVERNMENTS THAT:

Section 1:
TMACOG supports the policies and principles stated in the Ohio Coastal Zone Management Program for the protection and enhancement of Lake Erie coastal resources and makes the following recommendations:

A. The Ohio Department of Natural Resources (ODNR) should coordinate its Coastal Zone Management Program from a location within the Lake Erie counties, so that it may be effectively coordinated with local governments, the Remedial Action Plans, and other River Basin Councils,
B. ODNR should design its implementation program to have close working relationships with local governments and agencies, the Remedial Action Plans and other River Basin Councils, and the Areawide Planning Agencies of the Lake Erie coastal area in order to reduce duplication and offer better service to local governments, and
C. The seiche area of Swan Creek, the area from the mouth to River Mile 5.0 at Detroit Avenue affected by periodic backwater flows from Lake Erie (See the attached map), should be included as part of the Coastal Boundary Area, and therefore included in the Management Program; and

Section 2.
The Executive Director be and is hereby authorized to provide copies of this resolution and related documentation to the appropriate federal, state and local officials.

Adopted by the Board of Trustees November 20, 1996.

Yea 29 Nay 0 Abstain 0

Mark Pietrykowski, Chair

William L. Knight, Executive Director

## CERTIFICATION

I, William L. Knight, Executive Director of the Toledo Metropolitan Area Council of Governments (TMACOG), hereby certify as follows:

TMACOG, pursuant to the authority set forth in Resolution No. 1996-27, has prepared the *Areawide Water Quality Management Plan* and the *Maumee River Remedial Action Plan*; and

The *Areawide Water Quality Management Plan* was recommended by the Areawide Water Quality Planning Council (AWQPC), a committee of TMACOG on September 25, 1980, updated and reaffirmed on November 29, 1990; adopted by the Executive Committee of TMACOG on November 19, 1980, and reaffirmed on February 20, 1991; and

The Maumee River Remedial Action Plan Implementation Committee (MRIC) is a committee of TMACOG which reports to the Board of Trustees; and

Three of the eight Ohio coastal counties are part of the TMACOG Planning Area, comprising a vital regional resource for recreation, natural habitat, and quality of life; and

The *Maumee River Remedial Action Plan* (RAP), urging waterways be restored to fishable and swimmable conditions by elimination of pollutants and restoration of wetlands and natural habitat areas, was approved by the Board of Trustees on August 15, 1990, and reaffirmed with boundaries including the Toussaint River, Packer Creek, and Turtle Creek watersheds on March 18, 1992; and

The policies stated in the Ohio Coastal Zone Management Program are consistent with the *Maumee River Basin Area of Concern Remedial Action Plan, Recommendations Report* (RAP) goals stated in chapter 2 of the RAP Report, "Recommendations for Water Quality and Habitat," in particular §2.3.2 "Comprehensive Wildlife Habitat Management Plan," §2.3.3 "Acquisition of Fish and Wildlife Habitats," §2.3.4 "Wetlands and Open Space Preservation;" and

Financial and technical assistance from the Coastal Zone Management Program will be available to help in the planning, design, and implementation of the recommendations of the Maumee RAP; and

The Maumee River Implementation Committee (MRIC) recommended the adoption of Resolution No. 1996-27 for the reasons set forth in the attached Staff Report.

I further certify that the resolution attached to this certificate is a true copy of the original thereof on file and of record in my office.

IN WITNESS WHEREOF, I sign this attestation this 21st day of November, 1996

William L. Knight

William L. Knight, Executive Director
Toledo Metropolitan Area Council of Governments

Staff Report
TOLEDO METROPOLITAN AREA COUNCIL OF GOVERNMENTS
BOARD OF TRUSTEES AGENDA
November 20, 1996 - 3:30 p.m.

**Subject: The Ohio Coastal Zone Management Program**

The TMACOG staff has reviewed the above noted document. It was prepared by the Ohio Department of Natural Resources, and is currently available for public comment. ODNR has asked for the support of TMACOG. Three of the eight Ohio coastal counties are part of the TMACOG Planning Area, comprising a vital regional resource for recreation, natural habitat, and quality of life.

The ***Maumee River Remedial Action Plan*** (RAP), urging waterways be restored to fishable and swimmable conditions by elimination of pollutants and restoration of wetlands and natural habitat areas, was approved by the Board of Trustees on August 15, 1990, and reaffirmed with boundaries including the Toussaint River, Packer Creek, and Turtle Creek watersheds on March 18, 1992. The policies stated in the Ohio Coastal Zone Management Program are consistent with the ***Maumee River Basin Area of Concern Remedial Action Plan, Recommendations Report*** (RAP) goals stated in chapter 2 of the RAP Report, "Recommendations for Water Quality and Habitat," in particular §2.3.2 "Comprehensive Wildlife Habitat Management Plan," §2.3.3 "Acquisition of Fish and Wildlife Habitats," §2.3.4 "Wetlands and Open Space Preservation." Financial and technical assistance from the Coastal Zone Management Program will be available to help in the planning, design, and implementation of the recommendations of the Maumee RAP.

For more information, a summary is attached.

WRITTEN COMMENT #30: TOLEDO METROPOLITAN AREA COUNCIL OF GOVERNMENTS, November 22, 1996

Response to Comments:

1. Comment (in the Resolution, regarding coordination of program from a Lake Erie county) noted. No change required. ODNR is in agreement with this comment. In concert with both the OCMP implementation plan and ODNR's Strategic Action Plan for Coastal Management, several important functions of the OCMP will be administered directly from the coastal area. Key among those is a local coordination function designed specifically to work effectively with local governments, RAPs and other local and regional entities.

2. Comment (in the Resolution, regarding implementation program) noted. No change required. Agreed. It is a stated goal of ODNR's Strategic Action Plan for Coastal Management to establish a consolidated and coordinated presence in the Lake Erie coastal region. As part of this effort, departmental service providers located in the coastal area will provide quality services and readily accessible technical support reflecting local needs.

3. Comment (in the Resolution, regarding inclusion of the seiche area of Swan Creek) noted. The following change will be made. ODNR has considered and agrees to modifying the coastal management boundary to include the seiche effect reach of Swan Creek to mile 5 at Detroit Avenue. As noted in the comment, periodic backwater flows from Lake Erie extend to this area, and thus lake resources and this reach are integrally related. Activities in this area could directly affect coastal resources and the quality of coastal waters. Expanding the boundary along this reach of Swan Creek is consistent with the findings of the Maumee River Remedial Action Plan. The Narrative Boundary Description (Appendix A) and Map 1 in Appendix B have been revised accordingly.

ORAL COMMENT #1: KURT ERICHSEN, DIRECTOR OF ENVIRONMENTAL PLANNING FOR TOLEDO METROPOLITAN AREA COUNCIL OF GOVERNMENTS, DEIS PUBLIC HEARING TESTIMONY, TOLEDO, OHIO, September 30, 1996

Summary of Testimony:

TMACOG supports the goals of the OCMP, in particular to protect coastal natural areas and enhance public recreation. Local coastal governments will appreciate greatly the additional resources for protecting natural areas and access. We request that ODNR consider extending the coastal management area to include the seiche area of Swan Creek.

Response to Comment:

Comment noted. See response to written comment #30.

ORAL COMMENT #2: BILL STEUK, DEIS PUBLIC HEARING TESTIMONY, HURON, OHIO, October 1, 1996

Summary of Testimony:

We went through this process in the spring of 1992, and it has been almost four years until there was a formal response. What will the next time period be before the final document?

I have not had sufficient time to review the document, so I will have to file a written response.

In Volume I, Part I, page 7, it summarizes the grants that have been made available so far. In addition, a grant of $800,000 will be made upon approval. On Part I, page 1, it says with the exception of implementation of new coastal erosion program and amendments, the plan and document proposed no new state programs. The coastal erosion program has not been fully implemented yet. Of the $373,000 spent so far, will any of this money be made available to local authorities? Of the $800,000, will some of that be earmarked for local authorities?

In Part II, p. 5-9, the preliminary estimate of 148 miles would be roughly 56% of the coastline. What is the time frame of the next step? When will the letters be sent? When will the hearings be held? How many letters were sent?

(Later) I want to compliment ODNR for what has happened the past year and a half. The working group was set up (and four members are here, Ed Herdendorf, Wade Mertz, Darrell Opfer and myself). Mr. Opfer did a service to constituents in his district and beyond. The group met for a year and the process of taking time and giving as many people as possible a chance to intervene and discuss, it does work but it takes time. Looking back over what we did with the advisory group, it worked. The public has to know and there must be time to get involved. I am concerned about the time frame now. The copy came out in February 1992, and it is a tight process. I am concerned about what might be a constrained time requirement right now.

(Later) I didn't hear the specific dates for the erosion hearings. What is the date of the last hearing? Three are after the comment date of the document.

Response to Comments:

Comment (question regarding the time period before the final document) noted. No change required. NOAA responded that it would be several months between publication of the draft document and the final document, which will include all comments and responses to them, and a 30-day comment period will be provided.

ODNR responded that money from the implementation grant, but not the program development grant, will be available to local communities.

ODNR responded that approximately 3,800 letters were sent September 30 and that the hearings would be the second and third weeks of November.

NOAA responded that they would extend the comment period to coincide with the conclusion of the last coastal erosion area public hearing.

ORAL COMMENT #3: J.T. LENDRUM, DEIS PUBLIC HEARING TESTIMONY, HURON, OHIO, October 1, 1996

Summary of Testimony:

I own property on Lake Erie and my fear is that NOAA and ODNR are developing a means to completely control private property on the lakefront. H.B. 119 took away the rights of property owners and defines what they can build on certain property. ODNR had the arrogance to put a picture of my property on the front cover of this magazine without asking my permission. I have lived on the lake since the 30s and haven't seen any terrific erosion; there is none on my property. ODNR took a picture after a storm when some of the beach was eroded. Natural forces filled the beach in. Hitler called his Mein Kampf and I think ODNR has a different name for theirs here. Whose property are they planning to take over at Sheldon Marsh? Their film says we should have more access to the beach and the only way to get it is to take away someone's property rights.

Response to Comments:

Comment noted. No change required. H.B. 119 did only the following: (1) change terminology from "erosion hazard areas" to "coastal erosion areas," as requested by private property owners, (2) increased representation by private property owners and developers on the Coastal Resources Advisory Council, (3) provided that rules enacted under authority of O.R.C. Chapter 1506 sunset after six years, and (4) incorporated language assuring that designation of a property as being within a coastal erosion area will not be used as the basis for any eminent domain action and will not be used to deny a permit or other requirement under O.R.C. Chapter 1506.

ODNR does not intend to take any private property from unwilling owners. ODNR carefully follows the policies established in O.R.C. Chapter 163, which in part provide for negotiation with willing sellers, protection of property rights and consistent treatment of property owners.

ORAL COMMENT #4: MIKE TANN, CITY MANAGER OF HURON, DEIS PUBLIC HEARING TESTIMONY, October 1, 1996

Summary of Testimony:

Where are we (the city) in this equation? I thought someone said this is not a mandatory program. But if this becomes law in Ohio, will it be passed down to the city to enforce, and, if so who will pay our costs? If the city were to develop its own erosion policy, would we exist on our own policy, based on your evaluation, if we complied with what you want?

Response to Comments:

Comment noted. No change required. ODNR responded that enforcement of coastal erosion area permits at the local level is voluntary. The OCMP will not require enforcement at the local level. The coastal erosion area management provisions are already law in Ohio and it is ODNR's responsibility to implement and enforce them. The law provides that local communities may administer them if they choose, and the department will work with them to assume the program should they elect to. If the city wanted to control development of new permanent structures within local zoning regulations, and was accomplishing what is called for in Ohio's law, the director would approve the program and review and evaluate it every two years.

ORAL COMMENT #5: REPRESENTATIVE DARRELL OPFER, STATE REPRESENTATIVE, DEIS PUBLIC HEARING TESTIMONY, HURON, OHIO, October 1, 1996

Summary of Testimony:

It should be noted that H.B. 119 was an amendment to the original bill, and as Mr. Steuk mentioned, because of a working group and public comments and responses to public hearings held in 1992, a number of changes were made in the original proposals. The primary one reduced the amount of shoreline in coastal erosion areas. The rules sunset. There is certainly adequate opportunity for input after the program is established. ODNR has listened to results of hearings previously and has listened to the working group. The law has been changed, the rules modified and we have a much better product, and I appreciate ODNR's willingness to listen.

Response to Comment:

Comment noted. No change required.

ORAL COMMENT #6: GARY BOYLE, CHIEF PLANNER, CITY OF SANDUSKY, DEIS PUBLIC TESTIMONY, HURON, OHIO, October 1, 1996

Summary of Testimony:

I agree with Representative Opfer and Bill Steuk that ODNR has been responsive to a large degree to some of the concerns that we have had with the program and its implementation. We anticipate we will be inundated with some calls. We haven't received the mapping yet. I understand the logistics, but it would have been easier if we could have had it in advance. I suggest that in the future this be done so that we can answer concerns. Do I understand correctly that property owners could have been notified even though they may not be in the area? Erring on the side of caution does seem best. It is important to make it known what the ramifications are, how they can challenge it, what is the time period, and getting the information to the public and giving them the opportunity to have input. We will be preparing written comments and we appreciate the fact that we have another five or six weeks to do that. Until we see the maps, we reserve the right to comment.

Response to Comments:

Comment noted. No change required. Representative Opfer stated that the maps had reached him a week previously and had reached Ottawa County that day. The letters sent were very informative in telling people where maps are located.

ORAL COMMENT #7: WALT WEHENKEL, OTTAWA COUNTY PLANNING COMMISSION, DEIS PUBLIC HEARING TESTIMONY, HURON, OHIO, October 1, 1996

Summary of Testimony:

The packet we received was very well put together. It has the maps, the aerials, the introduction letter. It has some supporting material and question and answer brochures. I think you have done a great job putting together a good packet of information to assist us in doing our job.

Response to Comments:

Comment noted.

ORAL COMMENT #8: AMY KELLOGG, CITIES OF AVON LAKE AND CLEVELAND, DEIS PUBLIC HEARING TESTIMONY, CLEVELAND, OHIO, October 2, 1996

Summary of Testimony:

We put in comments in November 1993 to a draft EIS. Those comments haven't been responded to, so is that going to be part of this response at this time or what happened to those?

We have not had sufficient time to review and properly respond, so we will provide written comments by November 22. It has always been one of our concerns that the public is getting such a short time to respond. We realize the Coastal Resources Advisory Council is your watchdog, but in 1992 it was local communities and property owners that brought this to the attention of ODNR. We are also concerned about the money that is supposedly coming our way. It sounds from the document as if most will go to ODNR. We would appreciate it if some percentage would go to local communities or to people living on the lake. I was told this program was being streamlined, but now we are at two volumes.

I am pleased with ODNR that they have been willing to work with us. I was a member of the working group, and ODNR was very cooperative. I think we have made some substantial changes in this program that have made it better.

It says throughout the document that except for coastal erosion areas, the program is part of Ohio law already. Our concern is why haven't we been enforcing it to this date? ODNR has received $373,000 to create a document from existing things. ODNR continues to tell us what they will do after they implement the program. Consolidated permits and model ordinances are still in the to-do stage. I noticed that part of the OCMP is that ODNR is instructed to review the power siting board applications based on whether conclusions are incorrect, unsubstantiated or irrelevant. I thought it might be interesting to hold those same standards to this program.

The map of Lorain County is incorrect; Route 83 is still marked as Route 76. The cost benefit analysis is not really accurate. There are unsubstantiated comments and feel-good language about beneficial environmental, institutional and socio-economic effects. The City of Cleveland is very sensitive to reminders that the Cuyahoga River burned, and Mayor White would like references to that event removed.

I am grateful that the comment period will be extended to November 22. Hopefully, we will get the maps soon. In Chapter 11, the statement that the working group stated that ODNR's changes were reflecting their recommendations is untrue. I would like that stricken.

I continue to offer my support to ODNR and continue to work with them on this process to get this program adopted.

Response to Comments:

ODNR appreciates the commenter's support for program adoption and for the coastal erosion area rules revision process and the substantial program improvements made through that process.

Refer to responses made previously to written comments on the DEIS regarding (1) the time frame for review of the program document and DEIS, (2) funding for local communities and property owners, (3) the cost benefit analysis regarding coastal erosion area rules, (4) reference to the burning of the Cuyahoga River, and (5) the Chapter 11 statement regarding ODNR's response to the coastal erosion area working group's recommendations.

NOAA responded during the Cleveland public hearing that there was no previous DEIS, but there was an earlier notice in the Federal Register and an earlier Ohio public review document. ODNR and NOAA considered all comments regarding both of those actions and made many changes to the program document as a result. Those comments and ODNR's responses are described in detail in Chapter 11 of the program document and DEIS.

The increase in the size of the OCMP document has resulted not from further complexity of the proposed program, but rather from inclusion of the following: (1) a summary of all responses to all public comments on the 1992 public review draft document, (2) inclusion of all relevant law and rules in a separate volume, and (3) the federal DEIS portion as required by the National Environmental Policy Act.

While the laws and rules (other than coastal erosion areas management) were previously existing, the proposed comprehensive program that coordinates their enforcement and additional enhancement policies was not. The entire process of program development took longer than expected due to the need to negotiate changes to the Coastal Management Law and to revise administrative rules through a lengthy process that involved considerable public input. (Please see response to oral comment #13 [Mary Wood] regarding added time necessary for program development.) The coastal boundary map for eastern Lorain County has been corrected.

The coastal erosion area maps were sent to the cities of Avon Lake and Cleveland by certified mail on September 30, 1996. They were received (certified mail receipt signed) by a representative of the City of Cleveland on October 1 and by a representative of the City of Avon Lake on October 2.

ORAL COMMENT #9: EDITH CHASE, OHIO COASTAL RESOURCE MANAGEMENT PROJECT (OCRMP), DEIS PUBLIC HEARING TESTIMONY, CLEVELAND, OHIO, October 2, 1996

Summary of Testimony:

We are looking forward to the final adoption of Ohio's program as soon as possible. As the shoreline has developed over time, the ecosystem has become degraded and competition for limited resources continues to increase. The proposed program is a framework for action of the state and political subdivisions and local government to work cooperatively to preserve, protect, develop, restore or enhance these resources. The goal must be sustainable use and attention to natural, cultural, historic and aesthetic values and the national and regional issues.

Decision making authority is fragmented and uncoordinated. No voice can speak for the shoreline, and no arbiter exists to resolve conflicts. One of the most important functions of this program should be to provide opportunities for cooperative decision making efforts for public and private resource managers. Meaningful ways must be found to inform and involve the public, and so we hope the process of community involvement will continue.

Lake Erie is an economic asset, and marinas and ports contribute significantly to Ohio's economy. Each harbor needs a plan to address the accelerating pattern of waterfront development and mixed uses and so that safety, efficiency and viability are maintained. Public access and air and water quality protection are critically important. Individual citizens are dependent upon clean water, as are the travel and tourism industries. Protecting the environment and the economy are inextricably linked.

OCRMP task force urges a comprehensive, long-range ecosystem approach, elimination of beach advisories, and implementation of the four RAPs and the Great Lakes Water Quality Initiative. The OCMP document is a valuable reference work and a means to identify needs for strengthened laws. The no-net-loss for wetlands is not being met in Ohio. The continued loss of headwaters wetlands is a serious concern. The proposed wetland water quality standards, while setting higher mitigation ratios, will allow enhancement and preservation of existing wetlands, leading to further wetlands loss.

A unique element of this program is submerged lands management, and this should have additional attention and staff. Constant vigilance will be needed to see that Ohio's program remains consistent with the national policies and objectives. As a networked program, it will depend on coordination, communication, and cooperation, recognizing the interdependence of the economy, the environment, ethics and esthetics.

Response to Comments:

Comment noted. No change required. NOAA appreciates the support for moving forward expeditiously with federal approval, as proposed in the DEIS.

ORAL COMMENT #10: KATHRYN BROCK, CUYAHOGA SOIL AND WATER CONSERVATION DISTRICT, DEIS PUBLIC HEARING TESTIMONY, CLEVELAND, OHIO, October 2, 1996

Summary of Comments:

I'm happy to see the publication of the OCMP document and DEIS. Although it's a compilation of what exists, it's put together as a plan and that's a beginning. I think there's a lot of room for improvement.

Public access is one of the most serious problems in Ohio's portion of Lake Erie. Eighty-three percent of the coast is in private hands. In other coastal states, more of an effort is made to make the coast available to the public. I would like to see boardwalks and other things done in other states. Regarding air quality, the second largest source of pollution in Lake Erie is air deposition.

I would like to see enforcement clarification and identification of accountable decision makers with respect to coastal erosion, better coordination, limits to impermeable surfaces of coastal area developments, technical assitance on nonstructural erosion control methods, encouragement of conservation easements, wetland restoration. I also believe the OCMP should include a provision that any drastic change in the use of an energy facility would be scrutinized to determine if it is in the best interest of the public.

Response to Comments:

Comment noted. No change needed. Response was made in response to written comment #20 (Cuyahoga Soil and Water District) regarding public access, air quality, the need for additional coordinating bodies, nonstructural erosion control, wetland restoration and changes in use of energy facilities. Consideration of impermeable surfaces will be addressed as ODNR pursues one of its priority coastal management strategic initiatives: development of an urban stream management program in the coastal area. As with property acquisition, conservation easements will be explored with willing property owners.

ORAL COMMENT #11: BRIAN ULM, NORTHEAST OHIO SIERRA CLUB, DEIS PUBLIC HEARING TESTIMONY, CLEVELAND, OHIO, October 2, 1996

Summary of Comments:

We would like to see all wetlands preserved, since only 10 percent are left. I'm not aware that created wetlands are proven technology, and if something other than protecting wetlands is done, we would like to see proven technology used. Interagency conflicts exist. A lot of this depends upon local government because they have the enforcement authority, so we would like to see mandatory education of zoning commissioners. The document addresses public education and we agree with that.

We thought the document was weak on nonpoint source pollution and would like to see binding language. We would like to see more legally binding language generally, with more of the enhancement policies made enforceable regulations. There's a bit of lack of collection of up-to-date information. We would like to see more emphasis on public access, encouragement of nonstructural erosion control, recreational development of natural areas. We would like additional public review and comment period after review of property owners' appeals and establishment of final coastal erosion areas. We would like an up-to-date inventory of endangered wildlife, flora and fauna, a prohibition of oil and gas development, and a consistency review of changes in use of power plants.

Response to Comments:

ODNR supports use of proven technologies with regard to wetland creation projects. As experience has increased over time with such projects, better data is being made available regarding what works best and what does not succeed as well. The OCMP, through the Ohio EPA and ODNR, will use the best information available to guide such efforts and will support and contribute to ongoing and additional assesssments that increase the quality of the data available and improve decision making.

ODNR will not mandate education of local zoning officials, but will encourage and facilitate it. The issues of developing nonpoint source control programs and additional enforceable authorities generally were addressed in response to written comment #27 (Coast Alliance). Public access, nonstructural erosion control, and consistency review for energy facility use changes were also addressed in previous responses.

Additional development of recreational opportunities within natural areas must be based upon appropriateness for each preserve on a case-by-case basis. ODNR is required by law to manage the state nature preserve system primarily in order to protect and manage outstanding examples of Ohio's natural heritage. ODNR develops a mangement plan for each preserve, and provides for recreation within it to the extent that it is consistent with furthering that charge. Development of an up-to-date inventory is a priority initiative within ODNR's Strategic Action Plan for Coastal Management. Oil and natural gas development in the coastal area is not currently prohibited under Ohio law, but adequate authority exists to regulate this activity.

NOAA responded at the hearing that an additional 30 days would be provided for public review and comment on the FEIS.

ORAL COMMENT #12: J. W. COWDEN, DEIS PUBLIC HEARING TESTIMONY, CLEVELAND, OHIO, October 2, 1996

Summary of Testimony:

I agree with Edith Chase's testimony in its entirety. The document is an excellent and comprehensive background paper. I'm hesitant to be critical because I'm concerned that it has already been delayed too often by scare tactics. I have a lot of concern about coordination among various agencies. ODNR has not participated actively enough in the RAP (Remedial Action Plans for designated Areas of Concern) process. And I'm concerned about the lack of public involvement in this plan. There are various kinds of public participation. I hope that provision will be made for public involvement, along with coordination with the various agencies.

Water quality aspects concern me, because protection from pollutants is left up to individual knowledge. Resolution of interagency conflict is a problem, more with the state agencies than with state/federal. Also, with regard to the resource inventory recommended by ODNR's strategic plan, if we don't already know what's wrong in the coastal area, the agency ought to get with the environmental organizations who can provide a list.

Response to Comments:

Comment noted. No change required. Extensive public comment has been conducted throughout the twenty year process for developing the OCMP, as described in detail in Chapters 2, 3, 4 and 11 of the draft document and DEIS. OCRMP has been involved directly, and has had a member represented on the Coastal Resources Advisory Council (CRAC) for many years. ODNR fully intends to further cooperate and coordinate with the Remedial Action Plan development and implementation process following program development.

Extensive water quality regulations consistent with the federal Clean Water Act are administered by the State of Ohio. The development of a detailed state consistency process and establishment of coordinating entities is intended to improve coordination among agencies. The CRAC will be used more actively as OCMP moves into implementation, and ad hoc advisory groups will be formed and used pertaining to various issues as they have been for addressing coastal erosion area management.

ODNR's development of coastal resources inventories will incorporate existing information from local communities and environmental organizations, as necessary and appropriate. Geographically referenced inventories will be developed, but must begin with an assessment of what inventories exist already.

ORAL COMMENT #13: MARY WOOD, PRIVATE LAKEFRONT PROPERTY OWNER, DEIS PUBLIC HEARING TESTIMONY, CLEVELAND, OHIO, October 2, 1996

Summary of Comments:

I want to reiterate the concern that committees who draft these programs take years to come up with them and then we, the landowners, are given a few months to respond. There should be a different method, other than using legal notices in the newspaper, for notifying the public about hearings.

Response to Comments:

Comment noted. No change required. Developing Ohio's coastal erosion management policies, including erosion mapping and regulating new development in identified erosion areas, has been an understandably complex and lengthy undertaking. This is addressed in detail within Chapter 11 of the program document.

It is true that publication of the draft program document and DEIS has taken three years in addition to what was originally anticipated when the 1992 draft was published. ODNR embarked upon a process of reassessing methods for coastal erosion mapping in 1993. This was in direct response to issues raised by private property owners regarding coastal erosion area rules, maps and policies. That led to amendments to Ohio's Coastal Management Law in 1994, as negotiated with property owners, local governments and their representatives over a period of approximately nine months. The subsequent two year-long process involved the revision of administrative rules and mapping based upon those mutually-agreed-to changes in the law. During that two years, extensive consultation occurred with property owners, local governments and their representatives, as described in previous responses to comments on the DEIS. There have been no major substantive changes compared to the public review draft presented in 1992, other than incorporating revisions in response to public comments, updating various agency statutory and regulatory citations, and including NOAA's draft environmental impact statement.

The procedures for public notification are clearly prescribed in the Ohio Coastal Management Law (O.R.C. Chapter 1506) and in the state's administrative procedures statute, O.R.C. Chapter 119. However, ODNR went beyond the requirements of both state and federal law by directly distributing the draft OCMP document and DEIS itself to nearly 200 individuals and organizations. It was also made available in public libraries and governmental offices throughout the coastal area and in Columbus.

ORAL COMMENT #14: MALCOLM WOOD, DEIS PUBLIC HEARING TESTIMONY, CLEVELAND, OHIO, October 2, 1996

Summary of testimony:

There was not enough time to review and comment on the document. I hold ODNR directly responsible for exacerbating erosion on Lake Erie. Chapter 5, page 5, the fourth and last paragraphs prove this (as described in written comment #4). In Chapter 11, page 11, ODNR makes the statement that the erosion working group consented to what ODNR was writing in the way of rules revisions. This is false. At least two letters were sent objecting to the conclusions. Perhaps someone else should do this because ODNR cannot be depended upon to get its facts straight.

Will ODNR promise to use Section 306 funds for low-cost construction? If not, why not? Some of the defined coastal areas contain land used for other activities than that specified by federal regulations. Why?

Regarding Chapter 4, page 26, it needs to be detailed a great deal more. If the procedures are changed by information generated, how can they meet the criterion of being consistent? If ODNR puts each project through a review and comment period, how can there be consistency? If you are clearly thinking, you do something the same way each time and not say we'll decide when we take a look at it. How will the coordination procedure (page 27) simplify the process for obtaining a permit when more offices are involved? And on page 29, does this mean any license, permit or approval must be approved by ODNR and require an additional 30 days wait? In Chapter 11, page 6 ODNR addresses the understaffing issue, and it seems to me they spend so much time trying to get rules issued, the department has been reluctant to get involved with current issues. And they invest more than enough personnel in going to public hearings. They have six staff in attendance at this hearing. In addition, there has been no cost benefit analysis to justify adoption of this program. The only specific has been the need to receive $800,000 from the federal government. Other benefits have been couched in potential, conditional or parenthetical terms.

Response to Comments:

All of the commenter's questions and statements were addressed previously in response to his written comments (written comment #4).

ORAL COMMENT #15: KATHLEEN BARBER, CITIZEN, DEIS PUBLIC HEARING TESTIMONY, CLEVELAND, OHIO, October 2, 1996

Summary of Comments:

I have worked for many years to achieve a Coastal Management Program and think it is an important exercise. The proposed plan contains many important provisions to enhance protection of Ohio's coastal areas, but important issues remain. Briefly, there are five.

First, enforcement mechanisms are not clear. Who is responsible for what? One specific example is in the final identification of coastal erosion areas. It should be specified that any changes made by ODNR should be open for public review by the general public and not subject only to private negotiations.

Second, the wetlands protection provisions need to be significantly strengthened. Wetlands need to be defined in this plan. Mitigation is proving to be inadequate, and full restoration should be required. All diked wetlands should be re-integrated with the lake.

Third, solid, infectious and hazardous waste facilities should be absolutely prohibited in the coastal area, and in the larger watershed, landfills need better enforcement to prohibit leakage into Lake Erie tributaries.

Fourth, the State of Ohio should require training of local planning officials because they will make critical decisions about proposed developments that will affect adjacent property owners and the public, which is entitled to protection of its fragile and interdependent coastal resources. A model is the requirement for financial and investment training for county treasurers. Informed decision making at the local level is critical.

Fifth, control of nonpoint pollution is equally important. I understand a plan for this is being developed. I would simply urge serious attention to enforcement of realistic means of preventing or controlling such runoff.

Response to Comment:

Comment noted. No change required.

1. Each enforceable policy clearly states the statutory authorization and the governmental entity responsible for enforcing it. Regarding public review of changes ODNR makes in the process of making a final coastal erosion area designation, the procedure is very clearly and definitively prescribed in the Ohio Coastal Management Law (O.R.C. §1506.06). That law requires that ODNR allow property owners affected by ODNR's preliminary identification and by modifications to it to object. The law does not provide for broad public review and comment such as that recommended by the commentor. However, this is not to say that decisions or changes are based on "private negotiations." ODNR must rule on objections based upon verifiable evidence or documentation submitted by the objecting party. All information related to this process, including the preliminary identification and maps are public records.

2. See responses to item 5 of written comment #20 (Coast Alliance) and oral comment #11 (Brian Ulm) regarding wetlands.

3. ODNR does not agree that all waste disposal should be prohibited in the coastal area.

4. See response on this issue in response to oral comment #11.

5. Comment (regarding nonpoint pollution control noted.

ORAL COMMENT #16: LEE ANN STEIN, DEIS PUBLIC HEARING TESTIMONY, ASHTABULA, OHIO, October 3, 1996

Summary of Testimony:

I would like to see private property owners identified as affected interests in Part II, page 5-134. In addition, it should be noted in the same section that Canadian lakefront residents rent or lease their land from the Canadian government and that in the U.S. we buy and own the land.

Response to Comment:

Comment noted. The text on page 5-134 has been changed to reflect the first comment. The second comment recommends text that is more specific than required in the context.

ORAL COMMENT #17: TIM BOJANOWSKI, DEIS PUBLIC HEARING TESTIMONY, ASHTABULA, OHIO, October 3, 1996

Summary of Comments:

It is my position that ODNR should not adopt the plan as presently stated because there are flaws. You're supposed to determine if it meets federal consistency requirements. I believe those are primarily focused on consistency among state and local governments and federal agencies. The plan addresses primarily governmental interests and not the interests of individual land owners.

The federal government is going to give the state approximately $800,000 and the state is to implement and distribute that to local entities for projects that may be in their interest. There is no local or federal plan whereby an individual land owner can get funding for construction of erosion control structures. If the law's purpose is to require property owners to erect structures, then the government should assist the land owners. At current costs, the cost of building a home and constructing a control measure is prohibitive, thus foreclosing any development.

The state will spend a great deal of money to control things in the water on their property, but the individual is left out. We have to look at the majority of the people and those are private property owners. A key portion of the plan should direct money to the individual land owner. Now if federal or state money goes to private property owners, it must be without strings so that their land in effect remains theirs. They don't want the financial assistance to require them to turn over their land for public use. One of the great things about the shoreline is that a private property owner owns his property right to the water's edge, to walk on the beach without interference from other beach-goers. A little privacy is all they seek and they get that here. That should be key to both the federal and the Ohio plan.

The state plan is going to require a permit to construct a house or apartment unit in this area. Noticeably missing is a definition of a hardship. Now I have to go to the state as well as for all the other local permits. I have to submit plans and describe the erosion control measure. Now you cannot just build a house and say to the builder I don't care what plans you use. Now you're going to have to pay extra money to get permits and get an engineering design for a structure in the water. It's not affordable. So is the director going to say that is a hardship? Definition of hardship must be placed in O.A.C. 1501-6-21.

The document says that it will be a benefit. How? It will establish a bureaucracy to set up a zone, manage it and enforce rules and regulations. But it does not address the underlying problem, which is how to prevent erosion. Do you prevent erosion by moving buildings back? No.

As you gentleman know, the I.J.C. issued a levels reference study in 1993. That report indicated that land control management measures will not affect the erosive qualities of Lake Erie. The problems are not associated with setback but with trying to control things occurring that are causing erosive activity. The I.J.C. report recommended reducing Lake Erie's level. Reducing the lake level will help with the erosive effects. We who live on the lake know that erosive activities fluctuate with the seasons. We also know that when the level is high, erosion is severe and storms cause real problems. Lake Erie has been above its mean level for 10 to 15 years.

If we have several drought periods and the lake does not go down, then something is going on that's retaining water. Did the I.J.C. think of that? You bet and they said let's take care of the problem. They said let's remove the Niagara River constrictions, we'll pay $1.6 million to do it and that will help reduce Lake Erie's level. Would we as land owners rather see two years of bureaucratic management moving property back or would we rather see the money spent to open up the Niagara River and reduce the lake level. I bet the majority of property owners would rather see the level reduced.

We know that since the 1950s the beaches have been lost. This is not something that has not been studied. The 1925 Freeman report recommended lake level management and actual techniques used today to regulate lake levels. We have a problem now with water being retained in Lake Superior due to construction of several locks up there. What are they going to do with that water? It's going to have to come down. When it comes down, we're already up 13 inches. We're going to have even more and it's going to sit here.

The bottom line is one factor would be to reduce lake levels. Many others have been discussed. We also know that increased shipping has resulted in greater draft depths being needed. Every inch of draft depth amounts to hundreds of thousands of dollars of profit every year. Keeping water levels high is in their best interests, as it is for hydro-electric power interests. It behooves the federal and state governments to assure that the citizens of this state who live on the shoreline have their property protected and not over managed to the point it amounts to a taking.

Response to Comment:

Comment noted. No change required. The issue of appropriateness and legality of providing funding for private property owners to construct erosion control measures was addressed in response to written comment #11 (Roger Alexander), item #4. In addition, state law does not allow for expenditure of taxpayer dollars for purposes of protecting private property. With respect to laws and programs that benefit agencies and the agencies' actions to protect "their own property," it should be clarified that those agencies' actions in that regard are conducted for purposes of protecting public properties and Lake Erie as a public trust property and the benefits that accrue to all citizens from use and enjoyment of those public trust lands and waters. The purpose is not to benefit the agency itself.

ODNR's ownership of state park lands, natural areas and wildlife areas as well as the state's ownership of Lake Erie waters and submerged lands, as proprietor in trust for the people of Ohio, is to provide for recreational and other public uses and protection of flora, fauna and natural features important to a sustainable coastal area ecosystem. This is in the interest of all who depend upon them including lakefront property owners and other private interests within the coastal area. The State of Ohio takes that stewardship role very seriously, and it is a significant cornerstone of the Ohio Coastal Management Program.

Response was provided regarding the hardship provision in response to written comment #27 (Coast Alliance), item # I.4.

Environmental consequences, including benefits, of the OCMP were clearly and specifically described in Part III, pages 22 through 27 of the OCMP draft document and DEIS.

Regarding the I.J.C. Levels Reference Study of 1993, it should be made clear that while recommending removal of specific fills in the Niagara River, the report rejected numerous other suggested water level regulation schemes. The report also recommended relocation of structures away from hazard areas, real estate disclosure requirements (citing Ohio's law), and erosion setbacks.

Considering the context of the comment regarding funding, it must also be remembered that the annual funding for the OCMP is to be provided and used to address the entire range of resource management issues and conflicts and not coastal erosion management alone. However, expenditure of funds to reduce Lake Erie water levels is outside the scope of the OCMP.

ORAL COMMENT #18: ANDREW BRANIK, DEIS PUBLIC HEARING TESTIMONY, ASHTABULA, OHIO, October 3, 1996

Summary of Comments:

I agree with what the gentleman said.

Response to Comments:

See response to oral comment #17.

ORAL COMMENT #19: LOU LEHMAN, DEIS PUBLIC HEARING TESTIMONY, ASHTABULA, OHIO, October 3, 1996

Summary of Comments:

Your book does recognize the high water problem. I agree with the comments in Section 5, page 134. Very little has been said about easing the high water levels. When they are extremely high we really need a safety valve. Section 3, page 9 also recognizes the fact that Erie is still a foot and a half high and I have the charts to bear that out.

Response to Comments:

Comment noted. No change required. For further discussion, see response to oral comment #17.

ORAL COMMENT #20: KEITH RADER, LAKEFRONT PROPERTY OWNER, DEIS PUBLIC HEARING TESTIMONY, ASHTABULA, OHIO, October 3, 1996

Summary of Comments:

I've studied the lake very closely. On September 20, it was 37 inches above the low water datum and 13 inches above the new long term average. The first 20 years of the century had no rainfall. Lake Superior is 21 inches above low water datum and 10 inches above its regulated level of 602 feet. When they repaired the Sault locks this summer, it restricted the outflow. If they open the locks now we'll be in deep trouble. We met with the Corps and were reminded that the ice will restrict outflows even more. The power companies are only required to let out 50,000 cfs when the average flow is 200,000, so three fourths of the water has no place to go. We ought to let more water out the Niagara and the Chicago diversion and shut down the Ogaki Long Lac.

Response to Comments:

Comment noted. No change required. For further discussion, see response to oral comment #17.

ORAL COMMENT #21: LEONARD EAMES, ASHTABULA PORT AUTHORITY MEMBER AND LAKEFRONT PROPERTY OWNER, DEIS PUBLIC HEARING TESTIMONY, ASHTABULA, OHIO, October 3, 1996

Summary of Comments:

I see a great deal of confusion in a number of areas for property owners and business owners, a lack of perspective from the City of Ashtabula and the port authority being involved in this since the 24th Street bridge is the boundary. I think that the boundaries may be a little out of control going south from the lakeshore. I would like to see more reference as to what role the health department is going to play with marinas and industrial groups along the river if it's included in the CMP, and I'm not sure it should go to the 24th Street bridge.

As a resident I think the 30 year setback is a hardship to ask somebody to move their house or not build close to the shore and I want to know who is going to make the determination on sites. Since the Corps doesn't come out and look at the site for erosion control, who is going to be coming out and making the decision of whether or not the property owner is allowed? Also, there is no mention of drainage; erosion is partly because ditches are not kept clean and the water is not allowed to go into the natural feeder streams that were there before roads and developments take place.

Response to Comments:

The Ohio Department of Health's and health districts' authorities and responsibilities with respect to marinas are explained in Chapter, Policy 32 on page 5-119. The rationale for establishing boundaries of the coastal area for purposes of the program are described in Chapter 3 of the program document. No changes are proposed for the coastal area boundary on the lower Ashtabula River.

The requirement for a permit for new construction within coastal erosion areas does not constitute a setback or a requirement that houses be moved or that building not occur (refer to Chapter 5, Policy 1). Regarding enforcement, ODNR's Division of Real Estate and Land Management will be responsible as explained in Chapter 4 of the OCMP draft document. The divisions of Geological Survey and Engineering make site visits and provide technical assistance regarding site-specific erosion problems and methods of addressing them.

With respect to drainage, the Ohio Coastal Management Law specifically defines coastal erosion areas as "the land areas anticipated to be lost to *Lake Erie-related* erosion . . . ." ODNR does, however, recognize the impacts that urban stormwater changes have had upon the lakeshore. This element will therefore be addressed within the context of both the development of the updated state nonpoint source pollution control program and the urban streams protection program that is a high priority initiative within ODNR's Strategic Action Plan for Coastal Management.

# United States Department of Commerce

# Combined Coastal Management Program and Final Environmental Impact Statement for the State of Ohio

## Volume II Appendices

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STATE OF OHIO COASTAL MANAGEMENT PROGRAM AND
DRAFT ENVIRONMENTAL IMPACT STATEMENT

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# APPENDIX A

## DESCRIPTION OF THE INLAND BOUNDARY OF THE COASTAL AREA[1]

**Lucas and Wood Counties**

Commencing at the intersection of Hagman Road and the Ohio-Michigan state line and proceeding south on Hagman Road 3,000 feet;

Northeast from that point along a line to Suder Avenue at a point 1,000 feet south of the Ohio-Michigan state line;

South on Suder Avenue to Benore Road;

Northwest on Benore Road to Matzinger Road;

Southwest on Matzinger Road to Stickney Road and continuing along a line at the same compass heading to a point on Detroit Avenue about 2300 feet north of the center of the Ottawa River;

South on Detroit Avenue to I-75;

East on I-75 to Stickney Avenue;

North on Stickney Avenue 3,000 feet;

Northeast from that point along a line to the intersection of Ottawa River Drive and I-75;

East on Ottawa River Drive to 108th Street;

East on 108th Street to 290th Street;

South on 290th Street to Roseann Drive;

West on Roseann Drive to Allendale Drive and continue to Dahlia Drive;

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[1]Unless otherwise noted, the coastal area includes the entire rights-of-way of railroads and highways. The coastal area includes entire coastal erosion areas in their entirety (see Chapter 5, Policy 1) and moves landward, over time, in limited areas where necessary, with changes in the extent of coastal erosion areas (see Chapter 3).

South then west on Dahlia Drive and continue west on Northridge Drive to Suder Avenue;

South on Suder Avenue to Manhattan Boulevard;

West on Manhattan Boulevard to New York Avenue;

South on New York Avenue to Ontario Street;

Northeast on Ontario Street and continue on an extended line to Suder Avenue;

Southeast on Suder Avenue to Summit Street;

Southwest on Summit Street to Lafayette Street;

Northwest on Lafayette Street to Michigan Street;

Southwest on Michigan Street to Nebraska Avenue;

West on Nebraska Avenue to Hawley Street;

South on Hawley Street to Conrail tracks;

West on Contrail tracks to Wayne Street;

Southwest on Wayne Street, which becomes State Route 2, to U.S. Route 24;

South on U.S. 24 to Arlington Avenue;

East on Arlington Avenue to Woodsdale Avenue;

North on Woodsdale Avenue to Nelson Avenue;

East on Nelson Avenue to Hampton Avenue;

North on Hampton Avenue to South Avenue;

East on South Avenue to Hiett Avenue;

North on Hiett Avenue to Western Avenue;

East on Western Avenue to Anthony Wayne Trail;

Northeast on Anthony Wayne Trail to Emerald Avenue;

East on Emerald Avenue to Broadway;

Northeast on Broadway to Knapp Street;

Southwest on a line parallel to the center thread of the Maumee River to intersection of Orchard Street and Broadway;

Southwest on Broadway, City of Toledo, to intersection of Glendale Avenue and Harvard Boulevard;

Southwest on River Road, City of Maumee, to Broadway, City of Maumee;

Southwest on Broadway, City of Maumee, to intersection of western corporate boundary of City of Maumee and South River Road;

Southwest on South River Road to Interstate Route 475;

Southeast on Interstate Route 475 into Wood County to Toledo-Grand Rapids Road (Rt. 65);

Northeast on Toledo-Grand Rapids Road to intersection of Front Street and southern corporate boundary of the City of Perrysburg;

Northeast on Front Street to northern corporate boundary of the City of Perrysburg;

Southeast on northern corporate boundary of City of the Perrysburg to Baltimore and Ohio Railroad tracks;

Northeast on Baltimore and Ohio Railroad tracks into Lucas County to the second set of Conrail tracks;

Northwest on Conrail tracks to Fassett Street;

West on Fassett Street to the Yondota Street;

North on Yondota Street to the Conrail tracks;

Northeast on the Conrail tracks to a line extended southwest from Front Street;

Northeast on line extended southwest from Front Street and on Front Street to Millard Avenue;

Southeast on Millard Avenue to Otter Creek Road;

Northeast on Otter Creek Road to Cedar Point Road;

East on Cedar Point Road to Norden Road;

South on Norden Road to Corduroy Road;

East on Corduroy Road to Yondota Road;

South on Yondota Road to Veler Road extended west;

East on Veler Road extended west and on Veler Road to Bono-Port Clinton Road (Route 2);

South on Bono-Port Clinton (Route 2) to Lucas-Sandusky County line;

**Ottawa County**

Continuing south on Route 2 from the Lucas-Ottawa County line and then east on Route 2 to Route 590;

South on Route 590 to the point common to Sections 22, 23, 26 and 27 of Benton Township;

East from that point along the section line to Benton-Carroll Road;

North on Benton-Carroll Road to midpoint of east boundary line of Section 24 of Benton Township;

East from that midpoint to Genzman Road;

East on Genzman Road and on Genzman Road extended east, to Carroll-Erie Road;

South on Carroll-Erie Road to Route 163;

West on Route 163 to Route 19;

South on Route 19 to Portage River South Road;

Southeast on Portage River South Road to Woodrick Road;

South on Woodrick Road to the Sandusky-Ottawa County line;

**Sandusky County**

East from Woodrick Road along the county line to Church Road;

South on Church Road to petroleum pipeline;

Southeast on pipeline to Route 53;

Southwest on Route 53 to Port Clinton Road;

South on Port Clinton Road to the Norfolk and Western Railroad tracks;

South on the Norfolk and Western Railroad tracks to the Norfolk and Western and Conrail tracks;

South on the Norfolk and Western and Conrail tracks to State Street;

East across the Sandusky River on East State Street to Sandusky Avenue;

Northeast on Sandusky Avenue to the Norfolk and Western Railroad Tracks;

Northeast on the Norfolk and Western Railroad tracks to North River Road;

North on North River Road to Kelley Road

East on Kelley Road to Werth Road;

North on Werth Road to North River Road;

East on North River Road to Gable Road;

Northeast on Gable Road to the petroleum pipeline;

Southeast on the pipeline to Route 6;

East on Route 6 to Erie-Sandusky County line;

**Erie County**

Continuing east on Route 6 from the Sandusky-Erie County line to McCartney Road;

East on McCartney Road to Route 6 (Venice Road);

East on U.S. Route 6 (Venice Road) to Edgewater Avenue;

North on Edgewater to Conrail tracks;

East on Conrail tracks to junction with Norfolk and Western tracks;

Northeast on Norfolk and Western tracks to intersection of a line extending west from Madison Street;

East to Madison Street and continue on Madison Street to Tiffin Avenue;

Northeast on Tiffin Avenue to Washington Street;

East on Washington Street to Meigs Street;

South on Meigs Street to First Street;

East on First Street to Farwell Street;

South on Farwell Street to intersection with U.S. Route 6 (Cleveland Rd.);

South on a straight line to intersection of Perkins Avenue and U.S. Route 250;

East on Perkins Avenue to intersection with Remington Avenue;

East on the Sandusky corporate boundary to intersection with U.S. Route 6;

East on U.S. Route 6 to Plum Brook flood hazard boundary;

South along the flood hazard boundary to Hull Road;

East on Hull Road to opposite Plum Brook flood hazard boundary;

North along flood hazard boundary to U.S. Route 6;

East on U.S. Route 6 to flood hazard boundary of Dildine Ditch;

South and then north along flood hazard boundary of Dildine Ditch to Route 6;

East on Route 6 to the intersection with Route 13 in Huron;

South on Route 13 to a point 4,500 feet south of the Scheid Road intersection;

East from that point along a line across the Huron River to River Road;

North on River Road to Route 6;

East on Route 6 to a point 100 feet west of the Berlin Township boundary;

South on a line parallel to the township boundary to a point 100 feet north of the Old Woman Creek National Estuarine Research Reserve (NERR) boundary;

West from that point on a line parallel to the NERR boundary to a point 100 feet west of the western NERR boundary;

South from that point on a line parallel to the western NERR boundary to Berlin Road;

Southeast on Berlin Road to its intersection with Darrow Road at the Berlin Township boundary;

South on township boundary to the intersection of Norfolk & Western Railway and Berlin Road;

East on Norfolk & Western Railway to Route 61;

North on Route 61 to Route 6;

Northeast on Route 6 to a point 0.8 mile east of Route 61;

South to Conrail tracks;

East to the Vermilion Township line;

North along the township boundary to Route 6;

East on Route 6 to Joppa Road;

South on Joppa Road to the Conrail tracks;

East on Conrail tracks to Poorman Road;

North on Poorman Road to Route 6;

East on Route 6 to West River Road;

Southeast on West River Road to the Erie-Lorain County line;

**Lorain County**

Continuing south on West River Road from the Erie-Lorain County line to Route 2;

East on Route 2 to Vermilion Road;

North on Vermilion Road to Route 6 (Cleveland-Sandusky Road);

East on Route 6 to Baumhart Road;

East along a straight line from intersection of Baumhart Road and Route 6 to intersection of the township line and Old Lake Road;

East along a straight line to intersection of Route 6 and Oak Point Road;

Southeast on Oak Point Road to Yorktown Road;

East on Yorktown Road to Longbrook Road;

North on Longbrook Road to Kolbe Road;

North on Kolbe Road to Beavercrest Drive;

West and north on Beavercrest Drive to Route 6;

East on Route 6 to the Baltimore and Ohio Railroad tracks;

Southeast on the Baltimore and Ohio Railroad tracks to Lake Terminal Railroad tracks;

East on Lake Terminal Railroad tracks to Lorain-Sheffield corporate boundary;

North on the corporate boundary to southern extension of Lake Breeze Road;

North on this extension to Route 611;

West and northwest on Route 611 to Colorado Boulevard;

Northwest on Colorado Boulevard to Route 6 (East Erie Avenue in Lorain);

East on Route 6 to intersection of Route 6 and Maine Avenue;

South on Maine Avenue to Cleveland Boulevard;

East on Cleveland Boulevard to Nebraska Avenue;

North on Nebraska Avenue to intersection of Route 6;

East on Route 6 (Lake Road in Avon Lake) to Lorain-Cuyahoga County line;

**Cuyahoga County**

Continuing east on Lake Road from the Lorain-Cuyahoga County line to Avalon Drive;

East on Avalon Drive to Beach Cliff Boulevard;

North, east and southeast on Beach Cliff Boulevard to Wooster Road;

South on Wooster Road to Rocky River Reservation boundary line;

South east and south on property line to Hilliard Boulevard;

East on Hilliard Boulevard to Riverside Drive;

North and northeast on Riverside Drive to Graber Drive;

Northwest on Graber Drive to Detroit Avenue;

Northwest on Rocky River Bridge approach to Sloane Avenue;

North on Sloane Avenue to Lake Road;

Northeast on Lake Road to Webb Road;

North on Webb Road to Edgewater Drive;

East on Edgewater Drive to where it dead-ends;

East along a straight line across Kenneth Drive, Maple Cliff, Erie Cliff, and Forest Cliff to intersection of Summit Avenue and Edgewater Drive;

East on Edgewater Drive until it dead-ends at Abbieshire;

South on Abbieshire to Lake Avenue;

East on Lake Avenue to eastern edge of Lakewood Park;

North to Edgewater Drive;

East on Edgewater Drive to Nicholson Avenue;

South on Nicholson Avenue to Lake Avenue;

East on Lake Avenue to Cove Avenue;

North on Cove Avenue to Edgewater Drive;

East on Edgewater Drive to Cleveland Memorial Shoreway;

East on Cleveland Memorial Shoreway to West 28th Street;

North on West 28th Street to Division Street;

West on Division Street to River Road;

Northeast on River Road to Elm Road;

Southeast on Elm Road to Riverbed Road;

South on Riverbed Road to the Conrail tracks;

East on the Conrail tracks to the Baltimore and Ohio Railroad tracks;

South on the Baltimore and Ohio Railroad tracks to Harvard Avenue;

East on Harvard Avenue to the Newburgh and South Shore (N&SS) Railroad tracks;

North on N&SS Railroad tracks to the Baltimore and Ohio Railroad tracks;

North on the Baltimore and Ohio Railroad tracks to Canal Road;

North on Canal Road to the Norfolk and Western Railroad tracks;

North on the Norfolk and Western Railroad tracks to Cleveland Memorial Shoreway;

Northeast on Cleveland Memorial Shoreway to Conrail tracks;

Northeast on the Conrail tracks to East 99th Street;

North on East 99th Street to Lake Shore Boulevard;

Northeast on Lake Shore Boulevard to Cuyahoga-Lake County line;

**Lake County**

Continuing northeast on Lake Shore Boulevard to East Shore Boulevard;

Northeast on East Shore Boulevard to Minnewana Road;

Northeast on Minnewana Road to the corporate boundary of the City of Eastlake;

East on Eastlake corporate boundary to Erie Road;

South on Erie Road to Lake Shore Boulevard;

Northeast on Lake Shore Boulevard to Forest Road;

North on Forest Road to Portage Drive;

East on Portage Drive to Lake Shore Boulevard;

Northeast on Lake Shore Boulevard to intersection of Lake Shore Boulevard and a lane 750 feet east to Traymore Boulevard;

East along a straight line from intersection of Lake Shore Boulevard and a lane 750 feet east of Traymore Boulevard to intersection of Lake Shore Boulevard and Beachview Road;

North on Beachview Road to a point 200 feet south of the shore – parallel portion of Beachview Road;

East to Eaglewood Drive on a line 200 feet south of and parallel to the portion of Beachview Road that turns northeast;

South on Eaglewood Drive to Lake Shore Boulevard;

Northeast on Lake Shore Boulevard to Orchard Road;

North on Orchard Road to a point 200 feet south of Sunset Drive;

East along a straight line to intersection of Thunderbird Drive and Reynolds Road;

North on Reynolds Road to Salida Road;

Northeast on Salida Road to Andrews Road;

North on Andrews Road to Route 283;

East on Route 283 for 0.2 mile to 600 foot contour line west of a small unnamed tributary;

600-foot contour line around the unnamed tributary back to Route 283;

Route 283 east to 600-foot contour line west of a second small unnamed tributary;

600-foot contour line around the unnamed tributary back to Route 283;

East on Route 283 past Hopkins Road to 600 foot contour line;

600-foot contour line around Marsh and Heisley Creeks to Route 283;

East on Route 283 to Route 535;

Northwest on Route 535 to Stanford Street;

East on Stanford Street to Skinner Avenue;

North on Skinner Avenue to St. Clair Street;

West on St. Clair Street to East Street;

South on East Street to High Street;

Northwest on High Street to 4th Street;

East on 4th Street to Eagle Street;

North on Eagle Street to 2nd Street;

East on 2nd Street and 2nd Street extended east to the Fairport, Painesville and Eastern (FP&E) tracks;

East on FP&E Railroad tracks to Perry Park Road;

North on Perry Park Road to Parmly Road;

East on Parmly Road to power lines;

Northeast on power lines to eastern property line for the Perry Power Plant;

North on the eastern property line of the Perry Power Plant to Lockwood Road;

East on Lockwood Road to McMackin Road;

North on McMackin Road to Chapel Road;

East on Chapel Road to Homestead Road;

North and east on Homestead Road to East Tuttle Park Road;

North on East Tuttle Park Road to Northway Drive;

East on Northway Drive to Sandgate Road;

North on Sandgate Road to Shore Drive;

East on Shore Drive to Dunbar Road;

South on Dunbar Road to Berwick Street;

East on Berwick Street to Travers Road;

North on Travers Road to Devon Street;

East on Devon Street to Redbird Road;

North on Redbird Road to Lake Road;

Northeast on Lake Road to Bennett Road;

North on Bennett Road to Lake Road;

East on Lake Road to Dock Road;

South on Dock Road to Vrooman Road;

East on Vrooman Road to County Line Road;

North on County Line Road to Lake Road and the Lake-Ashtabula County line;

**Ashtabula County**

Continuing east on Lake Road from the Lake-Ashtabula County line to Geneva State Park boundary;

South and east then north on Geneva State Park boundary to the Village line;

East on the Village line to the Geneva State Park boundary;

South, then east on the Geneva State Park boundary to Route 534;

North on Route 534 to Route 531;

East on Route 531 to a point where Route 531 turns north;

Northeast on a line form point where Route 531 turns north to intersection of Route 531 and Lakegrove Avenue;

East then north on Route 531 to the point where it crosses an unnamed stream;

East from the point where Route 531 crosses the unnamed stream on a straight line 200 feet south of and parallel to Route 531 and Nineveh Road;

North on Nineveh Road to Lake Road in Ashtabula;

East on Lake Road to West 9th Street;

East on West 9th Street to Conrail tracks;

South on Conrail tracks to Lake Avenue in Ashtabula;

Southeast on Lake Avenue to West 24th Street;

Northeast on West 24th Street to Harbor Avenue;

North on Harbor Avenue to Conrail tracks;

North on Conrail tracks to East 6th Street;

East on East 6th Street to Lake Road;

East on Lake Road to State Road;

South on State Road 200 feet;

Northeast on a line parallel to and 200 feet south of Lake Road to Route 193;

North on Route 193 to Lake Road;

East on Lake Road to Regal Drive;

South on Regal Drive 200 feet;

Northeast on a line parallel to and 200 feet south of Lake Road to Glenwood Road;

North on Glenwood Road to Lake Road;

East on Lake Road to Lake Avenue in Conneaut;

East on Lake Avenue to the Bessemer and Lake Erie (B&LE) Railroad tracks;

South on B&LE Railroad to Conrail tracks;

East on Conrail tracks to Ohio-Pennsylvania state line.

# APPENDIX B


Map 1 Western Lucas and Wood Counties

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Map 3 Western Ottawa County

Map 4 Eastern Ottawa County

Map 5 Sandusky County

Map 6 Western Erie County

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# CHAPTER 1506

## Coastal Management

**Section**

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PENALTIES

1506.99 Penalties

**Cross References**

Natural resources department, engineering division, duties of chief engineer, 1507.01

Shore erosion, beach structure permits, 1507.04

**Law Review and Journal Commentaries**

Achieving Environmental Protection in a High-Performance Economy: A Great Lakes Perspective, Christena L. Bach and Jeffrey Edstrom. 26 U Tol L Rev 305 (Winter 1995).

The Ecosystem Approach to Managing the Great Lakes: The New Ideas and Problems Associated with Implementing Them, W. J. Christie. 26 U Tol L Rev 279 (Winter 1995).

The Great Lakes: Transboundary Issues for the Mid-90s, Leonard B. Dworsky, Albert E. Utton and David J. Allee. 26 U Tol L Rev 347 (Winter 1995).

Great Lakes Water Quality From a Fisheries Perspective, Brian T. Schurter. 26 U Tol L Rev 467 (Winter 1995).

New Directions for Great Lakes Management: The Vision of the Council of Great Lakes Industries, Grace Weaver and Paul Tippett. 26 U Tol L Rev 271 (Winter 1995).

Riverboat Gambling in the Great Lakes Region: A Pot of Gold at the End of the Rainbow or Merely "Fool's Gold"?, Lori Chapman. 26 U Tol L Rev 387 (Winter 1995).

## COASTAL MANAGEMENT PROGRAM

### 1506.01 Definitions

As used in this chapter:

(A) "Coastal area" means the waters of Lake Erie, the islands in the lake, and the lands under and adjacent to the lake, including transitional areas, wetlands, and beaches. The coastal area extends in Lake Erie to the international boundary line between the United States and Canada and landward only to the extent necessary to include shorelands, the uses of which have a direct and significant impact on coastal waters as determined by the director of natural resources.

(B) "Coastal management program" means the comprehensive action of the state and its political subdivisions cooperatively to preserve, protect, develop, restore, or enhance the resources of the coastal area and to ensure wise use of the land and water resources of the coastal area, giving attention to natural, cultural, historic, and aesthetic values; agricultural, recreational, energy, and economic needs; and the national interest. "Coastal management program" includes the establishment of objectives, policies, standards, and criteria concerning, without limitation, protection of air, water, wildlife, rare and endangered species, wetlands and natural areas, and other natural resources in the coastal area; management of coastal development and redevelopment; preservation and restoration of historic, cultural, and aesthetic coastal features; and public access to the coastal area for recreation purposes.

(C) "Coastal management program document" means a comprehensive statement consisting of, without limitation, text, maps, and illustrations that is adopted by the director in accordance with this chapter, describes the objectives, policies, standards, and criteria of the coastal management program for guiding public and private uses of lands and waters in the coastal area, lists the governmental agencies, including, without limitation, state agencies, involved in implementing the coastal management program, describes their applicable policies and programs, and cites the statutes and rules under which they may adopt and implement those policies and programs.

(D) "Person" means any agency of this state, any political subdivision of this state or of the United States, and any legal entity defined as a person under section 1.59 of the Revised Code.

(E) "Director" means the director of natural resources or the director's designee.

(F) "Permanent structure" means any residential, commercial, industrial, institutional, or agricultural building, any manufactured home as defined in section 4501.01 of the Revised Code, and any septic system that receives sewage from a single-family, two-family, or three-family dwelling, but does not include any recreational vehicle as defined in section 4501.01 of the Revised Code.

(G) "State agency" or "agency of the state" has the same meaning as "agency" as defined in section 111.15 of the Revised Code.

(H) "Coastal flood hazard area" means any territory within the coastal area that has been identified as a flood hazard area under the "Flood Disaster Protection Act of 1973," 87 Stat. 975, 42 U.S.C.A. 4002, as amended.

(I) "Coastal erosion area" means any territory included in Lake Erie coastal erosion areas identified by the director under section 1506.06 of the Revised Code.

(1996 H 119, eff. 5-8-96; 1988 S 70, eff. 3-15-89)

**Library References**

Health and Environment ⚷25.5(4).
WESTLAW Topic No. 199.

C.J.S. Health and Environment §§ 91, 130, 132.

**Notes of Decisions and Opinions**

**Littoral, construed 1**

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**1. Littoral, construed**

Judgment that set forth an undefined, overlapping, and unsupported littoral "zone" was unreasonable, arbitrary, and unconscionable. Lemley v. Stevenson (Erie 1995) 104 Ohio App.3d 126, 661 N.E.2d 237.

"Littoral rights" are those ownership rights of property owner whose land abuts lake to the use and enjoyment of waters of and land underlying lake. Lemley v. Stevenson (Erie 1995) 104 Ohio App.3d 126, 661 N.E.2d 237.

## 1506.02 Duties of director of natural resources; coastal management program document to be developed; cooperation from other agencies; grant program

(A) The department of natural resources is hereby designated the lead agency for the development and implementation of a coastal management program. The director of natural resources:

(1) Shall develop and adopt the coastal management program document no later than December 31, 1994. The director shall cooperate and coordinate with other agencies of the state and its political subdivisions in the development of the document. Before adopting the document, the director shall hold four public hearings on it in the coastal area, and may hold additional public meetings, to give the public the opportunity to make comments and recommendations concerning its terms. The director shall consider the public comments and recommendations before adopting the document. The director may amend the coastal management program document, provided that, prior to making

changes in it, the director notifies by mail those persons who submitted comments and recommendations concerning the original document and appropriate agencies of the state and its political subdivisions. The director may hold at least one public hearing on the proposed changes.

(2) Shall administer the coastal management program in accordance with the coastal management program document, this chapter, and rules adopted under it;

(3) Shall adopt and may amend or rescind rules under Chapter 119. of the Revised Code for the implementation, administration, and enforcement of the coastal management program and the other provisions of this chapter. Before the adoption, amendment, or rescission of rules under this division, the director shall do all of the following:

(a) Maintain a list of interested public and private organizations and mail notice to those organizations of any proposed rule or amendment to or rescission of a rule at least thirty days before any public hearing on the proposal;

(b) Mail a copy of each proposed rule, amendment, or rescission to any person who requests a copy within five days after receipt of the request;

(c) Consult with appropriate statewide organizations and units of local government that would be affected by the proposed rule, amendment, or rescission. Although the director is expected to discharge these duties diligently, failure to mail any notice or copy or to so consult with any person is not jurisdictional and shall not be construed to invalidate any proceeding or action of the director.

(4) Shall provide for consultation and coordination between and among state agencies, political subdivisions of the state, and interstate, regional, areawide, and federal agencies in carrying out the purposes of the coastal management program and the other provisions of this chapter;

(5) Shall, to the extent practicable and consistent with the protection of coastal area resources, coordinate the rules and policies of the department of natural resources with the rules and policies of other state and federal agencies to simplify and consolidate the regulation of activities along the Lake Erie shoreline;

(6) May, to accomplish the purposes of the coastal management program and the other provisions of this chapter, contract with any person and may accept and expend gifts, bequests, and grants of money or property from any person.

(B) Every agency of the state, upon request of the director, shall cooperate with the department of natural resources in the implementation of the coastal management program.

(C) The director shall establish a coastal management assistance grant program. Grants may be awarded from federal funds received for that purpose and from such other funds as may be provided by law to any municipal corporation, county, township, park district created under section 511.18 or 1545.04 of the Revised Code, conservancy district established under Chapter 6101. of the Revised Code, port authority, other political subdivision, state agency, educational institution, or nonprofit corporation that is located in whole or in part in the coastal area to help implement, administer, or enforce any aspect of the

coastal management program. Grants may be used for any of the following purposes:

(1) Feasibility studies and engineering reports for projects that are consistent with the policies in the coastal management program document;

(2) The protection and preservation of wetlands, beaches, fish and wildlife habitats, minerals, natural areas, prime agricultural land, endangered plant and animal species, or other significant natural coastal resources;

(3) The management of shoreline development to prevent loss of life and property in coastal flood hazard areas and coastal erosion areas, to set priorities for water-dependent energy, commercial, industrial, agricultural, and recreational uses, or to identify environmentally acceptable sites for dredge spoil disposal;

(4) Increasing public access to Lake Erie and other public places in the coastal area;

(5) The protection and preservation of historical, cultural, or aesthetic coastal resources;

(6) Improving the predictability and efficiency of governmental decision making related to coastal area management;

(7) Adopting, administering, and enforcing zoning ordinances or resolutions relating to coastal flood hazard areas or coastal erosion areas;

(8) The redevelopment of deteriorating and underutilized waterfronts and ports;

(9) Other purposes approved by the director.

(1996 H 119, eff. 5-8-96; 1994 S 182, eff. 10-20-94; 1988 S 70, eff. 3-15-89)

**Uncodified Law**

1996 H 119, § 3, eff. 5-8-96, reads: Any rule adopted under division (A)(3) of section 1506.02 of the Revised Code shall remain in effect for not more than six years after the effective date of the rule.

**Ohio Administrative Code References**

Definitions and determinations, erosion hazard areas, OAC 1501-6-10 to 1501-6-14
Floodplain management, OAC Ch 1501:22-1
Rules for leasing of Lake Erie submerged lands, OAC Ch 1501-6

**Library References**

Health and Environment ⟹25.5(4).
WESTLAW Topic No. 199.
C.J.S. Health and Environment §§ 91, 130, 132.

## 1506.021 Effectiveness of rules

Any rule adopted under division (A)(3) of section 1506.02 of the Revised Code shall remain in effect for not more than six years after the effective date of the rule.

(1996 H 119, § 3, eff. 5-8-96)

## 1506.03 Determination of consistency with coastal management program document

Except as otherwise provided in this section, no project or activity directly affecting the coastal area that is proposed by or subject to the approval of any agency of the state shall be implemented or approved until the director of natural resources has determined that it is consistent with the policies in the coastal management program document. Any agency of the state may develop and adopt a statement of coastal management policies, in which case a determination of consistency shall not be required under this section if the statement of coastal management policies has been approved by the director and the project or activity is in accordance with that statement.

(1994 S 182, eff. 10-20-94; 1988 S 70, eff. 3-15-89)

## 1506.04 Participation in national flood insurance program or adoption of resolutions exceeding program standards; action for noncompliance

(A) No later than six months after the effective date of this section, each county or municipal corporation within whose jurisdiction is a coastal flood hazard area shall either participate in and remain in compliance with the national flood insurance program established in the "Flood Disaster Protection Act of 1973," 87 Stat. 975, 42 U.S.C.A. 4002, as amended, or shall adopt resolutions or ordinances governing the coastal flood hazard area that meet or exceed the standards required for participation in the regular phase of the national flood insurance program.

(B) If the director of natural resources determines at any time that a county or municipal corporation that is participating in the national flood insurance program as described in division (A) of this section or has adopted resolutions or ordinances under that division is not in compliance with that program or those resolutions or ordinances, as applicable, he shall so notify the legislative authority of the county or municipal corporation and shall also notify the legislative authority that it may respond to his determination in accordance with the procedure for doing so established by rules adopted under section 1506.02 of the Revised Code. If after considering the legislative authority's response the director determines that the county or municipal corporation is still not in compliance with the national flood insurance program or resolutions or ordinances adopted under division (A) of this section, as applicable, he may request the attorney general in writing to, and the attorney general shall, bring an action for appropriate relief in a court of competent jurisdiction against the county or municipal corporation.

(C) The attorney general, upon the written request of the director, shall bring an action for appropriate relief in a court of competent jurisdiction against any development that meets both of the following criteria:

(1) Is located in a county or municipal corporation that is not in compliance with division (A) of this section;

(2) Is not in compliance with the standards of the national flood insurance program established in the "Flood Disaster Protection Act of 1973," 87 Stat. 975, 42 U.S.C.A. 4002, as amended.

As used in this division, "development" means any artificial change to improved or unimproved real estate, including, without limitation, the construction of buildings and other structures and mining, dredging, filling, grading, paving, excavation, and drilling operations.

(D) This section does not apply to any permits or approvals issued by any state agency prior to the effective date of rules adopted under section 1506.02 of the Revised Code for the implementation of this section.

(1988 S 70, eff. 3-15-89)

### Cross References

Attorney general to represent state departments and institutions, 109.02
County commissioners, construction in flood hazard areas and erosion hazard areas, 307.37
Fire insurance companies, authorized fields of insurance, 3925.34
Mutual protective insurance upon property, scope of business, 3939.01
Water division, floodplain management, 1521.13

### Ohio Administrative Code References

Floodplain management, OAC Ch 1501:22-1

### Library References

OJur 3d: 10, Buildings, Zoning, and Land Controls § 358

## 1506.05 Inventory of public access facilities and areas for Lake Erie shoreline

The director of natural resources shall prepare and maintain a current inventory of public access facilities and areas for the Ohio shoreline of Lake Erie, including, without limitation, shoreline parks, cultural resources, natural areas, wildlife refuges, harbors of refuge, boat launch ramps, shoreline fishing areas, and beaches. No later than December 31, 1994, the director shall evaluate public access to Lake Erie and may prepare and publish plans and policy recommendations as necessary for enhancing public access to Lake Erie. The director shall update any plans and policy recommendations at least once every five years. Every state agency and political subdivision, upon the director's request, shall cooperate with the director and furnish information for the public access inventory and any public access plans.

(1994 S 182, eff. 10-20-94; 1988 S 70, eff. 3-15-89)

### Cross References

Natural resources department, real estate and land management division, powers and duties, 1504.02

### Library References

Navigable Waters ⚷33.
WESTLAW Topic No. 270.
C.J.S. Navigable Waters § 60.

## 1506.06 Coastal erosion areas

(A) The director of natural resources, using the best available scientific records, data, and analyses of shoreline recession, shall make a preliminary identification of Lake Erie coastal erosion areas, which are the land areas anticipated to be lost by Lake Erie-related erosion within a thirty-year period if no additional approved erosion control measures are completed within that time. The preliminary identification shall state the bluff recession rates for the coastal erosion areas and shall take into account areas where substantial filling, protective measures, or naturally stable land has significantly reduced recession. Prior to making the preliminary identification, the director shall consult with the appropriate authority of each municipal corporation, county, and township having territory within an area that the director proposes to identify as a Lake Erie coastal erosion area. Upon making the preliminary identification, the director shall notify by certified mail the appropriate authority of each municipal corporation, county, and township having territory within a Lake Erie coastal erosion area of the preliminary identification. The notice shall delineate the portion of a Lake Erie coastal erosion area within the jurisdiction of, and shall be made available for public inspection by, the municipal corporation, county, or township. The director also shall publish a notice in a newspaper of general circulation in each affected locality stating that the preliminary identification has been made and stating where information delineating the Lake Erie coastal erosion areas may be inspected by the public and shall notify each landowner of record in a coastal erosion area of the preliminary identification. The notification shall be sent by certified mail to the landowner at the address indicated in the most recent tax duplicate. Within sixty days after the notifications required by this division, the director shall hold public hearings in each of the shoreline counties on the preliminary identification of the Lake Erie coastal erosion areas. Any affected municipal corporation, county, township, or private landowner may file with the director a written objection to the preliminary identification at any of those hearings or at any other time within one hundred twenty days from the date indicated in the certified mail notice, which date shall be one week following the date of the notice. For any such objection, verifiable evidence or documentation shall be submitted indicating that some portion of a Lake Erie coastal erosion area should not have been included in the areas defined by the preliminary identification. A municipal corporation, county, or township may object only with respect to territory within its jurisdiction or other territory that it owns; a private landowner may object only with respect to the landowner's land.

(B) The director shall review all objections filed under division (A) of this section. The director may then modify the preliminary identification of Lake Erie coastal erosion areas. Within the next ninety days, the director shall notify each objecting person of the director's decision regarding the objection. The director also shall notify, within that ninety-day period, any other owner for whom the director's decision results in a modification on that other owner's property.

(C) Whenever the preliminary identification of a Lake Erie coastal erosion area is modified as a result of an objection, the director shall so notify the affected municipal corporation, county, or township and shall publish a notice of the modification in a newspaper of general circulation in the affected local-

ity. Objections to modifications may be filed within sixty days of the newspaper notification required by this division or within sixty days of the date of the property owner's notification required by division (B) of this section, whichever is later, and shall be filed in the same manner as objections to the original preliminary identification. The director shall rule on each objection to a modification within sixty days after receiving it.

(D) After the director has ruled on each objection filed under division (B) or (C) of this section, the director shall make a final identification of the Lake Erie coastal erosion areas and shall notify by certified mail the appropriate authority of each affected municipal corporation, county, and township of the final identification. The final identification may be appealed under section 1506.08 of the Revised Code.

(E) At least once every ten years, the director shall review and may revise the identification of Lake Erie coastal erosion areas, taking into account any recent natural or artificially induced changes affecting anticipated recession. The review and revision shall be done in the same manner as that provided for original preliminary and final identification in this section.

(F) Any person who has received written notice under this section or section 5302.30 of the Revised Code that a parcel or any portion of a parcel of real property that the person owns has been included in a Lake Erie coastal erosion area identified under this section shall not sell or transfer any interest in that real property unless the person first provides written notice to the purchaser or grantee that the real property is included in a Lake Erie coastal erosion area. The written notice shall be provided in accordance with section 5302.30 of the Revised Code.

(G) No state agency, county, township, or municipal corporation, or any other political subdivision or special district in this state established by law shall use the fact that property has been identified as a Lake Erie coastal erosion area as a basis for any of the following:

(1) Failing to enter into or renew a lease or to issue or renew a permit under section 1506.11 of the Revised Code;

(2) Failing to issue or renew a permit required by law, other than a permit issued under section 1506.07 of the Revised Code;

(3) Taking private property for public use in the exercise of the power of eminent domain;

(4) Determining what constitutes just compensation for a taking of the property in the exercise of the power of eminent domain.

(1996 H 119, eff. 5-8-96; 1994 S 182, eff. 10-20-94; 1988 S 70, eff. 3-15-89)

**Cross References**

Shore erosion, permit and lease fund, 1507.05

**Ohio Administrative Code References**

Definitions and determinations, erosion hazard areas, OAC 1501-6-10 to 1501-6-14

**Library References**

Navigable Waters ⚷45.
WESTLAW Topic No. 270.
C.J.S. Navigable Waters § 86.

OJur 3d: 10, Buildings, Zoning, and Land Controls § 358

## 1506.07 Rulemaking powers; permits; stop work orders; resolutions or ordinances

(A) No later than December 31, 1994, the director of natural resources shall adopt, and may subsequently amend or rescind, rules in accordance with Chapter 119. of the Revised Code governing the erection, construction, and redevelopment of permanent structures in Lake Erie coastal erosion areas identified under section 1506.06 of the Revised Code and such other rules as are necessary to implement this section. The rules shall include, without limitation, a requirement that any person who intends to erect, construct, or redevelop any permanent structure in a Lake Erie coastal erosion area obtain a permit to do so from the director and requirements and procedures for the issuance of such permits, including, without limitation, a requirement that no later than thirty days after receiving a complete permit application, the director either shall notify the applicant that the application is approved or denied and, if denied, the reason for denial or shall notify the applicant of any modification necessary to qualify the application for approval and a requirement that each permit contain a reference to the volume and page of the deed record by which the current owner of the property to be improved obtained title to it.

The rules adopted under this division do not apply to the erection, construction, or redevelopment of a permanent structure for which a permit was issued or plan was approved by any state agency, political subdivision of this state, or federal agency prior to any of the following:

(1) The effective date of those rules;

(2) The date the director notifies each municipal corporation, county, and township of the final identification of the coastal erosion areas pursuant to section 1506.06 of the Revised Code;

(3) The date the director adopts the coastal management program document pursuant to section 1506.02 of the Revised Code.

(B) No person shall erect, construct, or redevelop a permanent structure on land within a Lake Erie coastal erosion area without a permit issued in accordance with rules adopted under division (A) of this section. The director shall grant a permit under those rules if the proposed site is protected by an effective erosion control measure approved by the director that will protect the permanent structure or if both of the following criteria are met:

(1) The structure will be movable or will be situated as far landward as applicable zoning resolutions or ordinances permit;

(2) The person seeking the authorization will suffer exceptional hardship if the authorization is not given.

The approval of an effective erosion control measure by the director for the purposes of this division does not create liability on the part of the director, the department of natural resources, or the state, municipal corporation, county,

or township regarding the future protection of the site for which the measure was approved.

The director shall not require a permit for the erection, construction, or redevelopment of a permanent structure on any parcel of property within a Lake Erie coastal erosion area if that property is not adjacent to Lake Erie.

(C) The director or his authorized representative may issue a stop work order whenever the director finds, after inspection, that any erection, construction, or redevelopment is being conducted within a Lake Erie coastal erosion area in violation of division (B) of this section.

(D) A permit granted by the director under division (B) of this section is not required within the territory of any county or municipal corporation that has adopted and is enforcing a Lake Erie coastal erosion area resolution or ordinance within its zoning or building regulations if the resolution or ordinance has been reviewed by the director under this division and meets or exceeds the standards established under division (B) of this section.

No later than thirty days after adopting, amending, or rescinding a Lake Erie coastal erosion area resolution or ordinance under this division, the legislative authority of the county or municipal corporation shall submit it to the director for review and comment. No later than thirty days after receiving the resolution or ordinance, the director shall notify the legislative authority that the resolution or ordinance does or does not meet or exceed the standards established under division (B) of this section. If it does, the director's notice also shall indicate that a permit granted by the director under division (B) of this section is not required within the territory of that county or municipal corporation. If the resolution or ordinance does not meet those standards, the legislative authority may submit a revised resolution or ordinance under this division until the director notifies the legislative authority that the resolution or ordinance meets those standards.

Beginning on the thirty-first day of January following the director's notice that the resolution or ordinance meets or exceeds the standards established under division (B) of this section, and every two years thereafter, the legislative authority shall submit to the director, on a form created by the department, a report of the county's or municipal corporation's relevant administrative and enforcement activities during the previous two calendar years.

If the director determines at any time that a Lake Erie coastal erosion area resolution or ordinance that the director has determined under this division meets or exceeds the standards established under division (B) of this section is being inadequately enforced, the director shall so notify the legislative authority that adopted it and also shall notify the legislative authority that it may respond to the director's determination in accordance with the procedure for doing so established by rules adopted under this section. If after considering the legislative authority's response the director determines that the resolution or ordinance still is being inadequately enforced, the director shall reinstate the permit requirement of division (B) of this section within the territory of the affected county or municipal corporation.

(1996 H 119, eff. 5-8-96; 1994 S 182, eff. 10-20-94; 1988 S 70, eff. 3-15-89)

**Cross References**

**Prohibition:** 1506.09

County commissioners, construction in flood hazard areas and erosion hazard areas, 307.37

Shore erosion, agreements with subdivisions for erosion projects; permit and lease fund, 1507.05

**Library References**

Navigable Waters ⚷38, 41.
WESTLAW Topic No. 270.

C.J.S. Navigable Waters §§ 69, 113, 114.

## 1506.08 Appellate procedure

Any person who is adversely affected by the final identification of a Lake Erie coastal erosion area under division (D) of section 1506.06 of the Revised Code or any other final administrative act of the director of natural resources under this chapter or who receives denial of a permit application under rules adopted under division (A) of section 1506.07 of the Revised Code, within thirty days after the identification, act, or denial, may appeal it in accordance with Chapter 119. of the Revised Code.

(1996 H 119, eff. 5-8-96; 1988 S 70, eff. 3-15-89)

## 1506.09 Prohibitions; injunctive relief; civil actions; penalties

(A)(1) No person shall violate or fail to comply with any provision of this chapter, any rule or order adopted or issued under it, or any condition of a permit issued in accordance with rules, resolutions, or ordinances adopted under it.

(2) The attorney general, upon written request of the director of natural resources, shall bring an action for an injunction against any person who has violated, is violating, or is threatening to violate division (A)(1) of this section.

(3) Any person who violates any provision of this chapter, any rule or order adopted or issued under it, or any condition of a permit issued in accordance with rules adopted under division (A) of section 1506.07 of the Revised Code shall, in addition to any fine that may be assessed under section 1506.99 of the Revised Code, be assessed a civil penalty of not more than five thousand dollars for each offense to be paid into the state treasury to the credit of the general revenue fund. Upon written request of the director, the attorney general shall commence an action against any such violator. Any action under this division is a civil action, governed by the Rules of Civil Procedure and other rules of practice and procedure applicable to civil actions.

(B) The prosecuting attorney of a county or the city director of law of a municipal corporation that has adopted a resolution or ordinance in accordance with division (D) of section 1506.07 of the Revised Code may, on behalf of that county or municipal corporation, respectively, bring a civil action against any person who violates that resolution or ordinance within the territory of that county or municipal corporation in the court of common pleas in the county in which the violation occurred. Any such violator may, in addition to any fine that may be assessed under section 1506.99 of the Revised Code, be assessed a civil penalty of not more than five thousand dollars for each offense

together with court costs. Any moneys recovered under this division shall be paid into the treasury of the appropriate county or municipal corporation. Any action under this division shall be governed by the Rules of Civil Procedure and other rules of practice and procedure applicable to civil actions.

(1988 S 70, eff. 3-15-89)

**Cross References**

**Penalty:** 1506.99

County prosecutor, legal advisor for township officers, 309.09

**Notes of Decisions and Opinions**

**Landowner's right of action 1**

**1. Landowner's right of action**

Landowners who presented no evidence of interference with reasonable use of water in front of property or inability to access navigable waters were not entitled to injunction that ordered removal of partially constructed breakwall. Lemley v. Stevenson (Erie 1995) 104 Ohio App.3d 126, 661 N.E.2d 237.

Landowners were entitled to injunction that ordered removal of a partially constructed breakwall on Lake Erie only upon demonstration of irreparable harm to their reasonable use of waters fronting their property and/or their right to access navigable waters of Lake Erie. Lemley v. Stevenson (Erie 1995) 104 Ohio App.3d 126, 661 N.E.2d 237.

Public trust doctrine and statutory procedure that permits state to lease submerged lands in waters of Lake Erie precluded trial court from permanently enjoining state from leasing submerged land along interested landowner's shoreline for purposes of erecting shore protection devices. Lemley v. Stevenson (Erie 1995) 104 Ohio App.3d 126, 661 N.E.2d 237.

## 1506.10 State's rights to waters of Lake Erie

It is hereby declared that the waters of Lake Erie consisting of the territory within the boundaries of the state, extending from the southerly shore of Lake Erie to the international boundary line between the United States and Canada, together with the soil beneath and their contents, do now belong and have always, since the organization of the state of Ohio, belonged to the state as proprietor in trust for the people of the state, for the public uses to which they may be adapted, subject to the powers of the United States government, to the public rights of navigation, water commerce, and fishery, and to the property rights of littoral owners, including the right to make reasonable use of the waters in front of or flowing past their lands. Any artificial encroachments by public or private littoral owners, which interfere with the free flow of commerce in navigable channels, whether in the form of wharves, piers, fills, or otherwise, beyond the natural shoreline of those waters, not expressly authorized by the general assembly, acting within its powers, or pursuant to section 1506.11 of the Revised Code, shall not be considered as having prejudiced the rights of the public in such domain. This section does not limit the right of the state to control, improve, or place aids to navigation in the other navigable waters of the state or the territory formerly covered thereby.

The department of natural resources is hereby designated as the state agency in all matters pertaining to the care, protection, and enforcement of the state's rights designated in this section.

Any order of the director of natural resources in any matter pertaining to the care, protection, and enforcement of the state's rights in that territory is a rule

or adjudication within the meaning of sections 119.01 to 119.13 of the Revised Code.

(1988 S 70, eff. 3-15-89)

### Historical and Statutory Notes

**Ed. Note:** 1506.10 is former 123.03, amended and recodified by 1988 S 70, eff. 3-15-89; 1973 S 174; 126 v 137; 1953 H 1; GC 3699-a.

### Cross References

Municipal corporations, sale or lease of property, rights of littoral or riparian owners, 721.10

Natural resources department, real estate and land management division, powers and duties, 1504.02

### Ohio Administrative Code References

Rules for leasing of Lake Erie submerged lands, OAC Ch 1501-6

### Library References

Navigable Waters ⚷36(1).
WESTLAW Topic No. 270.
C.J.S. Navigable Waters § 92.

OJur 3d: 19, Counties, Townships, and Municipal Corporations § 16; 53, Harbors, Marinas, and Wharves § 4; 53, Health and Sanitation § 51; 77, Public Lands § 79; 78, Public Works and Contracts § 2

Am Jur 2d: 78, Waters § 381, 384, 388, 390, 391

Hausser, Ohio Real Estate Law and Practice (2d Ed.), Text 77.02(H)

### Notes of Decisions and Opinions

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**1. Constitutional issues**

The Fleming Act, GC 3699a to 3699-9 (RC 123.03, 721.04 to 721.10), is constitutional and impairs no property rights of shore owners. (Annotation from former RC 123.03.) 1929 OAG 455.

**2. Trust estate**

State as trustee for water and lands of Lake Erie may, through proper legislation, use trust for benefit of public. Lemley v. Stevenson (Erie 1995) 104 Ohio App.3d 126, 661 N.E.2d 237.

The title to the waters and land beneath the waters of Sandusky Bay is held by the state of Ohio in trust for the people of the state. (Annotation from former RC 123.03.) Thomas v. Sanders (Ohio App. 1979) 65 Ohio App.2d 5, 413 N.E.2d 1224, 19 O.O.3d 3.

Title to subaqueous lands in lake rested in state. Toledo v. Kilburn (Ohio Mun. 1995) 71 Ohio Misc.2d 40, 654 N.E.2d 202.

There was no inconsistency in city's corporate limits extending two miles out to center of bay and holding that same territory was held in trust by state. Toledo v. Kilburn (Ohio Mun. 1995) 71 Ohio Misc.2d 40, 654 N.E.2d 202.

**3. Other public littoral owners**

Landowners' littoral right to Lake Erie, if exercised, was limited to right of wharf out to navigable water in area between their side of boundary lines, and was subject to state's control as trustee of waters and underlying lands of Lake Erie. Lemley v. Stevenson (Erie 1995) 104 Ohio App.3d 126, 661 N.E.2d 237.

Landowners were entitled to injunction that ordered removal of a partially constructed breakwall on Lake Erie only upon demonstration of irreparable harm to their reasonable use of waters fronting their property and/or their right to access navigable waters of Lake Erie. Lemley v. Stevenson (Erie 1995) 104 Ohio App.3d 126, 661 N.E.2d 237.

A county may not construct piers in the waters of Lake Erie for the protection of property and beach belonging to private owners,

unless they are necessary for drainage or to prevent overflow on such lands. (Annotation from former RC 123.03.) 1928 OAG 2710.

**4. Private littoral owners**

Filling or dumping so trifling that the law will not take notice thereof does not prevent a littoral owner from acquiring title to land by accretion. (Annotation from former RC 123.03.) State ex rel. Duffy v. Lakefront East Fifty-Fifth Street Corp. (Ohio 1940) 137 Ohio St. 8, 27 N.E.2d 485, 17 O.O. 301.

Action of adjoining littoral owners in wharfing out or in extending the shore line by dumping or filling, so as to increase or make possible accretion, does not affect the title of one not participating in such act to land made by accretion. (Annotation from former RC 123.03.) State ex rel. Duffy v. Lakefront East Fifty-Fifth Street Corp. (Ohio 1940) 137 Ohio St. 8, 27 N.E.2d 485, 17 O.O. 301.

Title by accretion vests in the littoral owner on the shores of Lake Erie as to all lands formed gradually and imperceptibly in the extension of the shore line through the action of the waters of the lake. (Annotation from former RC 123.03.) State ex rel. Duffy v. Lakefront East Fifty-Fifth Street Corp. (Ohio 1940) 137 Ohio St. 8, 27 N.E.2d 485, 17 O.O. 301.

A littoral owner's right to wharf out to navigable waters in aid of navigation is limited to the area within the projected boundaries of the waterfront property. (Annotation from former RC 123.03.) Thomas v. Sanders (Ohio App. 1979) 65 Ohio App.2d 5, 413 N.E.2d 1224, 19 O.O.3d 3.

Land which was reclaimed from the waters of Sandusky Bay for use by the littoral owner in aid of navigation is still part of the trust estate; and title to said land cannot thereafter be held by private persons to the exclusion of the beneficiaries of the trust estate, nor can the city or state abdicate the trust so as to leave the reclaimed soil in the control of private persons. (Annotation from former RC 123.03.) Thomas v. Sanders (Ohio App. 1979) 65 Ohio App.2d 5, 413 N.E.2d 1224, 19 O.O.3d 3.

Title to marsh area along Lake Erie submerged as a result of an avulsion in 1929 remained the property of the owner thereof. (Annotation from former RC 123.03.) U. S. v. 461.42 Acres of Land in Lucas County, Ohio (D.C.Ohio 1963) 222 F.Supp. 55, 25 O.O.2d 365.

A littoral owner along Lake Erie has no title beyond the natural shoreline. OAG 93-025.

A littoral owner along Lake Erie is the beneficiary of a grant pursuant to 43 USC 1311 of land above the natural shoreline of Lake Erie. OAG 93-025.

**5. Leases**

State may lease submerged lands of Lake Erie. Lemley v. Stevenson (Erie 1995) 104 Ohio App.3d 126, 661 N.E.2d 237.

Where state follows all of procedures outlined in statutes that controlled leasing of lands underlying the waters of Lake Erie in processing lease for submerged lands to be used for public benefit, trial court may not void executed lease for its alleged interference with interested shoreline owner's littoral rights. Lemley v. Stevenson (Erie 1995) 104 Ohio App.3d 126, 661 N.E.2d 237.

Submerged land lease could not be voided for alleged interference with interested shoreline owner's littoral rights where purpose of lease was to preserve historic dock or pier and to prevent erosion of shoreline, and state followed all procedures outlined in statutes that controlled leasing of lands underlying the waters of Lake Erie. Lemley v. Stevenson (Erie 1995) 104 Ohio App.3d 126, 661 N.E.2d 237.

Public trust doctrine and statutory procedure that permits state to lease submerged lands in waters of Lake Erie precluded trial court from permanently enjoining state from leasing submerged land along interested landowner's shoreline for purposes of erecting shore protection devices. Lemley v. Stevenson (Erie 1995) 104 Ohio App.3d 126, 661 N.E.2d 237.

A lease of land formed by fill in the waters of Lake Erie north of the natural shoreline of the property owned by the lessor is void ab initio. (Annotation from former RC 123.03.) Cleveland Boat Service v. City of Cleveland (Cuyahoga 1955) 102 Ohio App. 255, 130 N.E.2d 421, 73 Ohio Law Abs. 557, 2 O.O.2d 292, affirmed 165 Ohio St. 429, 136 N.E.2d 274, 60 O.O. 85.

The director of natural resources has authority under RC 1505.07 to issue an exclusive mineral lease for a portion of the bed of Lake Erie for any reasonable term of years even though actual extraction of the minerals may not be contemplated, if he determines that the issuance of such lease does not violate the public trust doctrine under which the soil and its contents under the state's territorial waters of Lake Erie are held in trust by the state of Ohio for the people of Ohio. (Annotation from former RC 123.03.) OAG 74-081.

An exclusive mineral lease to all minerals in a portion of the bed of Lake Erie issued by the director of natural resources pursuant to RC 1505.07, excepting the mineral rights to take and remove oil and gas, is a valid lease

and is not rendered illusory by the express reservation of the rights to take and remove the oil and gas therefrom. (Annotation from former RC 123.03.) OAG 74-081.

No upland owner may continue to use and maintain structures built out over the lake bed prior to the effective date of RC 123.031, nor make repairs, replacements, or additional improvements thereon, without paying rent therefor. (Annotation from former RC 123.03.) OAG 73-033.

An upland owner, who wharfed out to navigable water over the submerged bed of Lake Erie prior to the enactment of RC 123.031 in 1955, is required under that statute to apply to the director of public works for a lease, the terms and conditions of which, including the amount of rentals, are to be determined by the director of public works and approved by the governor. (Annotation from former RC 123.03.) OAG 73-033.

The Ohio department of public works may lease submerged land of Lake Erie to a port authority within the latter's territorial jurisdiction for all purposes not inconsistent with the powers granted to it in RC 4582.06 but limited by RC 123.03. (Annotation from former RC 123.03.) OAG 69-142.

**6. Common law**

Neither the Fleming Act, GC 3699a to 3699-9 (RC 123.03, RC 721.04 to RC 721.10), nor the Abele Act, GC 3699-10 (RC 721.11), alters the common law on accretion. (Annotation from former RC 123.03.) State ex rel. Duffy v. Lakefront East Fifty-Fifth Street Corp. (Ohio 1940) 137 Ohio St. 8, 27 N.E.2d 485, 17 O.O. 301.

At common law, the title and dominion in lands below the high water mark of the tides are in the King for the benefit of the nation, and since the American Revolution his rights are vested in the original states as successions within their respective borders; states admitted into the Union since adoption of the constitution have the same sovereign rights of ownership in their tide waters and the lands under them as the original states; whether the state's ownership can be lost by adverse possession, laches, or any other equitable doctrine is a matter for state and not federal courts to determine. (Annotation from former RC 123.03.) Phillips Petroleum Co. v. Mississippi (U.S.Miss. 1988) 108 S.Ct. 791, 484 U.S. 469, 98 L.Ed.2d 877, rehearing denied 108 S.Ct. 1760, 486 U.S. 1018, 100 L.Ed.2d 221.

**7. Federal land**

The secretary of the army may refuse a permit for construction of port facilities that could result in an increase in Alaska's coastline unless the state agrees that the construction will be deemed to not alter the federal-state boundary, by application of the 1899 Rivers and Harbors Appropriation Act, 33 USC 403; the United States' legitimate property interests are among the criteria the secretary may consider in deciding whether issuing a permit would affect the public interest. U.S. v. Alaska (U.S. 1992) 112 S.Ct. 1606, 503 U.S. 569, 118 L.Ed.2d 222.

The states, as sovereign successors to the English Crown, hold title to the lands under all navigable waters within their borders; when states other than the original thirteen were part of territories, the United States held the lands in trust for future states and could sell the land or reserve it as property of the United States, but an intent to reserve will not lightly be inferred. (Annotation from former RC 123.03.) Utah Div. of State Lands v. U.S. (U.S.Utah 1987) 107 S.Ct. 2318, 482 U.S. 193, 96 L.Ed.2d 162, on remand 846 F.2d 613.

**8. Islands**

Although portion of dike extending beyond harbor line up to artificially created island exceeded lease granted by state to city, control over that portion of dike, for purposes of navigation and water commerce, was statutorily delegated to city and, moreover, regulation of hunting was regulation in furtherance of aid of "navigation" and "water commerce," such that city was authorized to enforce municipal code section prohibiting hunting within city limits where hunting took place on portion of dike extending beyond harbor line. Toledo v. Kilburn (Ohio Mun. 1995) 71 Ohio Misc.2d 40, 654 N.E.2d 202.

A state may establish sovereignty by prescription over islands in a river dividing two states and acquiescence, as evidenced by its grant of the islands in 1813 and its taxation, policing, and patrolling of the property; the neighboring state cannot avoid this result by contending it had no reasonable notice of the other state's actions since inaction alone may be acquiescence when it continues a sufficient time. Georgia v. South Carolina (U.S. 1990) 110 S.Ct. 2903, 497 U.S. 376, 111 L.Ed.2d 309.

Under the Treaty of Beaufort of 1787 "reserving all islands to Georgia" in the Savannah River, which was interpreted in 1922 to mean that where there is no island in the river the boundary is midway between the banks and where there is an island the boundary is midway between the island and the South Carolina shore, Georgia is charged with notice that the treaty placed the islands in it.

Georgia v. South Carolina (U.S. 1990) 110 S.Ct. 2903, 497 U.S. 376, 111 L.Ed.2d 309.

**9. Navigation use**

Land which was reclaimed from the waters of Sandusky Bay for use by the littoral owner in aid of navigation is still part of the trust estate; and title to said land cannot thereafter be held by private persons to the exclusion of the beneficiaries of the trust estate, nor can the city or state abdicate the trust so as to leave the reclaimed soil in the control of private persons. (Annotation from former RC 123.03.) Thomas v. Sanders (Ohio App. 1979) 65 Ohio App.2d 5, 413 N.E.2d 1224, 19 O.O.3d 3.

Where land reclaimed from the waters of Sandusky Bay for use in aid of navigation lies in an area maintained by the city of Sandusky as a public slip or right of way, said land remains part of the public trust, the title to which cannot be held by private persons to the exclusion of the public rights under the trust. (Annotation from former RC 123.03.) Thomas v. Sanders (Ohio App. 1979) 65 Ohio App.2d 5, 413 N.E.2d 1224, 19 O.O.3d 3.

Where land reclaimed from the waters of Lake Erie and its bays for use in aid of navigation lies within the limits of a municipal corporation and where the purpose, in aid of navigation, has been abandoned, the municipal corporation has the authority to control and regulate said reclaimed land pursuant to RC 721.04 to 721.11, subject to the limitations contained therein. (Annotation from former RC 123.03.) Thomas v. Sanders (Ohio App. 1979) 65 Ohio App.2d 5, 413 N.E.2d 1224, 19 O.O.3d 3.

**10. Shipwreck**

The Ohio department of natural resources has no authority pursuant to RC 1506.10 and 1506.11 to issue a permit to conduct salvage operation upon an abandoned shipwreck located on or within the submerged lands of Lake Erie, title to which has passed to the state of Ohio pursuant to the Abandoned Shipwreck Act of 1987, where such operation effects a disposition of all or portions of such shipwreck. OAG 90-093.

**11. Evidence**

The determination of the natural shoreline of Lake Erie is a question of fact. OAG 93-025.

## 1506.11 Leasing of lakefront land for private improvement; review of proposed lessee's changes in property

*Note: See also following version of this section, eff. 3-4-98.*

(A) "Territory," as used in this section, means the waters and the lands presently underlying the waters of Lake Erie and the lands formerly underlying the waters of Lake Erie and now artificially filled, between the natural shoreline and the international boundary line with Canada.

(B) Whenever the state, acting through the director of natural resources, upon application of any person who wants to develop or improve part of the territory, and after notice as provided in this section, determines that any part of the territory can be developed and improved or the waters thereof used as specified in the application without impairment of the public right of navigation, water commerce, and fishery, a lease of all or any part of the state's interest therein may be entered into with the applicant, or a permit may be issued for that purpose, subject to the powers of the United States government and in accordance with rules adopted by the director in accordance with Chapter 119. of the Revised Code, and without prejudice to the littoral rights of any owner of land fronting on Lake Erie, provided that the legislative authority of the municipal corporation within which any such part of the territory is located, if the municipal corporation is not within the jurisdiction of a port authority, or the county commissioners of the county within which such part of the territory is located, excluding any territory within a municipal corporation or under the jurisdiction of a port authority, or the board of directors of a port authority with respect to such part of the territory included in the jurisdiction of the port authority, has enacted an ordinance or resolution finding and determining that such part of the territory, described by metes and bounds, is

not necessary or required for the construction, maintenance, or operation by the municipal corporation, county, or port authority of breakwaters, piers, docks, wharves, bulkheads, connecting ways, water terminal facilities, and improvements and marginal highways in aid of navigation and water commerce and that the land uses specified in the application comply with regulation of permissible land use under a waterfront plan of the local authority.

(C) Upon the filing of the application in the office of the director in Columbus, the director may hold a public hearing thereon and shall cause written notice of the filing to be given to any municipal corporation, county, or port authority, as the case may be, in which such part of the territory is located and also shall cause public notice of the filing to be given by advertisement in a newspaper of general circulation within the locality where such part of the territory is located. If a hearing is to be held, public notice of the filing may be combined with public notice of the hearing and shall be given once a week for four consecutive weeks prior to the date of the initial hearing. All hearings shall be before the director and shall be open to the public, and a record shall be made of the proceeding. Parties thereto are entitled to be heard and to be represented by counsel. The findings and order of the director shall be in writing. All costs of the hearings, including publication costs, shall be paid by the applicant. The director also may hold public meetings on the filing of an application.

If the director finds that a lease may properly be entered into with the applicant or a permit may properly be issued to the applicant, the director shall determine the consideration to be paid by the applicant, which consideration shall exclude the value of the littoral rights of the owner of land fronting on Lake Erie and improvements made or paid for by the owner of land fronting on Lake Erie or his predecessors in title. The lease or permit may be for such periods of time as the director determines. The rentals received under the terms of such a lease or permit shall be paid into the state treasury to the credit of the Lake Erie submerged lands fund, which is hereby created, and shall be distributed from that fund as follows:

(1) Fifty per cent of each rental shall be paid to the department of natural resources for the administration of this section and section 1506.10 of the Revised Code and for the coastal management assistance grant program required to be established under division (C) of section 1506.02 of the Revised Code;

(2) Fifty per cent of each rental shall be paid to the municipal corporation, county, or port authority making the finding provided for in this section.

All leases and permits shall be executed in the manner provided by section 1501.01 of the Revised Code and shall contain, in addition to the provisions required in this section, a reservation to the state of all mineral rights and a provision that the removal of any minerals shall be conducted in such manner as not to damage any improvements placed by the littoral owner, lessee, or permit holder on the lands. No lease or permit of the lands defined in this section shall express or imply any control of fisheries or aquatic wildlife now vested in the division of wildlife of the department.

(D) Upland owners who, prior to October 13, 1955, have erected, developed, or maintained structures, facilities, buildings, or improvements or made use of

waters in the part of the territory in front of those uplands shall be granted a lease or permit by the state upon the presentation of a certification by the chief executive of a municipal corporation, resolution of the board of county commissioners, or resolution of the board of directors of the port authority establishing that the structures, facilities, buildings, improvements, or uses do not constitute an unlawful encroachment on navigation and water commerce. The lease or permit shall specifically enumerate the structures, facilities, buildings, improvements, or uses so included.

(E) Persons having secured a lease or permit under this section are entitled to just compensation for the taking, whether for navigation, water commerce, or otherwise, by any governmental authority having the power of eminent domain, of structures, facilities, buildings, improvements, or uses erected or placed upon the territory pursuant to the lease or permit or the littoral rights of the person and for the taking of the leasehold and the littoral rights of the person pursuant to the procedure provided in Chapter 163. of the Revised Code. The compensation shall not include any compensation for the site in the territory except to the extent of any interest in the site theretofore acquired by the person under this section or by prior acts of the general assembly or grants from the United States government. The failure of any person to apply for or obtain a lease or permit under this section does not prejudice any right the person may have to compensation for a taking of littoral rights or of improvements made in accordance with a lease, a permit, or littoral rights.

(F) If any taxes or assessments are levied or assessed upon property that is the subject of a lease or permit under this section, the taxes or assessments are the obligation of the lessee or permit holder.

(G) If a lease or permit secured under this section requires the lessee or permit holder to obtain the approval of the department or any of its divisions for any changes in structures, facilities, or buildings, for any improvements, or for any changes or expansion in uses, no lessee or permit holder shall change any structures, facilities, or buildings, make any improvements, or expand or change any uses unless the director first determines that the proposed action will not adversely affect any current or prospective exercise of the public right of recreation in the territory and in the state's reversionary interest in any territory leased or permitted under this section.

Proposed changes or improvements shall be deemed to "adversely affect" the public right of recreation if the changes or improvements cause or will cause any significant demonstrable negative impact upon any present or prospective recreational use of the territory by the public during the term of the lease or permit or any renewals and of any public recreational use of the leased or permitted premises in which the state has a reversionary interest.

(1994 S 182, eff. 10-20-94; 1988 S 70, eff. 3-15-89)

*Note: See also following version of this section, eff. 3-4-98.*

## 1506.11 Leasing of lakefront land for private improvement; review of proposed lessee's changes in property

*Note: See also preceding version of this section, in effect until 3-4-98.*

(A) "Territory," as used in this section, means the waters and the lands presently underlying the waters of Lake Erie and the lands formerly underlying the waters of Lake Erie and now artificially filled, between the natural shoreline and the international boundary line with Canada.

(B) Whenever the state, acting through the director of natural resources, upon application of any person who wants to develop or improve part of the territory, and after notice as provided in this section, determines that any part of the territory can be developed and improved or the waters thereof used as specified in the application without impairment of the public right of navigation, water commerce, and fishery, a lease of all or any part of the state's interest therein may be entered into with the applicant, or a permit may be issued for that purpose, subject to the powers of the United States government and in accordance with rules adopted by the director in accordance with Chapter 119. of the Revised Code, and without prejudice to the littoral rights of any owner of land fronting on Lake Erie, provided that the legislative authority of the municipal corporation within which any such part of the territory is located, if the municipal corporation is not within the jurisdiction of a port authority, or the county commissioners of the county within which such part of the territory is located, excluding any territory within a municipal corporation or under the jurisdiction of a port authority, or the board of directors of a port authority with respect to such part of the territory included in the jurisdiction of the port authority, has enacted an ordinance or resolution finding and determining that such part of the territory, described by metes and bounds, is not necessary or required for the construction, maintenance, or operation by the municipal corporation, county, or port authority of breakwaters, piers, docks, wharves, bulkheads, connecting ways, water terminal facilities, and improvements and marginal highways in aid of navigation and water commerce and that the land uses specified in the application comply with regulation of permissible land use under a waterfront plan of the local authority.

(C) Upon the filing of the application with the director, the director may hold a public hearing thereon and shall cause written notice of the filing to be given to any municipal corporation, county, or port authority, as the case may be, in which such part of the territory is located and also shall cause public notice of the filing to be given by advertisement in a newspaper of general circulation within the locality where such part of the territory is located. If a hearing is to be held, public notice of the filing may be combined with public notice of the hearing and shall be given once a week for four consecutive weeks prior to the date of the initial hearing. All hearings shall be before the director and shall be open to the public, and a record shall be made of the proceeding. Parties thereto are entitled to be heard and to be represented by counsel. The findings and order of the director shall be in writing. All costs of the hearings, including publication costs, shall be paid by the applicant. The director also may hold public meetings on the filing of an application.

If the director finds that a lease may properly be entered into with the applicant or a permit may properly be issued to the applicant, the director shall determine the consideration to be paid by the applicant, which consideration shall exclude the value of the littoral rights of the owner of land fronting on Lake Erie and improvements made or paid for by the owner of land fronting on Lake Erie or that owner's predecessors in title. The lease or permit may be for

such periods of time as the director determines. The rentals received under the terms of such a lease or permit shall be paid into the state treasury to the credit of the Lake Erie submerged lands fund, which is hereby created, and shall be distributed from that fund as follows:

(1) Fifty per cent of each rental shall be paid to the department of natural resources for the administration of this section and section 1506.10 of the Revised Code and for the coastal management assistance grant program required to be established under division (C) of section 1506.02 of the Revised Code;

(2) Fifty per cent of each rental shall be paid to the municipal corporation, county, or port authority making the finding provided for in this section.

All leases and permits shall be executed in the manner provided by section 5501.01[2] of the Revised Code and shall contain, in addition to the provisions required in this section, a reservation to the state of all mineral rights and a provision that the removal of any minerals shall be conducted in such manner as not to damage any improvements placed by the littoral owner, lessee, or permit holder on the lands. No lease or permit of the lands defined in this section shall express or imply any control of fisheries or aquatic wildlife now vested in the division of wildlife of the department.

(D) Upland owners who, prior to October 13, 1955, have erected, developed, or maintained structures, facilities, buildings, or improvements or made use of waters in the part of the territory in front of those uplands shall be granted a lease or permit by the state upon the presentation of a certification by the chief executive of a municipal corporation, resolution of the board of county commissioners, or resolution of the board of directors of the port authority establishing that the structures, facilities, buildings, improvements, or uses do not constitute an unlawful encroachment on navigation and water commerce. The lease or permit shall specifically enumerate the structures, facilities, buildings, improvements, or uses so included.

(E) Persons having secured a lease or permit under this section are entitled to just compensation for the taking, whether for navigation, water commerce, or otherwise, by any governmental authority having the power of eminent domain, of structures, facilities, buildings, improvements, or uses erected or placed upon the territory pursuant to the lease or permit or the littoral rights of the person and for the taking of the leasehold and the littoral rights of the person pursuant to the procedure provided in Chapter 163. of the Revised Code. The compensation shall not include any compensation for the site in the territory except to the extent of any interest in the site theretofore acquired by the person under this section or by prior acts of the general assembly or grants from the United States government. The failure of any person to apply for or obtain a lease or permit under this section does not prejudice any right the person may have to compensation for a taking of littoral rights or of improvements made in accordance with a lease, a permit, or littoral rights.

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[2]Prior and current versions differ; although no amendment to this language appeared in 1995 H 60, "5501.01" appeared as "1501.01" in 1994 S 182.

(F) If any taxes or assessments are levied or assessed upon property that is the subject of a lease or permit under this section, the taxes or assessments are the obligation of the lessee or permit holder.

(G) If a lease or permit secured under this section requires the lessee or permit holder to obtain the approval of the department or any of its divisions for any changes in structures, facilities, or buildings, for any improvements, or for any changes or expansion in uses, no lessee or permit holder shall change any structures, facilities, or buildings, make any improvements, or expand or change any uses unless the director first determines that the proposed action will not adversely affect any current or prospective exercise of the public right of recreation in the territory and in the state's reversionary interest in any territory leased or permitted under this section.

Proposed changes or improvements shall be deemed to "adversely affect" the public right of recreation if the changes or improvements cause or will cause any significant demonstrable negative impact upon any present or prospective recreational use of the territory by the public during the term of the lease or permit or any renewals and of any public recreational use of the leased or permitted premises in which the state has a reversionary interest.

(1995 H 60, eff. 3-4-98; 1994 S 182, eff. 10-20-94; 1988 S 70, eff. 3-15-89)

*Note: See also preceding version of this section, in effect until 3-4-98.*

### Historical and Statutory Notes

**Ed. Note:** 1506.11 is former 123.031, amended and recodified by 1988 S 70, eff. 3-15-89; 1985 H 201; 1984 S 6; 1973 S 174; 131 v H 660; 129 v 582; 126 v 137.

### Cross References

Municipal corporations, leases or property, waterfront development, 721.11

Natural resources department, real estate and land management division, powers and duties, 1504.02

Right to private property; compensation for taking of property, O Const Art I §1, 19

### Ohio Administrative Code References

Rules for leasing of Lake Erie submerged lands, OAC Ch 1501-6

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WESTLAW Topic No. 270.
C.J.S. Navigable Waters § 132.

OJur 3d: 53, Harbors, Marinas, and Wharves § 11, 14; 72, Notice and Notices § 27 to 30, 33 to 35; 77, Public Lands § 63; 78, Public Works and Contracts § 2

### Notes of Decisions and Opinions

**Port authority 3**
**Salvage 1**
**Terms 2**

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**1. Salvage**

The Ohio department of natural resources has no authority pursuant to RC 1506.10 and 1506.11 to issue a permit to conduct salvage operation upon an abandoned shipwreck located on or within the submerged lands of Lake Erie, title to which has passed to the state of Ohio pursuant to the Abandoned Shipwreck Act of 1987, where such operation effects a disposition of all or portions of such shipwreck. OAG 90-093.

**2. Terms**

An upland owner, who wharfed out to navigable water over the submerged bed of Lake Erie prior to the enactment of RC 123.031 in 1955, is required under that statute to apply to the director of public works for a lease, the terms and conditions of which, including the amount of rentals, are to be determined by the director of public works and approved by the governor. (Annotation from former RC 123.031.) OAG 73-033.

**3. Port authority**

The Ohio department of public works may lease submerged land of Lake Erie to a port authority within the latter's territorial jurisdiction for all purposes not inconsistent with the powers granted to it in RC 4582.06 but limited by RC 123.03. (Annotation from former RC 123.031.) OAG 69-142.

## 1506.12 Coastal resources advisory council

There is hereby created the coastal resources advisory council, which shall consist of nineteen members, appointed by the director of natural resources, who represent a broad range of interests, experience, and knowledge relating to the management, use, conservation, protection, and development of coastal area resources. The director shall solicit names of qualified persons to serve on the council from the legislative authorities of counties, townships, municipal corporations, and other political subdivisions and from interest groups located in the coastal area. The director shall appoint to the council at least one member from each shoreline county, which members shall be selected from the names submitted to the director as described above and at least one of which shall be a public official of such a county; at least three individuals who own private shoreline property in a shoreline county; at least one public official of a municipal corporation that is located in a shoreline county; at least two individuals who are members of the Ohio association of realtors and whose places of business as specified in section 4735.16 of the Revised Code are located in the shoreline area; and at least two individuals with experience in residential and commercial land development in the shoreline area. No more than ten members of the council shall be from the same political party. The director may participate in the deliberations of the council, but shall not vote.

The members of the council first appointed by the director shall serve terms commencing no later than one hundred eighty days after March 15, 1989, and expiring on February 1, 1990. On February 2, 1990, the director shall appoint six members to serve for a term of one year and seven members to serve for a term of two years. The members first appointed by the director after the effective date of this amendment shall serve terms commencing no later than one hundred eighty days after that date. Three of those members shall serve terms expiring on February 1, 1997, and three of those members shall serve terms expiring on February 1, 1998. On February 2, 1997, the director shall appoint nine members to serve for a term of three years to replace all members whose terms of office expired on February 1, 1997. On February 2, 1998, the director shall appoint ten members to serve for a term of four years to replace all members whose terms of office expired on February 1, 1998. Thereafter, terms of office for all members shall be for four years commencing on the second day of February and ending on the first day of February. Members may be reappointed to the council.

The director may remove any member at any time for inefficiency, neglect of duty, or malfeasance in office. In the event of the death, removal, resignation, or incapacity of any member, the director shall appoint a successor to hold

office for the remainder of the term for which the member's predecessor was appointed. Any member shall continue in office subsequent to the expiration date of the member's term until the member's successor takes office, or until a period of sixty days has elapsed, whichever occurs first.

Membership on the council does not constitute holding a public office or position of employment under state law and is not grounds for removal of public officers or employees from their offices or positions of employment.

The council annually shall select from its members a chairperson and a vice-chairperson. The council shall hold at least one meeting every three months and shall keep a record of its proceedings, which shall be open to the public for inspection. Special meetings may be called by the chairperson and shall be called upon the written request of two or more members. A majority of the members constitutes a quorum. The department of natural resources shall furnish clerical, technical, legal, and other services required by the council in the performance of its duties.

Members shall receive no compensation, but shall be reimbursed from appropriations to the department for the actual and necessary expenses incurred by them in the performance of their official duties.

The council shall do all of the following:

(A) Advise the director on carrying out the director's duties under this chapter, including, without limitation, implementation of the coastal management program;

(B) Recommend to the director such policies and legislation as are necessary to preserve, protect, develop, and restore or enhance the coastal resources of the state;

(C) Review and make recommendations to the director on the development of policies, plans, and programs for long-term, comprehensive coastal resource management, including, without limitation, the coastal management program document adopted under division (A)(1) of section 1506.02 of the Revised Code;

(D) Recommend to the director ways to enhance cooperation among governmental agencies, including, without limitation, state agencies, having an interest in coastal management and to encourage wise use and protection of the state's coastal resources. The council may request information and other assistance from those governmental agencies for this purpose.

(1996 H 119, eff. 5-8-96; 1988 S 70, eff. 3-15-89)

**Ohio Administrative Code References**

Coastal resources advisory council, notice of public hearings, minutes, OAC 1501:1-35-01, 1501:1-35-02

## 1506.20 Lake Erie office—Repealed

(1991 H 298, eff. 7-26-91; 1990 H 804, H 550)

## 1506.21 Lake Erie commission

(A) There is hereby created the Ohio Lake Erie commission, consisting of the directors of environmental protection, natural resources, health, agriculture, and transportation, or their designees, as members ex officio. The members of the commission annually shall designate a chairman, who shall preside at the meetings of the commission, and a secretary. The offices of chairman and secretary shall rotate among the members annually.

The commission shall hold at least one meeting every three months. The secretary of the commission shall keep a record of its proceedings. Special meetings shall be held at the call of the chairman or upon the request of four members of the commission. All meetings and records of the commission shall be open to the public. Three members of the commission constitute a quorum. The agencies represented on the commission shall furnish clerical, technical, and other services required by the commission in the performance of its duties.

(B) The commission shall do all of the following:

(1) Ensure the coordination of state and local policies and programs pertaining to Lake Erie water quality, toxic pollution control, and resource protection;

(2) Review, and make recommendations concerning, the development and implementation of policies, programs, and issues for long-term, comprehensive protection of Lake Erie water resources and water quality that are consistent with the great lakes water quality agreement and the great lakes toxic substances control agreement;

(3) Recommend policies and programs to modify the coastal management program of this state;

(4) At each regular meeting, consider matters relating to the implementation of sections 1506.22 and 1506.23 of the Revised Code;

(5) Publish and submit the Lake Erie protection agenda in accordance with division (C) of section 1506.23 of the Revised Code;

(6) Ensure the implementation of a basinwide approach to Lake Erie issues;

(7) Increase representation of the interests of this state in state, regional, national, and international forums pertaining to the resources and water quality of Lake Erie and the Lake Erie basin;

(8) Promote education concerning the wise management of the resources of Lake Erie;

(9) Establish public advisory councils as considered necessary to assist in programs established under this section and sections 1506.22 and 1506.23 of the Revised Code. Members of the public advisory councils shall represent a broad cross section of interests, shall have experience or expertise in the subject for which the advisory council was established, and shall serve without compensation.

(10) Prepare and submit the report required under division (D) of section 1506.23 of the Revised Code.

(C) Each state agency, upon the request of the commission, shall cooperate in the implementation of this section and sections 1506.22 and 1506.23 of the Revised Code.

(1994 S 182, eff. 10-20-94; 1992 S 331, eff. 11-13-92; 1991 H 298; 1990 H 804)

**Library References**

Health and Environment ⟹3.
WESTLAW Topic No. 199.

C.J.S. Health and Environment §§ 9, 10.

## 1506.22 Implementation of purposes of great lakes protection fund; appointments to board of directors

(A) Except as provided in division (B) of this section, the department of natural resources is hereby designated the lead agency for the implementation in this state of the purposes of the great lakes protection fund, a regional trust fund established by the great lakes states to advance the principles, goals, and objectives of the great lakes toxic substances control agreement and the great lakes water quality agreement, as they may be revised and amended.

(B) The governor shall appoint two members from this state to the board of directors of the great lakes protection fund as provided in the bylaws and articles of incorporation of the fund. Of the initial appointments made to the board, one shall serve for a term of one year and one shall serve for a term of two years; thereafter, the members of the board of directors from this state shall serve for terms of two years. The governor may remove any member at any time as provided in the bylaws and articles of incorporation of the fund. In the event of a vacancy, the governor shall appoint a successor to hold office for the remainder of the term for which his predecessor was appointed. Any member shall continue in office subsequent to the expiration date of his term until his successor takes office or until a period of sixty days has elapsed, whichever occurs first.

Membership on the board does not constitute holding a public office or position of employment under the laws of this state and is not grounds for removal of public officers or employees from their offices or positions of employment.

Members of the board from this state shall receive no compensation, but shall be reimbursed for their actual and necessary expenses incurred in the performance of their official duties.

(1991 H 298, eff. 7-26-91; 1990 H 804)

**Library References**

Health and Environment ⟹25.5(3.1), 25.5(6).
States ⟹127.
WESTLAW Topic Nos. 199, 360.

C.J.S. Health and Environment §§ 91, 106, 129, 131.
C.J.S. States § 228.

## 1506.23 Lake Erie protection fund

(A) There is hereby created in the state treasury the Lake Erie protection fund, which shall consist of moneys awarded to the state from the great lakes protection fund, moneys deposited into the fund from the issuance of Lake Erie license plates under section 4503.52 of the Revised Code, donations, gifts, bequests, and other moneys received for the purposes of this section. The department of natural resources shall administer the fund and, with the approval of the Ohio Lake Erie commission created in section 1506.21 of the Revised Code, may expend moneys from it for any of the following purposes:

(1) Accelerating the pace of research into the economic, environmental, and human health effects of contamination of Lake Erie and its tributaries;

(2) Funding cooperative research and data collection regarding Lake Erie water quality and toxic contamination;

(3) Developing improved methods of measuring water quality and establishing a firm scientific base for implementing a basinwide system of water quality management for Lake Erie and its tributaries;

(4) Supporting research to improve the scientific knowledge on which protection policies are based and devising new and innovative clean-up techniques for toxic contaminants;

(5) Supplementing, in a stable and predictable manner, state commitments to policies and programs pertaining to Lake Erie water quality and resource protection;

(6) Encouraging cooperation with and among leaders from state legislatures, state agencies, political subdivisions, business and industry, labor, institutions of higher education, environmental organizations, and conservation groups within the Lake Erie basin;

(7) Awarding of grants to any agency of the United States, any state agency, as "agency" is defined in division (A)(2) of section 111.15 of the Revised Code, any political subdivision, any educational institution, or any nonprofit organization for the development and implementation of projects and programs that are designed to protect Lake Erie by reducing toxic contamination of or improving water quality in Lake Erie;

(8) Expenses authorized by the Ohio Lake Erie commission necessary to implement this chapter.

(B) Moneys in the Lake Erie protection fund are not intended to replace other moneys expended by any agency of the United States, any state agency, as "agency" is so defined, any political subdivision, any educational institution, or any nonprofit organization for projects and programs that are designed to protect Lake Erie by reducing toxic contamination of or improving water quality in Lake Erie.

(C) Each March, the Ohio Lake Erie commission shall publish a Lake Erie protection agenda that describes proposed uses of the Lake Erie protection fund for the following state fiscal year. The agenda shall be the subject of at least one public meeting of the commission held in the Lake Erie basin. The commission shall submit the agenda to the governor, the president of the senate, and the speaker of the house of representatives.

(D) Not later than September 1, 1991, and annually thereafter, the Lake Erie commission shall prepare a report of the activities that were undertaken by the commission under this section during the immediately preceding fiscal year, including, without limitation, revenues and expenses for the preceding fiscal year. The commission shall submit the report to the governor, the president of the senate, and the speaker of the house of representatives.

(1992 S 359, eff. 12-22-92; 1991 H 298; 1990 H 804)

**Library References**

States ⚷127.

WESTLAW Topic No. 360.
C.J.S. States § 228.

LAKE ERIE SUBMERGED LANDS AND ABANDONED PROPERTY

## 1506.30 Definitions

As used in sections 1506.30 to 1506.37 of the Revised Code:

(A) "Abandoned property" means a submerged aircraft; a submerged watercraft, including a ship, boat, canoe, skiff, raft, or barge; the rigging, gear, fittings, trappings, and equipment of a submerged aircraft or watercraft; the personal property of the officers, crew, and passengers of a submerged aircraft or watercraft; the cargo of a submerged aircraft or watercraft that has been deserted, relinquished, cast away, or left behind and for which attempts at reclamation have been abandoned by the owners and insurers; and submerged materials resulting from activities of prehistoric and historic native Americans.

(B) "Lake Erie" means that portion of the waters and lands of Lake Erie belonging to the state as provided in section 1506.10 of the Revised Code.

(C) "Historical value" means the quality of significance exemplified by an object, structure, site, or district that is included in or eligible for inclusion in the state registry of archaeological landmarks authorized under section 149.51 of the Revised Code, the state registry of historic landmarks authorized under section 149.55 of the Revised Code, or the national register of historic places.

(D) "Marine surveyor" means a person engaged in the business of mapping or surveying submerged lands and abandoned property.

(E) "Mechanical or other assistance" means all manmade devices used to raise or remove artifacts from abandoned property, including pry bars, wrenches and other hand or power tools, cutting torches, explosives, winches, flotation bags, lines to surface, extra divers buoyancy devices, and other buoyancy devices.

(F) "Recreational value" means value relating to an activity in which the public engages or may engage for recreation or sport, including scuba diving and fishing, as determined by the director of natural resources.

(1991 H 264, eff. 3-2-92)

**Cross References**

Abandoned property defined, 149.56

**Library References**

Abandoned and Lost Property ⚷1.1.
Health and Environment ⚷25.5(8).
WESTLAW Topic Nos. 1, 199.

C.J.S. Abandonment §§ 2, 4, 7, 8.
C.J.S. Health and Environment §§ 61, 115.

## 1506.31 Submerged lands preserves

(A) In order to provide special protection for abandoned property and features and formations in Lake Erie having historical, archaeological, recreational, ecological, geological, environmental, educational, scenic, or scientific value, the director of natural resources, with the approval of the director of the

Ohio historical society, may adopt rules in accordance with Chapter 119. of the Revised Code establishing Lake Erie submerged lands preserves. A preserve may be established for any area of submerged lands that contains a single watercraft or aircraft of historical value, two or more watercraft or aircraft constituting abandoned property, or other features of archaeological, historical, recreational, ecological, environmental, educational, scenic, scientific, or geological value other than sand, gravel, stone, and other minerals and substances authorized to be taken and removed in accordance with section 1505.07 of the Revised Code.

Any rule adopted under this division shall describe the area included in the preserve so designated and the abandoned property or features of archaeological, historical, recreational, ecological, geological, environmental, educational, scenic, or scientific value found in the preserve. Each preserve shall encompass the designated area and within that area shall extend upward to and include the surface of the water. Any number of preserves may be designated; however, an individual preserve shall not exceed three hundred square miles in area and the total area of all submerged lands designated as preserves shall not exceed ten per cent of the total submerged lands of Lake Erie.

(B) When establishing a preserve under division (A) of this section, the directors of natural resources and the Ohio historical society shall consider all of the following factors:

(1) Whether creating the preserve is necessary to protect either abandoned property or significant underwater features possessing historical, archaeological, recreational, geological, ecological, environmental, educational, scenic, or scientific value;

(2) The extent of local public and private support for creation of the preserve;

(3) If the purpose of the preserve is to be recreational, the extent to which preserve support facilities such as roads, marinas, charter services, hotels, medical hyperbaric facilities, and rescue agencies have been developed in or are planned for the coastal area that is nearest the proposed preserve;

(4) Whether creating the preserve will conflict with existing or potential removals of sand, gravel, stone, or other minerals or substances authorized to be taken and removed in accordance with section 1505.07 of the Revised Code.

(C) The director of natural resources, with the approval of the director of the Ohio historical society, may establish policies and may adopt rules in accordance with Chapter 119. of the Revised Code governing access to and the use of any preserve established under division (A) of this section. The director of natural resources shall limit or prohibit access to abandoned property in a preserve only if one of the following conditions is met:

(1) The site of the abandoned property is biologically or ecologically sensitive or is hazardous to human safety.

(2) Any abandoned property of significant historical value in the preserve is extremely fragile and in danger of collapsing.

(3) Any abandoned property of historical value in the preserve is suffering extensive deterioration or attrition due to prior unregulated access.

(4) The director of natural resources has agreed to limit access during the term of a permit issued under section 1506.32 of the Revised Code at the

request of the holder of the permit who is recovering, altering, salvaging, or destroying abandoned property in the preserve in accordance with the permit.

(1991 H 264, eff. 3-2-92)

**Cross References**

Natural resources department, real estate and land management division, powers and duties, 1504.02

**Library References**

Health and Environment ⟹25.5(3.1).
Navigable Waters ⟹36(4).
WESTLAW Topic Nos. 199, 270.
C.J.S. Health and Environment §§ 91, 106, 129.
C.J.S. Navigable Waters § 109.

## 1506.32 Permit for recovery, alteration, salvage, or destruction of abandoned property

(A) Except as otherwise provided in division (B) of this section, any person who wishes to recover, alter, salvage, or destroy any abandoned property that is located on, in, or in the immediate vicinity of and associated with a submerged watercraft or aircraft in Lake Erie shall obtain a permit to do so from the director of natural resources that also has been approved by the director of the Ohio historical society. A permit shall authorize the operation on, in, or in the immediate vicinity of and associated with only the submerged watercraft or aircraft named in the permit and shall expire one year after its date of issuance. To apply for a permit, a person shall file an application on a form prescribed by the director of natural resources that contains all of the following information:

(1) The name and address of the applicant;

(2) The name, if known, of the watercraft or aircraft on, in, or around which the operation is proposed and a current photograph or drawing of the watercraft or aircraft, if available;

(3) The location of the abandoned property to be recovered, altered, salvaged, or destroyed and the depth of water in which it may be found;

(4) A description of each item to be recovered, altered, salvaged, or destroyed;

(5) The method to be used in the operation;

(6) The proposed disposition of any abandoned property recovered, including the location at which it will be available for inspection by the director of the Ohio historical society for the purposes of division (C) of section 1506.33 of the Revised Code;

(7) Any other information that the director of natural resources or the director of the Ohio historical society considers necessary.

(B) A person may recover, alter, salvage, or destroy abandoned property from Lake Erie that is located outside a Lake Erie submerged lands preserve established under rules adopted under section 1506.31 of the Revised Code without obtaining a permit under this section if the abandoned property is not attached to or located on, in, or in the immediate vicinity of and associated with a submerged watercraft or aircraft and if the abandoned property is recoverable by hand without mechanical or other assistance.

(C) Immediately after receiving a permit application, the director of natural resources shall send a copy of it to the director of the Ohio historical society who shall review it for approval pursuant to division (D) of this section. If the director of natural resources determines that an application submitted under division (A) of this section is incomplete, he shall so notify the applicant in writing and shall specify the additional information that is needed. If the director of the Ohio historical society needs further information, he shall notify the director of natural resources, who shall notify the applicant in accordance with this division. The applicant may resubmit the application following receipt of the notice.

(D) The director of the Ohio historical society shall approve, conditionally approve, or disapprove an application. If he determines that the abandoned property to be recovered, altered, salvaged, or destroyed has historical value in itself or in conjunction with other abandoned property in its vicinity, he may conditionally approve or disapprove the application. If he conditionally approves an application, he may impose conditions on the permit in accordance with division (E) of this section. The director of the Ohio historical society shall notify the director of natural resources of his approval, conditional approval, or disapproval within fifty days after receiving the application. If the director of the Ohio historical society does not respond within fifty days as prescribed in this division, the application is deemed approved by him.

(E) The director of natural resources shall approve, conditionally approve, or disapprove an application. If he determines that the abandoned property to be recovered, altered, salvaged, or destroyed has substantial recreational, ecological, environmental, educational, scenic, or scientific value in itself or in conjunction with other abandoned property or resources in its vicinity or that the operation will not comply with any policies established or rules adopted under section 1506.31 of the Revised Code governing access to and use of the Lake Erie submerged lands preserve, if any, in which the operation is proposed, he may conditionally approve or disapprove the application.

(F) Not later than sixty days after a complete application is submitted under this section, the director of natural resources shall approve, conditionally approve, or disapprove the application. The director of natural resources shall not approve or conditionally approve an application until it has been approved or conditionally approved by the director of the Ohio historical society under division (D) of this section. If either director conditionally approves an application, he shall impose on the permit such conditions as he considers reasonable and necessary to protect the public trust and general interests, including conditions that provide any of the following:

(1) Protection and preservation of the abandoned property to be recovered and of any recreational value of the area in which the operation is proposed;

(2) Assurance of reasonable public access to the abandoned property after recovery;

(3) Conformity with any policies established or rules adopted under section 1506.31 of the Revised Code governing access to and use of the Lake Erie submerged lands preserve, if any, in which the operation is proposed;

(4) Prohibition of injury, harm, or damage to the applicable submerged lands or to abandoned property not authorized for recovery, alteration, salvage, or destruction during and after the proposed operation;

(5) Prohibition against the discharge of debris from the watercraft, aircraft, or salvage equipment or limitation of the amount of debris that may be so discharged;

(6) A requirement that the permit holder submit a specific plan for recovery, alteration, salvage, or destruction to the director of natural resources prior to commencing the operation. The plan may include a discussion of measures that will be taken to ensure the safety of individuals who will recover, alter, salvage, or destroy or assist in the recovery, alteration, salvage, or destruction of the abandoned property and to prevent, minimize, or mitigate potential adverse effects on any abandoned property that is to be recovered or salvaged, any abandoned property that is not to be recovered, altered, salvaged, or destroyed, and surrounding geographic features.

(G) A permit holder may renew the permit by making application to the director of natural resources at least sixty days before the expiration date of the permit. The director of natural resources shall not issue a permit to another person to recover, alter, salvage, or destroy abandoned property that is the subject of a permit for which a renewal is sought unless the director of natural resources or the director of the Ohio historical society disapproves the permit renewal. The director of natural resources or the director of the Ohio historical society may conditionally approve or disapprove a permit renewal application in accordance with division (D), (E), or (F) of this section or if the permit holder has not made reasonable progress in undertaking the operation authorized by the original permit.

(H) Any person may appeal to the director of natural resources a decision under this section approving, disapproving, or approving conditionally a permit application or renewal application in accordance with Chapter 119. of the Revised Code.

(I) The director of natural resources shall not issue and the director of the Ohio historical society shall not approve a permit under this section to recover, alter, salvage, or destroy abandoned property from Lake Erie that is located within a Lake Erie submerged lands preserve established under any rules adopted under section 1506.31 of the Revised Code unless the operation is for historical or scientific purposes or will not adversely affect the historical, cultural, recreational, or ecological integrity of the preserve as a whole.

(J) The director of natural resources may adopt rules in accordance with Chapter 119. of the Revised Code and establish and observe such policies regarding the public availability and use of applications submitted and permits issued under this section as will meet the legitimate requirements of the person who submits an application or to whom a permit is issued. Unless the director of natural resources determines that revealing the location of abandoned property to which a permit or permit or renewal application applies is necessary to protect the abandoned property or the public health, safety, and welfare, the director of natural resources and the director of the Ohio historical society shall keep confidential and shall not release to any person the location of such abandoned property:

(1) During the time the application or renewal application is being processed;

(2) During the term of the permit or a permit renewal;

(3) Except as provided in division (J)(4) of this section, for two years following the denial of a permit or renewal application;

(4) During the appeal of any denial of a permit or renewal application and for two years following the entry of any final order or judgment in the most recent appeal of the denial.

At the request of a permit holder, the director of natural resources may limit access to the site of abandoned property for which the permit was issued during the term of the permit.

(K) Except as provided in division (B) of this section, no person shall recover, alter, salvage, or destroy abandoned property in Lake Erie having a fair market value of one hundred dollars or more unless the person has a permit issued for that purpose under this section.

(1991 H 264, eff. 3-2-92)

**Cross References**

**Penalty:** 1506.99(B)

**Library References**

Health and Environment ⚷25.5(3.1).
Navigable Waters ⚷36(4).
Salvage ⚷1.
WESTLAW Topic Nos. 199, 270, 344.

C.J.S. Health and Environment §§ 91, 106, 129.
C.J.S. Navigable Waters § 109.
C.J.S. Salvage §§ 2, 4, 24.

## 1506.33 Ownership of abandoned property

(A) Except as otherwise provided in divisions (B) and (D) of this section, the ownership of and title to all abandoned property that is submerged in Lake Erie are in the state, which holds title in trust for the benefit of the people of the state.

(B) Any person who recovers or salvages abandoned property from Lake Erie without a permit as provided in division (B) of section 1506.32 of the Revised Code shall file a written report with the director of the Ohio historical society not later than thirty days after the recovery or salvage if both of the following apply:

(1) The property is valued at more than ten dollars;

(2) The property has been abandoned for more than thirty years.

The report shall list all such abandoned property that was recovered or salvaged and shall describe its location at the time of recovery or salvage.

The person shall give the director or his authorized representative an opportunity to examine the property for ninety days after the report is filed. If the director determines that the abandoned property does not have historical value, he shall release it to the person who recovered or salvaged it.

(C) Any person who recovers or salvages abandoned property from Lake Erie in accordance with a permit issued under section 1506.32 of the Revised Code shall file a written report with the director not later than ten days after

the recovery or salvage. The report shall list the abandoned property that was recovered or salvaged and shall describe its location at the time of recovery or salvage.

The person shall give the director or his authorized representative an opportunity to examine the property for ninety days after the report is filed. The property shall not be removed from this state during that period without written approval from the director. If the property is removed from the state without the director's written approval, the attorney general, upon the request of the director, shall bring an action for its recovery.

(D)(1) If the director determines that any abandoned property listed in a report filed under division (C) of this section has historical value, he shall not release it to the permit holder.

(2) If the director determines that any abandoned property so listed does not have historical value and if the abandoned property does not consist of coins, currency, or both that were intended for distribution as payroll, the director shall release the abandoned property to the permit holder. The permit holder shall remit to the treasurer of state an amount equal to ten per cent of the value of the abandoned property. The treasurer shall credit fifty per cent of the moneys so received to the fund provided for in section 149.56 of the Revised Code and fifty per cent to the Lake Erie submerged lands preserves fund created in section 1506.35 of the Revised Code.

(3) If the director determines that any abandoned property so listed does not have historical value and if the abandoned property consists of coins, currency, or both that were intended for distribution as payroll, he shall release at least sixty per cent, but not more than eighty per cent, of the abandoned property to the permit holder. The director may sell or otherwise transfer ownership of and title to any abandoned property retained by him under division (D)(3) of this section. Proceeds from any such sale shall be credited to the fund provided for in section 149.56 of the Revised Code.

(1991 H 264, eff. 3-2-92)

**Library References**

Abandoned and Lost Property ⟹5.
Navigable Waters ⟹36(.5).
WESTLAW Topic Nos. 1, 270.

C.J.S. Abandonment § 12.
C.J.S. Navigable Waters § 88.

## 1506.34 Powers and duties of natural resources director

(A) The director of natural resources, with the approval of the director of the Ohio historical society, shall establish policies and may adopt rules necessary to implement and administer sections 1506.30 to 1506.37 of the Revised Code. Not less than forty-five days prior to adopting a rule under this section or section 1506.31 of the Revised Code, the director of natural resources shall send a copy of the proposed rule to the director of the Ohio historical society, who shall promptly review it. Not more than thirty days after receiving the proposed rule, the director of the Ohio historical society shall return the rule to the director of natural resources together with his written approval or disapproval of the proposed rule. If he disapproves the rule, he shall explain the reasons for his disapproval and any amendments to the rule he considers

necessary to obtain his approval. The director of natural resources shall not adopt a rule under those sections that has not been approved by the director of the Ohio historical society. If the director of the Ohio historical society does not respond within thirty days as prescribed in this section, the rule is deemed approved by him.

(B) The director of natural resources shall inform the public of the requirements of sections 1506.30 to 1506.37 of the Revised Code and any policies established and rules adopted under them. In complying with this section, the director may establish or conduct educational programs or seminars, print and distribute informational pamphlets, and provide detailed information to organizations that conduct scuba diving training programs.

(C) The director of natural resources may hire or contract with a marine archaeologist, a marine historian, a marine surveyor, or any combination thereof for the purposes of implementing and administering sections 1506.30 to 1506.37 of the Revised Code and any rules adopted under them.

(1991 H 264, eff. 3-2-92)

## 1506.35 Revocation or suspension of permit; contraband; Lake Erie submerged lands preserves fund; civil actions; enforcement powers

(A) The director of natural resources may suspend or revoke, in accordance with Chapter 119. of the Revised Code, a permit issued under section 1506.32 of the Revised Code if the permit holder has done either of the following:

(1) Failed to comply with sections 1506.30 to 1506.37 of the Revised Code, any rules adopted under those sections, or any provision or condition of his permit;

(2) Damaged abandoned property other than in accordance with the provisions or conditions of the permit.

(B) Any motor vehicle, as defined in section 4501.01 of the Revised Code, watercraft, as defined in section 1547.01 of the Revised Code, mechanical or other assistance, scuba gear, sonar equipment, or other equipment used by any person in the course of committing a third or subsequent violation of division (K) of section 1506.32 of the Revised Code shall be considered contraband for the purposes of sections 2933.42 and 2933.43 of the Revised Code, except that proceeds from the sale of such contraband shall be disposed of in the following order:

(1) To the payment of the costs incurred in the forfeiture proceedings under section 2933.43 of the Revised Code;

(2) To the payment of the balance due on any security interest preserved under division (C) of section 2933.43 of the Revised Code;

(3) To the payment of any costs incurred by the seizing agency under section 2933.43 of the Revised Code in connection with the storage, maintenance, security, and forfeiture of the contraband;

(4) Fifty per cent of the remaining money to the credit of the Lake Erie submerged lands preserves fund created in division (C) of this section and fifty per cent of the remaining money to the Ohio historical society for deposit into the fund created pursuant to division (C) of section 149.56 of the Revised Code.

(C) There is hereby created in the state treasury the Lake Erie submerged lands preserves fund. The fund shall be composed of moneys credited to it under division (B)(4) of this section and division (D)(2) of section 1506.33 of the Revised Code, all appropriations, contributions, and gifts made to it, and any federal grants received by the department of natural resources for the purposes of sections 1506.30 to 1506.37 of the Revised Code. The director shall use the moneys in the Lake Erie submerged lands preserves fund solely to implement and administer sections 1506.30 to 1506.37 of the Revised Code.

(D) The director may request the attorney general to, and the attorney general shall, bring a civil action in any court of competent jurisdiction for any of the following purposes:

(1) To enforce compliance with or restrain violation of sections 1506.30 to 1506.37 of the Revised Code, any rules adopted under those sections, or any permit issued under section 1506.32 of the Revised Code;

(2) To enjoin the further removal of abandoned property or archaeological material from Lake Erie;

(3) To order the restoration of an area affected by a violation of sections 1506.30 to 1506.37 of the Revised Code or of a permit issued under section 1506.32 of the Revised Code to its prior condition.

Any action under this division is a civil action, governed by the Rules of Civil Procedure.

(E) A peace officer of a county, township, or municipal corporation, and a preserve officer, wildlife officer, park officer, or watercraft officer designated under section 1517.10, 1531.13, 1541.10, or 1547.521 of the Revised Code, as applicable, may enforce compliance with sections 1506.30 to 1506.37 of the Revised Code, any rules adopted under those sections, and any permit issued under section 1506.32 of the Revised Code and may make arrests for violation of those laws, rules, and permits.

(1994 S 182, eff. 10-20-94; 1991 H 264, eff. 3-2-92)

## 1506.36 Other rights not affected

Sections 1506.30 to 1506.35 of the Revised Code do not limit the right of:

(A) Any person to engage in recreational diving in Lake Erie, except at a site of abandoned property to which the director of natural resources has limited access during the term of a permit pursuant to division (J) of section 1506.32 of the Revised Code;

(B) Any person to own any abandoned property submerged in Lake Erie that was recovered before the effective date of this section or released to the person under division (B) or (D) of section 1506.33 of the Revised Code;

(C) The department of natural resources or the Ohio historical society to recover or contract for the recovery of abandoned property in Lake Erie;

(D) Any person to take and remove sand, gravel, stone, or other minerals or substances from and under the bed of Lake Erie in accordance with section 1505.07 of the Revised Code.

(1991 H 264, eff. 3-2-92)

## 1506.37 Submerged lands advisory committee

There is hereby created the submerged lands advisory committee, which shall consist of nine members as follows: the director of natural resources or his designee; the director of the Ohio historical society or his designee; and seven members appointed by the governor who have an interest in or are knowledgeable about the preservation of submerged resources, at least two of whom shall be experienced in scuba diving and at least one of whom shall be a professional salvor or marine surveyor. Other appointments may include, without limitation, maritime historians, underwater archaeologists, and charter boat operators. Initial appointments shall be made within ninety days after the effective date of this section. Of the initial appointments made by the governor, two shall be for terms ending one year after the effective date of this section, two shall be for terms ending two years after the effective date of this section, and three shall be for terms ending three years after the effective date of this section. Thereafter, terms of office shall be for three years, with each term ending on the same day of the same month as did the term that it succeeds. Each member shall hold office from the date of his appointment until the end of the term for which he was appointed. Members may be reappointed. Vacancies shall be filled in the manner provided for original appointments. Any member appointed to fill a vacancy occurring prior to the expiration date of the term for which his predecessor was appointed shall hold office as a member for the remainder of that term. A member shall continue in office subsequent to the expiration date of his term until his successor takes office or until a period of sixty days has elapsed, whichever occurs first. The board shall elect a chairman annually from among its members.

The committee may make recommendations to the coastal resources advisory council created in section 1506.12 of the Revised Code, the department of natural resources, the Ohio historical society, and the members of the general assembly regarding all of the following:

(A) The creation and boundaries of Lake Erie submerged lands preserves under rules adopted under section 1506.31 of the Revised Code;

(B) The issuance of permits under section 1506.32 of the Revised Code;

(C) Policies and rules needed for the implementation and administration of sections 1506.30 to 1506.37 of the Revised Code;

(D) Appropriate legislation for the management and preservation of submerged resources.

(1991 H 264, eff. 3-2-92)

PENALTIES

## 1506.99 Penalties

(A) Whoever violates division (A) of section 1506.09 of the Revised Code shall be fined not less than one hundred nor more than five hundred dollars for each offense.

(B) Whoever violates division (K) of section 1506.32 of the Revised Code is guilty of a misdemeanor of the third degree.

(1995 S 2, eff. 7-1-96; 1991 H 264, eff. 3-2-92; 1988 S 70)

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# CHAPTER 1507

## Shore Erosion

**Section**
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**Cross References**

Water management and supply improvements, financial aid, applicability to Burr Oak water system, 1521.04

### 1507.01 Engineering division; chief engineer

There is hereby created in the department of natural resources the division of engineering to be administered by the chief engineer of the department, who shall be a professional engineer registered under Chapter 4733. of the Revised Code. The chief engineer shall do all of the following:

(A) Administer this chapter;

(B) Provide engineering, architectural, land surveying, and related administrative and maintenance support services to the other divisions in the department;

(C) Upon request of the director of natural resources, implement the department's capital improvement program and facility maintenance projects, including all associated engineering, architectural, design, contracting, surveying, inspection, and management responsibilities and requirements;

(D) With the approval of the director, act as contracting officer in departmental engineering, architectural, surveying, and construction matters regarding capital improvements except for those matters otherwise specifically provided for in law;

(E) Administer, operate, and maintain the Burr Oak water system and, with the approval of the director, act as contracting agent in matters concerning that system;

(F) Provide engineering support for the coastal management program established under Chapter 1506. of the Revised Code;

(G) Coordinate the department's roadway maintenance program with the department of transportation pursuant to section 5511.05 of the Revised Code and maintain the roadway inventory of the department of natural resources;

(H) Coordinate the department's emergency response activities with the emergency management agency created in section 5915.02 of the Revised Code;

(I) Coordinate the department's projects, programs, policies, procedures, and activities with the United States army corps of engineers;

(J) Subject to the approval of the director, employ professional and technical assistants and such other employees as are necessary for the performance of the activities required or authorized under this chapter, other work of the division, and any other work agreed to under working agreements or contractual arrangements; prescribe their duties; and fix their compensation in accordance with such schedules as are provided by law for the compensation of state employees.

(1994 S 182, eff. 10-20-94)

**Historical and Statutory Notes**

**Ed. Note:** Former 1507.01 amended and recodified as 1507.02 by 1994 S 182, eff. 10-20-94; 130 v H 1, eff. 1-23-63; 129 v 1350; 126 v 569; 1953 H 1; GC 412-24.

## 1507.02 Erosion agent

The chief engineer of the department of natural resources shall act as the erosion agent of the state for the purpose of cooperating with the secretary of the army, acting through the chief of engineers of the United States army corps of engineers in the department of defense. The chief engineer shall cooperate with the secretary in carrying out, and may conduct, investigations and studies of conditions along the shorelines of Lake Erie and of the bays and projections therefrom, and of the islands therein, within the territorial waters of the state, with a view to devising and perfecting economical and effective methods and works for preventing, correcting, and arresting shore erosion and damage therefrom and preventing the inundation of improved property by the waters of Lake Erie.

(1994 S 182, eff. 10-20-94)

**Historical and Statutory Notes**

**Ed. Note:** 1507.02 is former 1507.01, amended and recodified by 1994 S 182, eff. 10-20-94; 130 v H 1, eff. 1-23-63; 129 v 1350; 126 v 569; 1953 H 1; GC 412-24.

**Ed. Note:** Former 1507.02 amended and recodified as 1507.03 by 1994 S 182, eff. 10-20-94; 129 v 1350, eff. 11-2-61; 1953 H 1; GC 412-25, 412-26.

## 1507.03 Assistance by engineers and employees of other state departments

The chief engineer of the department of natural resources, in the discharge of his duties under sections 1507.01 to 1507.10 of the Revised Code, may call to his assistance, temporarily, any engineers or other employees in any state department, or in the Ohio state university or other educational institutions financed wholly or in part by the state, for the purpose of devising the most effective and economical methods of arresting and preventing erosion and inundation along the shorelines of Lake Erie and its connecting bays.

Such engineers and employees shall not receive any additional compensation over that which they receive from the departments or institutions by which they are employed, but they shall be reimbursed for their actual necessary expenses incurred while working under the direction of the chief engineer on erosion and inundation projects.

(1994 S 182, eff. 10-20-94)

**Historical and Statutory Notes**

**Ed. Note:** 1507.03 is former 1507.02, amended and recodified by 1994 S 182, eff. 10-20-94; 129 v 1350, eff. 11-2-61; 1953 H 1; GC 412-25, 412-26.

**Ed. Note:** Former 1507.03 amended and recodified as 1507.04 by 1994 S 182, eff. 10-20-94; 1988 S 70, eff. 3-15-89; 129 v 1350; 126 v 769; 125 v 802; 1953 H 1; GC 412-28.

### 1507.04 Erosion control structure permits

No person shall construct a beach, groin, or other structure to arrest or control erosion, wave action, or inundation along or near the Ohio shoreline of Lake Erie, including related islands, bays, and inlets, without first submitting an application for a construction permit, including detailed plans and specifications prepared by a professional engineer registered under Chapter 4733. of the Revised Code, to the chief engineer of the department of natural resources. An applicant shall provide appropriate evidence of compliance with any applicable provisions of Chapters 1505., 1506., and 1521. of the Revised Code, as determined by the chief engineer. Whenever possible, the chief engineer shall consider an application for a permit from the United States army corps of engineers of the department of defense to be adequate as an application for a construction permit for the purposes of this section.

Each application or reapplication for a permit under this section shall be accompanied by a nonrefundable fee of not more than five hundred dollars, as the chief engineer shall prescribe by rule.

If the application is approved, the chief engineer shall issue a permit to the applicant authorizing construction of the project. If requested in writing by the applicant within thirty days of issuance of a notice of disapproval of the application, the chief engineer shall conduct an adjudication hearing under Chapter 119. of the Revised Code, except sections 119.12 and 119.121 of the Revised Code. After reviewing the record of the hearing, the chief engineer shall issue a final order approving the application, disapproving it, or approving it conditioned on the making of specified revisions in the plans and specifications.

The chief engineer, by rule, shall limit the period during which a construction permit issued under this section is valid and shall establish reapplication requirements governing a construction permit that expires before construction is completed.

In accordance with Chapter 119. of the Revised Code, the chief engineer shall adopt, and may amend or rescind, such rules as are necessary for the administration, implementation, and enforcement of this section.

(1994 S 182, eff. 10-20-94)

**Historical and Statutory Notes**

**Ed. Note:** 1507.04 is former 1507.03, amended and recodified by 1994 S 182, eff. 10-20-94; 1988 S 70, eff. 3-15-89; 129 v 1350; 126 v 769; 125 v 802; 1953 H 1; GC 412-28.

**Ed. Note:** Former 1507.04 amended and recodified as 1507.05 by 1994 S 182, eff. 10-20-94; 1988 S 70, eff. 3-15-89; 1985 H 201; 1977 S 221; 1972 S 397, H 94; 131 v H 460; 129 v 1350, 582; 126 v 569; 1953 H 1; GC 412-28.

### 1507.05 Permit and lease fund

All moneys derived from the granting of permits and leases under section 1505.07 of the Revised Code for the removal of sand, gravel, stone, gas, oil, and other minerals and substances from and under the bed of Lake Erie and from applications for construction permits submitted under section 1507.04 of the Revised Code shall be paid into the state treasury to the credit of the permit and lease fund, which is hereby created. Notwithstanding any section of the Revised Code relating to the distribution or crediting of fines for violations of the Revised Code, all fines imposed under sections 1505.99 and 1507.99 of the Revised Code shall be paid into that fund. The fund shall be administered by the department of natural resources for the protection of Lake Erie shores and waters; investigation and prevention of erosion; the planning, development, and construction of facilities for recreational use of Lake Erie; implementation of section 1507.04 of the Revised Code; preparation of the state shore erosion plan under section 1507.10 of the

Revised Code; and state administration of the Lake Erie erosion hazard area under sections 1506.06 and 1506.07 of the Revised Code.

(1994 S 182, eff. 10-20-94)

**Historical and Statutory Notes**

**Ed. Note:** 1507.05 is former 1507.04, amended and recodified by 1994 S 182, eff. 10-20-94; 1988 S 70, eff. 3-15-89; 1985 H 201; 1977 S 221; 1972 S 397, H 94; 131 v H 460; 129 v 1350, 582; 126 v 569; 1953 H 1; GC 412-28.

**Ed. Note:** Former 1507.05 amended and recodified as 1507.06 by 1994 S 182, eff. 10-20-94; 1989 H 230, eff. 10-30-89; 1988 S 70; 1985 H 201; 1977 S 221; 130 v H 573; 129 v 1350; 125 v 802; 1953 H 1; GC 412-28.

### 1507.051 and 1507.052 Contracting agent for erosion projects; acquisition of property—Repealed

(1994 S 182, eff. 10-20-94; 1985 H 201, eff. 7-1-85; 1977 S 221; 129 v 1350; 125 v 802)

**Historical and Statutory Notes**

**Ed. Note:** Former 1507.051 and 1507.052 amended and recodified as 1507.07 and 1507.08, respectively, by 1994 S 182, eff. 10-20-94.

### 1507.06 Agreements with subdivisions for erosion projects

The state, acting through the chief engineer of the department of natural resources, subject to section 1507.09 of the Revised Code, may enter into agreements with counties, townships, municipal corporations, park boards, and conservancy districts, other political subdivisions, or any state departments or divisions for the purpose of constructing and maintaining projects to prevent, correct, and arrest erosion along the Ohio shoreline of Lake Erie and in any rivers and bays that are connected with Lake Erie and any other watercourses that flow into Lake Erie. Such projects also may be constructed on any Lake Erie island that is situated within the boundaries of the state.

The cost of such shore erosion projects that are for the benefit of public littoral property shall be prorated on the basis of two-thirds of the total cost to the state through appropriations made to the division of engineering and one-third of the cost to the counties, townships, municipal corporations, park boards, conservancy districts, or other political subdivisions.

If a shore erosion emergency is declared by the governor, the state, acting through the chief engineer, may spend whatever state funds are available to alleviate shore erosion, without participation by any political subdivision, regardless of whether the project will benefit public or private littoral property.

A board of county commissioners, acting for the county over which it has jurisdiction, may enter into and carry out agreements with the chief engineer for the construction and maintenance of projects to prevent, correct, and arrest shore erosion. In providing the funds for the county's proportionate share of the cost of constructing and maintaining the projects referred to in this section, the board shall be governed by and may issue and refund bonds in accordance with Chapter 133. of the Revised Code.

A municipal corporation or a township, acting through the legislative authority or the board of township trustees, may enter into and carry out agreements with the chief engineer for the purpose of constructing and maintaining projects to prevent, correct, and arrest shore erosion. In providing the funds for the municipal corporation's or township's proportionate share of the cost of constructing and maintaining the projects referred to in this section, a municipal corporation or township may issue and refund bonds in accordance with Chapter 133. of the Revised Code. The contract shall be

executed on behalf of the municipal corporation or township by the mayor, city manager, or other chief executive officer who has the authority to act for the municipal corporation or township.

Conservancy districts may enter into and carry out agreements with the chief engineer, in accordance with the intent of this section, under the powers conferred upon conservancy districts under Chapter 6101. of the Revised Code.

Park boards may enter into and carry out agreements with the chief engineer, in accordance with the intent of this section, and issue bonds for that purpose under the powers conferred upon park districts under Chapter 1545. of the Revised Code.

The chief engineer shall approve and supervise all projects that are to be constructed in accordance with this section. The chief engineer shall not proceed with the construction of any project until all funds that are to be paid by the county, township, municipal corporation, park board, or conservancy district, in accordance with the terms of the agreement entered into between the chief engineer and the county, township, municipal corporation, park board, or conservancy district, are in his possession and deposited in the shore erosion fund, which is hereby created in the state treasury. If the chief engineer finds it to be in the best interests of the state to construct projects as set forth in this section by the state itself, without the financial contribution of counties, townships, municipal corporations, park boards, or conservancy districts, he may construct the projects.

In deciding whether to assist a county or municipal corporation in constructing and maintaining a project under this section, the state, acting through the chief engineer, shall consider, among other factors, whether the county or municipal corporation has adopted or is in the process of adopting a Lake Erie erosion hazard area resolution or ordinance under division (D) of section 1506.07 of the Revised Code.

All projects constructed by the state in conformity with sections 1507.02 to 1507.09 of the Revised Code shall be constructed subject to sections 153.01 to 153.20 of the Revised Code, except that the state architect and engineer is not required to prepare the plans and specifications for those projects.

As used in this chapter:

(A) "Conservancy district" means a conservancy district established under Chapter 6101. of the Revised Code.

(B) "Park board" means the board of park commissioners of a park district created under Chapter 1545. of the Revised Code.

(1994 S 182, eff. 10-20-94)

**Historical and Statutory Notes**

**Ed. Note:** 1507.06 is former 1507.05, amended and recodified by 1994 S 182, eff. 10-20-94; 1989 H 230, eff. 10-30-89; 1988 S 70; 1985 H 201; 1977 S 221; 130 v H 573; 129 v 1350; 125 v 802; 1953 H 1; GC 412-28.

**Ed. Note:** Former 1507.06 repealed by 129 v 1350, eff. 11-2-61; 126 v 569; 1953 H 1; GC 412-28.

## 1507.07 Shore erosion project construction contracts

The chief engineer of the department of natural resources may enter into a contract with any county, township, municipal corporation, conservancy district, or park board that has an agreement with the state in accordance with section 1507.06 of the Revised Code for the construction of a shore erosion project. No contract shall be let until all money which is to be paid by the political subdivision entering into the agreement has been deposited in the shore erosion fund created in section 1507.06 of the Revised Code, and no contract shall be valid until approved by the director of natural resources.

(1994 S 182, eff. 10-20-94)

### Historical and Statutory Notes

**Ed. Note:** 1507.07 is former 1507.051, amended and recodified by 1994 S 182, eff. 10-20-94; 1985 H 201, eff. 7-1-85; 1977 S 221; 129 v 1350; 125 v 802.

**Ed. Note:** Former 1507.07 repealed by 129 v 1350, eff. 11-2-61; 1953 H 1; GC 412-28.

### Library References

OJur 3d: 41, Environmental Protection § 40, 63

## 1507.08 Acquisition of property

The state, or any county, township, municipal corporation, conservancy district, or park board that has entered into a contract under section 1507.07 of the Revised Code, may acquire lands by gift or devise, purchase, or appropriation. In case of appropriation, the proceedings shall be instituted in the name of the state or the political subdivision and shall be conducted in the manner provided for the appropriation of private property by the state or the political subdivision insofar as those proceedings are applicable. Either the fee or any lesser interest may be acquired as the state or the political subdivision considers advisable.

(1994 S 182, eff. 10-20-94)

### Historical and Statutory Notes

**Ed. Note:** 1507.08 is former 1507.052, amended and recodified by 1994 S 182, eff. 10-20-94; 125 v 802, eff. 10-30-53.

**Ed. Note:** Former 1507.08 repealed by 129 v 1350, eff. 11-2-61; 125 v 802; 1953 H 1; GC 412-28a.

## 1507.09 Action not in conflict

Any action taken by the chief engineer of the department of natural resources under sections 1507.02 to 1507.09 of the Revised Code shall not be deemed in conflict with certain powers and duties conferred upon and delegated to federal agencies and to municipal corporations under Section 7 of Article XVIII, Ohio Constitution, or as provided by sections 721.04 to 721.11 of the Revised Code.

(1994 S 182, eff. 10-20-94)

### Historical and Statutory Notes

**Ed. Note:** 1507.09 is former 1507.11, amended and recodified by 1994 S 182, eff. 10-20-94; 1988 S 70, eff. 3-15-89; 129 v 1350; 1953 H 1; GC 412-29.

**Ed. Note:** Former 1507.09 repealed by 129 v 1350, eff. 11-2-61; 1953 H 1; GC 412-31.

## 1507.10 Plan for prevention of shore erosion; program to provide technical assistance

The chief engineer of the department of natural resources, in cooperation with the division of geological survey, shall prepare a plan for the prevention of shore erosion in the state along Lake Erie, revise the plan whenever it can be made more effective, and make the plan available for public inspection. In the preparation of the plan, the chief engineer shall employ such existing plans as are available.

The chief engineer also shall establish a program to provide technical assistance on shore erosion control measures to municipal corporations, counties, townships, conservancy districts, park boards, and shoreline property owners.

(1994 S 182, eff. 10-20-94)

### Historical and Statutory Notes

**Ed. Note:** 1507.10 is former 1507.12, amended and recodified by 1994 S 182, eff. 10-20-94; 1988 S 70, eff. 3-15-89; 129 v 1350; 125 v 802.

**Ed. Note:** Former 1507.10 repealed by 129 v 1350, eff. 11-2-61; 1953 H 1; GC 412-27.

### 1507.11 Reappraisal of land

Upon application of any owner of real property damaged or destroyed by shore erosion, the county auditor of the county in which the real property is situated shall cause a reappraisal to be made and shall place the property on the tax list at its true value in money.

Whenever the county auditor finds that ninety per cent or more of the area of any littoral parcel of land appearing upon the tax duplicate has been eroded and lies within the natural boundaries of Lake Erie and that the remainder of the parcel, if any, has no taxable value, he may certify that finding to the county board of revision. Upon consideration thereof, the board may authorize removal of the parcel from the tax duplicate and cancellation of all current and delinquent taxes, assessments, interest, and penalties charged against the parcel.

(1994 S 182, eff. 10-20-94)

#### Historical and Statutory Notes

**Ed. Note:** 1507.11 is former 1507.13, amended and recodified by 1994 S 182, eff. 10-20-94; 1983 H 260, eff. 9-27-83; 1976 H 920; 125 v 802.

**Ed. Note:** Former 1507.11 amended and recodified as 1507.09 by 1994 S 182, eff. 10-20-94; 1988 S 70, eff. 3-15-89; 129 v 1350; 1953 H 1; GC 412-29.

### 1507.12 Burr Oak water system fund

The chief engineer of the department of natural resources shall adopt, and may amend and rescind, rules in accordance with Chapter 119. of the Revised Code specifying requirements and procedures for the provision of water service to water users and establishing a rate schedule, including related water service fees and late payment penalties, for the sale of water from the Burr Oak water system sufficient to meet the capital improvement and operating expenses of the system. The revenue derived from the sale of the water shall be deposited into the Burr Oak water system fund, which is hereby created in the state treasury. All investment earnings of the fund shall be credited to the fund. Money in the fund shall be used to pay the capital improvement and operating expenses of the Burr Oak water system.

For the purposes of this chapter, "Burr Oak water system" means the Burr Oak water treatment plant and its transmission lines, storage tanks, and other appurtenances.

(1994 S 182, eff. 10-20-94)

#### Historical and Statutory Notes

**Ed. Note:** 1507.12 is former 1541.23, amended and recodified by 1994 S 182, eff. 10-20-94; 1992 S 180, eff. 3-24-93.

**Ed. Note:** Former 1507.12, amended and recodified as 1507.10 by 1994 S 182, eff. 10-20-94; 1988 S 70, eff. 3-15-89; 129 v 1350; 125 v 802.

#### Cross References

Natural resources department, leases and contracts, 1501.01

### 1507.13 Right of entry for inspection

The chief engineer of the department of natural resources or any employee in the service of the division of engineering may enter upon lands to make surveys and inspections in accordance with this chapter when necessary in the discharge of the duties specified in this chapter. Notice of such a proposed entry shall be given to the owner of the land to be surveyed or inspected or to the person in possession of it by such means as are reasonably available, not less than forty-eight hours nor more than thirty days prior to the date of the entry. Such an entry does not constitute a trespass.

(1994 S 182, eff. 10-20-94)

#### Historical and Statutory Notes

**Ed. Note:** Former 1507.13 amended and recodified as 1507.11 by 1994 S 182, eff. 10-20-94; 1983 H 260, eff. 9-27-83; 1976 H 920; 125 v 802.

**1507.99 Penalty**

Whoever violates section 1507.04 of the Revised Code shall be fined not less than one hundred nor more than five hundred dollars for each offense. Each day of violation constitutes a separate offense.

(1994 S 182, eff. 10-20-94; 1953 H 1, eff. 10-1-53)

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Memorandum of Understanding
Between
Ohio Department of Natural Resources
And
Ohio Environmental Protection Agency

This memorandum of understanding (MOU) was made and entered into March 7, 1997, by and between the Ohio Department of Natural Resources (ODNR) and the Ohio Environmental Protection Agency (Ohio EPA).

The purposes of this MOU are to establish the responsibilities of ODNR and Ohio EPA in coordinating intrastate review of consistency determinations, consistency certifications and federal assistance proposals required by the Coastal Zone Management Act (CZMA), 16 USC 1456, et seq., and implementing federal regulations, 30 C.F.R. 930, et seq. This MOU will also establish the responsibilities of ODNR and Ohio EPA in implementing the State of Ohio's Coastal Management Program (OCMP) and ensuring consistency of projects and activities subject to the approval of the State of Ohio, as required by Ohio Revised Code Section 1506.03 and further defined in the Coastal Management Program. The procedures outlined below are also intended to minimize duplication and delays while making certain that the objectives of the Coastal Management Program are attained.

## A. Cooperation in Environmental Planning And Management

Both ODNR and Ohio EPA have regulatory and custodial responsibilities to protect natural resources and environmental quality of the State of Ohio. It is acknowledged that close coordination and cooperation is essential to safeguarding the public trust interest in the waters of Lake Erie and associated resources.

Ohio EPA and ODNR agree to cooperate fully in the planning and development of the coastal nonpoint source pollution control program pursuant to the Coastal Zone Act Reauthorization Amendments of 1990, §6217. ODNR agrees to provide Ohio EPA financial assistance that may be available through the coastal management program. The coastal nonpoint program shall build and expand upon the federally approved Ohio Nonpoint Source Management Program developed and implemented under § 319 of the Clean Water Act. ODNR and Ohio EPA hereby express the State of Ohio's commitment to contact and involve relevant state, local and federal programs and to coordinate with other federal and state plans and programs that deal with land and water uses identified by the OCMP.

Further acknowledging the necessity of close coordination and cooperation, ODNR and Ohio EPA pledge to provide leadership and active support of the Lake Erie Commission and Lake Erie Protection Fund program, pursuant to O.R.C. § 1506.21, § 1506.22 and § 1506.23; to support the development and implementation of state policies and programs for long-term comprehensive protection of Lake Erie water resources and water quality consistent with the Great Lakes Water Quality Agreement and the Great Lakes Toxic Substances Control Agreement; and to work through the Commission and the OCMP Policies and Programs Coordinating Committee to

ensure the development and implementation of sound, comprehensive policies in coastal resources management.

ODNR agrees to include, in requests for funding under CZMA, funds for performance of Ohio EPA's obligations under this agreement and funds that may become available for the enhancement of any element of the OCMP in which Ohio EPA has implementation responsibilities.

ODNR will inform Ohio EPA in writing of any proposed changes in federal or state laws, regulations or policies affecting the OCMP and provide full opportunity for input in planning and policy making.

Ohio EPA agrees to notify ODNR and agencies represented on the OCMP Policies and Programs Coordinating Committee of any proposed activities of Ohio EPA or changes in policies or state laws that may affect the coastal area or programs of agencies with responsibility in the coastal area.

## B. Permitting

Ohio EPA has statutory authority to issue permits to the regulated community in the State of Ohio for the control of air pollution, for solid waste management, infectious waste management, protection of public water supplies, hazardous waste management, water pollution control, and for management of injection wells.

In each permit application, the Ohio EPA will notify the applicant in writing of the consistency requirements of the OCMP for activities that directly affect the coastal area and provide the applicant with a telephone number of the OCMP at ODNR for further information. The Ohio EPA will include for the applicant's signature a statement that the applicant understands and agrees that the activity may not proceed until a determination of consistency with the policies of the OCMP has been made by ODNR.

ODNR agrees to review all activities that will occur within or directly affect the coastal area to ensure the activity is consistent with the rules, regulations and policies embodied in the OCMP. Further, ODNR agrees to certify that every activity authorized by Ohio EPA permit that directly affects the coastal area is consistent with Ohio Revised Code Chapter 1506 and the rules, regulations and policies embodied in the OCMP document.

Ohio EPA agrees to notify ODNR of all permit applications received by the Director of Ohio EPA for activities that may affect the coastal area through the Ohio EPA publication known as the *Weekly Review*. Ohio EPA also will continue their policy to provide written notification to ODNR of: (1) applications for permits for solid and hazardous waste facilities; and (2) applications for permits to install for water treatment facilities, wastewater treatment facilities, water intake and thermal discharge facilities, and air pollution control facilities emissions, as requested by ODNR or deemed necessary by Ohio EPA. Ohio EPA will also notify ODNR in

writing of any unpermitted activities in the coastal area that come to their attention and activities for which permit applications are submitted after the fact.

It is agreed that ODNR will notify Ohio EPA in writing within 30 days of publication of the permit application in the *Weekly Review* or receipt of other written Ohio EPA notice, if ODNR determines that the activity contemplated in the permit application is inconsistent with the OCMP or that the application should be given further review. ODNR will clearly identify the laws, rules or regulations that the action does not meet and will recommend ways that the action should be modified, if possible, to ensure consistency with the applicable policies. ODNR may also request additional information necessary to make its determination. It shall be presumed that ODNR has waived its authority to concur in or object to the certification of consistency if ODNR has not provided Ohio EPA with written notice of its concern within 30 days of publication of the application in the *Weekly Review* or within 30 days of receipt of other written notice by Ohio EPA.

A project or action, once found to be consistent, will be presumed to remain consistent unless a determination of inconsistency is transmitted in writing from ODNR to Ohio EPA as a result of observed activities during project implementation that violate rules, regulations or policies of the OCMP.

When, as described above, ODNR has notified Ohio EPA in writing of its concern about the inconsistency with the OCMP of a permit application, Ohio EPA will not proceed with issuance of the permit until an agreement has been reached between ODNR and Ohio EPA that addresses ODNR's concern. Any disputes between Ohio EPA and ODNR concerning a permit application will be resolved through the mediation process outlined in Section F of this MOU. In no event shall the mediation process extend beyond the time frame established by statute for Ohio EPA permit review.

## C. Development Projects

ODNR agrees to notify Ohio EPA of those development projects within or directly affecting the coastal area as described in the OCMP having potential environmental impacts upon the coastal resources. Ohio EPA agrees to provide written comments within 30 days of such notification consistent with the Agency's rules, regulations and policies.

## D. Loans and Financial Assistance

Ohio EPA administers the Water Pollution Control Loan Fund (WPCLF) to assist local entities in the design and construction of wastewater treatment facilities and for the installation of management measures to control nonpoint source activities. Ohio EPA agrees to provide ODNR with the draft Intended Use Plan that lists active projects projected to receive WPCLF assistance. Ohio EPA will notify ODNR of any projects not listed in the Intended Use Plan via *The Clarifier* newsletter.

During facilities planning, the Ohio EPA will notify the applicant in writing that activities directly affecting the coastal area may require permits or other approvals that could be subject to the consistency requirements of the OCMP. The Ohio EPA will provide the applicant with a telephone number of the Coastal Management Program at ODNR for further information.

## E. Statements of Coastal Management Policies

Ohio EPA may develop a Statement of Coastal Management Policies for certain actions, upon mutual agreement with ODNR. The statement shall be as stringent as the corresponding portions of the OCMP and shall not be approved unless it includes:

1. A list of the agency's activities that, if implemented or approved, would affect the coastal area (as defined in Chapter 3 of the CMP, pursuant to the CZMA and based on O.R.C. Section 1506.01(A)) and that are determined to be consistent with the policies of the OCMP, and

2. A provision for the annual review of consistency performance by ODNR and Ohio EPA. If consistency performance is determined to be unsatisfactory after response by Ohio EPA, revocation of approval may result.

If ODNR and Ohio EPA agree to the Statement of Coastal Management Policies, it shall be signed by each director and made a part of this MOU. When a statement has been signed, no further reviews as specified in Sections A through D of this MOU will be required as long as actions specified in the statement remain consistent.

If ODNR believes that any action undertaken by Ohio EPA under the Statement of Coastal Management Policies is inconsistent, ODNR will notify Ohio EPA of such concern in writing, describing the reasons why ODNR believes the action is inconsistent. If the issue cannot be resolved within 30 days of receipt of written notification, either ODNR or Ohio EPA will initiate the mediation process outlined in Section F.

## F. Mediation of Determinations of Inconsistency

When a letter of inconsistency has been received by Ohio EPA from ODNR, Ohio EPA will not proceed with any action until ODNR has withdrawn its objection or the objection has been resolved through mediation in a timely fashion. The mediation between ODNR and Ohio EPA will be a tiered process using the following steps:

1. Meeting of staff members from each agency (within 20 days of receipt of the letter of inconsistency). Meeting arrangements will be made through the Coastal Management Administrator, Division of Real Estate and Land Management.

2. Meeting of agency directors (within 40 days of receipt of the letter of inconsistency).

3. Decision from the Office of the Governor.

A decision reached at any level will be binding on both parties, and the issue may not be brought forward at further stages of the action. In no event shall the mediation process extend beyond the timeframe established by statute for Ohio EPA permit review.

## G. Duration

One year after execution of this MOU, the process outlined herein will be reviewed by the parties to the MOU for substance, timeliness, responsiveness and impact upon agency workload. If the parties agree, the MOU may then be renewed or revised in writing by mutual agreement of the directors of both agencies.

## H. Designation of Liaisons

The Coastal Management Administrator is designated to serve as ODNR's liaison for matters involving the OCMP and this MOU The representative of Ohio EPA on the OCMP Policies and Programs Coordinating Committee or other staff member designated by the Director, Ohio EPA, shall serve as Ohio EPA's liaison for these purposes.

The above is mutually agreed between ODNR and Ohio EPA from this date on, or until modified or discontinued by mutual consent, or discontinued unilaterally with a minimum of ninety (90) days advance notice by either party.

Obligations of the State are subject to O.R.C. § 126.07. It is expressly understood that no financial commitment described in this MOU, each of which shall be the subject of a separate agreement, shall be binding upon either party until: all requirements of the Ohio Revised Code respecting the transfer or expenditure of funds, including but not limited to Sections 126.07, 131.34, and 131.35, have been complied with; all necessary funds are made available; and, when required, the expenditure or transfer of such funds is approved by the Controlling Board of the State of Ohio.

Donald C. Anderson, Director
Ohio Department of Natural Resources

Donald R. Schregardus, Director
Ohio Environmental Protection Agency

Memorandum of Understanding
Between
the Ohio Department of Natural Resources
and
Ohio Department of Transportation

This memorandum of understanding (MOU) was made and entered into on February 26, 1997, by and between the Ohio Department of Natural Resources (ODNR) and the Ohio Department of Transportation (ODOT).

The purposes of this MOU are to establish the responsibilities of ODNR and ODOT in coordinating intrastate review of consistency determinations, consistency certifications and federal assistance proposals required by the Coastal Zone Management Act (CZMA), 16 USC 1456, et seq., and implementing federal regulations, 30 C.F.R. 930, et seq. This MOU will also establish the responsibilities of ODNR and ODOT in implementing the State of Ohio Coastal Management Program (OCMP) and ensuring consistency of projects and activities subject to the approval of the State of Ohio as required in Section 1506.03 of the Ohio Revised Code and further defined in the Ohio Coastal Management Plan. The procedures outlined below are intended to minimize duplication and delays while making certain that the objectives of the Ohio Coastal Management Program are attained.

Activities of ODOT that are subject to the provisions of this MOU include all construction, maintenance and operations activities; however, the activities described in Attachment "A" are hereby determined to be consistent with the OCMP, based on their routine nature and relatively minor potential to impact the coastal zone as described in the OCMP. For other projects and activities not specifically exempted above, the following coordination procedures will be implemented.

## A. Planning Stage

To avoid major policy-based objections to activities undertaken by ODOT that may have a direct impact on the coastal area, as defined in the Ohio Coastal Management Program document, ODOT shall submit to ODNR, Coastal Management Administrator, Division of Real Estate and Land Management, a description of the proposed project or activity and an assessment that the project or activity is consistent with the policies of the coastal management program as early as possible in the planning phase. The consistency assessment should document that ODOT has coordinated with other agencies participating in the activity or exercising authority in the coastal area. The description of the proposed project shall be in sufficient detail and scope to allow for an adequate review by ODNR. A staff contact within ODOT and participating agencies shall be designated to address any need for follow-up questions, further information or mediation.

ODNR shall consult with other agencies and organizations as necessary to determine if the action or activity should be undertaken by the state based upon the rules, regulations and policies embodied in the Ohio Coastal Management Program document.

## B. Planning Stage Review Process

ODOT shall submit the project description with supporting documentation and consistency certification to ODNR as soon as practicable in the planning process but prior to a decision to proceed with the action or activity. ODNR shall promptly review the submitted material and request additional information or clarification as needed. ODNR shall review the project or activity, incorporating reviews of other agencies and organizations, within 30 days. Any extension of the review period will be mutually agreed to by ODNR and ODOT. If no response or request for additional information from ODNR is received by ODOT within 30 days of the receipt of the submission by ODNR, the project or activity shall be presumed to be consistent with the OCMP and may proceed as proposed by ODOT. ODNR's point of contact is the Coastal Management Administrator, Division of Real Estate and Land Management and ODOT's point of contact is the Administrator, Office of Environmental Services. ODOT's submission for the planning stage shall consist of the supplemental project information sheet and exhibits.

Upon completion of its review, ODNR will notify ODOT that the proposed project or activity is either consistent or inconsistent with policies of the Ohio Coastal Management Program. If found consistent, no further consistency reviews will be necessary if the action does not change in scope. If found inconsistent, ODNR will clearly identify the rule, regulation or policy the action does not meet and may request additional information or recommend ways that the action may be modified to ensure consistency with applicable policies.

If ODOT agrees to modify the proposal in accordance with ODNR recommendations, the revised proposal may be resubmitted to ODNR for a consistency approval. ODNR will notify ODOT of its determination within 30 days of receipt of the revised proposal. If ODOT disagrees with the determination by ODNR, it agrees to engage in the mediation process outlined in Section E of this MOU.

## C. Complex Project or Activity Review Process

For larger, more complex projects or activities, consistency determinations may be deferred pending ODNR's review of the environmental documentation, e.g., see factor summary (O.R.C. § 5521.011), Categorical Exclusion (23 C.F.R. 771), Environmental Assessment (23 C.F.R. 771) or Environmental Impact Statement (23 C.F.R. 771), prepared for ODOT projects. If no response or request for additional information from ODNR is received by ODOT within 30 days of the receipt of the submission by ODNR, the project or activity shall be presumed to be consistent with the OCMP and may proceed as proposed by ODOT.

## D. Determination of Consistency

ODNR's consistency determination will be based upon information available at the applicable review stage. Subsequent documents will address and attempt to resolve all concerns expressed

during review of previous documents. As appropriate, the procedures set forth in 15 C.F.R., Subpart F, will apply.

If the Director, ODNR, has determined that a project or activity is consistent with coastal management policies, ODNR does not need to send any further statements of concurrence. An action once found to be consistent will be presumed to remain consistent unless a letter of objection is transmitted from ODNR to ODOT as a result of a determination that activities would violate applicable rules, regulations or policies of the OCMP.

If the project is found to be inconsistent, ODNR will clearly identify the rule, regulation or policy the action does not meet and may recommend a way that the action may be modified to ensure consistency. If ODOT disagrees with the determination of inconsistency, this determination may be appealed under the mediation process outlined in Section E of this MOU.

## E. Mediation of Determinations of Inconsistency

When a letter of inconsistency has been received by ODOT from ODNR, ODOT will not proceed with the action until a decision has been reached that allows the objection to be lifted. The mediation will be a tiered process using the following steps:

1. A meeting of staff members from each agency will be convened within 30 days of receipt of letter of inconsistency. Arrangements will be made through the Coastal Management Administrator, Division of Real Estate and Land Management

2. A meeting of department directors will be convened within 30 days of the meeting of staff members, if necessary.

3. A meeting involving an appropriate representative of the Office of the Governor will be convened within 30 days of the meeting of the directors, if necessary.

A decision reached at any of these levels will be binding on both parties, and the issue may not be brought forward at further stages of the action.

## F. Statements of Coastal Management Policies

ODOT may request that ODNR approve a Statement of Coastal Management Policies for certain actions in addition to those listed in Attachment "A." The statement shall be as stringent as the corresponding portions of the OCMP. The statement shall not be approved unless it includes:

1. A list of the agency's projects or activities that, if implemented or approved, would affect the coastal area (as defined and described in the Ohio Coastal Management Program document pursuant to the CZMA and O.R.C. § 1506.01(A)) and that are determined to be consistent with the policies of the OCMP; and

If the statement is approved by the Director, ODNR, it shall be signed by each director and made a part of this MOU as Attachment B. When a statement has been signed, no further reviews of subject projects and activities as specified in Sections A-D will be required as long as actions specified in the statement remain consistent.

If ODNR believes that any action undertaken by ODOT under the statement is inconsistent, ODNR will notify ODOT of such concern in writing and outline the reason for the inconsistency determination. ODOT will have 30 days to correct the problem and provide in writing to ODNR what steps it has taken to make the action consistent or explain why the original action is consistent with policies of the OCMP.

ODNR will then notify ODOT either that it will lift its determination of inconsistency or revoke approval of the statement. If the Director, ODNR revokes approval of the statement, ODOT may appeal the decision under the mediation process outlined in Section E of this MOU.

**G. Review**

Two years after execution of this MOU, the process outlined herein will be reviewed by the parties to the MOU for substance, timeliness, responsiveness and impact on agency workload.

**H. Designation of Liaisons**

The Coastal Management Administrator is designated to serve as ODNR's liaison for matters involving the Ohio Coastal Management Program and this MOU. The Administrator, Office of Environmental Services, shall serve as ODOT's liaison for these purposes.

The above is mutually agreed between ODNR and ODOT from this date on, or until modified or discontinued by mutual consent, or discontinued unilaterally with a minimum of ninety (90) days advance notice by either party. Obligations of the State are subject to O.R.C. § 126.07.

Donald C. Anderson, Director
Ohio Department of Natural Resources

Jerry Wray, Director
Ohio Department of Transportation

ATTACHMENT A TO MOU BETWEEN ODNR AND ODOT- JULY, 1996

ROUTINE ODOT PROJECTS CONSIDERED CONSISTENT WITH THE OCMP

Activities described in this attachment are deemed to be consistent with the OCMP as follows: Type A(1) projects are deemed to be consistent. Type A(2) projects are deemed to be consistent upon confirmation of Categorical Exclusion. Type A(1) and A(2) projects are defined as follows:

Type A(1) is a project identified as a Categorical Exclusion and meets the following conditions:

1. All work will be performed within existing right-of-way with no significant adverse impact on abutting properties.

2. No involvement below the headwaters of a stream with a Mean Annual Flow (MAF) over 5 cubic feet per second (cfs).

3. No historic site improvement (Section 106).

Prior to concurring in determination of a Type A(1) project involving replacement or rehabilitation of an existing bridge, the Bureau of Environmental Services checks as to whether the bridge is on or eligible for the National Register of Historic Places and has been selected for preservation, or is in a reserve pool. If necessary, coordination is established at this point with the Ohio Historic Preservation Officer.

When it is determined that all requirements of a Type A(1) project have been met, the Bureau of Environmental Services advises the district and others that no further environmental documentation will be required.

Type A(2) is a project requiring further evaluation to confirm its Categorical Exclusion. This project is one in which one or more of the conditions required under Type A(1) are not met.

With appropriate documentary support, the district makes a recommendation to the Bureau of Environmental Services. Such an evaluation may include impacts on wetlands, historic/prehistoric resources and endangered wildlife species. Depending on the findings, coordination with other agencies now may be initiated.

When a project is reviewed and the determination is made that the Categorical Exclusion requirements are satisfied, the Bureau of Environmental Services advises the district and others that no further environmental documentation will be required.

Federally Funded Projects

Examples of Type A(1) are described in Section 771.117(c) (1-20) on the attached copy of portion of the Federal Register.

Examples of Type A(2) are described in Section 771.117(d) (1-12) on the attached copy of a portion of the Federal Register.

ATTACHMENT A - (continued)

State-Funded Projects

ODOT State Highway Funded projects that are on existing alignment and grade with no increase in through traffic lines.

Examples of Type A(1) and A(2) work are:

1. Two-Lane Resurfacing
2. Four-Lane Resurfacing
3. Bridge Repair
4. Bridge Painting
5. Bikeways
6. Crack Sealing
7. Culvert Construction/Reconstruction/Repair
8. Delineation
9. Fencing
10. Guardrail Rebuilding
11. Herbicidal Spraying
12. Lighting
13. Landscaping
14. Mowing
15. Pavement Marking
16. Pavement/Shoulder Sealing and/or Repair
17. Ride Share
18. Raised Pavement Markers
19. Railroad Crossing Protection
20. Railroad Crossing Reconstruction
21. Signalization
22. Signing
23. Snow and Ice Removal

Exemption for Port Assistance Projects

All projects funded by the Ohio Port Assistance Program are sponsored by a port authority, city or county government. Since these entities are initiating and provided partial funding for Port Assistance projects, they will be instructed by ODOT to consult with ODNR to help assure that projects will be consistent with OCMP policies.

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(iii) A final EIS has been approved and available for the prescribed period of time and a record of decision has been signed;

(2) For actions proposed for FHWA funding, the FHWA Division Administrator has received and accepted the certifications and any required public hearing transcripts required by 23 U.S.C. 128;

(3) For activities proposed for FHWA funding, the programming requirements of 23 CFR part 450, subpart B, and 23 CFR part 630, subpart A, have been met.

(b) For FHWA, the completion of the requirements set forth in paragraphs (a)(1) and (2) of this section is considered acceptance of the general project location and concepts described in the environmental document unless otherwise specified by the approving official. However, such approval does not commit the Administration to approve any future grant request to fund the preferred alternative.

(c) Letters of Intent issued under the authority of section 3(a)(4) of the UMT Act are used by UMTA to indicate an intention to obligate future funds for multi-year capital transit projects. Letters of Intent will not be issued by UMTA until the NEPA process is completed.

[52 FR 32660, Aug. 28, 1987; 53 FR 11066, Apr. 5, 1988]

**§771.115 Classes of actions.**

There are three classes of actions which prescribe the level of documentation required in the NEPA process.

(a) *Class I (EISs).* Actions that significantly affect the environment require an EIS (40 CFR 1508.27). The following are examples of actions that normally required an EIS:

(1) A new controlled access freeway.

(2) A highway project of four or more lanes on a new location.

(3) New construction or extension of fixed rail transit facilities (e.g., rapid rail, light rail, commuter rail, automated guideway transit).

(4) New construction or extension of a separate roadway for buses or high occupancy vehicles not located within an existing highway facility.

(b) *Class II (CEs).* Actions that do not individually or cumulative have a significant environmental effect are excluded from the requirement to prepare an EA or EIS. A specific list of CEs normally not requiring NEPA documentation is set forth in §771.117(c). When appropriately documented, additional projects may also qualify as CEs pursuant to §771.117(d).

(c) *Class III (EAs).* Actions in which the significance of the environmental impact is not clearly estabilished. All actions that are not Class I or II are Class III. All actions in this class require the preparation of an EA to determine the appropriate environmental document required.

**§771.117 Categorical exclusions.**

(a) Categorical exclusions (CEs) are actions which meet the definition contained in 40 CFR 1508.4, and, based on past experience with similar actions, do not involve signifient environmental impacts. They are actions which: do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise, either individually or cumulatively, have any significant environmental impacts.

(b) Any action which normally would be classified as a CE but could involve unusual circumstances will require the Administration, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:

(1) Significant environmental impacts;

(2) Substantial controversy on environmental grounds;

(3) Significant impact on properties protected by section 4(f) of the DOT Act or section 106 of the National Historic Preservation Act; or

(4) Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to

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the environmental aspects of the action.

(c) The following actions meet the criteria for CEs in the CEQ regulation (section 1508.4) and § 771.117(a) of this regulation and normally do not require any further NEPA approvals by the Administration:

(1) Activities which do not involve or lead directly to construction, such as planning and technical studies; grants for training and research programs; research activities as defined in 23 U.S.C. 307; approval of a unified work program and any findings required in the planning process pursuant to 23 U.S.C. 134; approval of statewide programs under 23 CFR part 630; approval of project concepts under 23 CFR part 476; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; and Federal-aid system revisions which establish classes of highways on the Federal-aid highway system.

(2) Approval of utility installations along or across a transportation facility.

(3) Construction of bicycle and pedestrian lanes, paths, and facilities.

(4) Activities included in the State's *highway safety plan* under 23 U.S.C. 402.

(5) Transfer of Federal lands pursuant to 23 U.S.C. 317 when the subsequent action is not an FHWA action.

(6) The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction.

(7) Landscaping.

(8) Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.

(9) Emergency repairs under 23 U.S.C. 125.

(10) Acquisition of scenic easements.

(11) Determination of payback under 23 CFR part 480 for property previously acquired with Federal-aid participation.

(12) Improvements to existing rest areas and truck weigh stations.

(13) Ridesharing activities.

(14) Bus and rail car rehabilitation.

(15) Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.

(16) Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand.

(17) The purchase of vehicles by the applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities which themselves are within a CE.

(18) Track and railbed maintenance and improvements when carried out within the existing right-of-way.

(19) Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.

(20) Promulgation of rules, regulations, and directives.

(d) Additional actions which meet the criteria for a CE in the CEQ regulations (40 CFR 1508.4) and paragraph (a) of this section may be designated as CEs only after Administration approval. The applicant shall submit documentation which demonstrates that the specific conditions or criteria for these CEs are satisfied and that significant environmental effects will not result. Examples of such actions include but are not limited to:

(1) Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (e.g., parking, weaving, turning, climbing).

(2) Highway safety or traffic operations improvement projects including the installation of ramp metering control devices and lighting.

(3) Bridge rehabilitation, reconstruction or replacement or the construction of grade separation to replace existing at-grade railroad crossings.

(4) Transportation corridor fringe parking facilities.

(5) Construction of new truck weigh stations or rest areas.

(6) Approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts.

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(7) Approvals for changes in access control.

(8) Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.

(9) Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users.

(10) Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.

(11) Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and where there is no significant noise impact on the surrounding community.

(12) Acquisition of land for hardship or protective purposes; advance land acquisition loans under section 3(b) of the UMT Act.[3] Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition quality for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.

(e) Where a pattern emerges of granting CE status for a particular type of action, the Administration will initiate rulemaking proposing to add this type of action to the list of categorical exclusions in paragraph (c) or (d) of this section, as appropriate.

[52 FR 32660, Aug. 28, 1987; 53 FR 11066, Apr. 5, 1988]

**§771.119 Environmental assessments.**

(a) An EA shall be prepared by the applicant in consultation with the Administration for each action that is not a CE and does not clearly require the preparation of an EIS, or where the Administration believes an EA would assist in determining the need for an EIS.

(b) For actions that require an EA, the applicant, in consultation with the Administration, shall, at the earliest appropriate time, begin consultation with interested agencies and others to advise them of the scope of the project and to achieve the following objectives: determine which aspects of the proposed action have potential for social, economic, or environmental impact; identify alternatives and measures which might mitigate adverse environmental impacts; and identify other environmental review and consultation requirements which should be performed concurrently with the EA. The applicant shall accomplish this through an early coordination process (i.e., procedures under §771.111) or through a scoping process. Public involvement shall be summarized and the results of agency coordination shall be included in the EA.

(c) The EA is subject to Administration approval before it is made available to the public as an Administration document. The UMTA applicants may circulate the EA prior to Administration approval provided that the document is clearly labeled as the applicant's document.

(d) The EA need not be circulated for comment but the document must be

[3] Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety or financial reasons that remaining in the property poses an undue hardship compared to others.

Protective acquisition is done to prevent imminent development of a parcel which is needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.

**MEMORANDUM OF UNDERSTANDING**

BETWEEN

THE DIVISION OF NATURAL AREAS AND PRESERVES
FOR THE OLD WOMAN CREEK NATIONAL ESTUARINE RESEARCH RESERVE

AND

THE OFFICE OF REAL ESTATE AND LAND MANAGEMENT
FOR THE OHIO COASTAL MANAGEMENT PROGRAM

This memorandum of understanding (M.O.U.) was made and entered into September, 16, 1992, by and between the Division of Natural Areas and Preserves (DNAP) and the Office of Real Estate and Land Management (REALM), Ohio Department of Natural Resources (ODNR).

The purposes of this M.O.U. are to establish the formal administrative linkage between the Old Woman Creek National Estuarine Research Reserve and the Ohio Coastal Management Program and to facilitate activities and interactions advantageous to these programs, the state of Ohio and the nation.

The Coastal Zone Management Act of 1972, as amended 16 U.S.C. 1451 et seq. (CZMA), authorizes the Secretary of Commerce to encourage and assist the nation's states to exercise effectively their responsibilities in the coastal zone through development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone, giving full consideration to ecological, cultural, historic, and aesthetic values as well as the needs for compatible economic development.

The CZMA, Section 306, authorizes a federal program to assist the state in the implementation of a comprehensive coastal management program.

Section 315 of the CZMA establishes the National Estuarine Research Reserve System (NERRS). A primary mission of the NERR System is to conduct long-term research, monitoring, education, and interpretation programs in support of regional and national coastal management priorities.

## I. ORGANIZATION

In Ohio, the Coastal Zone Management Program is administered by the Ohio Department of Natural Resources pursuant to Section 1506.02 of the Ohio Revised Code.

The Office of Real Estate and Land Management, ODNR, is responsible for the development, implementation and enhancement of the Ohio Coastal Management Program, consistent with and supported through Section 306 and other provisions of the CZMA.

The Division of Natural Areas and Preserves, ODNR, administers, the Old Woman Creek State Nature Preserve and National Estuarine Research Reserve, consistent with and supported through Section 315 of the CZMA.

## II. POLICY

It is the policy of ODNR to encourage a strong, substantive and collaborative working relationship between these two programs and to fully integrate the National Estuarine Research Reserve into a broad-based approach to managing Lake Erie's coastal resources.

In furtherance of this policy, DNAP and REALM will cooperate and provide administrative support and technical and other assistance to the respective programs as may be permitted under state and federal law. Areas of cooperation will include:

A. Interacting to disseminate coastal information to the general public and state coastal program managers.

B. Participating in and co-sponsoring coastal management workshops and conferences.

C. Developing cooperative relationships with other state, local and federal and regional agencies whose programs affect coastal ecosystems.

D. Designating the Old Woman Creek NERR as an official clearinghouse for information and policy on statewide coastal management issues.

E. Interacting to develop and implement coastal management enhancement strategies and coastal nonpoint source pollution control, as provided by Sections 309 and 6217 of the Coastal Zone Act Reauthorization Amendments of 1990.

F. Coordinating the use of the Old Woman Creek NERR for long-term scientific research, monitoring and educational programs on coastal issues.

The above is mutually agreed between DNAP and REALM from this date on, or until modified or discontinued by mutual consent, or discontinued unilaterally.

Ralph Ramey

Ralph Ramey, Chief
Division of Natural Areas and Preserves

16 Sept 1992
Date

Jeffrey Nogawick

Jeffrey F. Nogawick, Chief
Office of Real Estate and Land Management

Sept. 16, 1992
Date

Frances S. Buchholzer

FRANCES S. BUCHHOLZER, Director
Department of Natural Resources

9/18/92
Date

APPENDIX F

OHIO DEPARTMENT OF NATURAL RESOURCES

1501:1-35-01 TO 1501:1-35-02

| | |
|---|---|
| 1501:1-35-01 | Notice of Public Meetings (Sunshine Rule) |
| 1501:1-35-02 | Minutes |

1501:1-35-01 NOTICE OF PUBLIC MEETINGS (SUNSHINE RULE).

NOTICE OF ALL PUBLIC MEETINGS OF THE OHIO COASTAL RESOURCES ADVISORY COUNCIL SHALL BE GIVEN IN ACCORDANCE WITH THE FOLLOWING PROCEDURE:

(A) ANY PERSON MAY DETERMINE (BE INFORMED OF) THE TIME AND PLACE OF REGULARLY SCHEDULED MEETINGS OR THE TIME, PLACE AND PURPOSE OF ANY SPECIAL MEETING BY CALLING ON THE TELEPHONE THE OFFICE OF REAL ESTATE AND LAND MANAGEMENT.

(B) ANY PERSON MAY OBTAIN ADVANCE NOTICE OF ALL MEETINGS AT WHICH ANY SPECIFIC TYPE OF PUBLIC BUSINESS IS TO BE DISCUSSED BY IDENTIFYING THE TYPE OF PUBLIC BUSINESS FOR WHICH HE DESIRES TO BE NOTIFIED AND BY SUPPLYING THE OFFICE OF REAL ESTATE AND LAND MANAGEMENT WITH STAMPED SELF-ADDRESSED ENVELOPES. THE CHIEF WILL MAIL TO SUCH PERSON A NOTICE OF THE TIME, PLACE, AND TYPE OF BUSINESS TO BE DISCUSSED AT THE MEETING AT LEAST FOUR CALENDAR DAYS BEFORE THE MEETING IS SCHEDULED UNLESS THE MEETING IS AN EMERGENCY MEETING.

(C) THE OFFICE OF REAL ESTATE AND LAND MANAGEMENT WILL MAINTAIN A LIST OF REPRESENTATIVES OF THE NEWS MEDIA WHO HAVE REQUESTED IN WRITING NOTICE OF SPECIAL OR EMERGENCY MEETINGS. THE CHIEF SHALL MAIL SUCH REPRESENTATIVES NOTICE AT LEAST FOUR DAYS BEFORE SPECIAL MEETINGS OR SHALL TELEPHONE NOTICE AT LEAST TWENTY-FOUR HOURS BEFORE SPECIAL MEETINGS. IN THE EVENT OF AN EMERGENCY MEETING THE REPRESENTATIVES OF THE NEWS MEDIA WHO HAVE REQUESTED NOTIFICATION OF EMERGENCY MEETINGS SHALL BE NOTIFIED IMMEDIATELY OF THE TIME, PLACE AND PURPOSE OF THE MEETING. NEWS MEDIA REQUESTING NOTICE PURSUANT TO THIS PARAGRAPH SHALL SUPPLY THE CHIEF WITH THE NAME, MAILING ADDRESS AND TELEPHONE NUMBER OF THE REPRESENTATIVE TO BE CONTACTED.

(D) THE OHIO COASTAL RESOURCES ADVISORY COUNCIL SHALL PROVIDE THE CHIEF OF THE OFFICE OF REAL ESTATE AND LAND MANAGEMENT WITH THE TIME, PLACE, AND PURPOSE OF MEETINGS REQUIRING PUBLIC NOTICE UNDER THE PROVISION OF THIS RULE WITHIN SUFFICIENT TIME TO ENABLE THE CHIEF TO COMPLY WITH THE PROVISIONS OF THIS RULE.

Effective: SEPTEMBER 8, 1991

Certification F. S. Buchholzer

FRANCES S. BUCHHOLZER, DIRECTOR
DEPARTMENT OF NATURAL RESOURCES

8/27/91
Date

Promulgated under R.C. Ch. 119
Rule amplifies R.C. 1506.12
Rule authorized by R.C. 121.22

1501:1-35-02 MINUTES.

MINUTES OF ALL MEETINGS OF THE OHIO COASTAL RESOURCES ADVISORY COUNCIL WILL BE PROMPTLY RECORDED AND SHALL BE OPEN TO PUBLIC INSPECTION DURING WORKING HOURS AT THE OFFICE OF THE CHIEF OF THE OFFICE OF REAL ESTATE AND LAND MANAGEMENT.

Effective: SEPTEMBER 8, 1991

Certification F.S. Buchholzer
FRANCES S. BUCHHOLZER, DIRECTOR
DEPARTMENT OF NATURAL RESOURCES

8/27/91
Date

Promulgated under R.C. Ch. 119
Rule amplifies R.C. 1506.12
Rule authorized by R.C. 121.22

OHIO DEPARTMENT OF NATURAL RESOURCES

1501-6-10 TO 1501-6-13

# RULES FOR DESIGNATING LAKE ERIE COASTAL EROSION AREAS


| | |
|---|---|
| 1501-6-10 | DEFINITIONS |
| 1501-6-11 | DETERMINATION OF ANNUAL RECESSION RATES |
| 1501-6-12 | DETERMINATION OF ANTICIPATED RECESSION DISTANCES |
| 1501-6-13 | PREPARATION OF MAPS OF LAKE ERIE COASTAL EROSION AREAS |


JUNE, 1996

1501-6-10 DEFINITIONS.

(A) "ANNUAL RECESSION RATE" MEANS THE AVERAGE RATE, EXPRESSED IN FEET PER YEAR, AT WHICH THE RECESSION LINE MOVES LANDWARD. THE ANNUAL RECESSION RATE SHALL BE BASED ON A TIME PERIOD NOT LESS THAN TEN YEARS NOR GREATER THAN THIRTY YEARS PRIOR TO THE YEAR THAT THE BASE-MAP IMAGERY WAS ACQUIRED. IN NO CASE SHALL THE ANNUAL RECESSION RATE USED TO CALCULATE THE ANTICIPATED RECESSION DISTANCE BE LESS THAN ZERO.

(B) "ANTICIPATED RECESSION DISTANCE" MEANS THE CENTER-WEIGHTED MOVING AVERAGE OF DISTANCES, EQUAL TO THIRTY TIMES THE ANNUAL RECESSION RATE, AS DETERMINED AT FIVE CONSECUTIVE TRANSECTS. ANTICIPATED RECESSION DISTANCES LESS THAN THIRTY TIMES THE "CALCULATED ACCURACY LIMIT" (REFER TO PARAGRAPH (H) OF THIS RULE) SHALL BE EQUAL TO ZERO.

(C) "BARRIER BEACH" MEANS A NARROW, ELONGATE SAND RIDGE RISING ABOVE LAKE LEVEL AND EXTENDING GENERALLY PARALLEL WITH THE MAINLAND SHORE, BUT SEPARATED FROM IT BY A BODY OF WATER OR A WETLAND.

(D) "BASE RECESSION LINE" MEANS THE RECESSION LINE MAPPED FROM SYNOPTIC AERIAL PHOTOGRAPHY, REMOTE SENSING IMAGERY, DIGITAL DATA, OR MAPS USED TO CREATE THE RECESSION-LINE BASE MAP UPON WHICH COASTAL EROSION AREAS ARE DESIGNATED. THE COASTAL EROSION AREA SHALL BE DESIGNATED BY MEASURING ANTICIPATED RECESSION DISTANCES FROM THE BASE RECESSION LINE.

(E) "BEACH" MEANS A ZONE OF UNCONSOLIDATED MATERIAL THAT EXTENDS LANDWARD FROM THE SHORELINE TO THE TOE OF THE BLUFF OR DUNE. WHERE NO BLUFF OR DUNE EXISTS, THE LANDWARD LIMIT OF THE BEACH IS EITHER THE LINE OF PERMANENT VEGETATION OR THE PLACE WHERE THERE IS A MARKED CHANGE IN MATERIAL OR PHYSIOGRAPHIC FORM.

(F) "BLUFF" MEANS A BANK OR CLIFF WITH A PRECIPITOUS, STEEPLY SLOPED FACE ADJOINING A BEACH OR A BODY OF WATER.

(G) "BLUFF LINE" MEANS THE POINT OF INFLECTION WHERE THE SLOPE OF THE UPLAND SURFACE CHANGES TO BEGIN ITS DESCENT TO THE BEACH OR SHORELINE.

(H) "CALCULATED ACCURACY LIMIT" MEANS THE POTENTIAL ERROR IN RECESSION RATE RESULTING FROM THE LIMIT OF IMAGE RESOLUTION AND MEASUREMENT INACCURACIES AND SHALL BE CALCULATED BY DIVIDING A FIXED ERROR OF FIVE FEET BY THE TIME PERIOD IN YEARS OVER WHICH THE ANNUAL RECESSION RATE IS CALCULATED.

(I) "COASTAL EROSION AREA" MEANS THOSE LAND AREAS ALONG LAKE ERIE ANTICIPATED TO BE LOST DUE TO LAKE ERIE-RELATED EROSION WITHIN A THIRTY-YEAR PERIOD IF NO ADDITIONAL APPROVED EROSION CONTROL MEASURES ARE COMPLETED WITHIN THAT TIME. THESE AREAS INCLUDE LAND LAKEWARD OF THE BASE RECESSION LINE WHERE ANTICIPATED RECESSION DISTANCES ARE GREATER THAN ZERO AND EXTEND LANDWARD FROM THE BASE RECESSION LINE FOR A DISTANCE EQUAL TO THE ANTICIPATED RECESSION DISTANCE. WHERE ANTICIPATED RECESSION DISTANCES ARE EQUAL TO ZERO, COASTAL EROSION AREAS SHALL NOT BE DESIGNATED EITHER LAKEWARD OR LANDWARD OF THE BASE RECESSION LINE.

(J) "DIKE" MEANS ANY ARTIFICIAL BARRIER TOGETHER WITH APPURTENANT WORKS THAT SHALL BE USED EITHER TO:

(1) DIVERT OR RESTRAIN THE FLOW OF A STREAM OR OTHER BODY OF WATER FOR THE PURPOSE OF PROTECTING AN AREA FROM INUNDATION BY FLOOD WATERS; OR

(2) MAINTAIN WATER LEVELS IN THE DIKED AREA FOR THE PURPOSES OF MANAGING A WETLAND.

(K) "DUNE" MEANS A RIDGE OR HILL OF LOOSE, WINDBLOWN SAND, THE CREST OF WHICH TYPICALLY TRENDS PARALLEL TO THE SHORELINE.

(L) "EROSION" MEANS THE LOSS OR DISPLACEMENT OF LAND ALONG THE LAKESHORE DUE TO WAVE ATTACK, ICE SCOUR, MASS WASTING, OR OTHER RELATED EROSION PROCESSES.

(M) "EROSION CONTROL MEASURE" MEANS A STRUCTURE OR ACTIONS SPECIFICALLY DESIGNED TO REDUCE OR CONTROL LAKE ERIE-RELATED EROSION OF THE SHORE. EXAMPLES INCLUDE, BUT ARE NOT LIMITED TO, GROINS, JETTIES, DIKES, SEAWALLS, REVETMENTS, BULKHEADS, BREAKWATERS AND ARTIFICIALLY NOURISHED SAND AND/OR GRAVEL BEACHES.

(N) "FILL LAND" MEANS ARTIFICIAL LAND MADE BY PLACING SUBSTANTIAL FILL AND ASSOCIATED EROSION CONTROL MEASURES IN LAKE ERIE.

(O) "MASS WASTING" MEANS THE DOWNSLOPE MOVEMENT OF MATERIAL DUE TO GRAVITY. EXAMPLES OF MASS WASTING INCLUDE BUT ARE NOT LIMITED TO ROTATIONAL SLUMPS, DEBRIS FLOWS, BLOCK FALLS, AND ROCK FALLS.

(P) "RECESSION" MEANS THE LANDWARD RETREAT OF THE SHORE DUE TO EROSION.

(Q) "RECESSION DISTANCE" MEANS THE DISTANCE BETWEEN TWO RECESSION LINES. THE RECESSION DISTANCE SHOWS HOW FAR THE "RECESSION LINE" (REFER TO PARAGRAPH (R) OF THIS RULE) RECEDED DURING A GIVEN TIME PERIOD.

(R) "RECESSION LINE" MEANS THE LANDFORM USED FOR MAPPING RECESSION OF THE SHORE, WHICH SHALL INCLUDE BUT IS NOT LIMITED TO:

(1) WHERE THE SHORE IS A BLUFF, THE RECESSION LINE SHALL BE THE BLUFF LINE. EXAMPLES ARE SHOWN IN FIGURE 1 OF THIS RULE.

(2) WHERE THE SHORE IS A SAND SPIT WITH A DUNE OR A BARRIER BEACH WITH A DUNE, THE RECESSION LINE SHALL BE THE TOP OF THE WAVE-CUT FACE IN THE DUNE OR THE CREST OF THE DUNE.

(3) WHERE THE SHORE IS A LOW-LYING SAND SPIT LACKING A DUNE OR A BARRIER BEACH LACKING A DUNE, THE RECESSION LINE SHALL BE THE CREST OF THE SPIT OR BARRIER.

(4) WHERE THE SHORE IS A WETLAND, THE RECESSION LINE SHALL BE THE LAKEWARD LINE OF PERSISTENT EMERGENT VEGETATION.

(5) WHERE THE SHORE IS DIKED, THE RECESSION LINE SHALL BE THE TOP OF THE LAKEWARD-FACING SLOPE OF THE DIKE.

(6) WHERE LOW-LYING WATERFRONT AREAS ARE PROTECTED BY A SEAWALL, BULKHEAD, OR REVETMENT, THE RECESSION LINE SHALL BE THE TOP OF THE LAKEWARD-FACING SLOPE OF THE STRUCTURE.

(S) "SAND SPIT" MEANS A NARROW EMBANKMENT OF LAND COMPOSED OF SAND AND GRAVEL DEPOSITED BY LITTORAL PROCESSES WHICH HAS ONE END ATTACHED TO THE SHORE AND THE OTHER TERMINATING IN OPEN WATER.

(T) "SHORE" MEANS THE LAND BORDERING THE LAKE.

(U) "SHORELINE" MEANS THE LINE OF INTERSECTION OF LAKE ERIE WITH THE BEACH OR SHORE.

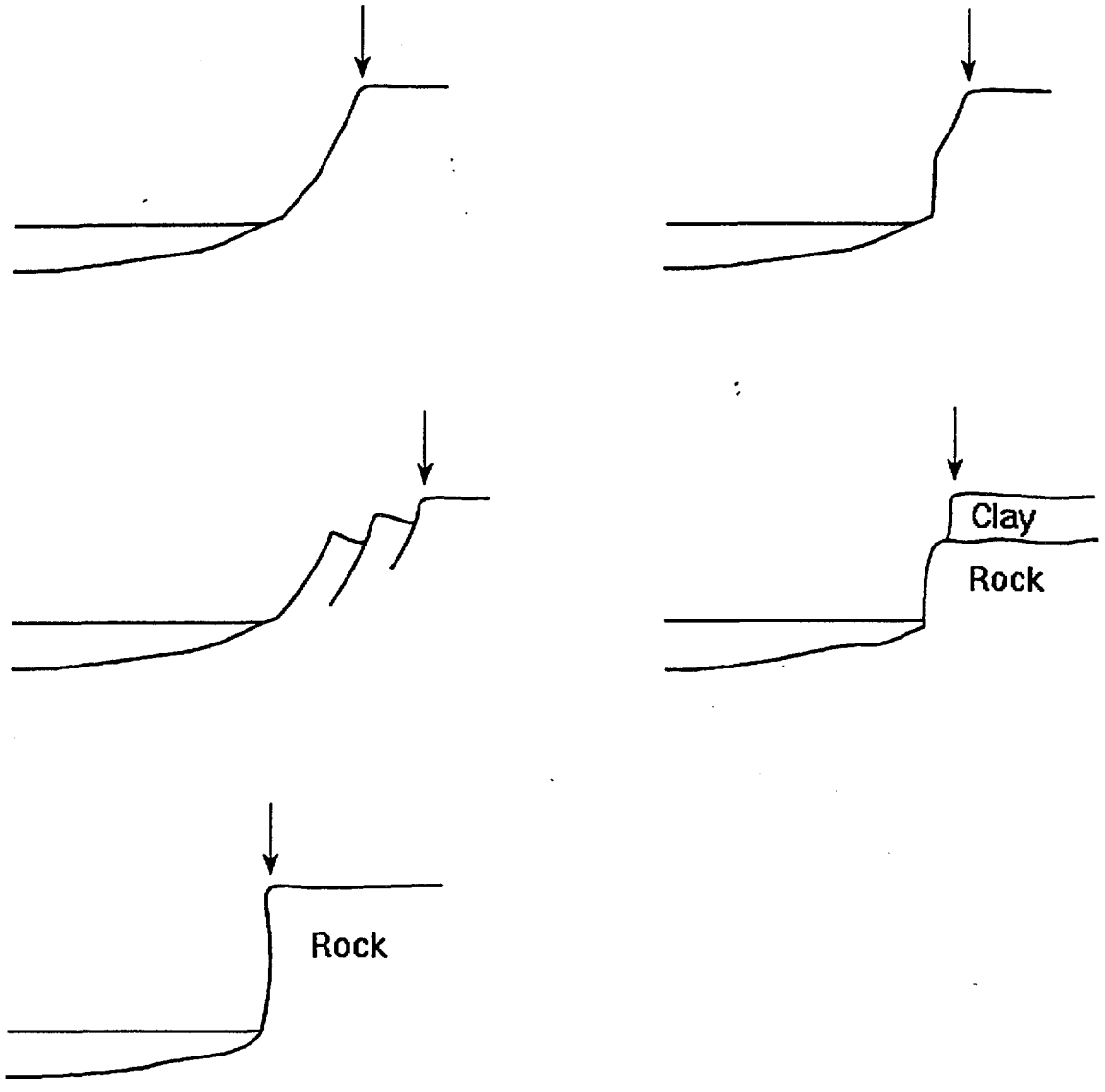


FIGURE 1: EXAMPLES OF HOW RECESSION LINES ARE PICKED AT BLUFF EDGE.

(V) "WETLAND" MEANS AN AREA THAT IS INUNDATED OR SATURATED BY SURFACE OR GROUNDWATER AT A FREQUENCY AND DURATION SUFFICIENT TO SUPPORT, AND THAT UNDER NORMAL CIRCUMSTANCES DOES SUPPORT, VEGETATION TYPICALLY ADAPTED FOR LIFE IN SATURATED SOIL CONDITIONS. WETLAND INCLUDES WITHOUT LIMITATION SWAMPS, MARSHES, BOGS, AND FENS.

EFFECTIVE: June 14, 1996

CERTIFICATION: Signed

DONALD C. ANDERSON, DIRECTOR
DEPARTMENT OF NATURAL RESOURCES

May 31, 1996
DATE

PROMULGATED UNDER R.C. CH. 119
RULE AUTHORIZED BY R.C. 1506.02
RULE AMPLIFIES R.C. 1506.02, R.C. 1506.06
PRIOR EFFECTIVE DATE 9/8/91

1501-6-11 DETERMINATION OF ANNUAL RECESSION RATES.

THE PROCESS OF DETERMINING ANNUAL RECESSION RATES SHALL INCLUDE PREPARATION OF RECESSION-LINE BASE MAPS, MEASUREMENT OF RECESSION DISTANCES ON THE RECESSION-LINE MAPS, AND CALCULATION OF ANNUAL RECESSION RATES.

(A) RECESSION-LINE MAPS SHALL BE PREPARED USING THE FOLLOWING PROCEDURE.

(1) BASE MAPS SHALL BE CONSTRUCTED USING THE MOST CURRENTLY AVAILABLE IMAGERY. TYPES OF BASE-MAP IMAGERY MAY INCLUDE, BUT ARE NOT LIMITED TO, AERIAL PHOTOGRAPHS, REMOTE SENSING IMAGERY, DIGITAL DATA, OR SOME COMBINATION THEREOF. CRITERIA USED TO SELECT BASE-MAP IMAGERY SHALL INCLUDE, BUT ARE NOT LIMITED TO, COMPLETE SYNOPTIC COVERAGE OF THE OHIO SHORE WHERE THE SHORE IS CENTRALLY LOCATED ON THE IMAGES, ADEQUATE GEOGRAPHIC REFERENCE POINTS, AND RESOLUTION THAT IS ADEQUATE TO MAP A BASE RECESSION LINE AND IDENTIFY CULTURAL AND PHYSIOGRAPHIC FEATURES ON THE IMAGERY.

(2) THE RESULTING BASE MAPS SHALL BE PRODUCED AT A NOMINAL SCALE OF ONE INCH EQUAL TO TWO HUNDRED FEET; THE SCALE OF THE BASE MAPS SHALL BE VERIFIED WITH FIELD MEASUREMENTS NOT LESS THAN FIVE HUNDRED FEET IN LENGTH, AND THE TRUE SCALE IN FEET SHALL BE NOTED ON EACH INDIVIDUAL BASE MAP.

(3) A BASE RECESSION LINE SHALL BE MAPPED ON THE RECESSION-LINE BASE MAPS AS DESCRIBED IN PARAGRAPH (R) OF RULE 1501-6-10 OF THE ADMINISTRATIVE CODE.

(4) HISTORICAL IMAGERY USED TO PREPARE RECESSION-LINE MAPS SHALL BE SELECTED FROM CHARTS, AERIAL PHOTOGRAPHS, OR OTHER IMAGERY OF THE SHORE WHICH ARE ON FILE AT THE DEPARTMENT OF NATURAL RESOURCES, DIVISION OF GEOLOGICAL SURVEY. CRITERIA USED TO SELECT THIS IMAGERY FOR RECESSION-LINE MAPPING SHALL INCLUDE BUT ARE NOT LIMITED TO THOSE CRITERIA LISTED IN PARAGRAPH (A)(1)OF THIS RULE. IMAGERY SHALL BE ACQUIRED WITHIN A TIME PERIOD OF NOT LESS THAN TEN YEARS NOR GREATER THAN THIRTY YEARS PRIOR TO THE YEAR THAT THE BASE-MAP IMAGERY WAS ACQUIRED.

(5) RECESSION LINES FROM CHARTS, AERIAL PHOTOGRAPHS, OR OTHER IMAGERY SHALL BE PROJECTED OR DIGITALLY TRANSFERRED ONTO THE BASE MAPS.

(B) RECESSION DISTANCES SHALL BE MEASURED AT POINTS UNIFORMLY SPACED ALONG THE BASE RECESSION LINE. THE RECESSION DISTANCE AT EACH POINT SHALL BE MEASURED FROM THE BASE RECESSION LINE ALONG A TRANSECT ORIENTED AT A RIGHT ANGLE TO THE GENERAL TREND OF THE BASE RECESSION LINE (FIGURE 1). EACH TRANSECT SHALL BE UNIQUELY IDENTIFIED AND THE MEASURED RECESSION DISTANCE SHALL BE RECORDED AND USED TO CALCULATE THE ANNUAL RECESSION RATE.

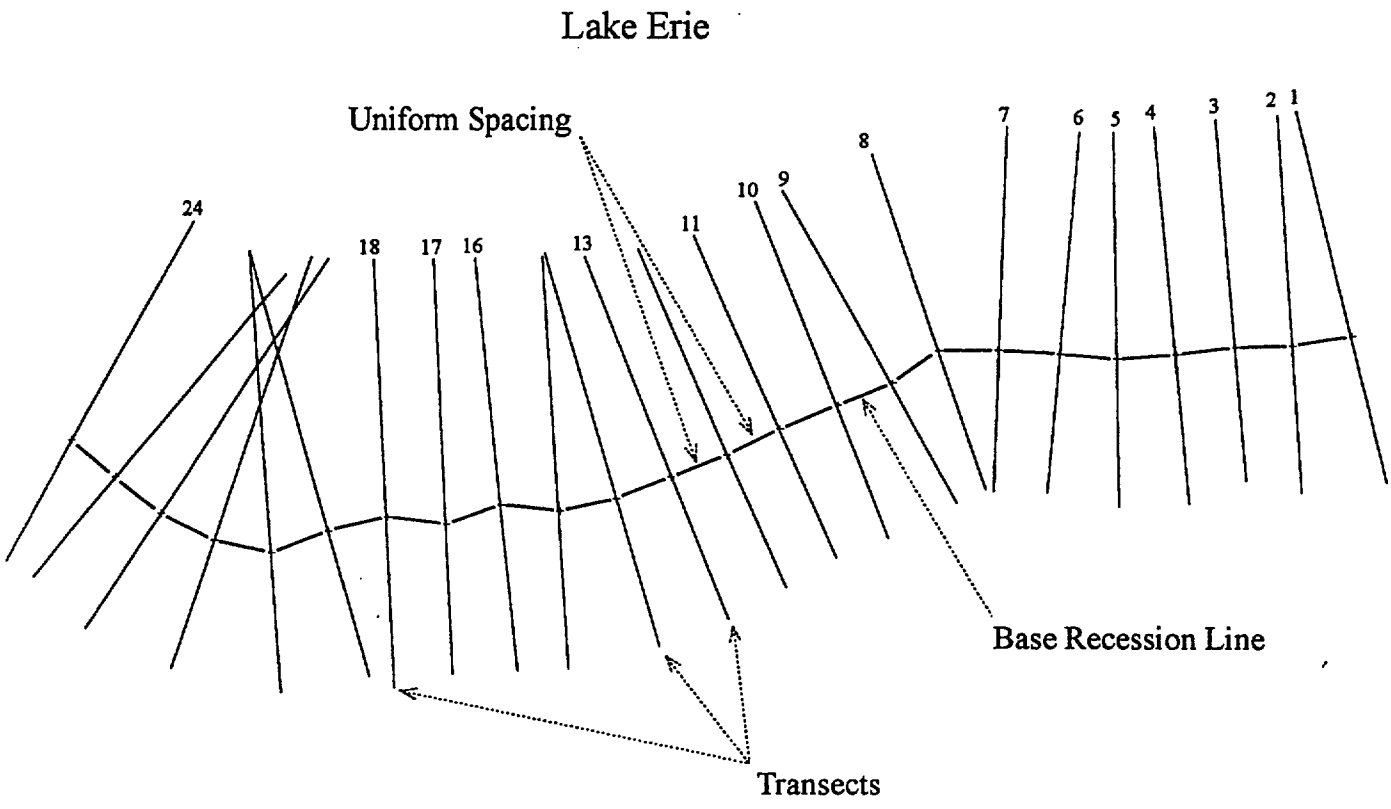


FIGURE 1: EXAMPLE ILLUSTRATING BASE-RECESSION LINE, TRANSECT OR ORIENTATION, AND UNIFORM SPACING BETWEEN TRANSECTS.

(C) FOR EACH TRANSECT, THE ANNUAL RECESSION RATE IN FEET PER YEAR SHALL BE CALCULATED BY DIVIDING THE MEASURED RECESSION DISTANCE BY THE TIME PERIOD IN YEARS BETWEEN THE RECESSION LINES. THE MINIMUM ANNUAL RECESSION RATE SHALL BE ZERO FEET PER YEAR.

EFFECTIVE: June 14, 1996

CERTIFICATION: Signed

DONALD C. ANDERSON, DIRECTOR
DEPARTMENT OF NATURAL RESOURCES

May 31, 1996
DATE

PROMULGATED UNDER R.C. CH. 119
RULE AUTHORIZED BY R.C. 1506.02
RULE AMPLIFIES R.C. 1506.02, R.C. 1506.06
PRIOR EFFECTIVE DATE 9/8/91

1501-6-12 DETERMINATION OF ANTICIPATED RECESSION DISTANCES.

THE ANTICIPATED RECESSION DISTANCE IN FEET FOR EACH TRANSECT SHALL BE THE CENTER-WEIGHTED MOVING AVERAGE OF DISTANCES EQUAL TO THIRTY TIMES THE ANNUAL RECESSION RATE IN FEET PER YEAR AS DETERMINED AT FIVE CONSECUTIVE TRANSECTS WHERE: (1) THE DISTANCES FOR THE TWO OUTER TRANSECTS SHALL BE WEIGHTED BY A FACTOR OF ONE; (2) THE DISTANCES FOR THE TWO INNER TRANSECTS SHALL BE WEIGHTED BY A FACTOR OF THREE; AND (3) THE DISTANCE FOR THE CENTER TRANSECT SHALL BE WEIGHTED BY A FACTOR OF FIVE (FIGURE 1). ANTICIPATED RECESSION DISTANCES LESS THAN THIRTY TIMES THE CALCULATED ACCURACY LIMIT SHALL BE EQUAL TO ZERO. IN NO CASE SHALL THE ANTICIPATED RECESSION DISTANCE BE LESS THAN ZERO.

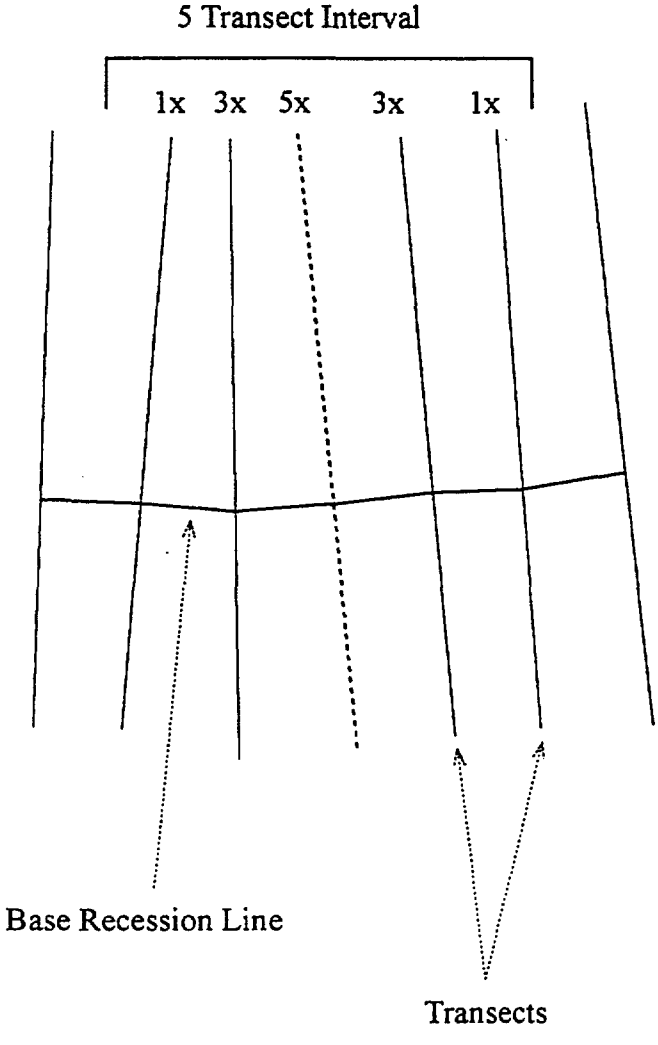


FIGURE 1: ILLUSTRATION OF WEIGHTED FIVE-POINT MOVING AVERAGE. THE CENTER TRANSECT IS WEIGHTED BY A FACTOR OF FIVE, THE NEXT TWO ADJACENT TRANSECTS ARE WEIGHTED BY A FACTOR OF THREE, AND THE TWO EDGE TRANSECTS ARE WEIGHTED BY A FACTOR OF ONE.

EFFECTIVE: June 14, 1996

CERTIFICATION:

DONALD C. ANDERSON, DIRECTOR
DEPARTMENT OF NATURAL RESOURCES

May 31, 1996
DATE

PROMULGATED UNDER R.C. CH. 119
RULE AUTHORIZED BY R.C. 1506.02
RULE AMPLIFIES R.C. 1506.02, R.C. 1506.06

1501-6-13 PREPARATION OF COASTAL EROSION AREA MAPS.

COASTAL EROSION AREAS SHALL BE DELINEATED ON COASTAL EROSION AREA MAPS.

(A) WHERE COASTAL EROSION AREAS ARE IDENTIFIED, SUCH AREAS SHALL INCLUDE LAND LAKEWARD OF THE BASE RECESSION LINE AND ALL LAND THAT EXTENDS LANDWARD OF THE BASE RECESSION LINE FOR A DISTANCE EQUAL TO THE ANTICIPATED RECESSION DISTANCE. WHERE ANTICIPATED RECESSION DISTANCES ARE EQUAL TO ZERO, A COASTAL EROSION AREA SHALL NOT BE DESIGNATED, EITHER LAKEWARD OR LANDWARD OF THE BASE RECESSION LINE.

(1) THE LANDWARD BOUNDARY OF A COASTAL EROSION AREA SHALL BE DELINEATED BY PLOTTING ON EACH TRANSECT A POINT LANDWARD FROM THE BASE RECESSION LINE EQUAL TO THE ANTICIPATED RECESSION DISTANCE AS DETERMINED IN RULE 1501-6-12 OF THE ADMINISTRATIVE CODE AND THEN DRAWING STRAIGHT LINES BETWEEN THESE POINTS (FIGURE 1).

(2) WHERE ONE TRANSECT HAS A POSITIVE ANTICIPATED RECESSION DISTANCE AND AN ADJACENT TRANSECT HAS A ZERO ANTICIPATED RECESSION DISTANCE, THE COASTAL EROSION AREA BOUNDARY SHALL BE DELINEATED AS FOLLOWS. A BOUNDARY LINE SHALL BE DRAWN BETWEEN THE POSITIVE ANTICIPATED RECESSION DISTANCE ON THE ONE TRANSECT TO THE BASE RECESSION LINE POSITION ON THE ADJACENT TRANSECT (FIGURE 2). AT THE POINT WHERE THE DISTANCE BETWEEN THE BOUNDARY LINE AND THE BASE RECESSION LINE EQUALS THE CALCULATED ACCURACY LIMIT, THE BOUNDARY LINE SHALL TURN LAKEWARD. THE LAKEWARD EXTENSION OF THE BOUNDARY LINE SHALL EXTEND TO THE SHORELINE AND SHALL BE SPACED PROPORTIONATELY BETWEEN THE TRANSECTS (FIGURE 2).

(B) THE PRELIMINARY IDENTIFICATION OF COASTAL EROSION AREAS SHALL BE SHOWN ON RECESSION-LINE BASE MAPS DESCRIBED IN PARAGRAPH (A) OF RULE 1501-6-11 OF THE ADMINISTRATIVE CODE AS AREAS BOUNDED ON THE LAKEWARD SIDE BY THE SHORELINE AND ON THE LANDWARD SIDE BY A LINE (COASTAL EROSION AREA LINE) DRAWN PURSUANT TO PARAGRAPHS (A)(1) AND (A)(2) OF THIS RULE. THE BASE RECESSION LINE AND THE RECESSION LINE USED TO DETERMINE ANNUAL RECESSION RATES AND ANTICIPATED RECESSION DISTANCES AS PRESCRIBED IN PARAGRAPH (A)(4) OF RULE 1501-6-11 OF THE ADMINISTRATIVE CODE SHALL ALSO BE SHOWN ON THE RECESSION-LINE BASE MAPS (FIGURE 3).

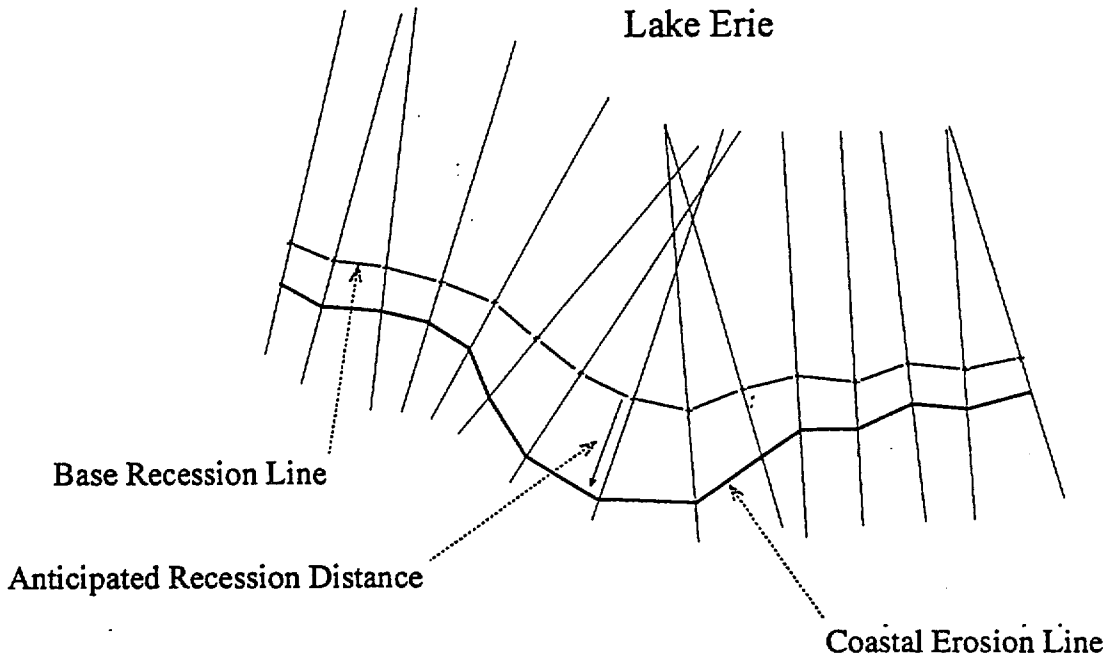


Figure 1. Anticipated recession distance measured from the base recession line defines the landward boundary of a coastal erosion area.

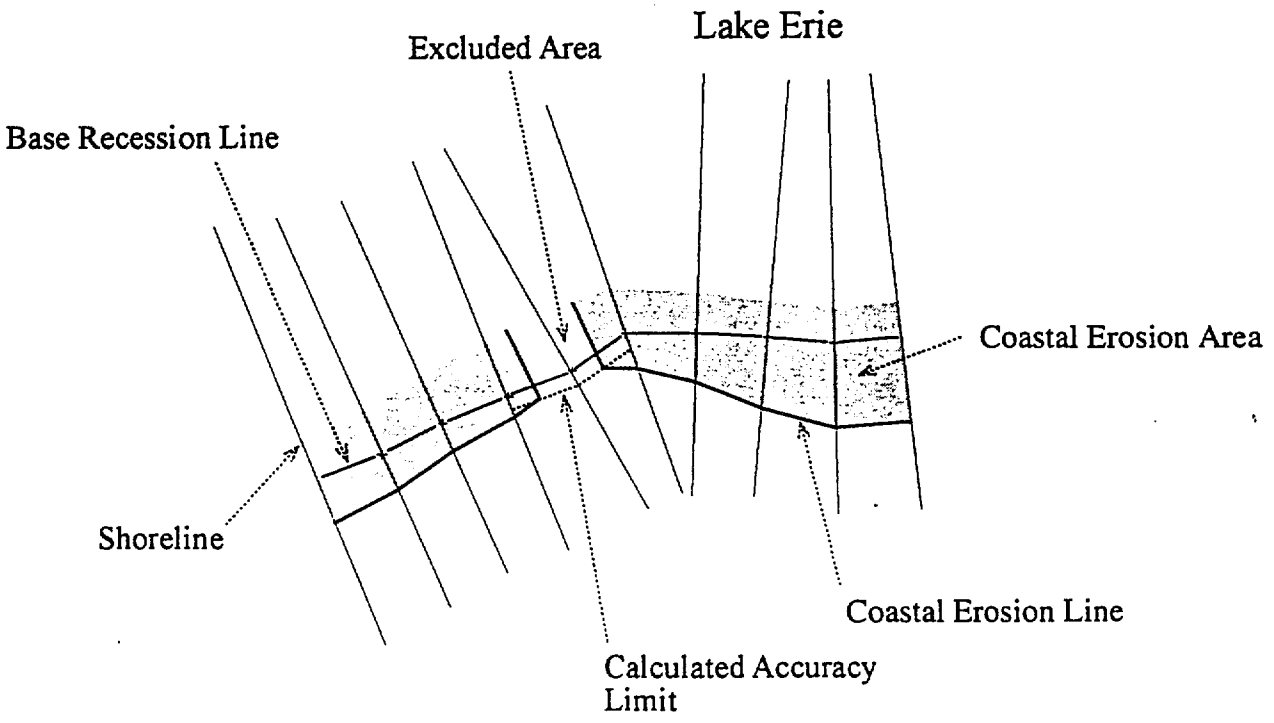


Figure 2. Example of an excluded area. Shading indicates coastal erosion areas. Coastal erosion line turns lakeward upon intersecting the calculated accuracy limit.

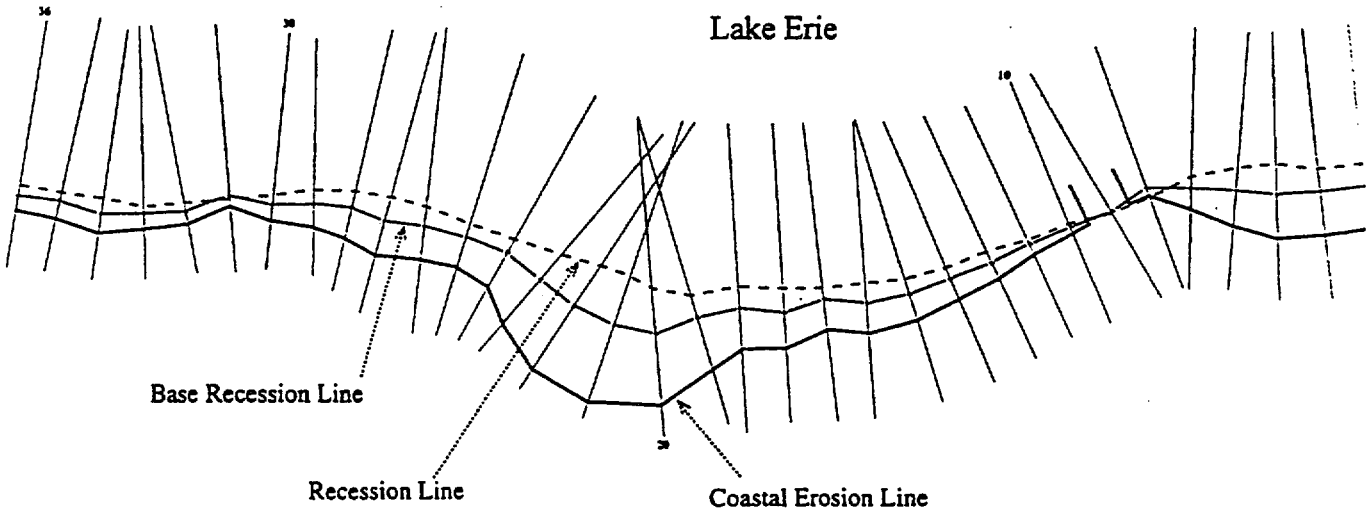


Figure 3. Example of a coastal erosion map illustrating transects, the recession line used to determine annual recession rates (dashed line), the base recession line, and coastal erosion line denoting the landward extent of coastal erosion areas.

(C) FINAL IDENTIFICATION OF COASTAL EROSION AREAS SHALL BE SHOWN ON THE RECESSION-LINE BASE MAPS DESCRIBED IN PARAGRAPH (A) OF RULE 1501-6-11 OF THE ADMINISTRATIVE CODE AS AREAS BOUNDED ON THE LAKEWARD SIDE BY THE SHORELINE AND ON THE LANDWARD SIDE BY A LINE DRAWN PURSUANT TO PARAGRAPHS (A)(1), (A)(2), AND (B) OF THIS RULE. THIS FINAL IDENTIFICATION SHALL SHOW THE BOUNDARIES OF COASTAL EROSION AREAS AS THEY EXISTED AT THE TIME THE BASE-MAP IMAGERY WAS ACQUIRED. SUBSEQUENT TO THE FINAL IDENTIFICATION, THE LANDWARD EXTENT OF A COASTAL EROSION AREA SHALL BE DETERMINED BY MEASURING THE ANTICIPATED RECESSION DISTANCE FROM THE CURRENT BASE RECESSION LINE DEFINED IN PARAGRAPH (R) OF RULE 1501-6-10 OF THE ADMINISTRATIVE CODE. RECESSION RATES AND ANTICIPATED RECESSION DISTANCES SHALL BE PROVIDED BY THE DEPARTMENT OF NATURAL RESOURCES WITH COASTAL EROSION AREA MAPS.

REPLACES: PART OF 1501-6-14

EFFECTIVE: June 14, 1996

CERTIFICATION: Donald C. Anderson

DONALD C. ANDERSON, DIRECTOR
DEPARTMENT OF NATURAL RESOURCES

May 31, 1996
DATE

PROMULGATED UNDER R.C. CH. 119
RULE AUTHORIZED BY R.C. 1506.02
RULE AMPLIFIES R.C. 1506.02, R.C. 1506.06
PRIOR EFFECTIVE DATES: 9/8/91

OHIO DEPARTMENT OF NATURAL RESOURCES

RULES FOR ENFORCING LAKE ERIE
COASTAL EROSION AREAS

1501-6-21 TO 1501-6-28


| | |
|---|---|
| 1501-6-21 | Definitions |
| 1501-6-22 | Applicability of the permit requirements for construction of a permanent structure |
| 1501-6-23 | Permit application procedure |
| 1501-6-24 | Review of permit application |
| 1501-6-25 | The permit to erect, construct, or redevelop a permanent structure |
| 1501-6-26 | Inspection procedures |
| 1501-6-27 | Review of administrative and enforcement activities of counties or municipal corporations which have adopted Lake Erie coastal erosion area resolutions or ordinances |
| 1501-6-28 | Severability |


June, 1996

1501-6-21 DEFINITIONS.

THE FOLLOWING DEFINITIONS SHALL APPLY TO THE TERMS USED IN RULES 1501-6-21 TO 1501-6-28 OF THE ADMINISTRATIVE CODE.

(A) "APPLICANT" MEANS THE OWNER OF THE PROPERTY TO BE IMPROVED OR AN AUTHORIZED AGENT FOR SAID PROPERTY OWNER.

(B) "APPLICATION" MEANS THE SIGNED AND COMPLETED APPLICATION FORM AND ALL SUPPORTING INFORMATION REQUIRED TO BE SUBMITTED TO APPLY FOR A PERMIT TO ERECT, CONSTRUCT, OR REDEVELOP A PERMANENT STRUCTURE IN A LAKE ERIE COASTAL EROSION AREA PURSUANT TO SECTION 1506.07 OF THE REVISED CODE.

(C) "COASTAL EROSION AREA" MEANS THOSE LAND AREAS ALONG LAKE ERIE ANTICIPATED TO BE LOST DUE TO LAKE ERIE-RELATED EROSION WITHIN A THIRTY-YEAR PERIOD IF NO ADDITIONAL APPROVED EROSION CONTROL MEASURES ARE COMPLETED WITHIN THAT TIME, AS DEFINED IN RULE 1501-6-10 OF THE ADMINISTRATIVE CODE.

(D) "CONSTRUCT" MEANS TO BUILD, FORM, OR ASSEMBLE A NEW PERMANENT STRUCTURE.

(E) "DEPARTMENT" MEANS THE DEPARTMENT OF NATURAL RESOURCES.

(F) "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT OF NATURAL RESOURCES, OR THE DIRECTOR'S DESIGNEE.

(G) "ERECT" MEANS CONSTRUCT.

(H) "EROSION CONTROL MEASURE" MEANS A STRUCTURE OR ACTIONS SPECIFICALLY DESIGNED TO REDUCE OR CONTROL LAKE ERIE-RELATED EROSION OF THE SHORE. EXAMPLES INCLUDE, BUT ARE NOT LIMITED TO, GROINS, JETTIES, DIKES, SEAWALLS, REVETMENTS, BULKHEADS, BREAKWATERS AND ARTIFICIALLY NOURISHED SAND AND/OR GRAVEL BEACHES.

(I) "EXISTING STRUCTURE" MEANS A PERMANENT STRUCTURE WHICH EXISTED OR UPON WHICH CONSTRUCTION HAD BEGUN PRIOR TO THE EFFECTIVE DATE OF ENFORCEMENT OF THESE RULES AS DESCRIBED IN PARAGRAPH (C) OF RULE 1501-6-22 OF THE ADMINISTRATIVE CODE.

(J) "MOVABLE STRUCTURE" MEANS A PERMANENT STRUCTURE DESIGNED, SITED, AND CONSTRUCTED TO BE READILY RELOCATED AT MINIMUM COST AND WITH MINIMUM DISRUPTION OF ITS INTENDED USE. ACCESS TO AND FROM THE SITE SHALL BE OF SUFFICIENT WIDTH AND ACCEPTABLE GRADE TO PERMIT THE STRUCTURE TO BE RELOCATED. MOBILE HOMES AND STRUCTURES BUILT OF ABOVE-GROUND STUD WALL CONSTRUCTION ON SKIDS OR ON PILING, OR ON BASEMENT OR CRAWL SPACE FOUNDATIONS ARE EXAMPLES OF MOVABLE STRUCTURES. SEPTIC SYSTEMS AND

STRUCTURES WITH ABOVE-GROUND WALLS OF MASONRY, CONCRETE, OR RELATED MATERIALS ARE NOT MOVABLE STRUCTURES.

(K) "PERMANENT STRUCTURE" MEANS ANY RESIDENTIAL, COMMERCIAL, INDUSTRIAL, INSTITUTIONAL, OR AGRICULTURAL BUILDING, ANY MANUFACTURED HOME AS DEFINED IN SECTION 4501.01 OF THE REVISED CODE, AND ANY SEPTIC SYSTEM THAT RECEIVES SEWAGE FROM A SINGLE-FAMILY, TWO-FAMILY, OR THREE-FAMILY DWELLING, BUT DOES NOT INCLUDE ANY RECREATIONAL VEHICLE AS DEFINED IN SECTION 4501.01 OF THE REVISED CODE. AN ADDITION TO ANY EXISTING RESIDENTIAL, COMMERCIAL, INDUSTRIAL, INSTITUTIONAL, OR AGRICULTURAL BUILDING, OR ANY MANUFACTURED HOME, WILL BE CONSIDERED A PERMANENT STRUCTURE IF THE GROUND LEVEL AREA OF THE ADDITION IS GREATER THAN OR EQUAL TO 500 SQUARE FEET.

AN APPURTENANT STRUCTURE TO ANY RESIDENTIAL, COMMERCIAL, INDUSTRIAL, INSTITUTIONAL, OR AGRICULTURAL BUILDING, OR ANY MANUFACTURED HOME, THAT IS NOT INTEGRAL TO THE BUILDING'S STRUCTURE, SUCH AS A PATIO OR DECK, WILL NOT BE CONSIDERED A PERMANENT STRUCTURE. STAND-ALONE, UNINHABITABLE, STRUCTURES SUCH AS GAZEBOS, PICNIC SHELTERS, GARAGES AND STORAGE OR TOOL SHEDS WILL NOT BE CONSIDERED PERMANENT STRUCTURES.

(L) "PERMIT" MEANS A FORM SIGNED BY THE DIRECTOR AUTHORIZING A PERSON TO ERECT, CONSTRUCT, OR REDEVELOP A PERMANENT STRUCTURE WHICH LIES OR WILL LIE, IN WHOLE OR IN PART, ON LAND WITHIN A LAKE ERIE COASTAL EROSION AREA.

(M) "PERSON" MEANS ANY AGENCY OF THIS STATE, ANY POLITICAL SUBDIVISION OF THIS STATE OR OF THE UNITED STATES, AND ANY LEGAL ENTITY DEFINED AS A PERSON UNDER SECTION 1.59 OF THE REVISED CODE.

(N) "REDEVELOP" MEANS TO REMOVE AND REPLACE AN ENTIRE EXISTING PERMANENT STRUCTURE, OR TO BUILD A NEW PERMANENT STRUCTURE ON AN EXISTING FOUNDATION.

EFFECTIVE: August 1, 1997

CERTIFICATION: Donald C. Anderson

DONALD C. ANDERSON, DIRECTOR
DEPARTMENT OF NATURAL RESOURCES

May 31, 1996
DATE

PROMULGATED UNDER R.C. CH. 119
RULE AUTHORIZED BY R.C. 1506.07
RULE AMPLIFIES R.C. 1506.07

1501-6-22 APPLICABILITY OF THE PERMIT REQUIREMENTS FOR CONSTRUCTION OF A PERMANENT STRUCTURE.

(A) IN ACCORDANCE WITH THE PROVISIONS OF DIVISION (B) OF SECTION 1506.07 OF THE REVISED CODE AND THE ADMINISTRATIVE RULES ADOPTED PURSUANT TO DIVISION (A) OF SECTION 1506.07 OF THE REVISED CODE, A PERMIT SHALL BE REQUIRED FOR THE ERECTION, CONSTRUCTION, OR REDEVELOPMENT OF A PERMANENT STRUCTURE WHICH LIES OR WILL LIE, IN WHOLE OR IN PART, ON ANY LAND WITHIN A LAKE ERIE COASTAL EROSION AREA AS DEFINED IN SECTION 1506.06 OF THE REVISED CODE AND RULES 1501-6-10 TO 1501-6-13 OF THE ADMINISTRATIVE CODE.

(B) A PERMIT IS NOT REQUIRED UNDER DIVISION (B) OF SECTION 1506.07 OF THE REVISED CODE FOR ERECTION, CONSTRUCTION, OR REDEVELOPMENT OF A PERMANENT STRUCTURE WHICH IS OR WILL BE LOCATED WITHIN ANY COUNTY OR MUNICIPAL CORPORATION THAT HAS ADOPTED AND IS ENFORCING A LAKE ERIE COASTAL EROSION AREA RESOLUTION OR ORDINANCE WITHIN ITS ZONING OR BUILDING REGULATIONS, PROVIDED THAT THE RESOLUTION OR ORDINANCE HAS BEEN DETERMINED TO BE ACCEPTABLE BY THE DIRECTOR UNDER DIVISION (D) OF SECTION 1506.07 OF THE REVISED CODE.

(C) A PERMIT IS NOT REQUIRED UNDER DIVISION (B) OF SECTION 1506.07 OF THE REVISED CODE FOR ERECTION, CONSTRUCTION OR REDEVELOPMENT OF A PERMANENT STRUCTURE IF ANY OTHER REQUIRED PERMIT WAS ISSUED OR PLAN WAS APPROVED FOR THAT ERECTION, CONSTRUCTION OR REDEVELOPMENT BY ANY STATE AGENCY, POLITICAL SUBDIVISION OF THIS STATE, OR FEDERAL AGENCY PRIOR TO ANY OF THE FOLLOWING:

(1) THE EFFECTIVE DATE OF THESE RULES;

(2) THE DATE THE DIRECTOR NOTIFIES EACH MUNICIPAL CORPORATION, COUNTY, AND TOWNSHIP OF THE FINAL IDENTIFICATION OF THE COASTAL EROSION AREAS PURSUANT TO SECTION 1506.06 OF THE REVISED CODE;

(3) THE DATE THE DIRECTOR ADOPTS THE COASTAL MANAGEMENT PROGRAM DOCUMENT PURSUANT TO SECTION 1506.02 OF THE REVISED CODE.

(D) A PERMIT IS NOT REQUIRED UNDER DIVISION (B)OF SECTION 1506.07 OF THE REVISED CODE FOR ERECTION, CONSTRUCTION, OR REDEVELOPMENT OF A PERMANENT STRUCTURE ON ANY PARCEL OF LAND THAT IS NOT ADJACENT TO LAKE ERIE.

EFFECTIVE: August 1, 1997

CERTIFICATION: _____
DONALD C. ANDERSON, DIRECTOR
DEPARTMENT OF NATURAL RESOURCES

May 31, 1996
DATE

PROMULGATED UNDER R.C. CH. 119
RULE AUTHORIZED BY R.C. 1506.07
RULE AMPLIFIES R.C. 1506.07

1501-6-23 PERMIT APPLICATION PROCEDURE.

(A) A PERSON SEEKING TO OBTAIN A PERMIT TO ERECT, CONSTRUCT, OR REDEVELOP A PERMANENT STRUCTURE WHICH LIES OR WILL LIE, IN WHOLE OR IN PART, ON ANY LAND WITHIN A LAKE ERIE COASTAL EROSION AREA IS REQUIRED TO FILE AN APPLICATION, ACCOMPANIED BY NECESSARY SUPPORTING INFORMATION, IN ACCORDANCE WITH RULES 1501-6-21 TO 1501-6-28 OF THE ADMINISTRATIVE CODE. THE APPLICATION SHALL BE ON A FORM AS SPECIFIED BY THE DIRECTOR, COPIES OF WHICH MAY BE OBTAINED FROM THE DEPARTMENT. IN ADDITION TO THE INFORMATION TO BE SUPPLIED ON THE APPLICATION FORM, THE APPLICANT SHALL ALSO SUBMIT THE SUPPORTING INFORMATION DESCRIBED IN PARAGRAPH (B) OR (C) OF THIS RULE.

(B) FOR A PROPOSED PERMANENT STRUCTURE PROTECTED OR TO BE PROTECTED BY AN EROSION CONTROL MEASURE, THE APPLICATION SHALL INCLUDE THE FOLLOWING:

(1) A GENERAL DESCRIPTION OF THE PROPOSED PERMANENT STRUCTURE IDENTIFYING ITS PURPOSE; AND

(2) A MAP OF THE PROJECT SITE THAT CLEARLY SHOWS THE LOCATION OF THE PROPOSED PERMANENT STRUCTURE WITH RESPECT TO THE LAKE ERIE SHORELINE; PROPERTY LINES; COUNTY, TOWNSHIP, AND MUNICIPAL CORPORATION BOUNDARY LINES; AND STATE, COUNTY AND LOCAL ROADS. A UNITED STATES GEOLOGICAL SURVEY (USGS) SEVEN AND ONE-HALF MINUTE TOPOGRAPHIC MAP OR PORTION THEREOF WILL GENERALLY MEET THIS REQUIREMENT; AND

(3) A PROPOSED SCHEDULE OF CONSTRUCTION. THE SCHEDULE SHALL DEMONSTRATE THAT THE EROSION CONTROL MEASURES WILL BE CONSTRUCTED PRIOR TO OR CONCURRENT WITH THE ERECTION, CONSTRUCTION, OR REDEVELOPMENT OF THE PERMANENT STRUCTURE; AND

(4) OTHER PERTINENT INFORMATION AS MAY REASONABLY BE DETERMINED NECESSARY BY THE DEPARTMENT TO FULLY EVALUATE THE APPLICATION.

(C) FOR A PROPOSED PERMANENT STRUCTURE WHEN THE APPLICANT REQUESTS A PERMIT DUE TO EXCEPTIONAL HARDSHIP AS DESCRIBED IN PARAGRAPH (C)(2) OF RULE 1501-6-24 OF THE ADMINISTRATIVE CODE, THE APPLICATION SHALL INCLUDE THE FOLLOWING SUPPORTING INFORMATION:

(1) THE INFORMATION DESCRIBED IN PARAGRAPHS (B)(1) AND (B)(2) OF THIS RULE; AND

(2) DOCUMENTATION THAT THE PERMANENT STRUCTURE WILL BE MOVABLE OR WILL BE SITUATED AS FAR LANDWARD AS APPLICABLE ZONING RESOLUTIONS OR ORDINANCES PERMIT; AND

(3) EXPLANATION OF THE EXCEPTIONAL HARDSHIP THAT THE PERSON SEEKING THE AUTHORIZATION WILL SUFFER, IF THE AUTHORIZATION IS NOT GIVEN.

(D) THE THIRTY-DAY REVIEW PERIOD SPECIFIED IN PARAGRAPH (B) OF RULE 1501-6-24 OF THE ADMINISTRATIVE CODE WILL BEGIN ON THE DATE THE DEPARTMENT RECEIVES A COMPLETED APPLICATION AND ALL REQUIRED SUPPORTING INFORMATION. WITHIN SEVEN WORKING DAYS OF RECEIPT OF THE APPLICATION, THE DEPARTMENT SHALL NOTIFY THE APPLICANT, IN WRITING, INDICATING THE STARTING DATE FOR THE THIRTY-DAY REVIEW PERIOD (WHICH DATE SHALL BE, AS STATED ABOVE, THE DATE OF RECEIPT OF THE APPLICATION) IF THE APPLICATION IS COMPLETE. IF THE APPLICATION IS INCOMPLETE, THE DEPARTMENT SHALL IDENTIFY DEFICIENCIES IN THE APPLICATION WHICH MUST BE CORRECTED BEFORE THE APPLICATION WILL BE CONSIDERED COMPLETE. IF ADDITIONAL INFORMATION IS REQUESTED, THE THIRTY-DAY REVIEW PERIOD WILL BEGIN ON THE DATE IT IS RECEIVED BY THE DEPARTMENT.

(E) IF, DURING THE THIRTY-DAY REVIEW PERIOD SPECIFIED IN PARAGRAPH (B) RULE 1501-6-24 OF THE ADMINISTRATIVE CODE, THE APPLICATION IS FOUND TO BE INACCURATE OR ADDITIONAL INFORMATION FROM THE APPLICANT IS NECESSARY TO ADEQUATELY EVALUATE THE PROJECT, THE APPLICANT SHALL BE NOTIFIED, IN WRITING, OF THE INACCURACY OR ADDITIONAL INFORMATION REQUIRED. REVIEW OF THE APPLICATION WILL CEASE PENDING RECEIPT OF THE NECESSARY CHANGES OR ADDITIONAL INFORMATION FROM THE APPLICANT. UPON RECEIPT OF THE REQUESTED CHANGES OR ADDITIONAL INFORMATION FROM THE APPLICANT, A NEW THIRTY-DAY REVIEW PERIOD WILL COMMENCE. IF EITHER THE NECESSARY CHANGES OR ADDITIONAL INFORMATION IS NOT PROVIDED WITHIN SIXTY DAYS OF THE DATE THE DEPARTMENT REQUESTED IT, REVIEW OF THE APPLICATION WILL BE TERMINATED, THE DEPARTMENT SHALL RETURN THE APPLICATION, AND A NEW APPLICATION SHALL BE REQUIRED FOR RENEWED CONSIDERATION.

EFFECTIVE: August 1, 1997

CERTIFICATION: _____
DONALD C. ANDERSON, DIRECTOR
DEPARTMENT OF NATURAL RESOURCES

May 31, 1996
DATE

PROMULGATED UNDER R.C. CH. 119
RULE AUTHORIZED BY R.C. 1506.07
RULE AMPLIFIES R.C. 1506.07

1501-6-24 REVIEW OF PERMIT APPLICATION.

(A) PURSUANT TO THE REQUIREMENTS OF DIVISION (B) OF SECTION 1506.07 OF THE REVISED CODE, THE DEPARTMENT SHALL REVIEW EACH APPLICATION FOR A PERMIT AS DESCRIBED IN PARAGRAPH (B) OF RULE 1506-6-23 OF THE ADMINISTRATIVE CODE TO EVALUATE THE EXISTING OR PROPOSED EROSION CONTROL MEASURES. FACTORS TO BE CONSIDERED IN THE EVALUATION OF AN EROSION CONTROL MEASURE SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING:

(1) THE POTENTIAL INDIVIDUAL OR CUMULATIVE IMPACT, INCLUDING ANY ADVERSE EFFECTS ON SAND RESOURCES AND COASTAL PROCESSES; AND

(2) THE POTENTIAL FOR ACCELERATING EROSION ALONG THE ADJACENT SHORELINE; AND

(3) THE STABILITY OF THE EXISTING OR PROPOSED SLOPE; AND

(4) THE EFFECTIVENESS OF EXISTING EROSION CONTROL MEASURES AT THE PROPOSED SITE AND ALONG THE ADJACENT SHORELINE; AND

(5) THE INTEGRITY OF THE EXISTING OR PROPOSED EROSION CONTROL MEASURE, ITS APPURTENANCES AND COMPONENT MATERIALS; AND

(6) THE EFFECTIVENESS OF PROPOSED STRUCTURAL AND/OR NONSTRUCTURAL MEASURES TO PROTECT THE PERMANENT STRUCTURE.

(B) WITHIN THIRTY DAYS AFTER RECEIPT OF A COMPLETE APPLICATION, THE DIRECTOR SHALL NOTIFY THE APPLICANT THAT THE APPLICATION IS EITHER APPROVED OR DENIED. IF AN APPLICATION IS APPROVED, THE DIRECTOR SHALL ISSUE A PERMIT, AS SPECIFIED IN RULE 1501-6-25 OF THE ADMINISTRATIVE CODE, TO ERECT, CONSTRUCT, OR REDEVELOP THE PERMANENT STRUCTURE. IF AN APPLICATION IS DENIED, THE DIRECTOR SHALL NOTIFY THE APPLICANT OF THE REASON FOR DENIAL AND OF THE APPLICANT'S APPEAL RIGHTS UNDER SECTION 1506.08 OF THE REVISED CODE.

(C) THE DIRECTOR SHALL ISSUE A PERMIT TO AN APPLICANT IF:

(1) THE PROPOSED SITE IS OR WILL BE PROTECTED BY EFFECTIVE EROSION CONTROL MEASURES AS DETERMINED ACCORDING TO CRITERIA IN PARAGRAPHS (A)(1) THROUGH (A)(6) OF THIS RULE, OR

(2) BOTH OF THE FOLLOWING CRITERIA ARE MET:

(a) THE PERMANENT STRUCTURE WILL BE A MOVABLE STRUCTURE OR WILL BE SITUATED AS FAR LANDWARD AS APPLICABLE

ZONING RESOLUTIONS OR ORDINANCES PERMIT; AND

(b) THE APPLICANT WILL SUFFER EXCEPTIONAL HARDSHIP IF THE PERMIT IS NOT GRANTED.

(D) ISSUANCE BY THE DIRECTOR OF A PERMIT TO ERECT, CONSTRUCT OR REDEVELOP A PERMANENT STRUCTURE PURSUANT TO DIVISION (B) OF SECTION 1506.07 OF THE REVISED CODE DOES NOT RELEASE THE APPLICANT FROM OBTAINING ANY AND ALL OTHER PERMITS, LEASES OR DOCUMENTS FROM ANY LOCAL, STATE OR FEDERAL AGENCY FOR THE PERMANENT STRUCTURE OR FOR THE EROSION CONTROL MEASURES.

EFFECTIVE: August 1, 1997

CERTIFICATION: Donald C. Anderson

DONALD C. ANDERSON, DIRECTOR
DEPARTMENT OF NATURAL RESOURCES

May 31, 1996
DATE

PROMULGATED UNDER R.C. CH. 119
RULE AUTHORIZED BY R.C. 1506.07
RULE AMPLIFIES R.C. 1506.07

1501-6-25 THE PERMIT TO ERECT, CONSTRUCT, OR REDEVELOP A PERMANENT STRUCTURE.

(A) A PERMIT TO ERECT, CONSTRUCT, OR REDEVELOP A PERMANENT STRUCTURE WHICH LIES OR WILL LIE, IN WHOLE OR IN PART, IN A LAKE ERIE COASTAL EROSION AREA SHALL BE ISSUED BY THE DIRECTOR AFTER APPROVAL OF THE APPLICATION REQUIRED BY RULE 1501-6-23 OF THE ADMINISTRATIVE CODE. THE PERMIT SHALL BE VALID FOR A PERIOD OF TWO YEARS FROM THE DATE OF ISSUE UNLESS SPECIFIED OTHERWISE PURSUANT TO PROVISIONS OF THIS RULE. NO CONSTRUCTION SHALL BE PERFORMED UNTIL THE PERMIT IS ISSUED BY THE DIRECTOR.

(B) THE PERMIT SHALL INCLUDE CONDITIONS, AS NECESSARY, TO ASSURE THAT CONSTRUCTION OF THE PERMANENT STRUCTURE AND ANY EROSION CONTROL MEASURE IS IN COMPLIANCE WITH THE APPROVED APPLICATION.

(C) IF THE PROPOSED CONSTRUCTION SCHEDULE REQUIRED BY RULE 1501-6-23 OF THE ADMINISTRATIVE CODE EXCEEDS A PERIOD OF TWO YEARS, THE DIRECTOR MAY ISSUE, ON WRITTEN REQUEST OF THE APPLICANT, A PERMIT WHICH IS VALID FOR A LONGER PERIOD.

(D) IF THE PERMIT EXPIRES BEFORE CONSTRUCTION HAS BEGUN, NO CONSTRUCTION SHALL BE PERFORMED, AND A NEW APPLICATION WITH SUPPORTING INFORMATION, AS PRESCRIBED BY RULE 1501-6-23 OF THE ADMINISTRATIVE CODE, SHALL BE SUBMITTED FOR RENEWED CONSIDERATION.

(E) IF, AFTER CONSTRUCTION HAS BEGUN, A REVISED CONSTRUCTION SCHEDULE SHOWS THAT THE PERMIT WILL EXPIRE BEFORE CONSTRUCTION IS COMPLETED, THE DIRECTOR, ON WRITTEN REQUEST OF THE APPLICANT, MAY EXTEND THE LIFE OF THE PERMIT. NO EXTENSION SHALL BE GRANTED UNLESS THE APPLICANT HAS DEMONSTRATED TO THE SATISFACTION OF THE DIRECTOR THAT SUBSTANTIAL EFFORT HAS BEEN MADE TO COMPLETE THE CONSTRUCTION.

(F) A SINGLE PERMIT MAY BE ISSUED TO AN APPLICANT FOR THE PURPOSE OF AUTHORIZING THE ERECTION, CONSTRUCTION, OR REDEVELOPMENT OF MORE THAN ONE PERMANENT STRUCTURE ON A SINGLE PARCEL OR ON CONTIGUOUS PARCELS OF PROPERTY OWNED BY THE APPLICANT.

EFFECTIVE: August 1, 1997

CERTIFICATION: _____
DONALD C. ANDERSON, DIRECTOR
DEPARTMENT OF NATURAL RESOURCES

May 31, 1996
DATE

PROMULGATED UNDER R.C. CH. 119
RULE AUTHORIZED BY R.C. 1506.07
RULE AMPLIFIES R.C. 1506.07

1501-6-26 INSPECTION PROCEDURES.

(A) THE DIRECTOR OR THE DIRECTOR'S AUTHORIZED REPRESENTATIVE MAY MAKE INSPECTIONS DURING CONSTRUCTION TO ENSURE THAT THE PERMANENT STRUCTURE AND ANY EROSION PROTECTION MEASURES ARE BEING BUILT OR UNDERTAKEN IN COMPLIANCE WITH THE PERMIT ISSUED PURSUANT TO DIVISION(B) OF SECTION 1506.07 OF THE REVISED CODE. THE APPLICANT SHALL BE GIVEN REASONABLE PRIOR NOTICE OF AN INSPECTION BY THE DEPARTMENT, AND ALL INSPECTIONS SHALL BE PERFORMED AT REASONABLE TIMES FOR CONDUCTING BUSINESS.

(B) IF AN INSPECTION REVEALS THAT ANY ERECTION, CONSTRUCTION, OR REDEVELOPMENT OF A PERMANENT STRUCTURE IS BEING CONDUCTED WITHOUT A PERMIT OR IN VIOLATION OF THE PERMIT OR THAT A REQUIRED EROSION PROTECTION MEASURE IS NOT IN COMPLIANCE WITH THE PERMIT, THE DIRECTOR OR THE DIRECTOR'S AUTHORIZED REPRESENTATIVE MAY ORDER THAT ALL WORK SHALL CEASE UNTIL THE VIOLATION HAS BEEN CORRECTED TO THE SATISFACTION OF THE DIRECTOR. THE DIRECTOR'S ORDER SHALL BE IN WRITING AND SHALL INDICATE THE SPECIFIC NATURE OF THE VIOLATION. THE ORDER SHALL REMAIN IN EFFECT UNTIL THE VIOLATION HAS BEEN CORRECTED TO THE SATISFACTION OF THE DIRECTOR OR THE DIRECTOR'S AUTHORIZED REPRESENTATIVE. THE PERSON TO WHOM AN ORDER IS ISSUED SHALL BE AFFORDED AN ADJUDICATION HEARING PURSUANT TO CHAPTER 119. OF THE REVISED CODE. THE DIRECTOR SHALL SUSTAIN THE ORDER IF DEEMED APPROPRIATE AFTER EACH PERSON ALLEGEDLY LIABLE HAS HAD A HEARING OR HAS WAIVED THE RIGHT TO A HEARING.

EFFECTIVE: August 1, 1997

CERTIFICATION: Donald C. Anderson

DONALD C. ANDERSON, DIRECTOR
DEPARTMENT OF NATURAL RESOURCES

May 31, 1996
DATE

PROMULGATED UNDER R.C. CH. 119
RULE AUTHORIZED BY R.C. 1506.07
RULE AMPLIFIES R.C. 1506.07, 1506.08, 1506.09

1501-6-27 REVIEW OF ADMINISTRATIVE AND ENFORCEMENT ACTIVITIES OF COUNTIES OR MUNICIPAL CORPORATIONS WHICH HAVE ADOPTED LAKE ERIE COASTAL EROSION AREA RESOLUTIONS OR ORDINANCES.

(A) BEGINNING ON THE THIRTY-FIRST DAY OF JANUARY FOLLOWING THE DIRECTOR'S NOTICE THAT THE LAKE ERIE COASTAL EROSION AREA RESOLUTION OR ORDINANCE OF A COUNTY OR MUNICIPAL CORPORATION MEETS OR EXCEEDS THE STANDARDS OF DIVISION (B) OF SECTION 1506.07 OF THE REVISED CODE, AND EVERY TWO YEARS THEREAFTER, THE LEGISLATIVE AUTHORITY OF THE COUNTY OR MUNICIPAL CORPORATION SHALL SUBMIT TO THE DIRECTOR, ON A FORM PROVIDED BY THE DEPARTMENT, A REPORT OF THE COUNTY'S OR MUNICIPAL CORPORATION'S RELEVANT ADMINISTRATIVE AND ENFORCEMENT ACTIVITIES DURING THE PREVIOUS TWO YEARS.

(B) THE DEPARTMENT SHALL REVIEW THE REPORTS TO ASSURE COMPLIANCE WITH SECTION 1506.07 OF THE REVISED CODE INCLUDING, BUT NOT LIMITED TO, VERIFICATION OF THE LOCATIONS OF PERMITTED PERMANENT STRUCTURES RELATIVE TO COASTAL EROSION AREAS.

(C) IF, AT ANY TIME, THE DIRECTOR DETERMINES THAT A LAKE ERIE COASTAL EROSION AREA RESOLUTION OR ORDINANCE ADOPTED BY A COUNTY OR MUNICIPAL CORPORATION IS BEING INADEQUATELY ADMINISTERED OR ENFORCED, THE DIRECTOR SHALL SO NOTIFY THE LEGISLATIVE AUTHORITY OF THE COUNTY OR MUNICIPAL CORPORATION, IDENTIFYING THE SCOPE OF THE ADMINISTRATIVE OR ENFORCEMENT DEFICIENCIES AND THE PROCEDURE ESTABLISHED IN PARAGRAPH (D) OF THIS RULE FOR THE LEGISLATIVE AUTHORITY'S RESPONSE.

(D) AFTER THE DIRECTOR NOTIFIES THE AFFECTED LEGISLATIVE AUTHORITY OF THE DEFICIENCY, THE FOLLOWING PROCEDURE SHALL APPLY:

(1) WITHIN THIRTY DAYS OF THE DATE OF MAILING OF THE DIRECTOR'S NOTICE THAT THE RESOLUTION OR ORDINANCE IS BEING INADEQUATELY ADMINISTERED OR ENFORCED, THE LEGISLATIVE AUTHORITY OF THE COUNTY OR MUNICIPAL CORPORATION SHALL RESPOND, IN WRITING, TO THE DIRECTOR, ADDRESSING THE IDENTIFIED DEFICIENCIES AND DESCRIBING WITH SPECIFICITY ANY PROPOSED REMEDIES THERETO.

(2) WITHIN THIRTY DAYS OF THE DATE OF MAILING OF THE WRITTEN RESPONSE FROM THE LEGISLATIVE AUTHORITY OF THE COUNTY OR MUNICIPAL CORPORATION, THE DIRECTOR SHALL MAKE A FINAL DETERMINATION AS TO WHETHER OR NOT THE LEGISLATIVE AUTHORITY'S RESPONSE ADEQUATELY ADDRESSES THE IDENTIFIED DEFICIENCIES AND PROVIDES FOR THEIR CORRECTION.

(3) IF THE DIRECTOR MAKES A FINAL DETERMINATION THAT A LAKE ERIE COASTAL EROSION AREA RESOLUTION OR ORDINANCE IS BEING INADEQUATELY ADMINISTERED OR ENFORCED BY A COUNTY OR MUNICIPAL CORPORATION, THE PERMIT REQUIREMENTS OF DIVISION (B) OF SECTION 1506.07 OF THE REVISED CODE SHALL BE REINSTATED WITHIN THE TERRITORY OF THE AFFECTED COUNTY OR MUNICIPAL CORPORATION.

(4) DURING ANY PERIOD IN WHICH THE DIRECTOR HAS DETERMINED THAT A LAKE ERIE COASTAL EROSION AREA RESOLUTION OR ORDINANCE ADOPTED BY A COUNTY OR MUNICIPAL CORPORATION IS BEING INADEQUATELY ADMINISTERED OR ENFORCED, ALL APPLICATIONS TO ERECT, CONSTRUCT, OR REDEVELOP A PERMANENT STRUCTURE IN A LAKE ERIE COASTAL EROSION AREA SHALL BE SUBJECT TO JOINT REVIEW BY THE DIRECTOR AND THE COUNTY OR MUNICIPAL CORPORATION. DURING THIS PERIOD, THE COUNTY OR MUNICIPAL CORPORATION SHALL NOT ISSUE ANY PERMIT FOR CONSTRUCTION, ERECTION, OR REDEVELOPMENT OF A PERMANENT STRUCTURE WHICH LIES OR WILL LIE, IN WHOLE OR IN PART, IN A LAKE ERIE COASTAL EROSION AREA WITHOUT THE SPECIFIC WRITTEN APPROVAL OF THE DIRECTOR. THE PERIOD OF JOINT REVIEW SHALL COMMENCE ON THE FIFTH DAY AFTER THE DATE OF MAILING OF THE DIRECTOR'S NOTICE OF DEFICIENCY AND SHALL BE EFFECTIVE UNTIL SUCH TIME AS THE DIRECTOR IS SATISFIED THAT ANY IDENTIFIED DEFICIENCIES HAVE BEEN ADEQUATELY ADDRESSED BY THE LEGISLATIVE AUTHORITY OF THE COUNTY OR MUNICIPAL CORPORATION.

EFFECTIVE: August 1, 1997

CERTIFICATION: Donald C. Anderson

DONALD C. ANDERSON, DIRECTOR
DEPARTMENT OF NATURAL RESOURCES

May 31, 1996
DATE

PROMULGATED UNDER R.C. CH. 119
RULE AUTHORIZED BY R.C. 1506.07
RULE AMPLIFIES R.C. 1506.07

1501-6-28 SEVERABILITY.

THE INVALIDATION BY A COURT OF A RULE ADOPTED OR AMENDED PURSUANT TO SECTION 1506.07 OF THE REVISED CODE SHALL NOT AFFECT THE VALIDITY OF ANY OTHER RULE OR PORTION THEREOF ADOPTED OR AMENDED THEREUNDER BY THE DIRECTOR.

EFFECTIVE: August 1, 1997

CERTIFICATION: Donald C. Anderson

DONALD C. ANDERSON, DIRECTOR
DEPARTMENT OF NATURAL RESOURCES

May 31, 1996
DATE

PROMULGATED UNDER R.C. CH. 119
RULE AUTHORIZED BY R.C. 1506.07
RULE AMPLIFIES R.C. 1506.07

**OHIO DEPARTMENT OF NATURAL RESOURCES**

**1501:22-1-01 TO 1501:22-1-08**

**FINAL RULES FOR**
**FLOODPLAIN MANAGEMENT STANDARDS IN**
**COASTAL FLOOD HAZARD AREAS**


| | |
|---|---|
| 1501:22-1-01 | Definitions. |
| 1501:22-1-02 | Severability. |
| 1501:22-1-03 | Floodplain Management Requirements for Counties and Municipal Corporations Containing Flood Hazard Areas. |
| 1501:22-1-04 | Floodplain Management Criteria. |
| 1501:22-1-05 | Criteria for Variances. |
| 1501:22-1-06 | Reporting Requirements. |
| 1501:22-1-07 | Noncompliance with Regulations. |
| 1501:22-1-08 | Noncompliant Development. |

1501:22-1-01 DEFINITIONS.

FOR PURPOSES OF RULES 1501:22-1-01 TO 1501:22-1-08 OF THE ADMINISTRATIVE CODE:

(A) "APPURTENANT STRUCTURE" MEANS A STRUCTURE WHICH IS ON THE SAME PARCEL OF PROPERTY AS THE PRINCIPAL STRUCTURE AND THE USE OF WHICH IS INCIDENTAL TO THE USE OF THE PRINCIPAL STRUCTURE.

(B) "APPEAL" MEANS A REQUEST FOR A REVIEW OF THE COUNTY OR MUNICIPAL CORPORATION PERMIT ADMINISTRATOR'S INTERPRETATION OF ANY PROVISION OF THE FLOOD DAMAGE PREVENTION REGULATIONS OR A REQUEST FOR A VARIANCE.

(C) "AREA OF SHALLOW FLOODING" MEANS A DESIGNATED AO, AH, OR VO ZONE ON A COUNTY'S OR MUNICIPAL CORPORATION'S FLOOD INSURANCE RATE MAP (FIRM) WITH A ONE PER CENT OR GREATER ANNUAL CHANCE OF FLOODING TO AN AVERAGE DEPTH OF ONE TO THREE FEET WHERE A CLEARLY DEFINED CHANNEL DOES NOT EXIST, WHERE THE PATH OF FLOODING IS UNPREDICTABLE AND WHERE VELOCITY FLOW MAY BE EVIDENT. SUCH FLOODING IS CHARACTERIZED BY PONDING OR SHEET FLOW.

(D) "AREA OF SPECIAL FLOOD HAZARD" IS THE LAND IN THE FLOODPLAIN WITHIN A COUNTY OR MUNICIPAL CORPORATION SUBJECT TO A ONE PER CENT OR GREATER CHANCE OF FLOODING IN ANY GIVEN YEAR. THE AREA MAY BE DESIGNATED AS ZONE A ON THE FLOOD HAZARD BOUNDARY MAP (FHBM). AFTER DETAILED RATE MAKING HAS BEEN COMPLETED IN PREPARATION FOR PUBLICATION OF THE FIRM, ZONE A USUALLY IS REFINED INTO ZONES A, AO, AH, A1-30, AE, A99, VO, V1-30, VE, OR V.

(E) "BASE FLOOD" MEANS THE FLOOD HAVING A ONE PER CENT CHANCE OF BEING EQUALLED OR EXCEEDED IN ANY GIVEN YEAR. THE BASE FLOOD IS ALSO REFERRED TO AS THE ONE-HUNDRED YEAR FLOOD.

(F) "BASEMENT" MEANS ANY AREA OF THE BUILDING HAVING ITS FLOOR SUBGRADE (BELOW GROUND LEVEL) ON ALL SIDES.

(G) "BREAKAWAY WALL" MEANS A WALL THAT IS NOT PART OF THE STRUCTURAL SUPPORT OF THE BUILDING AND IS INTENDED THROUGH ITS DESIGN AND CONSTRUCTION TO COLLAPSE UNDER SPECIFIC LATERAL LOADING FORCES, WITHOUT CAUSING DAMAGE TO THE ELEVATED PORTION OF THE BUILDING OR SUPPORTING FOUNDATION SYSTEM.

(H) "COASTAL AREA" MEANS THE WATERS OF LAKE ERIE, THE ISLANDS IN THE LAKE, AND THE LANDS UNDER AND ADJACENT TO THE LAKE, INCLUDING TRANSITIONAL AREAS, WETLANDS, AND BEACHES. THE COASTAL AREA EXTENDS IN LAKE ERIE TO THE INTERNATIONAL BOUNDARY LINE BETWEEN THE UNITED STATES AND CANADA AND LANDWARD ONLY TO THE EXTENT NECESSARY TO INCLUDE SHORELANDS, THE USES OF WHICH HAVE A DIRECT AND SIGNIFICANT IMPACT ON COASTAL WATERS AS DETERMINED BY THE DIRECTOR OF NATURAL RESOURCES.

(I) "COASTAL FLOOD HAZARD AREA" MEANS ANY TERRITORY WITHIN THE COASTAL AREA THAT HAS BEEN IDENTIFIED AS A SPECIAL FLOOD HAZARD AREA UNDER THE FLOOD DISASTER PROTECTION ACT OF 1973, 87 STAT. 975, 42 U.S.C.A. 4002, AS AMENDED, AND IS SUBJECT TO LAKE ERIE-RELATED FLOODING.

(J) "COASTAL HIGH HAZARD AREA" MEANS AN AREA OF SPECIAL FLOOD HAZARD, AS IDENTIFIED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, ALONG THE OPEN COAST AT LAKE ERIE AND ANY OTHER AREA SUBJECT TO HIGH VELOCITY WAVE ACTION FROM STORMS OR SEISMIC SOURCES ALONG LAKE ERIE AND ITS BAYS.

(K) "DEVELOPMENT" MEANS ANY ARTIFICIAL CHANGE TO IMPROVED OR UNIMPROVED REAL ESTATE, INCLUDING, WITHOUT LIMITATION, THE CONSTRUCTION OF BUILDINGS AND OTHER STRUCTURES AND MINING, DREDGING, FILLING, GRADING, PAVING, EXCAVATION AND DRILLING OPERATIONS.

(L) "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT OF NATURAL RESOURCES, STATE OF OHIO OR HIS DESIGNEE.

(M) "ELEVATED BUILDING" MEANS A NON-BASEMENT BUILDING (a) BUILT, IN THE CASE OF A BUILDING IN ZONES A1-30, AE, A, A99, AO, AH, B, C, X, OR D, TO HAVE THE TOP OF THE ELEVATED FLOOR, OR IN THE CASE OF BUILDING IN ZONES V1-30, VE, OR V, TO HAVE THE BOTTOM OF THE LOWEST HORIZONTAL STRUCTURE MEMBER OF THE ELEVATED FLOOR, ELEVATED ABOVE THE GROUND LEVEL BY MEANS OF PILINGS, COLUMNS (POSTS AND PIERS), OR SHEAR WALLS PARALLEL TO THE FLOW OF THE WATER AND (b) ADEQUATELY ANCHORED SO AS NOT TO IMPAIR THE STRUCTURAL INTEGRITY OF THE BUILDING DURING A FLOOD OF UP TO THE MAGNITUDE OF THE BASE FLOOD. IN THE CASE OF ZONES A1-30, AE, A, A99, AO, AH, B, C, X, OR D, "ELEVATED BUILDING" ALSO INCLUDES A BUILDING ELEVATED BY MEANS OF FILL OR SOLID FOUNDATION PERIMETER WALLS WITH OPENINGS SUFFICIENT TO FACILITATE THE UNIMPEDED MOVEMENT OF FLOOD WATERS. IN THE CASE OF ZONES V1-30, VE, OR V, "ELEVATED BUILDING" ALSO INCLUDES A BUILDING OTHERWISE MEETING THE DEFINITION OF "ELEVATED BUILDING," EVEN THOUGH THE LOWER AREA IS ENCLOSED BY MEANS OF BREAKAWAY WALLS IF THE BREAKAWAY WALLS MEET THE STANDARDS OF PARAGRAPH (D)(4) OF RULE 1501:22-1-04 OF THE ADMINISTRATIVE CODE.

(N) "EXISTING MANUFACTURED HOME PARK OR SUBDIVISION" MEANS A MANUFACTURED HOME PARK OR SUBDIVISION FOR WHICH THE CONSTRUCTION OF FACILITIES FOR SERVICING THE LOTS ON WHICH THE MANUFACTURED HOMES ARE TO BE AFFIXED (INCLUDING, AT A MINIMUM, THE INSTALLATION OF UTILITIES, THE CONSTRUCTION OF STREETS, AND EITHER FINAL SITE GRADING OR THE POURING OF CONCRETE PADS) IS COMPLETED BEFORE THE EFFECTIVE DATE OF THE FLOODPLAIN MANAGEMENT REGULATIONS ADOPTED BY A COUNTY OR MUNICIPALITY.

(O) "EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION" MEANS THE PREPARATION OF ADDITIONAL SITES BY THE CONSTRUCTION OF FACILITIES FOR SERVICING THE LOTS ON WHICH THE MANUFACTURED HOMES ARE TO BE AFFIXED (INCLUDING THE INSTALLATION OF UTILITIES, THE CONSTRUCTION OF STREETS, AND EITHER FINAL SITE GRADING OR THE POURING OF CONCRETE PADS).

(P) "FEDERAL EMERGENCY MANAGEMENT AGENCY" (FEMA) MEANS THE FEDERAL AGENCY WITH THE OVERALL RESPONSIBILITY FOR ADMINISTERING THE NATIONAL FLOOD INSURANCE PROGRAM.

(Q) "FLOOD HAZARD BOUNDARY MAP" (FHBM) MEANS AN OFFICIAL MAP OF A COUNTY OR MUNICIPAL CORPORATION, ISSUED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, WHERE THE BOUNDARIES OF THE FLOOD AREAS HAVING SPECIAL HAZARDS HAVE BEEN DESIGNATED AS ZONE A.

(R) "FLOOD INSURANCE RATE MAP" (FIRM) MEANS AN OFFICIAL MAP OF A COMMUNITY, ON WHICH THE FEDERAL EMERGENCY MANAGEMENT AGENCY HAS DELINEATED BOTH THE SPECIAL HAZARD AREAS AND THE RISK PREMIUM ZONES APPLICABLE TO THE COMMUNITY.

(S) "FLOOD INSURANCE RATE ZONES" MEANS THE VARIOUS FLOOD INSURANCE RISK PREMIUM ZONES IDENTIFIED ON A COUNTY'S OR MUNICIPAL CORPORATION'S FIRM OR FHBM ISSUED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY. THE SYMBOLS USED TO DESIGNATE THESE ZONES ARE AS FOLLOWS:

| | |
|---|---|
| A | AREA OF SPECIAL FLOOD HAZARD WITHOUT BASE FLOOD ELEVATIONS DETERMINED. |
| A1-30, AE | AREA OF SPECIAL FLOOD HAZARD WITH BASE FLOOD ELEVATIONS DETERMINED. |
| AO | AREA OF SPECIAL FLOOD HAZARD HAVING SHALLOW WATER DEPTHS AND/OR UNPREDICTABLE FLOW PATHS BETWEEN ONE AND THREE FEET. |
| A99 | AREA OF SPECIAL FLOOD HAZARD WHERE ENOUGH PROGRESS HAS BEEN MADE ON A PROTECTIVE SYSTEM, SUCH AS DIKES, DAMS, AND LEVEES, TO CONSIDER IT COMPLETE FOR INSURANCE RATING PURPOSES. |
| AH | AREA OF SPECIAL FLOOD HAZARD HAVING SHALLOW WATER DEPTHS AND/OR UNPREDICTABLE FLOW PATHS BETWEEN ONE AND THREE FEET, AND WITH BASE FLOOD ELEVATIONS DETERMINED. |
| V | AREA OF SPECIAL FLOOD HAZARD ALONG COAST WITH VELOCITY HAZARD (COASTAL HIGH HAZARD AREA); NO BASE FLOOD ELEVATIONS DETERMINED. |
| V1-30, VE | AREA OF SPECIAL FLOOD HAZARD ALONG COAST WITH VELOCITY HAZARD (COASTAL HIGH HAZARD AREA); BASE FLOOD ELEVATIONS DETERMINED. |
| VO | AREA OF SPECIAL FLOOD HAZARD ALONG COAST WITH VELOCITY HAZARD HAVING SHALLOW WATER DEPTHS AND/OR UNPREDICTABLE FLOW PATHS BETWEEN ONE AND THREE FEET. |
| B, X | AREA OF MODERATE FLOOD HAZARD. |
| C, X | AREA OF MINIMAL HAZARD. |
| D | AREA OF UNDETERMINED BUT POSSIBLE FLOOD HAZARD. |

(T) "FLOOD INSURANCE STUDY" MEANS THE OFFICIAL REPORT IN WHICH THE FEDERAL EMERGENCY MANAGEMENT AGENCY HAS MADE AN EXAMINATION, EVALUATION, AND DETERMINATION OF FLOOD HAZARDS AND, IF APPROPRIATE, CORRESPONDING WATER SURFACE ELEVATIONS AND FLOODWAY BOUNDARIES.

(U) "FLOODWAY" MEANS THE CHANNEL OF A RIVER OR OTHER WATERCOURSE AND THE ADJACENT LAND AREAS THAT MUST BE RESERVED IN ORDER TO DISCHARGE THE BASE FLOOD WITHOUT CUMULATIVELY INCREASING THE WATER SURFACE ELEVATION MORE THAN A DESIGNATED HEIGHT.

(V) "FLOODPROOFING" MEANS ANY COMBINATION OF STRUCTURAL AND NON-STRUCTURAL ADDITIONS, CHANGES, OR ADJUSTMENTS TO STRUCTURES WHICH REDUCE OR ELIMINATE FLOOD DAMAGE TO REAL ESTATE OR IMPROVED REAL PROPERTY, WATER AND SANITARY FACILITIES, STRUCTURES AND THEIR CONTENTS.

(W) "FUNCTIONALLY DEPENDENT USE" MEANS A USE WHICH CANNOT PERFORM ITS INTENDED PURPOSE UNLESS IT IS LOCATED OR CARRIED OUT IN CLOSE PROXIMITY TO WATER. THE TERM INCLUDES ONLY DOCKING FACILITIES, PORT FACILITIES THAT ARE NECESSARY FOR THE LOADING AND UNLOADING OF CARGO OR PASSENGERS, AND SHIP BUILDING AND SHIP REPAIR FACILITIES, BUT DOES NOT INCLUDE LONG-TERM STORAGE OR RELATED MANUFACTURING FACILITIES.

(X) "HISTORIC STRUCTURE" MEANS ANY STRUCTURE THAT IS:

(1) LISTED INDIVIDUALLY IN THE NATIONAL REGISTER OF HISTORIC PLACES (A LISTING MAINTAINED BY THE UNITED STATES DEPARTMENT OF THE INTERIOR) OR PRELIMINARILY DETERMINED BY THE SECRETARY OF THE UNITED STATES DEPARTMENT OF THE INTERIOR AS MEETING THE REQUIREMENTS FOR INDIVIDUAL LISTING ON THE NATIONAL REGISTER;

(2) CERTIFIED OR PRELIMINARILY DETERMINED BY THE SECRETARY OF THE UNITED STATES DEPARTMENT OF THE INTERIOR AS CONTRIBUTING TO THE HISTORICAL SIGNIFICANCE OF A REGISTERED HISTORIC DISTRICT OR A DISTRICT PRELIMINARILY DETERMINED BY THE SECRETARY TO QUALIFY AS A REGISTERED HISTORIC DISTRICT;

(3) INDIVIDUALLY LISTED ON THE STATE INVENTORY OF HISTORIC PLACES; OR

(4) INDIVIDUALLY LISTED ON A LOCAL INVENTORY OF HISTORIC PLACES IN COUNTIES OR MUNICIPAL CORPORATIONS WITH HISTORIC PRESERVATION PROGRAMS THAT HAVE BEEN CERTIFIED BY THE OHIO HISTORICAL SOCIETY.

(Y) "LOWEST FLOOR" MEANS THE LOWEST FLOOR OF THE LOWEST ENCLOSED AREA (INCLUDING BASEMENT). AN UNFINISHED OR FLOOD RESISTANT ENCLOSURE, USABLE SOLELY FOR PARKING OF VEHICLES, BUILDING ACCESS OR STORAGE IN AN AREA OTHER THAN A BASEMENT AREA IS NOT CONSIDERED A BUILDING'S LOWEST FLOOR, PROVIDED, THAT SUCH ENCLOSURE IS NOT BUILT SO AS TO RENDER THE STRUCTURE IN VIOLATION OF THE APPLICABLE NON-ELEVATION DESIGN REQUIREMENTS OF RULE 1501:22-1-04 OF THE ADMINISTRATIVE CODE.

(Z) "MANUFACTURED HOME" MEANS A STRUCTURE, TRANSPORTABLE IN ONE OR MORE SECTIONS, WHICH IS BUILT ON A PERMANENT CHASSIS AND IS DESIGNED FOR USE WITH OR WITHOUT A PERMANENT FOUNDATION WHEN ATTACHED TO THE REQUIRED UTILITIES. THE TERM "MANUFACTURED HOME" DOES NOT INCLUDE A "RECREATIONAL VEHICLE".

(AA) "MANUFACTURED HOME PARK OR SUBDIVISION" MEANS A PARCEL OR CONTIGUOUS PARCELS OF LAND DIVIDED INTO TWO OR MORE MANUFACTURED HOME LOTS FOR RENT OR SALE. THIS DEFINITION SHALL EXCLUDE ANY MANUFACTURED HOME PARK AS DEFINED IN SECTION 3733.01 OF THE REVISED CODE, OVER WHICH THE PUBLIC HEALTH COUNCIL HAS EXCLUSIVE RULE MAKING POWER.

(BB) "NATIONAL FLOOD INSURANCE PROGRAM" MEANS A FEDERAL PROGRAM ESTABLISHED BY CONGRESS IN 1968, THAT ALLOWS PROPERTY OWNERS TO PURCHASE FEDERALLY BACKED FLOOD INSURANCE WITHIN COMMUNITIES THAT PARTICIPATE IN THIS PROGRAM. IN RETURN FOR THIS INSURANCE PROTECTION, PARTICIPATING COMMUNITIES MUST REGULATE NEW DEVELOPMENT WITHIN SPECIAL FLOOD HAZARD AREAS IDENTIFIED AND MAPPED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY.

(CC) "NEW CONSTRUCTION" MEANS STRUCTURES FOR WHICH THE "START OF CONSTRUCTION" COMMENCED ON OR AFTER THE EFFECTIVE DATE OF A FLOODPLAIN MANAGEMENT REGULATION ADOPTED BY A COUNTY OR MUNICIPAL CORPORATION AND INCLUDES ANY SUBSEQUENT IMPROVEMENTS TO SUCH STRUCTURES.

(DD) "NEW MANUFACTURED HOME PARK OR SUBDIVISION" MEANS A MANUFACTURED HOME PARK OR SUBDIVISION FOR WHICH THE CONSTRUCTION OF FACILITIES FOR SERVICING THE LOTS ON WHICH THE MANUFACTURED HOMES ARE TO BE AFFIXED (INCLUDING AT A MINIMUM, THE INSTALLATION OF UTILITIES, THE CONSTRUCTION OF STREETS, AND EITHER FINAL SITE GRADING OR THE POURING OF CONCRETE PADS) IS COMPLETED ON OR AFTER THE EFFECTIVE DATE OF FLOODPLAIN MANAGEMENT REGULATIONS ADOPTED BY A COUNTY OR MUNICIPALITY.

(EE) "NONCOMPLIANCE" MEANS THE FAILURE OF A STRUCTURE OR OTHER DEVELOPMENT TO BE FULLY COMPLIANT WITH THE STANDARDS OF THE NATIONAL FLOOD INSURANCE PROGRAM OR THOSE PROMULGATED UNDER RULE 1501:22-1-04 OF THE ADMINISTRATIVE CODE CONCERNING FLOODPLAIN MANAGEMENT CRITERIA.

(FF) "RECREATIONAL VEHICLE" MEANS A VEHICLE WHICH IS (1) BUILT ON A SINGLE CHASSIS; (2) FOUR HUNDRED SQUARE FEET OR LESS WHEN MEASURED AT THE LARGEST HORIZONTAL PROJECTIONS; (3) DESIGNED TO BE SELF-PROPELLED OR PERMANENTLY TOWABLE BY A LIGHT DUTY TRUCK; AND (4) DESIGNED PRIMARILY NOT FOR USE AS A PERMANENT DWELLING BUT AS TEMPORARY LIVING QUARTERS FOR RECREATIONAL, CAMPING, TRAVEL, OR SEASONAL USE.

(GG) "SPECIAL FLOOD HAZARD AREA" MEANS THE SAME AS "AREA OF SPECIAL FLOOD HAZARD."

(HH) "START OF CONSTRUCTION" INCLUDES SUBSTANTIAL IMPROVEMENT, AND MEANS THE DATE THE BUILDING PERMIT WAS ISSUED, PROVIDED THE ACTUAL START OF CONSTRUCTION, REPAIR, RECONSTRUCTION, REHABILITATION, ADDITION, PLACEMENT, OR OTHER IMPROVEMENT WAS WITHIN ONE HUNDRED EIGHTY DAYS OF THE PERMIT DATE. START OF CONSTRUCTION MEANS THE FIRST PLACEMENT OF PERMANENT CONSTRUCTION OF A STRUCTURE ON A SITE, SUCH AS THE POURING OF SLAB OR FOOTINGS, THE INSTALLATION OF PILES, THE CONSTRUCTION OF COLUMNS, OR ANY WORK BEYOND THE STAGE OF EXCAVATION; OR THE PLACEMENT OF A MANUFACTURED HOME ON A FOUNDATION. PERMANENT CONSTRUCTION DOES NOT INCLUDE LAND PREPARATION, SUCH AS CLEARING, GRADING AND FILLING; NOR DOES IT INCLUDE THE INSTALLATION OF STREETS AND/OR WALKWAYS; NOR DOES IT INCLUDE EXCAVATION FOR A BASEMENT, FOOTINGS, PIERS, OR FOUNDATIONS OR THE ERECTION OF TEMPORARY FORMS; NOR DOES IT INCLUDE THE INSTALLATION ON THE PROPERTY OF ACCESSORY BUILDINGS, SUCH AS GARAGES OR SHEDS NOT OCCUPIED AS DWELLING UNITS OR NOT PART OF THE MAIN STRUCTURE. FOR A SUBSTANTIAL IMPROVEMENT, THE ACTUAL START OF CONSTRUCTION MEANS THE FIRST ALTERATION OF ANY WALL, CEILING, FLOOR, OR OTHER STRUCTURAL PART OF A BUILDING, WHETHER OR NOT THAT ALTERATION AFFECTS THE EXTERNAL DIMENSIONS OF THE BUILDING.

(II) "STRUCTURE" MEANS A WALLED AND ROOFED BUILDING, MANUFACTURED HOME, OR GAS OR LIQUID STORAGE TANK THAT IS PRINCIPALLY ABOVE GROUND.

(JJ) "SUBSTANTIAL DAMAGE" MEANS DAMAGE OF ANY ORIGIN SUSTAINED BY A STRUCTURE WHEREBY THE COST OF RESTORING THE STRUCTURE TO ITS BEFORE DAMAGED CONDITION WOULD EQUAL OR EXCEED FIFTY PER CENT OF THE MARKET VALUE OF THE STRUCTURE BEFORE THE DAMAGE OCCURRED.

(KK) "SUBSTANTIAL IMPROVEMENT" MEANS ANY REHABILITATION, ADDITION OR OTHER IMPROVEMENT OF A STRUCTURE, THE COST OF WHICH EQUALS OR EXCEEDS FIFTY PER CENT OF THE MARKET VALUE OF THE STRUCTURE BEFORE THE "START OF CONSTRUCTION" OF THE IMPROVEMENT. THIS TERM INCLUDES STRUCTURES WHICH HAVE INCURRED "SUBSTANTIAL DAMAGE", REGARDLESS OF THE ACTUAL REPAIR WORK PERFORMED. THE TERM DOES NOT, HOWEVER, INCLUDE EITHER (1) ANY PROJECT FOR IMPROVEMENT OF A STRUCTURE TO CORRECT EXISTING VIOLATIONS OF STATE OR LOCAL HEALTH, SANITARY OR SAFETY CODE SPECIFICATIONS WHICH HAVE BEEN IDENTIFIED BY THE LOCAL CODE ENFORCEMENT OFFICIAL AND WHICH ARE THE MINIMUM NECESSARY TO ASSURE SAFE LIVING CONDITIONS OR (2) ANY ALTERATION OF A "HISTORIC STRUCTURE."

(LL) "VARIANCE" MEANS A GRANT OF RELIEF BY A COUNTY OR MUNICIPAL CORPORATION FROM THE TERMS OF ITS FLOODPLAIN MANAGEMENT REGULATIONS.

Effective: July 26, 1990

CERTIFICATION: Joseph P. Kemmer, Director

July 16, 1990
Date

Promulgated Under R.C. Chapter 119
Rule amplifies R.C. 1506.04
Rule authorized by R.C. 1506.02

1501:22-1-02 SEVERABILITY.

THE INVALIDATION BY A COURT OF A RULE ADOPTED OR AMENDED PURSUANT TO SECTION 1506.04 OF THE REVISED CODE SHALL NOT AFFECT THE VALIDITY OF ANY OTHER RULE OR PORTION THEREOF ADOPTED OR AMENDED THEREUNDER BY THE DIRECTOR.

Effective: July 26, 1990

CERTIFICATION: Joseph J. Sommer, Director

July 16, 1990
Date

Promulgated under R.C. Ch. 119
Rule amplifies R.C. 1506.04
Rule authorized by R.C. 1506.02

1501:22-1-03 FLOODPLAIN MANAGEMENT REQUIREMENTS FOR COUNTIES AND MUNICIPAL CORPORATIONS CONTAINING COASTAL FLOOD HAZARD AREAS.

(A) THE FLOODPLAIN MANAGEMENT CRITERIA CONTAINED IN RULE 1501:22-1-04 OF THE ADMINISTRATIVE CODE SHALL APPLY TO ALL COUNTIES AND MUNICIPAL CORPORATIONS CONTAINING COASTAL FLOOD HAZARD AREAS WHICH ARE NOT PARTICIPATING IN THE NATIONAL FLOOD INSURANCE PROGRAM. SUCH COMMUNITIES SHALL ADOPT RESOLUTIONS OR ORDINANCES GOVERNING DEVELOPMENT WITHIN THE COASTAL FLOOD HAZARD AREAS WHICH MEET OR EXCEED THE STANDARDS OF RULE 1501:22-1-04 OF THE ADMINISTRATIVE CODE. THESE REGULATIONS MUST BE LEGALLY ENFORCEABLE, APPLIED UNIFORMLY THROUGHOUT THE COUNTY OR MUNICIPAL CORPORATION TO ALL PRIVATELY AND PUBLICLY OWNED LAND WITHIN THE COASTAL FLOOD HAZARD AREA, AND MUST TAKE PRECEDENCE OVER ANY LESS RESTRICTIVE OR CONFLICTING LOCAL LAWS, RESOLUTIONS, ORDINANCES, OR CODES. THE CRITERIA OF RULE 1501:22-1-04 OF THE ADMINISTRATIVE CODE ARE TO BE CONSIDERED MINIMUM STANDARDS, A COUNTY OR MUNICIPAL CORPORATION MAY EXCEED THESE CRITERIA BY ADOPTING MORE STRINGENT FLOODPLAIN MANAGEMENT REGULATIONS.

(B) A COUNTY OR MUNICIPAL CORPORATION THAT PARTICIPATES IN THE NATIONAL FLOOD INSURANCE PROGRAM SHALL COMPLY WITH THE FLOODPLAIN MANAGEMENT CRITERIA SET FORTH IN THE NATIONAL FLOOD INSURANCE PROGRAM REGULATIONS FOUND IN PART 60 OF TITLE 44 OF THE CODE OF FEDERAL REGULATIONS.

Effective: July 26, 1990

CERTIFICATION: Joseph J. Lemmer, Director

July 16, 1990
Date

Promulgated under R.C. Ch. 119
Rule amplifies R.C. 1506.04
Rule authorized by R.C. 1506.02

1501:22-1-04 FLOODPLAIN MANAGEMENT CRITERIA.

(A) WHEN A COUNTY OR MUNICIPAL CORPORATION HAS BEEN NOTIFIED, PURSUANT TO THE REQUIREMENTS OF THE NATIONAL FLOOD INSURANCE PROGRAM, THAT IT CONTAINS AREAS OF SPECIAL FLOOD HAZARDS (A ZONES) BY THE PUBLICATION OF A FHBM OR FIRM, BUT WHERE SUCH MAPS NEITHER IDENTIFY A FLOODWAY OR COASTAL HIGH HAZARD AREA, NOR CONTAIN WATER SURFACE ELEVATION DATA, THE COUNTY OR MUNICIPAL CORPORATION SHALL:

(1) REQUIRE PERMITS FOR ALL PROPOSED CONSTRUCTION AND OTHER DEVELOPMENTS INCLUDING THE PLACEMENT OF MANUFACTURED HOMES, WITHIN ZONE A ON THE FHBM OR FIRM;

(2) REVIEW PROPOSED DEVELOPMENT TO ASSURE THAT ALL NECESSARY PERMITS HAVE BEEN RECEIVED FROM THOSE GOVERNMENTAL AGENCIES FROM WHICH APPROVAL IS REQUIRED BY FEDERAL OR STATE LAW, INCLUDING SECTION 404 OF THE FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972, 33 U.S.C. 1334;

(3) REVIEW ALL PERMIT APPLICATIONS TO DETERMINE WHETHER PROPOSED BUILDING SITES WILL BE REASONABLY SAFE FROM FLOODING. IF A PROPOSED BUILDING SITE IS IN AN AREA OF SPECIAL FLOOD HAZARD, ALL NEW CONSTRUCTION AND SUBSTANTIAL IMPROVEMENTS SHALL (a) BE DESIGNED (OR MODIFIED) AND ADEQUATELY ANCHORED TO PREVENT FLOTATION, COLLAPSE, OR LATERAL MOVEMENT OF THE STRUCTURE RESULTING FROM HYDRODYNAMIC AND HYDROSTATIC LOADS, INCLUDING THE EFFECTS OF BUOYANCY, (b) BE CONSTRUCTED WITH MATERIALS RESISTANT TO FLOOD DAMAGE, (c) BE CONSTRUCTED BY METHODS AND PRACTICES THAT MINIMIZE FLOOD DAMAGES, AND (d) BE CONSTRUCTED WITH ELECTRICAL, HEATING, VENTILATION, PLUMBING, AND AIR CONDITIONING EQUIPMENT AND OTHER SERVICE FACILITIES THAT ARE DESIGNED AND/OR LOCATED SO AS TO PREVENT WATER FROM ENTERING OR ACCUMULATING WITHIN THE COMPONENTS DURING CONDITIONS OF FLOODING.

(4) REVIEW SUBDIVISION PROPOSALS AND OTHER PROPOSED NEW DEVELOPMENT, INCLUDING MANUFACTURED HOME PARKS OR SUBDIVISIONS, TO DETERMINE WHETHER SUCH PROPOSALS WILL BE REASONABLY SAFE FROM FLOODING. IF A SUBDIVISION PROPOSAL OR OTHER PROPOSED NEW DEVELOPMENT IS IN AN AREA OF SPECIAL FLOOD HAZARD, ANY SUCH PROPOSALS SHALL BE REVIEWED TO ASSURE THAT (a) ALL SUCH PROPOSALS ARE CONSISTENT WITH THE NEED TO MINIMIZE FLOOD DAMAGE WITHIN THE FLOOD-PRONE AREA, (b) ALL PUBLIC UTILITIES AND FACILITIES, SUCH AS SEWER, GAS, ELECTRICAL, AND WATER SYSTEMS ARE LOCATED AND CONSTRUCTED TO MINIMIZE OR ELIMINATE FLOOD DAMAGE, AND (c) ADEQUATE DRAINAGE IS PROVIDED TO REDUCE EXPOSURE TO FLOOD HAZARDS;

(5) REQUIRE WITHIN AREAS OF SPECIAL FLOOD HAZARD NEW AND REPLACEMENT WATER SUPPLY SYSTEMS TO BE DESIGNED TO MINIMIZE OR ELIMINATE INFILTRATION OF FLOOD WATERS INTO THE SYSTEMS; AND

(6) REQUIRE WITHIN AREAS OF SPECIAL FLOOD HAZARD (a) NEW AND REPLACEMENT SANITARY SEWAGE SYSTEMS TO BE DESIGNED TO MINIMIZE OR ELIMINATE INFILTRATION OF FLOOD WATERS INTO THE SYSTEMS AND DISCHARGES FROM THE SYSTEMS INTO FLOOD WATERS AND (b) ONSITE WASTE DISPOSAL SYSTEMS TO BE LOCATED TO AVOID IMPAIRMENT TO THEM OR CONTAMINATION FROM THEM DURING FLOODING.

(7) REQUIRE THAT ALL NEW SUBDIVISION PROPOSALS AND OTHER PROPOSED DEVELOPMENTS (INCLUDING PROPOSALS FOR MANUFACTURED HOME PARKS AND SUBDIVISIONS) GREATER THAN FIFTY LOTS OR FIVE ACRES, WHICHEVER IS THE LESSER, INCLUDE WITHIN SUCH PROPOSALS BASE FLOOD ELEVATION DATA;

(8) OBTAIN, REVIEW AND REASONABLY UTILIZE ANY BASE FLOOD ELEVATION AND FLOODWAY DATA AVAILABLE FROM A FEDERAL, STATE, OR OTHER SOURCE, INCLUDING DATA DEVELOPED PURSUANT TO PARAGRAPH (A)(7) OF THIS RULE, AS CRITERIA FOR REQUIRING THAT NEW CONSTRUCTION, SUBSTANTIAL IMPROVEMENTS, OR OTHER DEVELOPMENT IN ZONE A ON THE FHBM OR FIRM MEET THE STANDARDS IN PARAGRAPHS (B)(2), (B)(3), (B)(5), (B)(6), (B)(12), (B)(14), (C)(2) AND (C)(3) OF THIS RULE;

(9) WHERE BASE FLOOD ELEVATION DATA ARE UTILIZED, WITHIN ZONE A ON THE FHBM OR FIRM:

(a) OBTAIN THE ELEVATION (IN RELATION TO MEAN SEA LEVEL) OF THE LOWEST FLOOR (INCLUDING BASEMENT) OF ALL NEW AND SUBSTANTIALLY IMPROVED STRUCTURES, AND

(b) OBTAIN, IF THE STRUCTURE HAS BEEN FLOODPROOFED IN ACCORDANCE WITH PARAGRAPH (B)(3)(b) OF THIS RULE, THE ELEVATION IN RELATION TO MEAN SEA LEVEL TO WHICH THE STRUCTURE WAS FLOODPROOFED, AND

(c) MAINTAIN A RECORD OF ALL SUCH INFORMATION WITH THE OFFICIAL DESIGNATED BY THE COUNTY OR MUNICIPAL CORPORATION TO ADMINISTER THE ISSUANCE OF FLOODPLAIN DEVELOPMENT PERMITS.

(10) NOTIFY, IN RIVERINE SITUATIONS, ADJACENT COUNTIES AND MUNICIPAL CORPORATIONS PRIOR TO ANY ALTERATION OR RELOCATION OF A WATERCOURSE, AND SUBMIT COPIES OF SUCH NOTIFICATIONS TO THE CHIEF OF THE DIVISION OF WATER IN THE DEPARTMENT OF NATURAL RESOURCES.

(11) ASSURE THAT THE FLOOD CARRYING CAPACITY WITHIN THE ALTERED OR RELOCATED PORTION OF ANY WATERCOURSE IS MAINTAINED;

(12) REQUIRE THAT ALL MANUFACTURED HOMES TO BE PLACED WITHIN ZONE A ON THE FHBM OR FIRM SHALL BE INSTALLED USING METHODS AND PRACTICES WHICH MINIMIZE FLOOD DAMAGE. FOR THE PURPOSES OF THIS REQUIREMENT, MANUFACTURED HOMES MUST BE ELEVATED AND ANCHORED TO RESIST FLOTATION, COLLAPSE OR LATERAL MOVEMENT. METHOD OF ANCHORING MAY INCLUDE, BUT ARE NOT TO BE LIMITED TO, USE OF OVER-THE-TOP OR FRAME TIES TO GROUND ANCHORS. THIS REQUIREMENT IS IN ADDITION TO APPLICABLE STATE AND LOCAL ANCHORING REQUIREMENTS FOR RESISTING WIND FORCES.

(B) WHEN, PURSUANT TO THE REQUIREMENTS OF THE NATIONAL FLOOD INSURANCE PROGRAM, A COUNTY OR MUNICIPAL CORPORATION HAS BEEN PROVIDED A NOTICE OF FINAL FLOOD ELEVATIONS FOR ONE OR MORE SPECIAL FLOOD HAZARD AREAS ON THE FIRM AND, IF APPROPRIATE, OTHER SPECIAL FLOOD HAZARD AREAS HAVE BEEN DESIGNATED WITHOUT BASE FLOOD ELEVATIONS ON THE FIRM, BUT A REGULATORY FLOODWAY OR COASTAL HIGH HAZARD AREA HAS NOT BEEN IDENTIFIED, THE COUNTY OR MUNICIPAL CORPORATION SHALL:

(1) REQUIRE THE STANDARDS OF PARAGRAPH (A) OF THIS RULE WITHIN ALL A1-30 ZONES, AE ZONES, A ZONES, AH ZONES, AND AO ZONES, ON THE FIRM:

(2) REQUIRE THAT ALL NEW CONSTRUCTION AND SUBSTANTIAL IMPROVEMENTS OF RESIDENTIAL STRUCTURES WITHIN ZONES A1-30, AE AND AH ZONES ON THE FIRM HAVE THE LOWEST FLOOR, INCLUDING BASEMENT, ELEVATED TO OR ABOVE THE BASE FLOOD LEVEL.

(3) REQUIRE THAT ALL NEW CONSTRUCTION AND SUBSTANTIAL IMPROVEMENTS OF NON-RESIDENTIAL STRUCTURES WITHIN ZONES A1-30, AE AND AH ZONES ON THE FIRM (a) HAVE THE LOWEST FLOOR, INCLUDING BASEMENT, ELEVATED TO OR ABOVE THE BASE FLOOD LEVEL OR, (b) TOGETHER WITH ATTENDANT UTILITY AND SANITARY FACILITIES, BE DESIGNED SO THAT BELOW THE BASE FLOOD LEVEL THE STRUCTURE IS WATERTIGHT WITH WALLS SUBSTANTIALLY IMPERMEABLE TO THE PASSAGE OF WATER AND WITH STRUCTURAL COMPONENTS HAVING THE CAPABILITY OF RESISTING HYDROSTATIC AND HYDRODYNAMIC LOADS AND EFFECTS OF BUOYANCY;

(4) PROVIDE THAT WHERE A NON-RESIDENTIAL STRUCTURE IS INTENDED TO BE MADE WATERTIGHT BELOW THE BASE FLOOD LEVEL, (a) A REGISTERED PROFESSIONAL ENGINEER OR ARCHITECT SHALL DEVELOP AND/OR REVIEW STRUCTURAL DESIGN, SPECIFICATIONS, AND PLANS FOR THE CONSTRUCTION, AND SHALL CERTIFY THAT THE DESIGN AND METHODS OF CONSTRUCTION ARE IN ACCORDANCE WITH ACCEPTED STANDARDS OF PRACTICE FOR MEETING THE APPLICABLE PROVISIONS OF PARAGRAPH (B)(3)(b) OR (B)(8)(b) OF THIS RULE, AND (b) A RECORD OF SUCH CERTIFICATES WHICH INCLUDES THE SPECIFIC ELEVATION, IN RELATION TO MEAN SEA LEVEL, TO WHICH SUCH STRUCTURES ARE FLOOD-PROOFED SHALL BE MAINTAINED FOR PUBLIC INSPECTION WITH THE OFFICIAL DESIGNATED BY THE COUNTY OR MUNICIPAL CORPORATION.

(5) REQUIRE, FOR ALL NEW CONSTRUCTION AND SUBSTANTIAL IMPROVEMENTS, THAT FULLY ENCLOSED AREAS BELOW THE LOWEST FLOOR THAT ARE USABLE SOLELY FOR PARKING OF VEHICLES, BUILDING ACCESS OR STORAGE IN AN AREA OTHER THAN A BASEMENT AND WHICH ARE SUBJECT TO FLOODING SHALL BE DESIGNED TO AUTOMATICALLY EQUALIZE HYDROSTATIC FLOOD FORCES ON EXTERIOR WALLS BY ALLOWING FOR THE ENTRY AND EXIT OF FLOODWATERS. DESIGNS FOR MEETING THIS REQUIREMENT MUST EITHER BE CERTIFIED BY A REGISTERED PROFESSIONAL ENGINEER OR ARCHITECT OR MEET OR EXCEED THE FOLLOWING MINIMUM CRITERIA: A MINIMUM OF TWO OPENINGS HAVING A TOTAL NET AREA OF NOT LESS THAN ONE SQUARE INCH FOR EVERY SQUARE FOOT OF ENCLOSED AREA SUBJECT TO FLOODING SHALL BE PROVIDED. THE BOTTOM OF ALL OPENINGS SHALL BE NO HIGHER THAN ONE FOOT ABOVE GRADE. OPENINGS MAY BE EQUIPPED WITH SCREENS, LOUVERS, VALVES, OR OTHER COVERINGS OR DEVICES PROVIDED THAT THEY PERMIT THE AUTOMATIC ENTRY AND EXIT OF FLOODWATERS.

(6) REQUIRE THAT MANUFACTURED HOMES THAT ARE PLACED OR SUBSTANTIALLY IMPROVED WITHIN ZONES A1-30, AH, AND AE ON THE FIRM ON SITES (a) OUTSIDE OF A MANUFACTURED HOME PARK OR SUBDIVISION (b) IN A NEW MANUFACTURED HOME PARK OR SUBDIVISION, (c) IN AN EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION, OR (d) IN AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION ON WHICH A MANUFACTURED HOME HAS INCURRED "SUBSTANTIAL DAMAGE" AS A RESULT OF A FLOOD, BE ELEVATED ON

A PERMANENT FOUNDATION SUCH THAT THE LOWEST FLOOR OF THE MANUFACTURED HOME IS ELEVATED TO OR ABOVE THE BASE FLOOD ELEVATION AND BE SECURELY ANCHORED TO AN ADEQUATELY ANCHORED FOUNDATION SYSTEM TO RESIST FLOTATION COLLAPSE AND LATERAL MOVEMENT.

(7) REQUIRE WITHIN ANY AO ZONE ON THE FIRM THAT ALL NEW CONSTRUCTION AND SUBSTANTIAL IMPROVEMENTS OF RESIDENTIAL STRUCTURES HAVE THE LOWEST FLOOR (INCLUDING BASEMENT) ELEVATED ABOVE THE HIGHEST ADJACENT GRADE AT LEAST AS HIGH AS THE DEPTH NUMBER SPECIFIED IN FEET ON THE FIRM (AT LEAST TWO FEET IF NO DEPTH NUMBER IS SPECIFIED);

(8) REQUIRE WITHIN ANY AO ZONE ON THE FIRM THAT ALL NEW CONSTRUCTION AND SUBSTANTIAL IMPROVEMENTS OF NONRESIDENTIAL STRUCTURES (a) HAVE THE LOWEST FLOOR, INCLUDING BASEMENT, ELEVATED ABOVE THE HIGHEST ADJACENT GRADE AT LEAST AS HIGH AS THE DEPTH NUMBER SPECIFIED IN FEET ON THE FIRM--AT LEAST TWO FEET IF NO DEPTH NUMBER IS SPECIFIED, OR (b) TOGETHER WITH ATTENDANT UTILITY AND SANITARY FACILITIES BE COMPLETELY FLOODPROOFED TO THAT LEVEL TO MEET THE FLOODPROOFING STANDARD SPECIFIED IN PARAGRAPH (B)(3)(b) OF THIS RULE;

(9) REQUIRE WITHIN ANY A99 ZONES ON A FIRM THE STANDARDS OF PARAGRAPHS (A)(1) TO (A)(4)(a) AND (A)(9) TO (A)(12) OF THIS RULE;

(10) REQUIRE UNTIL A REGULATORY FLOODWAY IS DESIGNATED, THAT NO NEW CONSTRUCTION, SUBSTANTIAL IMPROVEMENTS, OR OTHER DEVELOPMENT, INCLUDING FILL, SHALL BE PERMITTED WITHIN ZONES A1-30 AND AE ON THE FIRM, UNLESS IT IS DEMONSTRATED THAT THE CUMULATIVE EFFECT OF THE PROPOSED DEVELOPMENT, WHEN COMBINED WITH ALL OTHER EXISTING AND ANTICIPATED DEVELOPMENT, WILL NOT INCREASE THE WATER SURFACE ELEVATION OF THE BASE FLOOD MORE THAN ONE FOOT AT ANY POINT WITHIN THE COUNTY OR MUNICIPAL CORPORATION.

(11) REQUIRE WITHIN ZONES AH AND AO, ADEQUATE DRAINAGE PATHS AROUND STRUCTURES ON SLOPES, TO GUIDE FLOODWATERS AROUND AND AWAY FROM PROPOSED STRUCTURES.

(12) REQUIRE THAT MANUFACTURED HOMES TO BE PLACED OR SUBSTANTIALLY IMPROVED ON SITES IN AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISIONS WITHIN ZONES A1-30 AH, AND AE ON THE FIRM THAT ARE NOT SUBJECT TO THE PROVISIONS OF PARAGRAPH (B)(6) OF THIS RULE BE ELEVATED SO THAT EITHER (a) THE LOWEST FLOOR OF THE MANUFACTURED HOME IS AT OR ABOVE THE BASE FLOOD ELEVATION, OR (b) THE MANUFACTURED HOME CHASSIS IS SUPPORTED BY REINFORCED PIERS OR OTHER FOUNDATION ELEMENTS OF AT LEAST EQUIVALENT STRENGTH THAT ARE NO LESS THAN THIRTY-SIX INCHES IN HEIGHT ABOVE GRADE AND BE SECURELY ANCHORED TO AN ADEQUATELY ANCHORED FOUNDATION SYSTEM TO RESIST FLOTATION, COLLAPSE, AND LATERAL MOVEMENT.

(13) NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS RULE, A COUNTY OR MUNICIPALITY MAY APPROVE CERTAIN DEVELOPMENT IN ZONES A1-30, AE AND AH, ON THE FIRM WHICH INCREASE THE WATER SURFACE ELEVATION OF THE BASE FLOOD BY MORE THAN ONE FOOT, PROVIDED THAT THE COUNTY OR MUNICIPALITY FIRST APPLIES FOR APPROVAL FROM THE CHIEF OF THE DIVISION OF WATER IN THE DEPARTMENT OF NATURAL RESOURCES.

(14) REQUIRE THAT RECREATIONAL VEHICLES PLACED ON SITES WITHIN ZONES A1-30, AH, AND AE ON THE FIRM EITHER (a) BE ON THE SITE FOR FEWER THAN ONE HUNDRED EIGHTY CONSECUTIVE DAYS, (b) BE FULLY LICENSED AND READY FOR HIGHWAY USE, OR (c) MEET THE PERMIT REQUIREMENTS OF (A)(1) OF THIS RULE AND THE ELEVATION AND ANCHORING REQUIREMENTS FOR "MANUFACTURED HOMES" IN PARAGRAPH (B)(6) OF THIS RULE. A RECREATIONAL VEHICLE IS READY FOR HIGHWAY USE IF IT IS ON ITS WHEELS OR JACKING SYSTEM, IS ATTACHED TO THE SITE ONLY BY QUICK DISCONNECT TYPE UTILITIES AND SECURITY DEVICES, AND HAS NO PERMANENTLY ATTACHED ADDITIONS.

(C) WHEN, PURSUANT TO THE REQUIREMENTS OF THE NATIONAL FLOOD INSURANCE PROGRAM, A COUNTY OR MUNICIPAL CORPORATION HAS BEEN PROVIDED A NOTICE OF FINAL BASE FLOOD ELEVATIONS WITHIN ZONES A1-30 AND/OR AE ON THE FIRM AND, IF APPROPRIATE, AO ZONES, AH ZONES, A99 ZONES, AND A ZONES HAVE BEEN DESIGNATED ON THE FIRM, AND HAS BEEN PROVIDED DATA FROM WHICH THE COUNTY OR MUNICIPAL CORPORATION SHALL DESIGNATE ITS REGULATORY FLOODWAY, THE COUNTY OR MUNICIPAL CORPORATION SHALL:

(1) MEET THE REQUIREMENTS OF PARAGRAPH (B)(1) TO (B)(14) OF THIS RULE;

(2) SELECT AND ADOPT A REGULATORY FLOODWAY BASED ON THE PRINCIPLE THAT THE AREA CHOSEN FOR THE REGULATORY FLOODWAY MUST BE DESIGNED TO CARRY THE WATERS OF THE BASE FLOOD WITHOUT INCREASING THE WATER SURFACE ELEVATION OF THAT FLOOD MORE THAN ONE FOOT AT ANY POINT;

(3) PROHIBIT ENCROACHMENTS, INCLUDING FILL, NEW CONSTRUCTION, SUBSTANTIAL IMPROVEMENTS, AND OTHER DEVELOPMENT WITHIN THE ADOPTED REGULATORY FLOODWAY UNLESS IT HAS BEEN DEMONSTRATED THROUGH HYDROLOGIC AND HYDRAULIC ANALYSES PERFORMED IN ACCORDANCE WITH STANDARD ENGINEERING PRACTICE THAT THE PROPOSED ENCROACHMENT WOULD NOT RESULT IN ANY INCREASE IN FLOOD LEVELS WITHIN THE COUNTY OR MUNICIPAL CORPORATION DURING THE OCCURRENCE OF THE BASE FLOOD DISCHARGE;

(D) WHEN, PURSUANT TO THE REQUIREMENTS OF THE NATIONAL FLOOD INSURANCE PROGRAM, A COUNTY OR MUNICIPAL CORPORATION HAS BEEN PROVIDED A NOTICE OF FINAL BASE FLOOD ELEVATIONS WITHIN ZONES A1-30 AND/OR AE ON THE FIRM AND, IF APPROPRIATE, AH ZONES, AO ZONES, A99 ZONES, AND A ZONES HAVE BEEN DESIGNATED ON THE FIRM, AND WHERE ON THE FIRM COASTAL HIGH HAZARD AREAS HAVE BEEN DESIGNATED AS ZONES V1-30, VE, AND/OR V, THE COUNTY OR MUNICIPAL CORPORATION SHALL:

(1) MEET THE REQUIREMENTS OF PARAGRAPHS (B)(1) TO (B)(14) OF THIS RULE;

(2) WITHIN ZONES V1-30, VE, AND V ON A FIRM. (a) OBTAIN THE ELEVATION, IN RELATION TO MEAN SEA LEVEL, OF THE BOTTOM OF THE LOWEST STRUCTURAL MEMBER OF THE LOWEST FLOOR, EXCLUDING PILINGS AND COLUMNS, OF ALL NEW AND SUBSTANTIALLY IMPROVED STRUCTURES, AND WHETHER OR NOT SUCH STRUCTURES CONTAIN A BASEMENT, AND (b) MAINTAIN A RECORD OF ALL SUCH INFORMATION WITH THE OFFICIAL DESIGNATED BY THE COUNTY OR MUNICIPAL CORPORATION.

(3) PROVIDE THAT ALL NEW CONSTRUCTION AND SUBSTANTIAL IMPROVEMENTS IN ZONES V1-30 AND VE, AND ALSO ZONE V, IF BASE FLOOD ELEVATION DATA ARE AVAILABLE, ON THE FIRM, ARE ELEVATED ON PILINGS AND COLUMNS SO THAT (a) THE BOTTOM OF THE LOWEST HORIZONTAL STRUCTURAL MEMBER OF THE LOWEST FLOOR, EXCLUDING THE PILINGS OR COLUMNS, IS ELEVATED TO OR ABOVE THE BASE FLOOD LEVEL; AND (b) THE PILE OR COLUMN FOUNDATION AND STRUCTURE ATTACHED THERETO IS ANCHORED TO RESIST FLOTATION, COLLAPSE AND LATERAL MOVEMENT DUE TO THE EFFECTS OF WIND AND WATER LOADS ACTING SIMULTANEOUSLY ON ALL BUILDING COMPONENTS. WATER LOADING VALUES USED SHALL BE THOSE ASSOCIATED WITH THE BASE FLOOD. WIND LOADING VALUES USED SHALL BE THOSE REQUIRED BY APPLICABLE STATE OF LOCAL BUILDING STANDARDS. A REGISTERED PROFESSIONAL ENGINEER OR ARCHITECT SHALL DEVELOP OR REVIEW THE STRUCTURAL DESIGN, SPECIFICATIONS AND PLANS FOR THE CONSTRUCTION, AND SHALL CERTIFY THAT THE DESIGN AND METHODS OF CONSTRUCTION TO BE USED ARE IN ACCORDANCE WITH ACCEPTED STANDARDS OF PRACTICE FOR MEETING THE PROVISIONS OF THIS PARAGRAPH.

(4) PROVIDE THAT ALL NEW CONSTRUCTION AND SUBSTANTIAL IMPROVEMENTS WITHIN ZONES V1-30, VE, AND V ON THE FIRM HAVE THE SPACE BELOW THE LOWEST FLOOR EITHER FREE OF OBSTRUCTION OR CONSTRUCTED WITH NON-SUPPORTING BREAKAWAY WALLS, OPEN WOOD LATTICE-WORK, OR INSECT SCREENING INTENDED TO COLLAPSE UNDER WIND AND WATER LOADS WITHOUT CAUSING COLLAPSE, DISPLACEMENT, OR OTHER STRUCTURAL DAMAGE TO THE ELEVATED PORTION OF THE BUILDING OR SUPPORTING FOUNDATION SYSTEM. FOR THE PURPOSES OF THIS PARAGRAPH, A BREAKAWAY WALL SHALL HAVE A DESIGN SAFE LOADING RESISTANCE OF NOT LESS THAN TEN AND NO MORE THAN TWENTY POUNDS PER SQUARE FOOT. USE OF BREAKAWAY WALLS WHICH EXCEED A DESIGN SAFE LOADING RESISTANCE OF TWENTY POUNDS PER SQUARE FOOT, EITHER BY DESIGN OR WHEN SO REQUIRED BY LOCAL OR STATE CODES, MAY BE PERMITTED ONLY IF A REGISTERED PROFESSIONAL ENGINEER OR ARCHITECT CERTIFIES THAT THE DESIGNS PROPOSED MEET THE FOLLOWING CONDITIONS:

(a) BREAKAWAY WALL COLLAPSE SHALL RESULT FROM A WATER LOAD LESS THAN THAT WHICH WOULD OCCUR DURING THE BASE FLOOD; AND,

(b) THE ELEVATED PORTION OF THE BUILDING AND SUPPORTING FOUNDATION SYSTEM SHALL NOT BE SUBJECT TO COLLAPSE, DISPLACEMENT, OR OTHER STRUCTURAL DAMAGE DUE TO THE EFFECTS OF WIND AND WATER LOADS ACTING SIMULTANEOUSLY ON ALL BUILDING COMPONENTS--STRUCTURAL AND NON-STRUCTURAL. WATER LOADING VALUES USED SHALL BE THOSE ASSOCIATED WITH THE BASE FLOOD. WIND LOADING VALUES USED SHALL BE THOSE REQUIRED BY APPLICABLE STATE OR LOCAL BUILDING STANDARDS. SUCH ENCLOSED SPACE SHALL BE USEABLE SOLELY FOR PARKING OF VEHICLES, BUILDING ACCESS OR STORAGE.

(5) PROHIBIT THE USE OF FILL FOR STRUCTURAL SUPPORT OF BUILDINGS WITHIN ZONES V1-30, VE, AND V ON THE FIRM;

(6) REQUIRE THAT MANUFACTURED HOMES PLACED OR SUBSTANTIALLY IMPROVED WITHIN ZONES V1-30, V, AND VE ON THE FIRM ON SITES (a) OUTSIDE OF A MANUFACTURED HOME PARK OR SUBDIVISION, (b) IN A NEW MANUFACTURED HOME PARK OR SUBDIVISION, (c) IN AN EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION, OR (d) IN AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION ON WHICH A MANUFACTURED HOME HAS INCURRED

"SUBSTANTIAL DAMAGE" AS THE RESULT OF A FLOOD, MEET THE STANDARDS OF PARAGRAPHS (D)(2) TO (D)(5) OF THIS RULE AND THAT MANUFACTURED HOMES PLACED OR SUBSTANTIALLY IMPROVED ON OTHER SITES IN AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION WITHIN ZONES V1-30, V, AND VE ON THE FIRM MEET THE REQUIREMENTS OF PARAGRAPH (B)(12) OF THIS RULE.

(7) REQUIRE THAT RECREATIONAL VEHICLES PLACED ON SITES WITHIN ZONES V1-30, V, AND VE ON THE FIRM EITHER (a) BE ON THE SITE FOR FEWER THAN ONE HUNDRED EIGHTY CONSECUTIVE DAYS, (b) BE FULLY LICENSED AND READY FOR HIGHWAY USE, OR (c) MEET THE REQUIREMENTS IN PARAGRAPHS (A)(1) AND (D)(2) TO (D)(5) OF THIS RULE. A RECREATIONAL VEHICLE IS READY FOR HIGHWAY USE IF IT IS ON ITS WHEELS OR JACKING SYSTEM, IS ATTACHED TO THE SITE ONLY BY QUICK DISCONNECT TYPE UTILITIES AND SECURITY DEVICES, AND HAS NO PERMANENTLY ATTACHED ADDITIONS.

Effective: July 26, 1990

CERTIFICATION: Joseph J. Lammer, Director

July 16, 1990
Date

Promulgated under R.C. Ch. 119
Rule amplifies R.C. 1506.04
Rule authorized by R.C. 1506.02

1501:22-1-05 CRITERIA FOR VARIANCES.

RESOLUTIONS OR ORDINANCES ADOPTED BY COUNTIES OR MUNICIPAL CORPORATIONS GOVERNING COASTAL FLOOD HAZARD AREAS MAY INCLUDE PROVISIONS FOR ISSUING VARIANCES FROM THE FLOODPLAIN MANAGEMENT CRITERIA OF RULE 1501:22-1-04 OF THE ADMINISTRATIVE CODE PROVIDED SUCH VARIANCES ARE CONSISTENT WITH THE FOLLOWING PROVISIONS:

(A) VARIANCES SHALL NOT BE ISSUED WITHIN ANY DESIGNATED REGULATORY FLOODWAY IF ANY INCREASE IN FLOOD LEVELS DURING THE BASE FLOOD DISCHARGE WOULD RESULT;

(B) VARIANCES MAY BE ISSUED FOR NEW CONSTRUCTION AND SUBSTANTIAL IMPROVEMENTS TO BE ERECTED ON A LOT OF ONE-HALF ACRE OR LESS IN SIZE CONTIGUOUS TO AND SURROUNDED BY LOTS WITH EXISTING STRUCTURES CONSTRUCTED BELOW THE BASE FLOOD LEVEL, IN CONFORMANCE WITH THE PROCEDURES OF PARAGRAPHS (C), (D), AND (E) OF THIS RULE;

(C) VARIANCES SHALL ONLY BE ISSUED UPON (1) A SHOWING OF GOOD AND SUFFICIENT CAUSE, (2) A DETERMINATION THAT THE GRANTING OF A VARIANCE WILL NOT RESULT IN INCREASED FLOOD HEIGHTS, ADDITIONAL THREATS TO PUBLIC SAFETY, EXTRAORDINARY PUBLIC EXPENSE, CREATE NUISANCES, CAUSE FRAUD ON OR VICTIMIZATION OF THE PUBLIC, OR CONFLICT WITH EXISTING LOCAL RESOLUTIONS OR ORDINANCES;

(D) VARIANCES SHALL ONLY BE ISSUED UPON A DETERMINATION THAT THE VARIANCE IS THE MINIMUM NECESSARY, CONSIDERING THE FLOOD HAZARD, TO AFFORD RELIEF;

(E) A COUNTY OR MUNICIPAL CORPORATION SHALL MAINTAIN A RECORD OF ALL VARIANCE ACTIONS, INCLUDING JUSTIFICATION FOR THEIR ISSUANCE, AND UPON REQUEST, SUBMIT SUCH INFORMATION TO THE CHIEF OF THE DIVISION OF WATER IN THE DEPARTMENT OF NATURAL RESOURCES.

(F) VARIANCES MAY BE ISSUED BY A COUNTY OR MUNICIPAL CORPORATION FOR NEW CONSTRUCTION AND SUBSTANTIAL IMPROVEMENTS AND FOR OTHER DEVELOPMENT NECESSARY FOR THE CONDUCT OF A FUNCTIONALLY DEPENDENT USE PROVIDED THAT (1) THE CRITERIA OF PARAGRAPHS (A) TO (D) OF THIS RULE ARE MET, AND (2) THE STRUCTURE OR OTHER DEVELOPMENT IS PROTECTED BY METHODS THAT MINIMIZE FLOOD DAMAGES DURING THE BASE FLOOD AND CREATE NO ADDITIONAL THREATS TO PUBLIC SAFETY.

(G) VARIANCES MAY BE ISSUED FOR THE REPAIR OR REHABILITATION OF HISTORIC STRUCTURES UPON A DETERMINATION THAT THE PROPOSED REPAIR OR REHABILITATION WILL NOT PRECLUDE THE STRUCTURE'S CONTINUED DESIGNATION AS A HISTORIC STRUCTURE AND THAT THE VARIANCE IS THE MINIMUM NECESSARY TO PRESERVE THE HISTORIC CHARACTER AND DESIGN OF THE STRUCTURE.

Effective: July 26, 1990

CERTIFICATION: Joseph J. Lammer, Director

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Date

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Rule authorized by R.C. 1506.02

1501:22-1-06 REPORTING REQUIREMENTS.

(A) UPON THE WRITTEN REQUEST BY THE DIRECTOR OR HIS DESIGNEE, THE COUNTY OR MUNICIPAL CORPORATION SHALL WITHIN THIRTY DAYS OF THE MAILING OF THE REQUEST FURNISH CERTIFIED COPIES OF SUCH ADOPTED RESOLUTIONS OR ORDINANCES TO THE CHIEF OF THE DIVISION OF WATER IN THE DEPARTMENT OF NATURAL RESOURCES.

(B) A COUNTY OR MUNICIPAL CORPORATION WHICH MAKES ANY MODIFICATIONS OR AMENDMENTS TO ITS ADOPTED RESOLUTIONS OR ORDINANCES GOVERNING COASTAL FLOOD HAZARD AREAS SHALL WITHIN THIRTY DAYS OF ADOPTION SUBMIT A CERTIFIED COPY OF SUCH MODIFICATIONS OR AMENDMENTS TO THE CHIEF OF THE DIVISION OF WATER IN THE DEPARTMENT OF NATURAL RESOURCES.

Effective: July 26, 1990

CERTIFICATION: Joseph J. Sommer, Director

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Date

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Rule authorized by R.C. 1506.02

1501:22-1-07 NONCOMPLIANCE WITH REGULATIONS.

A COUNTY OR MUNICIPAL CORPORATION CONTAINING COASTAL FLOOD HAZARD AREAS THAT FAILS TO ADOPT OR ENFORCE RESOLUTIONS OR ORDINANCES WHICH COMPLY WITH THE FLOOD-PLAIN MANAGEMENT CRITERIA OF THE NATIONAL FLOOD INSURANCE PROGRAM OR THE CRITERIA CONTAINED IN RULE 1501:22-1-04 OF THE ADMINISTRATIVE CODE SHALL BE CONSIDERED NONCOMPLIANT. WHEN THE DIRECTOR OR HIS DESIGNEE DETERMINES THAT A COUNTY OR MUNICIPAL CORPORATION IS NONCOMPLIANT, HE SHALL SEND A WRITTEN NOTICE OF NONCOMPLIANCE TO THE LEGISLATIVE AUTHORITY OF THE COUNTY OR MUNICIPALITY. SUCH NOTICE SHALL LIST THE SPECIFIC DEFICIENCIES NOTED AND PROVIDE A REASONABLE AMOUNT OF TIME NOT TO EXCEED ONE HUNDRED EIGHTY DAYS BY WHICH THE NONCOMPLIANCE SHALL BE CORRECTED.

THE LEGISLATIVE AUTHORITY OF THE COUNTY OR MUNICIPALITY SHALL REPORT TO THE DIRECTOR WITHIN THIRTY DAYS OF THE MAILING OF THE WRITTEN NOTICE ON THE ACTION WHICH IT IS TAKING OR PROPOSES TO TAKE TO CORRECT THE NONCOMPLIANCE.

IF THE COUNTY'S OR MUNICIPALITY'S LEGISLATIVE AUTHORITY FAILS TO REPORT TO THE DIRECTOR WITHIN THIRTY DAYS OF THE DATE OF THE MAILING THE NOTICE OF NONCOMPLIANCE ON THE ACTION WHICH IT IS TAKING OR PROPOSES TO TAKE TO CORRECT THE NONCOMPLIANCE, OR FAILS TO CORRECT THE NONCOMPLIANCE WITHIN ONE HUNDRED EIGHTY DAYS, THE DIRECTOR MAY, IN WRITING, REQUEST THE ATTORNEY GENERAL TO BRING AN ACTION FOR APPROPRIATE RELIEF IN A COURT OF COMPETENT JURISDICTION AGAINST THE COMMUNITY.

Effective: July 26, 1990

CERTIFICATION: Joseph Lemmer, Director

July 16, 1990
Date

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Rule amplifies R.C. 1506.04
Rule authorized by R.C. 1506.02

1501:22-1-08 NONCOMPLIANT DEVELOPMENT.

IF ANY DEVELOPMENT OCCURS WITHIN THE COASTAL FLOOD HAZARD AREA OF A COUNTY OR MUNICIPAL CORPORATION WHICH THE DIRECTOR DETERMINES MEETS BOTH OF THE FOLLOWING CRITERIA, THE DIRECTOR MAY, IN WRITING, REQUEST THE ATTORNEY GENERAL BRING AN ACTION FOR APPROPRIATE RELIEF IN A COURT OF COMPETENT JURISDICTION AGAINST THE DEVELOPMENT.

(A) THE DEVELOPMENT IS LOCATED IN A COUNTY OR MUNICIPAL CORPORATION THAT IS NOT PARTICIPATING IN THE NATIONAL FLOOD INSURANCE PROGRAM AND HAS NOT ADOPTED RESOLUTIONS OR ORDINANCES WHICH MEET OR EXCEED THE FLOOD-PLAIN MANAGEMENT CRITERIA OF RULE 1501:22-1-04 OF THE ADMINISTRATIVE CODE;

(B) THE DEVELOPMENT IS NOT IN COMPLIANCE WITH THE STANDARDS OF THE NATIONAL FLOOD INSURANCE PROGRAM.

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CERTIFICATION: Joseph Lehmer, Director

July 16, 1990
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Rule authorized by R.C. 1501.30

# APPENDIX J

## COASTAL NONPOINT POLLUTION CONTROL PROGRAM AND OHIO NONPOINT SOURCE MANAGEMENT PROGRAM

### The Coastal Nonpoint Pollution Control Program

As a part of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA), Congress created a stand-alone provision, Section 6217 (not an amendment of the CZMA), which requires that states and territories with approved coastal management programs develop a Coastal Nonpoint Pollution Control Program. The program must be submitted to NOAA and U.S. EPA for approval, and be implemented through changes to both the state coastal management program and the nonpoint source management program (Section 319, federal Clean Water Act). The State of Ohio will submit its updated Nonpoint Source Management Program as the basis for an approvable Coastal Nonpoint Pollution Control Program to NOAA and U.S. EPA within 30 months of approval of the OCMP (see letter from ODNR to NOAA on this matter at the end of this appendix).

The central purpose of Section 6217 is to strengthen the links between federal and state coastal management and water quality programs to enhance state and local efforts to manage land-use activities that degrade coastal waters and coastal aquatic habitats. To accomplish this purpose, the statute seeks to improve the states' and local governments' capabilities to control activities that affect coastal waters through implementation of management measures. In conformity with U.S. EPA guidance published under Section 6217(g), states may need to develop additional management measures determined necessary to achieve and maintain water quality standards. For example, additional management measures may need to be developed by the State of Ohio to address localized problems resulting from particular activities or land uses, or to manage critical coastal areas adjacent to impaired or threatened coastal waters.

Management Measures Guidance

Section 6217(g) of the CZARA requires U.S. EPA to publish (and periodically revise) "guidance for specifying management measures for sources of nonpoint source pollution in coastal waters." Management measures are defined in Section 6217(g)(5) as:

> economically achievable measures for the control of the addition of pollutants from existing and new categories and classes of nonpoint sources of pollution, which reflect the greatest degree of pollutant reduction achievable through the application of the best available nonpoint pollution control practices, technologies, processes, siting criteria, operating methods, or other alternatives.

Guidance on such management measures has been published by the U.S. EPA in a document titled "Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters" (Office of Water, 840 B-92-002. U.S. Environmental Protection Agency, Washington, D.C.

20460, January, 1993). The guidance focuses on five major categories of nonpoint sources that impair or threaten coastal waters nationally: agricultural runoff; urban runoff (including developing and developed areas); silvicultural (forestry) runoff; marinas and recreational boating; and hydrologic modifications, dams and levees, and shoreline erosion. U.S. EPA has also included management measures for wetlands, riparian areas, and filter strips that apply generally to various categories of nonpoint source pollution.

The Requirements of Section 6217

Each state program shall provide for the implementation of management measures in conformity with guidance published by the Administrator, U.S. EPA, and shall contain the following:

1. An identification of land uses that individually or cumulatively cause or contribute significantly to degradation of coastal waters.

2. An identification of critical coastal areas adjacent to coastal waters, within which any new land uses or substantial expansion of existing land uses shall be subject to management measures in addition to those otherwise provided for in the program.

3. Management measures – implementation and continuing revision of additional management measures applicable to land uses and areas identified in 1 and 2 above.

4. Technical assistance – provision of technical assistance to local governments and the public for implementing measures referred to in 3 above (e.g., assistance in developing ordinances and regulations, training, demonstration projects, financial incentives).

5. Public participation – opportunities for participation in all aspects of the program.

6. Administrative coordination – establishment of mechanisms such as joint review, memoranda of agreement, or other mechanisms to improve coordination among state agencies and between state and local officials responsible for land-use programs and permitting, water quality permitting and enforcement, etc.

7. State coastal area boundary modification – a proposal to modify the boundaries of the state coastal area if the coastal management agency of the state determines it is necessary to implement recommendations that may be made by the Secretary of Commerce regarding the inland boundaries of the coastal area. The state may elect not to change the Coastal Management boundary if it can demonstrate that it has the necessary enforceable policies and mechanisms to ensure 6217 implementation by networking other state authorities.

## Developing the Ohio Coastal Nonpoint Pollution Control Program

Ohio's coastal nonpoint pollution program will be accomplished through changes to the approved Ohio Nonpoint Source Management Program and to the OCMP. Within ODNR, the Coastal Management Section, REALM, will work with the Division of Soil and Water Conservation (DSWC), which was ODNR's lead entity coordinating the development of the Ohio Nonpoint Source Management Program, to develop coastal nonpoint source initiatives and program strategies. The National Estuarine Research Reserve Program in the Division of Natural Areas and Preserves will participate in the development and implementation of the coastal nonpoint program as part of ODNR's continuing effort to fully integrate the OWC-NERR into the OCMP's broad-based approach to managing Lake Erie's coastal resources.

The development of the coastal nonpoint pollution control program will update and expand the existing Ohio Nonpoint Source Management Program. Ohio's program has been an aggressive program, harnessing state, local, federal and private resources and initiatives. ODNR is confident that the coastal nonpoint program can be developed effectively within that framework.

A team comprised of Ohio EPA's Division of Surface Water (DSW) and ODNR's DSWC staff will lead the development and implementation of Ohio's coastal nonpoint pollution control program. The Coastal Management Program, REALM, will coordinate program development, seek funding assistance, and ensure the involvement of the OWC-NERR, the Lake Erie Office and other relevant state, local and federal agencies. Coordination mechanisms for the OCMP described in Chapter 4 and the cooperative agreement embodied in the Memorandum of Understanding between ODNR and Ohio EPA (Appendix E) will enable the state to develop and implement the necessary management measures for nonpoint source pollution to restore and protect Lake Erie coastal area waters.

## Current Means to Address Coastal Nonpoint Pollution Control

The following is a description of the authorities and programs the State of Ohio currently uses to address the five major categories of nonpoint sources (and wetlands) that are identified in the U.S. EPA Guidance.

### *Urban Runoff*

Urban storm water pollution is fast becoming the most serious type of water pollution affecting Ohio's streams and nearshore areas. Although other sources, such as agricultural runoff, are more widespread and contribute a larger total pollutant load, urban storm water pollution is increasing, and the programs associated with its control are still largely in their infancy.

Although several agencies have some regulatory control over urban storm water, Ohio EPA's is the most comprehensive. Any discharge of wastewater from a point source must be permitted under O.R.C. § 6111.04. Construction and industrial activities resulting in such discharges must obtain either an individual or general NPDES permit. Dischargers must file a Notice of Intent (NOI),

informing Ohio EPA of their desire to obtain or renew coverage under a general permit. Additional information is required for individual discharge permits. Ohio EPA's program is authorized under federal regulations (40 C.F.R. Part 122).

While the industrial portion of the storm water permit program is proceeding well, problems abound for the construction site permit program. Because of their transient and ubiquitous nature, it is difficult for Ohio EPA to keep abreast of the thousands of construction sites across the state. To help meet this need, ODNR's Division of Soil and Water Conservation (DSWC) provides approximately $75,000 per year to county Soil and Water Conservation districts (SWCDs) to review building permit applications and compare them with NOIs in their jurisdictions. For sites without NOIs, the districts contact the site operators and inform them of their responsibilities and offer assistance in preparing a Storm Water Pollution Prevention Plan (SWPP). SWCDs provide follow-up visits in cooperation with Ohio EPA district staff.

It should be noted that several types of construction sites are exempt under the NPDES program, principally small sites under 5 acres. These sources of pollution are generally controlled by counties under O.R.C. § 307.79, or municipalities under Article XVIII, Section 3 of the Ohio Constitution.

Standards for construction site erosion control and pre- and post-storm water management from development sites are set by the DSWC under O.R.C. §1511.02. "Rainwater and Land Development" (1996) contains applicable best management practices. The division, with the help of the Natural Resources Conservation Service (NRCS), provides technical assistance and training to SWCDs and Ohio EPA field staff.

Other controls are available to reduce urban storm water pollution but are less often applied, e.g., Division of Wildlife authority under O.R.C. Chapter 1531 to prevent stream litter and/or other discharges that kill and/or endanger wild animals, including stream life.

*Agricultural Runoff*

Agricultural pollution in Ohio is covered by a multiplicity of laws, rules and regulations. Principal among these is the DSWC's authority to control erosion on agricultural and forest lands and animal wastes discharges. The division's authority is contained in O.R.C. § 1511.02, which authorizes the promulgation of rules for management practices and plans and their enforcement. The division is authorized to carry out the agricultural pollution abatement program through county SWCDs, which provide on-site technical assistance and investigation of pollution complaints. The division is authorized to provide cost-sharing to land owners for the installation of management practices and provide grants to SWCDs to help implement pollution abatement programs. In state fiscal year 1996, over $1.0 million was provided for these purposes. Along with implementation program funding, the division also develops standards and provides training to SWCD staff and agricultural producers. These functions are often shared with the NRCS and the Cooperative Extension Service.

Ohio has a very strong SWCD program, with 88 separate districts employing over 400 staff. This, coupled with nearly 270 NRCS staff, provides a solid foundation to carry out agricultural pollution control programs across the state. SWCDs are empowered to provide technical assistance to producers, prepare and approve farm conservation plans, and enter onto private property to make natural resources inventories and other purposes under O.R.C. § 1515.08. SWCDs may also enter into agreements with DSWC to implement agricultural pollution abatement rules. At this time, all districts in Ohio are cooperating with the division for agricultural sediment, silvicultural erosion and animal waste pollution abatement.

Agricultural pollution control also falls under the purview of Ohio EPA, which is responsible for enforcing state water quality standards and issuing NPDES permits to livestock operations exceeding 1000 animal units. Such permits are often reviewed by SWCDs and ODNR, who provide technical suggestions to Ohio EPA.

The ODNR (Division of Soil and Water Conservation), Ohio EPA, Cooperative Extension Service and NRCS combine to provide an extensive educational and technical assistance capability in Ohio. Such resources are instrumental in conducting dozens of watershed projects focusing on agricultural pollution control throughout Ohio. These resources and high level of cooperation were responsible for the state achieving large reductions in sediment and phosphorus transport to Lake Erie in support of the U.S.-Canada Water Quality Agreement.

Agricultural pesticide use and distribution is controlled by the Ohio Department of Agriculture (ODA) under O.R.C. § 921. ODA is also responsible for implementing provisions of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) in Ohio, including certification and training of pesticide applicators, registering sellers, testing products and enforcement. DSWC can establish standards for management practices affecting sediment-bound pesticide, but has not done so, relying instead on an array of agricultural management practices developed by the NRCS.

The Division of Wildlife within the ODNR often cites agricultural sources of pollution. Under O.R.C. Chapter 1531, the division has authority to issue citations for fish kills associated with any source; however, manure discharges routinely account for a large percentage of fish kill citations each year. The division also has broad authority to cite potential and actual cases of pollution under its stream litter laws. Wildlife's strong authority stems from its ownership of all wild animals including all stream life. The division also has peace-keeping powers similar to sheriffs and municipal police officers.

*Silvicultural Runoff*

In general, few water quality problems are associated with forestry operations within the coastal area, primarily because there is very little forest acreage within the Ohio portion of the Lake Erie Basin. However, erosion problems associated with forestry operations are controlled by the DSWC, working in concert with ODNR's Division of Forestry. DSWC's authority is contained within the same chapter as that for agricultural operations, 1511.02, of the Ohio Revised Code. Both divisions

provide training to forest operations personnel in the proper use of best management practices. When pollution problems occur, they are reported to DSWC, which uses the SWCDs to investigate them and make recommendations, just as is done with agricultural pollution. The ODA controls the use of pesticides on forests, as it does with other commercial crops.

*Hydrologic Modification*

Nonpoint source impacts from hydromodification activities include short and long term water quality degradation, destruction of aquatic habitat and impairment of beneficial functions of Ohio's waters. Ohio uses the following programs and authorities to address these impacts.

Ohio EPA has denied or conditioned Section 401 Water Quality Certification for nationwide permits for hydropower projects, bank stabilization, headwaters and isolated waters, and boat ramps.

Since 1989, ODNR, through the Divisions of Natural Areas and Preserves (DNAP), SWC, Forestry, and Wildlife have been working together to promote and demonstrate biotechnical engineering solutions to restore stream banks and improve aquatic habitat. The Division of Forestry's Stewardship Incentive Program (SIP) provides financial assistance up to 75 percent for landowners to stabilize stream banks and riparian corridors with woody vegetation. ODNR is working with county engineers to demonstrate BMPs to improve habitat on local agricultural ditches. And, the Division of Wildlife in conjunction with its ownership of the state's fish and wildlife resources and its enforcement authorities over the illegal killing of fish or wildlife, provides technical information to help assure protection of these resources during and following hydromodification activities.

DSWC through its NatureWorks Program and state nonpoint source pollution control funding is emphasizing riparian area protection and restoration of stream habitat. More than $500,000 in state funds have been devoted to this purpose in the coastal area over the past two years. In addition, several divisions are preparing educational fact sheets for landowners on stream restoration; practices described in the fact sheets have been published as part of the post-development BMPs for construction sites.

The state Scenic Rivers Program administered by DNAP discourages hydromodification projects that would affect the natural qualities for which a scenic river has been designated. O.R.C. §1517.16 prohibits channel modifications within any wild, scenic or recreational river without plan approval by the Director of ODNR.

ODNR and Ohio EPA are cooperating to develop stream management policies that emphasize preservation. The agencies are cooperating to produce a video demonstrating BMPs and a Stream Management Notebook that will update the 1986 Ohio Stream Management Guide. ODNR is cooperating with SWCDs to initiate and/or complete restoration and enhancement of riparian habitat along 1,000 miles of stream per year.

Submerged lands leasing rules (O.A.C. 1501-6-01 through 06) stipulate that ODNR's review of any proposed project that would occupy the waters of Lake Erie and underlying lands must use information and findings of the Ohio Nonpoint Source Management Program.

*Marinas*

Marinas represent the only source category identified in the 6217 Guidance that is not explicitly addressed by the Ohio Nonpoint Source Management Program. As a result, this source has not been a significant focus of nonpoint source pollution control efforts in the State of Ohio. However, several authorities and programs are used to control marina-associated pollution.

The Ohio Department of Health (ODH) regulates marina construction, operation and maintenance under O.R.C. § 3733.21 through 3733.30 and O.A.C. 3701-35 (see Chapter 5, Policy 32). The intent of the marina law and regulations is to ensure that Ohioans using recreational watercraft, as well as surrounding areas, will be protected from unsafe drink in water, pollution hazards from improperly disposed wastes, accident hazards, and other unsanitary conditions. Marinas that provide dockage for watercraft with installed sewage holding tanks must provide sewage pump-out facilities (O.R.C. 3701-35-05).

ODH also administers the Clean Vessel Act to financially assist marina facility owners in the construction, renovation, operation, and maintenance of pump-out and dump stations for recreational watercraft. Eligible activities also include those necessary for storage and transport to sewage treatment facilities as well as information and education programs targeted to recreational boaters.

Marina construction is subject to the Ohio EPA NPDES storm water permit requirement for any earth-disturbing activity of greater than 5 acres, as described above with respect to Urban Runoff. Certain activities associated with marina operations are covered by this requirement as well. Those portions of marina facilities that are considered transportation-related are regulated. This entails such activities as mechanical repairs, fueling, painting, lubrication and equipment cleaning operations.

Under the Ohio EPA's Section 401 Water Quality Certification authority, the state has limited nationwide permit #36 to disallow authorization for boat ramps where dredging is required to establish water depths necessary for boat launching. And Ohio EPA has conditioned nationwide permit #33 for temporary construction, access and dewatering to disallow construction, maintenance or modification of marina basins.

*Wetlands*

In addition to the urban, agricultural, marina, silvicultural and hydromodification authorities and programs that in part can be used to address nonpoint source pollution in wetlands, the State of Ohio relies upon a rigorously enforced Water Quality Certification (Section 401) program. The following is a general description of that program as it relates to wetlands water quality protection. For a more

thorough discussion of Ohio's enforcement of this program, see Chapter 5, Policy 12, and Appendix K.

In Ohio, wetlands are designated "state resource waters" (O.A.C. 3745-1-05(C)). Present ambient water quality may not be degraded for all substances determined to be toxic or to interfere with any designated use as determined by the Director, Ohio EPA. Existing uses must be maintained and protected. No lowering of water quality is allowed at all in "state resource waters." The discharge of dredged or fill material is prohibited unless the director determines that the activity will not interfere with the attainment or maintenance of water quality standards and will not result in a violation of any applicable provision of the CWA. And the director still may deny any Section 401 Water Quality Certification application if adverse long- or short-term impacts on water quality will result.

The State of Ohio's authority over wetlands extends beyond the scope of the Corps' Section 10/404 permit requirements. State law provides that the Director, Ohio EPA, may certify or deny certification to any applicant for **any** federal license or permit to conduct an activity that may result in a discharge into state waters (O.R.C. 6111.03(P)).

For approved Section 401 Water Quality Certifications that entail wetland mitigation, annual water quality monitoring is often required. Generally, grab samples are to be obtained each May and analyzed for ammonia, nitrates, total nitrogen, total and ortho-phosphorus, total organic carbon, total sulfates, total iron, total manganese, specific conductivity, pH, turbidity, total suspended solids, metals and biochemical oxygen demand.

Ohio Water Quality Certification has been denied for the following nationwide permits: 16 – return water from upland confined disposal sites, 17 – discharges associated with hydropower projects, 21 – surface coal mining activities and 23 – approved categorical exclusions. In addition, State of Ohio general conditions apply to nationwide permit numbers 3 through 7, 12 through 15, 18, 20, 22, 26, 27, 32 through 34, 37, 38 and 40. General conditions include insurance of bank stability, immediate repair of equipment-related damages and care in avoidance of unnecessary turbidity throughout the duration of the project. Ohio EPA has imposed specific conditions with respect to wetlands on several nationwide permits, as follows:

12. Utility Line Backfill and Bedding – In wetlands, at least the top 6 inches of backfill over a utility line shall consist of the topsoil material removed from the trench. Utility line installations greater than 1,000 feet in length are not authorized in forested wetlands.

26. Headwaters and Isolated Waters Discharges – Discharges in isolated wetlands and wetlands adjacent to headwaters where more than 5 acres would be adversely affected are not authorized. The nationwide permit will not authorize discharge into bogs or fens.

29. Single-family Housing – Discharge into bogs; fens; wetlands adjacent to headwater lakes; state scenic rivers; designated Coldwater, Exceptional Warmwater or Seasonal Salmonid

aquatic life habitat streams; or into Lake Erie or any wetlands adjacent to Lake Erie is not authorized.

With respect to wetlands restoration (Management Measure B), the State of Ohio is using numerous programs in an increasingly aggressive manner to protect and restore wetlands. These are discussed in greater detail in Chapter 5, Policy 12. They are ODNR's State Nature Preserve Program, which includes approximately 1,200 acres of coastal wetlands; ODNR's Division of Wildlife's acquisition and land management programs, which, with completion of several new projects, will include approximately 6,900 acres of wetlands; and ODNR's state park system which now includes approximately 1,400 acres of coastal wetlands.

In addition, the Lake Erie Marshes is a focus area of the NAWMP and, as such, is of the highest priority for restoration projects with private landowners. Through 1995, ODNR's Division of Wildlife has assisted in restoration of more than 650 acres of previously drained coastal wetlands. And the Division of Soil and Water Conservation has cooperated with the U.S. Natural Resources Conservation Service to protect 250 acres of wetlands in coastal counties by offering piggy-back funding for the Wetlands Reserve Program (WRP) targeted at riparian wetlands. More than 500 additional acres in riparian areas of the Maumee River watershed are expected to enhance water quality in the Lake Erie basin, using SWC's added incentives to the WRP. ODNR's Division of Natural Areas and Preserves, through its Scenic Rivers Program, cooperates with the Ohio EPA and ODNR's DSWC to encourage watershed protection on designated streams with the aim of applying proper storm water management techniques and nonpoint source pollution control. (Segments of five Lake Erie tributaries have been designated as state Scenic Rivers.)

The Lake Erie Commission, in its 1996-1998 Strategic Plan, has identified the need to address "Loss of Habitat" and "Nonpoint Source Pollution" as two of its highest priorities, in part recommending that these areas continue to be high priorities for Lake Erie Protection Fund funding. Grants now will be available for property acquisition and for plan development in implementing measures that protect coastal wetland habitat. Projects that promote implementation of new and innovative practices to reduce urban nonpoint pollution and to support watershed planning and management to reduce agricultural nonpoint source pollution are also encouraged.

A statewide wetlands inventory has been developed to assist wetlands regulation, monitoring and enforcement, acquisition and protection strategies, and planning and management efforts. ODNR's Division of Wildlife manages this remotely sensed satellite imagery inventory.

The use of engineered vegetated treatment systems (Management Measure C) for pollution control has been underway in Ohio for nearly a decade. ODNR began to experiment with this method of pollution control in the late 1980s on several streams affected by acid mine drainage. More recently, wetlands have been constructed to treat feedlot runoff and milk house waste discharges from livestock operations. Using state NatureWorks funds, wetlands treating home septic system effluent will be demonstrated in Clermont County this year. All of the systems installed to

date have been successful; however, some maintenance problems, such as destruction of plants by muskrat and beaver, need to be overcome.

In the Maumee River basin, the Blue Creek wetlands restoration project was designed to study the effectiveness of wetlands in removing agricultural pollutants. A task force was formed in 1989, and a grant from the Ohio EPA and U.S. EPA was used to hire Dr. William Mitsch of The Ohio State University to conduct a preliminary feasibility study. (Dr. Mitsch is an internationally recognized wetlands expert and a pioneer in the development of engineered wetlands.) Representatives of eight public agencies (including Ohio EPA, ODNR and TMACOG) and universities form the task force. Continuing research on contaminant pathways and agricultural runoff is being conducted through the University of Toledo, Bowling Green State University and Heidelberg College.

Use of engineered systems is addressed in the short- and long-term strategies of the Ohio Wetlands Strategy. It is a recommended short-term goal to collaborate in pilot and full-scale studies on the use of created wetlands for treating domestic and industrial wastewater. The long-term recommended goal includes an interim goal of 50,000 acres of wetlands and riparian ecosystems restored or created by the year 2000 and an overall goal of 400,00 acres by the year 2010.

## The Ohio Nonpoint Source Management Program

The State of Ohio has developed a statewide nonpoint source management program that consists of the Ohio Nonpoint Source Assessment (Assessment) and the Ohio Nonpoint Source Management Program (Management Program). The development of the Assessment was coordinated by the Ohio EPA (DSW) and was approved by the U.S. EPA in April, 1989. ODNR (DSWC) coordinated the development of the Management Program, which was approved by U.S. EPA in December, 1989. It is an aggressive program that demonstrates Ohio's strong and long-term commitment to reducing nonpoint source pollution entering the state waters. State and county agencies, federal agencies, universities, and nonprofit organizations initiated and continued the implementation of over 100 statewide, watershed, county and municipal nonpoint source projects with federal, state and local fund support since 1990. Many of these projects directly affect coastal waters or are in the Lake Erie watershed. A copy of the State of Ohio Section 319 Annual Report, may be obtained from Ohio EPA, Nonpoint Source /Clean Lakes Unit, Division of Surface Water, P.O. Box 1049, 1800 WaterMark Drive, Columbus, Ohio 43216-1049.

The Ohio Nonpoint Source Assessment was updated in 1990 in part as a result of suggestions made in public comments on the 1988 Assessment to make it easier to use. The 1990 update reorganizes the Assessment into five regional volumes including Lake Erie West and Lake Erie East that comprise the Ohio watershed area of Lake Erie. The regional volumes are complete and provide an excellent reference to streams and lakes within specific drainage basins and to ground water contamination problems. The Assessment provides information on seven categories and 25 subcategories of sources of nonpoint source pollution as defined within programs administered by U.S. EPA.

The Ohio Nonpoint Source Management Program uses some authorities of state and local government. The program has a large number of activities that were initiated at all levels of government. These projects are managed and implemented through cooperative agreements between state agencies, state and federal agencies, state and local agencies, and public and independent agencies.

The Ohio Nonpoint Source Management Program has implemented many projects in the Lake Erie watershed and coastal waters. Examples include:

- Enhancing Phosphorus Reduction Efforts from Agriculture in the Maumee River Remedial Action Plan Area of Concern (Project Manager: ODNR; Federal Cost = $198,986; Local and State Cost = $100,000)

- Enhancing Phosphorus Reduction Efforts from Agriculture in the Central and Eastern Lake Erie Drainage Basin (Project Manager: ODNR; Federal Cost = $198,986; Local and State Cost = $100,000)

- Upper Tiffin Watershed Protection PL-566 (Responsible Agency: SCS; Project Manager: Ohio EPA; Federal Cost = $60,000; Local and State Cost = $0)

- Ottawa County Paired Watershed Study (Responsible Agency: Ottawa Soil and Water Conservation District; Project Manager: Ohio EPA; Federal Cost = $50,000; Local and State Cost = $33,333)

- Cuyahoga Remedial Action Plan Nonpoint Source Education Project (Responsible Agency: Cuyahoga River Community Planning Organization; Project Manager: Ohio EPA; Federal Cost = $30,000; Local and State Cost = $10,000)

- Ottawa River/Swan Creek Urban Runoff Control (Responsible Agency: Toledo Metropolitan Area Council of Governments; Project Manager: Ohio EPA; Federal Cost = $63,000; Local and State Cost = $63,000)

- East Branch Rocky River Urban Nonpoint Source Project (Responsible Agency: Cuyahoga Soil and Water Conservation District; Project Manager: Ohio EPA; Federal Cost = $63,000; Local and State Cost = $42,000)

- Non-Agricultural Phosphorous Reduction in Lake Erie (Project Manager: ODNR; Federal Cost = $100,000; Local and State Cost = $99,000)

- Old Woman Creek Nonpoint Source Project (Responsible Agencies: Erie County Soil and Water Conservation District, ODNR; Project Manager: ODNR; ASCS has awarded $187,000 in special water quality funds to the watershed)

- Water Quality Impact of No-Till and Fall Plow Systems with High and Low Input (Responsible Agency: The Ohio State University - Ohio Cooperative Extension Service; Project Manager: Ohio EPA; Federal Cost = $50,084; Local and State Cost = $13,208)

- Accelerating Awareness and Use of Prescription Farming (Project Manager: ODNR; Federal Cost = $21,000; Local and State Cost = $14,000)

- Maumee River Remedial Action Plan (Project Manager: Ohio EPA; Federal Cost = $641,000 awarded for land use management measures and technical assistance)

- Black River Remedial Action Plan (Project Manager: Ohio EPA; $200,000 awarded for a conservation equipment buy-down program, and technical assistance to land users in applying for conservation practices)

The program also uses enforceable authorities to control certain activities that may cause nonpoint source pollution. Agricultural pollution abatement rules enacted by ODNR's DSWC (O.A.C. 1501:15-5-01 through 1501:15-5-16) provide enforcement authority to correct agricultural and silvicultural erosion and animal waste discharges. Ohio EPA, under O.A.C. 3745-33-02 can issue NPDES permits and PTIs to agricultural animal confinement facilities for more than 1,000 animal units that are not excluded by 40 C.F.R. § 124.11.

Ohio EPA administers NPDES stormwater discharge permits for medium sized cities (Toledo, in the coastal area) and for industries under authority of O.R.C. § 6111.03(J) and 6111.03(5), in accordance with O.A.C. 3745-33 and 3745-38. (Such permits also apply to large sized cities such as Cleveland, but Cleveland is not required to file for a permit because larger portions of the city are served by combined sewers.) The definition of "industry" covered by these regulations includes landfills, hazardous waste facilities, transportation facilities, steam electric generating facilities and construction activities disturbing more than 5 acres in addition to numerous standard industrial classification facilities. The Ohio Department of Agriculture enforces regulations concerning the use of pesticides, including sanitizers, germicides, insecticides, fungicides, rodenticides and herbicides (O.R.C. § 921.0 to 921.28 and O.A.C. 901:5-11). Local health departments regulate on-site treatment systems for 1- 2-and 3-family dwellings and manage sanitary landfills. Minimum standards are established by O.R.C. § 3701.34.

ODNR's Division of Wildlife has authority to cite, arrest and/or fine for several types of nonpoint source pollution to protect the state's wildlife resources. DOW has prosecuted cases involving thermal waste, pesticide, fertilizer and other pollutants when fish and other wild animal kills have occurred.

OHIO Department of Natural Resources

George V. Voinovich • *Governor*
Donald C. Anderson • *Director*

July 16, 1996

Mr. Jeffrey R. Benoit, Director
Office of Ocean and Coastal Resource
Management, NOAA
1305 East-West Highway
Silver Spring, Maryland 20910

Dear Mr. Benoit:

Governor George V. Voinovich has submitted the Ohio Coastal Management Program (OCMP) to the National Oceanic and Atmospheric Administration (NOAA) for federal approval. After federal approval, the nonpoint pollution control provisions of §6217 of the Coastal Zone Act Reauthorization Amendments of 1990 will apply to the OCMP.

The State of Ohio believes that its existing comprehensive Nonpoint Source Management Program contains the authorities, assessment and implementation activities that provide the basis for an approvable coastal nonpoint pollution control program. This program is administered cooperatively by the Ohio Department of Natural Resources (ODNR) and the Ohio Environmental Protection Agency (Ohio EPA). However, we recognize that NOAA and the U.S. Environmental Protection Agency (U.S.EPA) cannot make a final finding on that issue because the type and amount of information included in Appendix J of the OCMP document clearly does not constitute a complete description and assessment of Ohio's program under the requirements set out in NOAA and U.S.EPA Coastal Nonpoint Program guidance dated January 1993 and March 16, June 21, and June 28, 1995.

We have identified nonpoint source pollution as a high priority issue for Lake Erie and coastal waters. On-going strategic actions of the state include prioritizing funding for coastal nonpoint pollution research and implementation projects, and coordinating efforts of ODNR, Ohio EPA and other agencies with the Nonpoint Source Management Program and related programs.

The State of Ohio is updating its nonpoint source program. This program will fully consider Ohio's needs and objectives for protecting our coastal waters as well as national objectives and guidance for coastal nonpoint pollution control. The updated Nonpoint Source Management Program should be completed in 1997. The State of Ohio commits to submitting the updated management program to NOAA and U.S.EPA within thirty months of OCMP approval. We look forward to working with you and your staff on this matter.

Sincerely,

DONALD C. ANDERSON
Director

DCA:kdp
cc: Donald R. Schregardus, Director, Ohio EPA

# APPENDIX K

## WETLANDS AUTHORITIES

- Ohio EPA Section 401 Certification Regulations and Review Guidelines
- State of Ohio Environmental Protection Agency Exceptions to Section 404 Nationwide Permits
- Wetlands Mitigation Policies Used in Section 401 Reviews
- Ohio EPA Policy for Purchase of High-Quality Wetlands as Partial Mitigation for Wetlands Destruction
- Ohio EPA Standard Wetland Mitigation Conditions
- Executive Order 90-68
- Ohio Department of Natural Resources Policy Statement on Wetlands

## 3745-32 SECTION 401 WATER QUALITY CERTIFICATIONS


| | |
|---|---|
| 3745-32-01 | Definitions. |
| 3745-32-02 | Section 401 water quality certification required. |
| 3745-32-03 | Section 401 water quality certification exemptions. |
| 3745-32-04 | Section 401 water quality certification application. |
| 3745-32-05 | Criteria for decision by director. |
| 3745-32-06 | Revocation of section 401 water quality certification. |
| 3745-32-07 | Procedure for decision by director. |


### 3745-32-01 Definitions

For the purposes of this chapter the following definitions shall apply:

(A) "Applicant" means any person required to obtain a section 401 water quality certification from the Ohio EPA.

(B) "Director" means the director of the Ohio EPA or his duly authorized representative.

(C) "Discharge of dredged material" means any addition of dredged material, in excess of one cubic yard when used in a single or incidental operation, into the waters of the state. The term includes, without limitation, the addition of dredged material to a specified disposal site which is located in waters of the state, or the run-off or overflow of dredged material from a contained land or water disposal area which enters the waters of the state. Discharges of pollutants into waters of the state resulting from the subsequent onshore processing of dredged material that is extracted for any commercial use (other than fill) are not included within this term and are subject to section 402 of the Federal Water Pollution Control Act, even though the extraction of such material may require a permit from the army corps of engineers under section 10 of the Rivers and Harbors Act.

(D) "Discharge of fill material" means the addition of fill material into waters of the state for the purpose of creating fastlands, elevations of land beneath waters of the state, or for impoundments of water. The term includes, but is not limited to, the placement of the following in waters of the state: fill that is necessary to the construction of any structure; structures or impoundments requiring rock, sand, dirt, or other pollutants for its construction; site-development fills for recreational, industrial, commercial, residential, or other uses; causeways or road fills; dams and dikes; artificial islands, property protection or reclamation devices such as riprap, groins, seawalls, breakwalls, and bulkheads, and fills; beach nourishment; levees; sanitary landfills; fill for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants, and subaqueous utility lines; or artificial reefs.

(E) "Dredged material" means material that is excavated or dredged from waters of the state. The term does not include material resulting from normal farming, silviculture, and ranching activities, such as plowing, cultivating, seeding, and harvesting, for production of food, fiber, and forest products.

(F) "Federal Water Pollution Control Act" means the Federal Water Pollution Control Act Amendments of 1972, 86 Stat. 886, 33 U.S.C. 1251, as amended.

(G) "Fill material" means any pollutant used to create fill to replace an aquatic area with dry land or to change the bottom elevation of a water body for any purpose. "Fill material" does not include the following:

(1) Material resulting from normal farming, silviculture, and ranching activities, such as plowing, cultivating, seeding, and harvesting, for the production of food, fiber, and forest products;

(2) Material placed for the purpose of maintenance of existing structures, including emergency reconstruction of recently damaged parts of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures.

(H) "General permit" means a department of the army authorization that is issued for a category or categories of discharges of dredged or fill material that are substantially similar in nature and that cause only minimal individual and cumulative adverse environmental impact.

(I) "Nationwide permit" means a department of the army authorization that has been issued for certain specified activities nationwide.

(J) "Ohio EPA" means the Ohio Environmental Protection Agency or its director, as the context or other law or regulations may require.

(K) "Person" means the state, any municipal corporation, political subdivision of the state, person as defined in section 1.59 of the Revised Code, interstate body created by compact, or the federal government or any department, agency, of instrumentality thereof.

(L) "Section 401 Water Quality Certification" means certification from Ohio EPA, pursuant to section 401 of the Federal Water Pollution Control Act, Chapter 6111 of the Revised Code and Chapter 3745-32 of the Administrative Code, that any discharge, as set forth in section 401, will comply with sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act.

(M) "The Rivers and Harbors Act" means the Rivers and Harbors Act of 1899, 30 Stat. 1151. 33 U.S.C. 401.

(N) "Waters of the state" means all streams, lakes, ponds, wetlands, watercourses, waterways, wells, springs, irrigation systems, drainage systems and all other bodies or accumulations of water, surface and underground, natural or artificial, which are situated wholly or partly within, or border upon, this state, or are within its jurisdiction, except those private waters which do not combine or effect a junction with natural surface or underground waters, including those waters that are presently used, have been used or are susceptible to use to transport interstate commerce up to the head of navigation.

(O) "Wetlands" are areas where the water table is at, near, or above the land surface long enough each year to support the growth of water dependent vegetation and to result in the formation of characteristic wet soil types. These include marshes, swamps, bogs and similar areas.

(Effective September 15, 1982)

### 3745-32-02 Section 401 water quality certification required.

(A) A section 401 water quality certification is required to obtain the following:

(1) A permit from the army corps of engineers pursuant to section 10 of the Rivers and Harbors Act;

(2) A permit from the army corps of engineers pursuant to section 404 of the Federal Water Pollution Control Act;

(3) A permit from the army corps of engineers pursuant to both section 10 of the Rivers and Harbors Act and section 404 of the Federal Water Pollution Control Act; and

(4) Any other federal permit or license to conduct any activity which may result in any discharge to waters of the state.

(B) No certification issued pursuant to this chapter shall be effective until all applicable fees have been paid.

(Effective September 15, 1982)

### 3745-32-03 Section 401 water quality certification exemptions.

No section 401 water quality certification need be obtained if:

(A) The secretary of the army has issued a general permit pursuant to section 404 (e) of the Federal Water Pollution Control Act; or

(B) The discharge of dredged or fill material is part of the construction of a federal project specifically authorized by congress, provided the effects of such discharge are included in an environmental impact statement submitted to congress prior to the actual discharge.

(Effective September 15, 1982)

3745-32-04 Section 401 water quality certification applications.

(A) Filing an application with the army corps of engineers for any permit set forth in paragraphs (A)(1) to (A)(3) of rule 3745-32-02 of the Administrative Code constitutes application for a section 401 water quality certification from the Ohio EPA. If an application, in the judgment of the director, lacks information necessary or desirable to determine whether the applicant has demonstrated the criteria set forth in paragraph (A) of rule 3745-32-05 of the Administrative Code, the director shall inform the applicant in writing that review of the application will not proceed until the applicant has submitted additional information as described by the director.

(B) Any person filing an application for any other federal permit or license to conduct an activity which may result in a discharge to waters of the state must submit an application to the director for a section 401 water quality certification. If an application, in the judgment of the director, lacks information necessary or desirable to determine whether the applicant has demonstrated the criteria set forth in paragraph (A) of rule 3745-32-05 of the Administrative Code, the director shall inform the applicant in writing that review of the application will not proceed until the applicant has submitted additional information as described by the director. The director may waive the application requirement if, in the judgment of the director, the activity for which a federal permit of license is sought will not result in a discharge to the waters of the state.

(Effective September 15, 1982)

3745-32-05 Criteria for decision by director.

(A) The director shall not issue a section 401 water quality certification unless he determines that the applicant has demonstrated that the discharge of dredged or fill material to waters of the state or the creation of any obstruction or alteration in waters of the state will:

(1) Not prevent or interfere with the attainment or maintenance of applicable water quality standards.

(2) Not result in a violation of any applicable provision of the following sections of the Federal Water Pollution Control Acting including:

(a) Effluent limitations as described in section 301;

(b) Water quality related effluent limitations as described in section 302;

(c) Water quality standards and implementation plans as described in section 303;

(d) National standards of performance as described in section 306; or

(e) Toxic and pretreatment effluent standards as described in section 307.

(B) Notwithstanding an applicant's demonstration of the criteria in paragraph (A) of rule 3745-32-05 of the Administrative Code, the director may deny an application for a section 401 water quality certification of the director concludes that the discharge of dredged or fill material or obstructions or alterations in waters of the state will result in adverse long or short term impact on water quality.

(C) The director may impose such terms and conditions as part of a section 401 water quality certification as are appropriate or necessary to ensure compliance with the applicable laws and to ensure adequate protection of water quality.

(D) Prior to the issuance of a section 401 water quality certification or prior to, during, or after the discharge of dredged or fill material to waters of the state or the creation of any obstruction or alteration in waters of the state to ensure adequate protection of water quality, the director may require that the applicant perform various environmental quality tests including, but not limited to, chemical analyses of water, sediment or fill material, and bioassays.

(Effective September 15, 1982)

3745-32-06 Revocation of section 401 water quality certification.

The director may revoke a section 401 water quality certification if he concludes at any time that any applicable laws or regulations have been or are likely to be violated.

(Effective September 15, 1982)

3745-32-07 Procedure for decision by director.

(A) A section 401 water quality certification shall be issued, modified, revoked, or denied and may be challenged in accordance with the provisions of the rules of procedure of the Ohio EPA, Chapter 3745-47 of the Administrative Code.

(Effective September 15, 1982)

# FROM THE WATER QUALITY STANDARDS
# EPR REGULATIONS

(KKK) "Water quality standards" means the rules set forth in Chapter 3745-1 of the Administrative Code establishing stream use designations and water quality criteria protective of such uses for the surface waters of the state.

(LLL) "Wetlands" mean areas of land where the water table is at, near or above the land surface long enough each year to result in the formation of characteristically wet (hydric) soil types, and support the growth of water-dependent (hydrophytic) vegetation. Wetlands include, but are not limited to, marshes, swamps, bogs, and other such low-lying areas.

Effective: May 1, 1990

3745-1-03 Analytical methods and availability of documents.

(A) Analytical methods.

(1) All methods of analysis used in applying any of the chemical-specific criteria in Chapter 3745-1 of the Administrative Code shall be in accord with those prescribed in 40 CFR part 136, as amended, "Test Procedures for the Analysis of Pollutants" and "Manual of Ohio EPA Surveillance Methods and Quality Assurance Practices," as cited in paragraph (B) of this rule.

(2) All methods of sample collection and preservation used in applying any of the chemical-specific criteria in Chapter 3745-1 of the Administrative Code shall be in accord with "Test Procedures for the Analysis of Pollutants to the National Interim Primary Drinking Water Regulations (NIPDWR) and to the National Pollutant Discharge Elimination System (NPDES), 40 CFR part 136," and "Manual of Ohio EPA Surveillance Methods and Quality Assurance Practices," as cited in paragraph (B) of this rule.

(3) Mixing zones for thermal discharges will be determined in accordance with "Guidelines for the Submittal of Demonstrations Pursuant to Sections 316(a) and 316(b) of the Clean Water Act and Chapter 3745-1 of the Administrative Code," as cited in paragraph (B) of this rule.

(4) Methods for conducting whole-effluent toxicity tests shall be in accordance with those prescribed in "Manual of Ohio EPA Surveillance Methods and Quality Assurance Practices" as cited in paragraph (B) of this rule.

(5) Methods, data collection and data analysis requirements for applying the biological criteria in rule 3745-1-07 of the Administrative Code shall be in accordance with "Biological Criteria for the Protection of Aquatic Life: Volume II, Users Manual for Biological Field Assessment of Ohio Surface Waters," and "Manual of Ohio EPA Surveillance Methods and Quality Assurance Practices" as cited in paragraph (B) of this rule.

(B) Availability of documents. The following documents, cited in Chapter 3745-1 of the Administrative Code, are available for viewing at the library of the "Ohio Environmental Protection Agency, 1800 WaterMark Drive, Columbus, Ohio 43215."

(1) 40 CFR part 136, "Test Procedures for the Analysis of Pollutants."

(2) "Manual of Ohio EPA Surveillance Methods and Quality Assurance Practices," October 1, 1988, or any subsequent revisions.

(3) "Test Procedures for the Analysis of Pollutants to the National Interim Primary Drinking Water Regulations (NIPDWR) and to the National Pollutant Discharge Elimination System (NPDES) 40 CFR part 136," state of Ohio department of health, December 3, 1979, revised February - March, 1980.

(4) "Guidelines for the Submittal of Demonstrations Pursuant to Sections 316(a) and 316(b) of the Clean Water Act and Chapter 3745-1 of the Administrative Code," Ohio environmental protection agency, division of industrialwastewater, September 30, 1978.

(5) "Standard Methods for the Examination of Water and Wastewater," sixteenth edition, "American Public Health Association," "American Water

## FROM THE WATER QUALITY STANDARDS
## EPR REGULATIONS

3745-1-04 Criteria applicable to all waters.

The following general water quality criteria shall apply to all surface waters of the state including mixing zones. To every extent practical and possible as determined by the director, these waters shall be:

(A) Free from suspended solids or other substances that enter the waters as a result of human activity and that will settle to form putrescent or otherwise objectionable sludge deposits, or that will adversely affect aquatic life;

(B) Free from floating debris, oil, scum and other floating materials entering the waters as a result of human activity in amounts sufficient to be unsightly or cause degradation;

(C) Free from materials entering the waters as a result of human activity producing color, odor or other conditions in such a degree as to create a nuisance;

(D) Free from substances entering the waters as a result of human activity in concentrations that are toxic or harmful to human, animal or aquatic life and/or are rapidly lethal in the mixing zone;

(E) Free from nutrients entering the waters as a result of human activity in concentrations that create nuisance growths of aquatic weeds and algae.

Effective: April 4, 1985

The Director of the Ohio EPA adopted a revised antidegradation policy (O.A.C. 3745-1-05), effective October 1, 1996. The rule includes extensive detail regarding National Pollutant Discharge Elimination System (NPDES) permits and Permits to Install (PTIs). To obtain a copy of the rule, contact the Ohio EPA, Division of Surface Water at (614) 644-2001.

Review guidelines have been established for three major categories of projects: full projects, dredging projects and bulk commodity facilities. For ease of use, the guidelines are presented in a flowchart format. Table 1 lists the categories, the figure number of the appropriate flowchart, types of projects within these categories, and general comments.

Developing specific guidelines for site-specific projects if very difficult considering the number of variables for any given site. The purpose of these guidelines is to provide basic criteria for decision-making and for maintaining consistency of review. Consequently, user discretion is advised as to the degree to which the guidelines are followed.

*Table 1: Review Categories*

| Project Category | Figure №. | Comments |
|---|---|---|
| Fill Projects | 1 | |
| ° Wetland Fills | 1a | Diking or filling any wetland, as defined in Ohio Administrative Code (OAC) Section 3745-32 |
| ° Erosion Protection | 1b | Riprap, bulkheads, groins, breakwaters |
| ° Temporary Road Crossings, Cofferdams | 1c | Haul road crossings, fills for pipeline placement, fills in connection with construction dewatering |
| ° Oxbow Fills | 1 | Fills associated with channelization projects; others considered as fastland creation |
| ° Fastland Creation | 1 | Any fill with the purpose of converting aquatic areas to upland |
| ° Dredge Disposal Sites | 1 | In-water confined disposal areas |
| Dredging Projects | 2 | |
| ° Wetland Projects | 2a | |
| Bulk Commodity Facilities | 3 | Loading/unloading docks; Section 10 consideration only |

*Figure 1: Fill Projects*

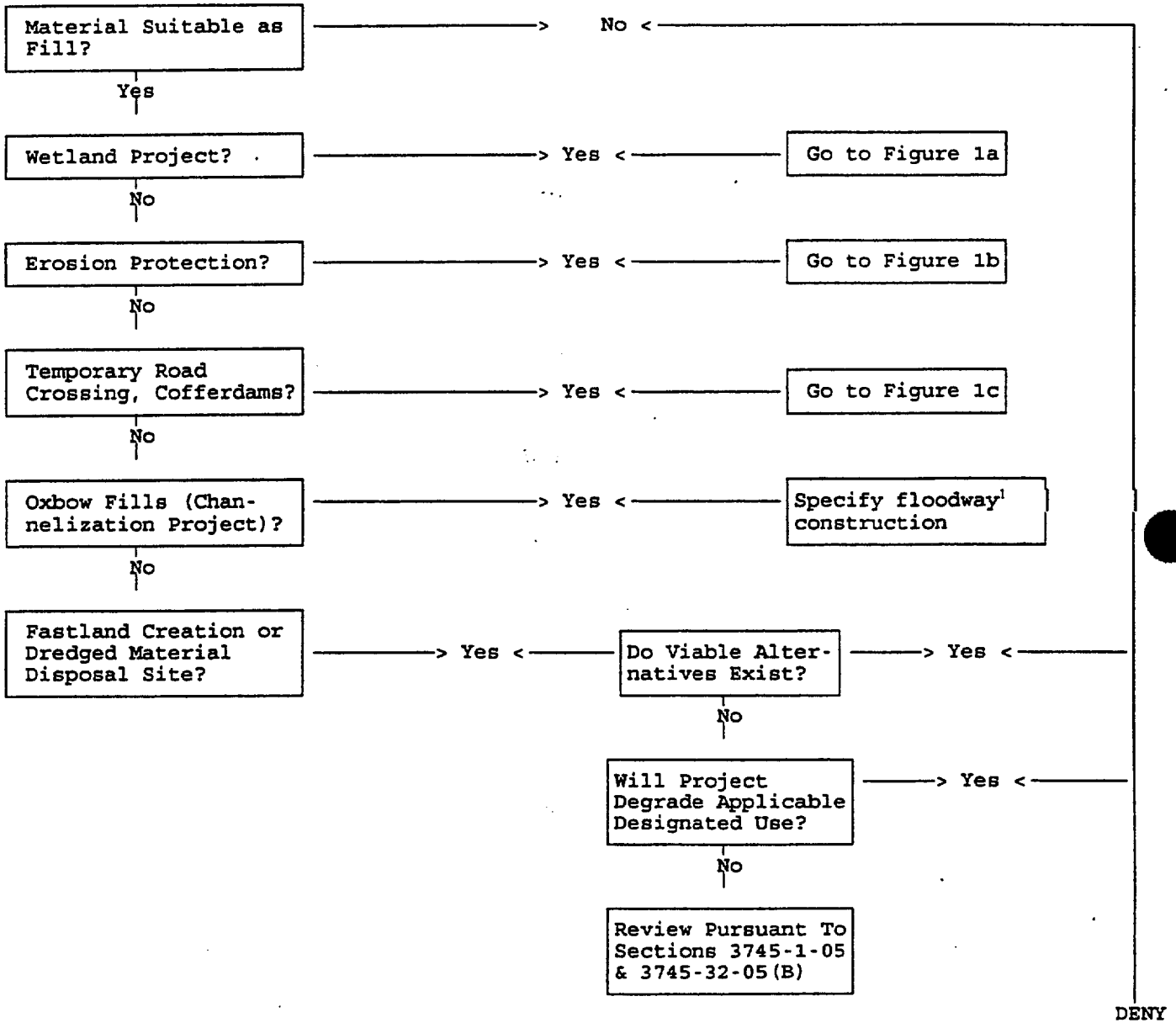


Figure 1a: Wetland Fills

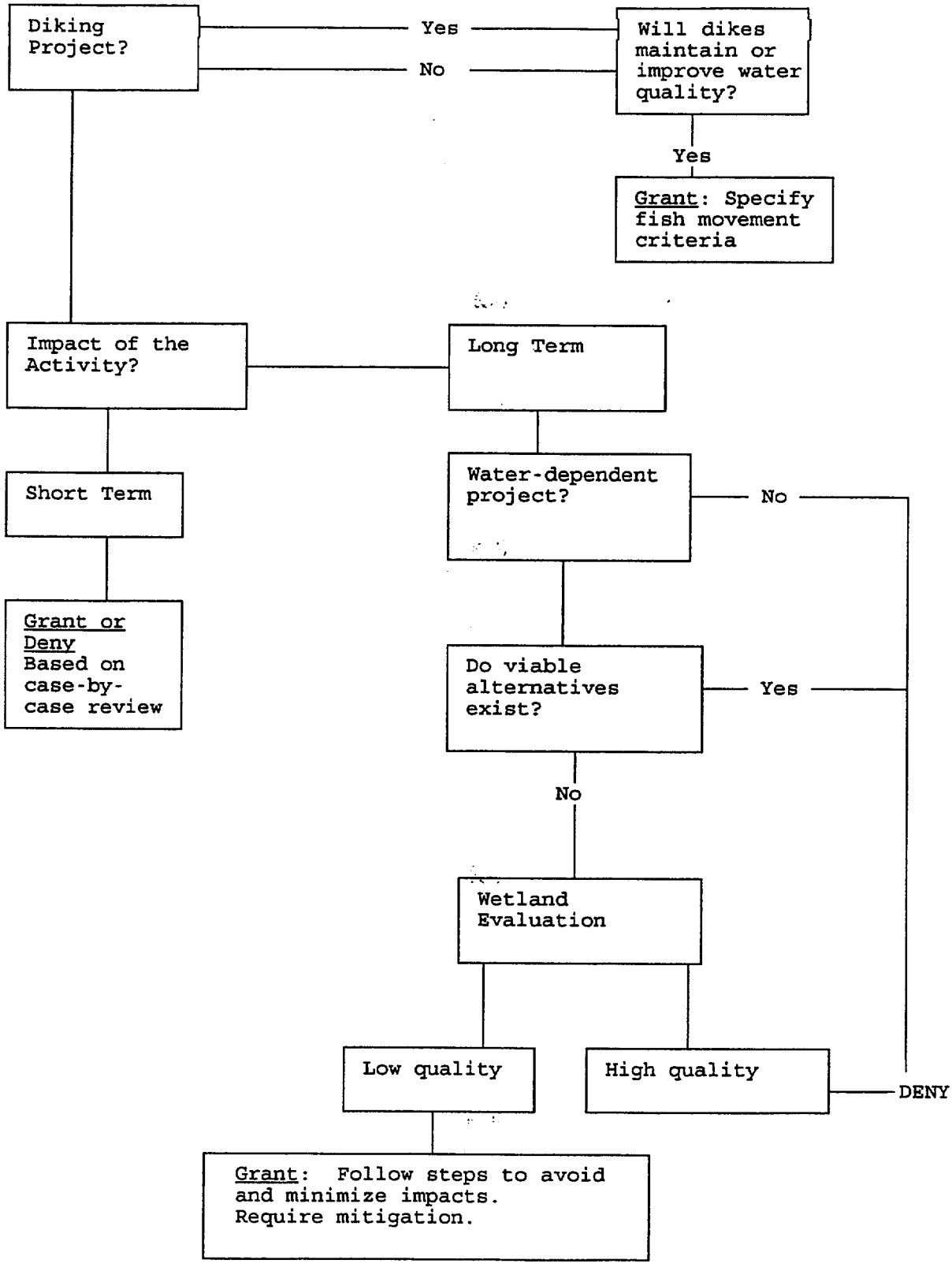


Figure 1b: Files for Erosion Protection

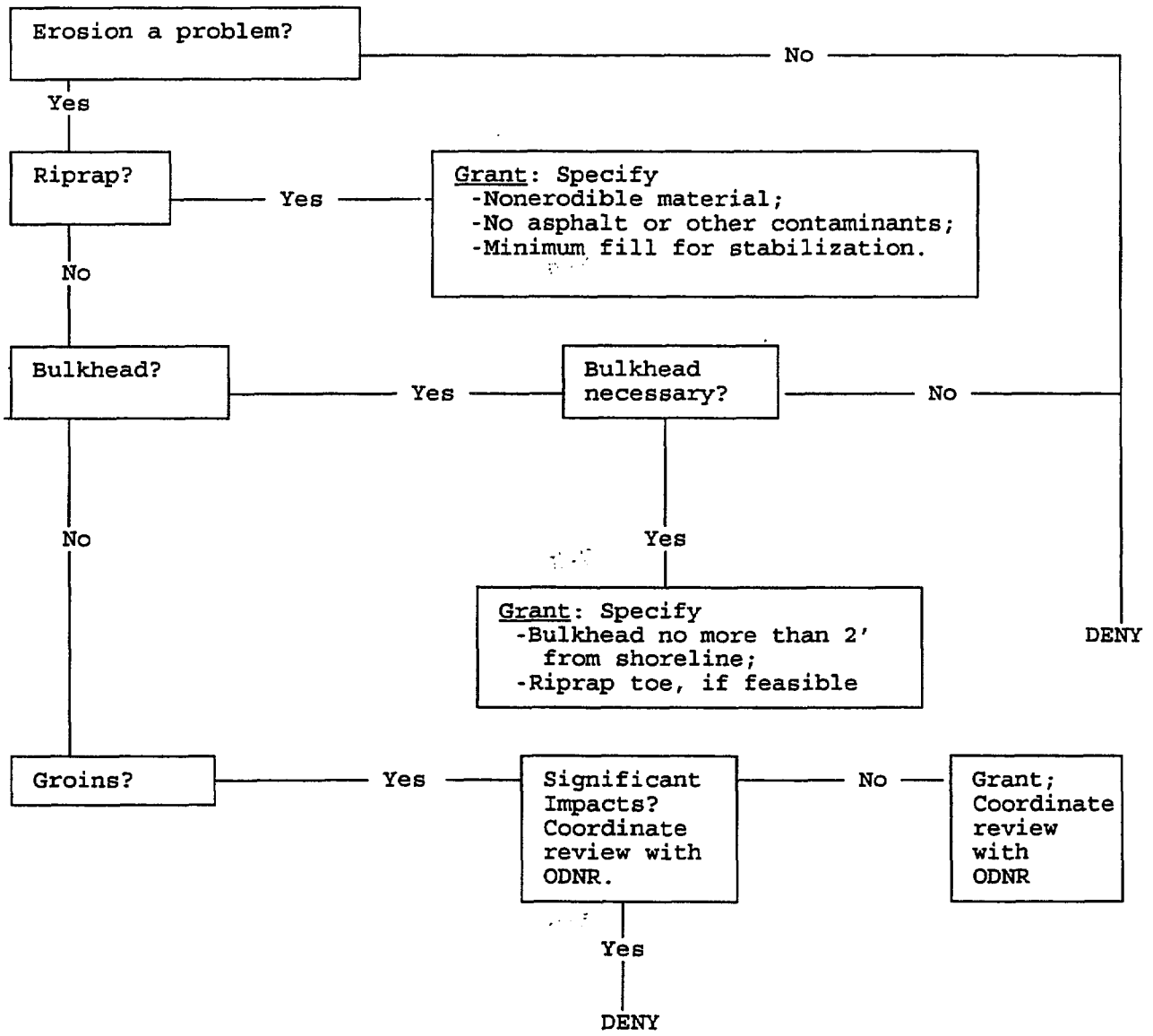
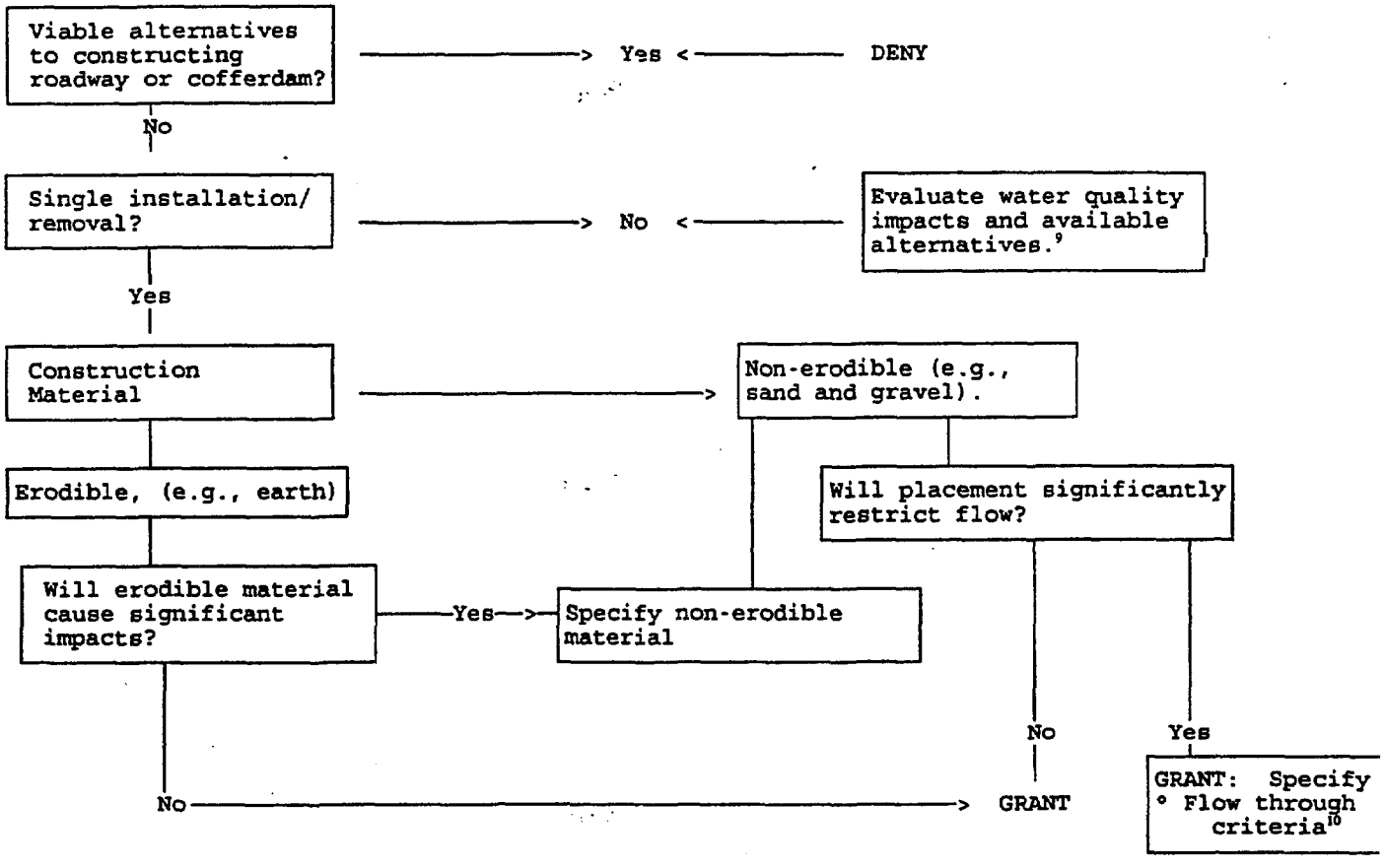


*Figure 1c: Fills/Temporary Road Crossings, Cofferdams*



The following correspond to the numbers appearing in the Fill Projects review flowcharts (Figures 1, 1a, 1b and 1c). These paragraphs elaborate on the review guidelines for the activities identified.

1. **Creation of Floodways**: Channelization projects often needlessly remove oxbows from a stream as a means of improving drainage. Oxbows offer a diverse habitat for aquatic organisms that a new change does not, and probably will not for many years. Whenever possible, it is recommended that a floodway be created to by-pass the oxbow and facilitate drainage during floods, leaving the oxbow in its normal state for channeling the flow during non-flood periods.

2. **Alternatives**: Consider practicable alternatives to aquatic fills. If na applicant requests permission to fill for marina parking, and an upland areas is available nearby, then this alternative should be pursued. The loss of the aquatic habitat outweighs the inconvenience of a boater walking to his boat. Requiring the applicant to buy a piece of land away from the project site for this parking, however, does not represent a variable alternative.

3. **Diked Wetlands**: As a result of certain wildlife management practices, water quality in a wetland may be degraded by diking and other management techniques. Such degradation is a result of managing a wetland for specific types of wildlife. Generally, these activities are conducted by or coordinate with the Fish & Wildlife Resource Agencies. When reviewing certification applications for such projects, close coordination with the Fish & Wildlife Resource Agencies is essential.

4. **Fish Movement Criteria**: Diking of wetlands isolates these systems from the associated waterbody, resulting in losses including fish spawning and nursery areas. However, by not diking some wetlands, the habitat is degraded to a point that it is no longer desirable to many species. A compromise can be reached by allowing fish to access these areas during spawning periods. Any method may be used, as long as free movement between the waterbody and the wetland is maintained during these periods (e.g., floodgates, gated culverts or lift-board weirs). In order to assure proper access and a workable time-table, it is recommended that this activity be coordinated with the Ohio Department of Natural Resources and the U.S. Fish & Wildlife Service.

5. **Water Dependency**: An assessment must be made to determine whether the fill needs to be located in an aquatic environment in order to fulfill its basic purpose. A fill to create a picnic area is not water-dependent since a picnic does not require water to function. Conversely, a fill coincidental to the construction of a marina would be water-dependent if it related directly to the function or maintenance of the marina, such as fills for finger docks or jetties. Nonwater-dependent fills may be allowable in specific instances where the fill is necessary to meet the over-riding public interest. Examples of such projects include construction of State highways. The applicant shall be required to avoid and minimize the amount of fill to be placed.

6. **Wetland Evaluation**: Wetland evaluation should include a plant and wildlife inventory and an evaluation of the wetland functions. High quality wetlands include, but are not limited to, those which provide habitat for threatened or endangered species and/or wetlands which are locally or regionally scare or threatened.

7. **Mitigation**: All wetlands in Ohio are classified as State Resource Waters in Ohio's Antidegradation Policy (OAC Section 3745-1-05(C)) and are protected from degradation. However, in certain instances, limited degradation is permitted provided the applicant has worked to avoid impacts due to hydromodification (including reducing the scale of the proposed project), minimize the impacts, and agreed to mitigate for the destruction of wetland habitat.

Acceptable mitigation includes construction of a wetland designed to replace the wetland functions destroyed, and restoration or enhancement of an existing degraded wetland. Protection of an existing functional wetland is not acceptable mitigation for destruction of a wetland; however, as part of a mitigation plan, certification conditions may require protection of on-site wetlands through establishment of deed restrictions or easements.

8. **Bulkhead Necessity**: Look at various factors such as ice scour that would remove riprap, areas intensively bulkheaded, or any engineering constraints that necessitate the placement of a bulkhead. Vertical steel sheet-pile bulkheads provide minimal habitat for fish. If no alternatives exist, the placement of riprap at the bulkhead toe to mitigate the loss of the aquatic habitat will be required.

9. **Cofferdam**: Annual installation and removal of a cofferdam may cause long-term water quality degradation and impact the utilization of a waterbody by spawning fish. In many instances, less environmentally damaging alternatives to annual cofferdam installation are available and should be utilized.

10. **Flow Through Criteria**: If the placement of the fill will reduce the flow to a point potentially causing stagnation, thus rending the water unfit for use or for receiving discharges, steps must be taken to allow an uninterrupted flow. This can be accomplished through the placement of weirs, culverts or other means.

*Figure 2: Dredging Projects*

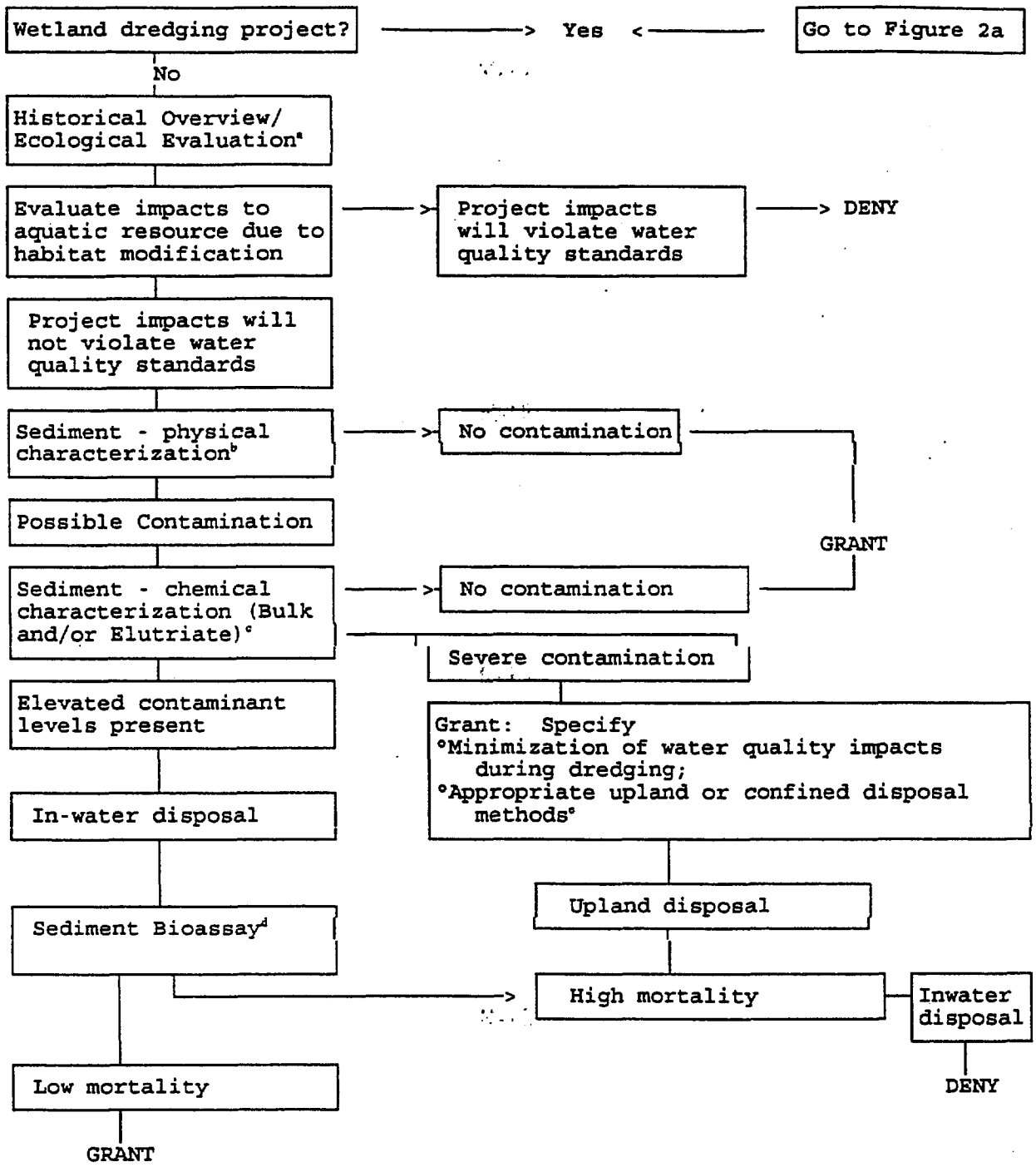
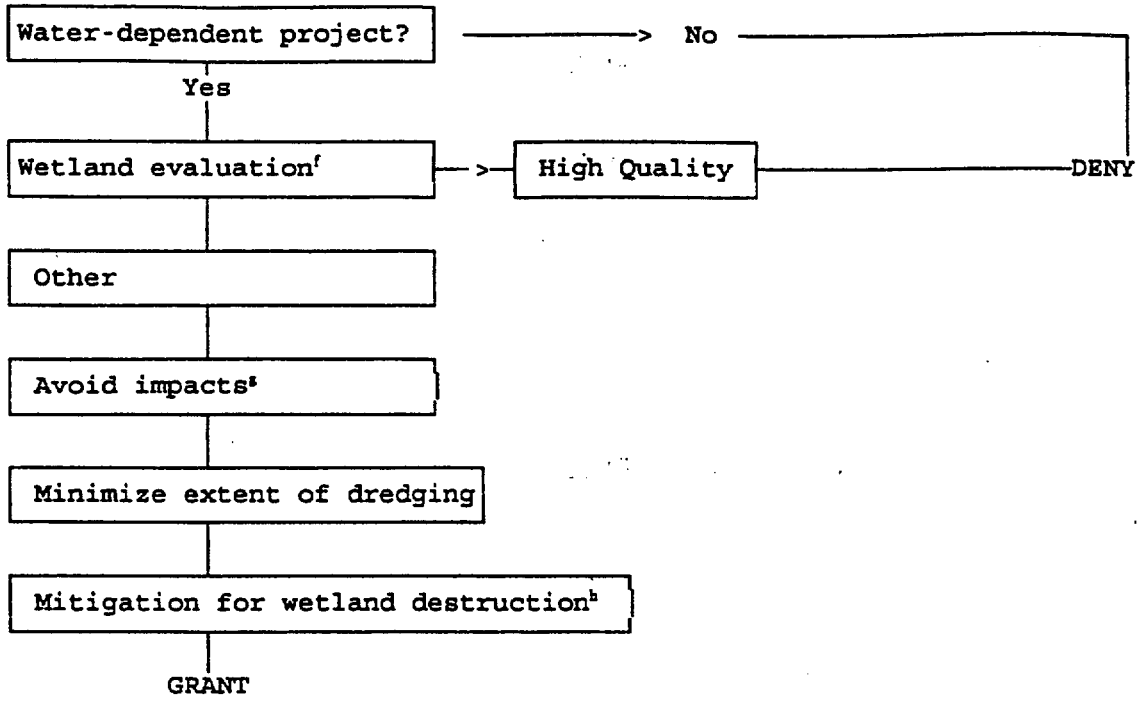


*Figure 2a: Wetland Dredging Projects*



The following correspond to the numbers appearing in the Dredging Projects review flowcharts (Figures 2 and 2a). These paragraphs elaborate on the review guidelines for the activities identified.

a. **Historical Overview and Ecological Evaluation:** A brief review of historical data from the area is necessary to properly evaluate a project. This review should address the following: Known or suspected pollutant sources and types of potential sediment contaminants, previous dredging activities, previous disposal methods and locations, quantity and quality of these materials and any benefits or problems associated with these activities.

   An ecological evaluation should include a review of existing inventories describing the area biota to determine local populations and if endangered species are present. Conditions that support heir well-being should be noted. The applicable beneficial use designation should be determined from the State's Water Quality Standards. (Waterbodies which are State Resource Waters, Exceptional Warmwater Habitat, Coldwater Habitat or Seasonal Salmonid Habitat are considered High Quality.) Review existing bioaccumulation studies to determine if any problems exist with the uptake of heavy metals or organics.

b. **Sediment Physical Characterization:** Characterization of the sediment particle size and composition is important in assessing potential contaminant levels. Sand and coarse-grained inorganic sediments (greater than 0.25 mm) rarely are contaminated. Conversely, fine organic sediments (less than 0.25 mm) generally retain the highest levels of contaminants. This information is helpful in determining the need for chemical analyses of the sediment. Generally, sediment-physical characterization is conducted when in-water disposal is proposed or contamination of sediment is suspected based upon the results of the Historical and Ecological Evaluation.

c. **Sediment Chemical Analyses:** Chemical characterization of the sediment can be done in two ways: The bulk analysis determines the total levels of sediment parameters on a dry-weight basis. Suggested parameters and criteria for evaluating the results are listed below. The elutriate test is designed to simulate the dredging and disposal processes, reflecting the immediate release of contaminants to the water column. Suggested parameters and criteria for evaluating the results are listed below. In both cases, the parameter list should be modified as necessary to address site-specific concerns. If the historic overview indicates the potential presence of organics, then sediment samples must be analyzed for these compounds. A parameter list should be prepared on a site-specific basis, using the U.S. EPA priority pollutants list and the Ohio Water Quality Standards as guidance.

## Bulk Sediment Analysis

Parameters (dry weight)

| | |
|---|---|
| Ammonia ($NH_3$-N) | Nickel (Ni) |
| Arsenic (As) | Oil & Grease |
| Cadmium (Cd) | Phosphorus (P, Total) |
| Chromium (Cr) | Total Kjeldahl Nitrogen |
| Chemical Oxygen Demand | Volatile Solids (%) |
| Copper (Cu) | Total Organic Carbon |
| Iron (Fe) | Cyanide, Total |
| Zinc (Zn) | Mercury (Ng) |
| Phenolics, Total | |

Sediment Evaluation Criteria

Guidelines, Criteria and Register for Great Lakes Dredging Projects. Report of the Dredging Subcommittee to the Water Quality Programs Committee of the Great Lakes Water Quality Board. International Joint Commission. March, 1981.

Guidelines for the Pollution Classification of Great Lakes Harbor Sediments. U.S. Environmental Protection Agency, Region V, Chicago, Illinois. April, 1977.

Evaluation of Illinois Stream Sediment Data: 1974-1980: Illinois Environmental Protection Agency, Division of Water Pollution Control. 1984.

## Elutriate Analysis

Parameters

| | |
|---|---|
| Ammonia ($NH_3$-N) | Nickel (Ni) |
| Arsenic (As) | Oil & Grease |
| Cadmium (Cd) | Phosphorus (P, Total) |
| Chromium (Cr) | Iron (Fe) |
| Copper (Cu) | Mercury (Ng) |
| Zinc (Zn) | Phenolics, Total |
| Cyanide, Total | |

Evaluation Criteria

Ohio EPA Water Quality Standards. Chapter 3745-1 of the Ohio Administrative Code.

d. **Sediment Bioassay:** An important consideration in evaluating a dredging or disposal activity is the impact on the aquatic organisms. Two basic types of tests can be used to evaluate this impact: Algal bioassays, which measure effects on primary production and animal bioassays, which measure acute or chronic effects. Methods and test organisms vary and it is recommended that the bioassays be coordinated with U.S. EPA and the U.S. Fish & Wildlife Service.

e. If sediment contamination levels warrant, upland disposal projects should be referred to the Ohio EPA's Division of Hazardous Waste Management for permitting. For other projects, specify conditions to minimize the adverse impacts from upland site runoff and discharge of decant water.

f. All wetlands in Ohio are designated as State Resource Waters in OAC Section 3745-1-05(C) and are protected from degradation. Dredging of high quality wetlands (for example, wetland types which are regionally scarce or wetlands which provide habitat for threatened or endangered species) should be prohibited.

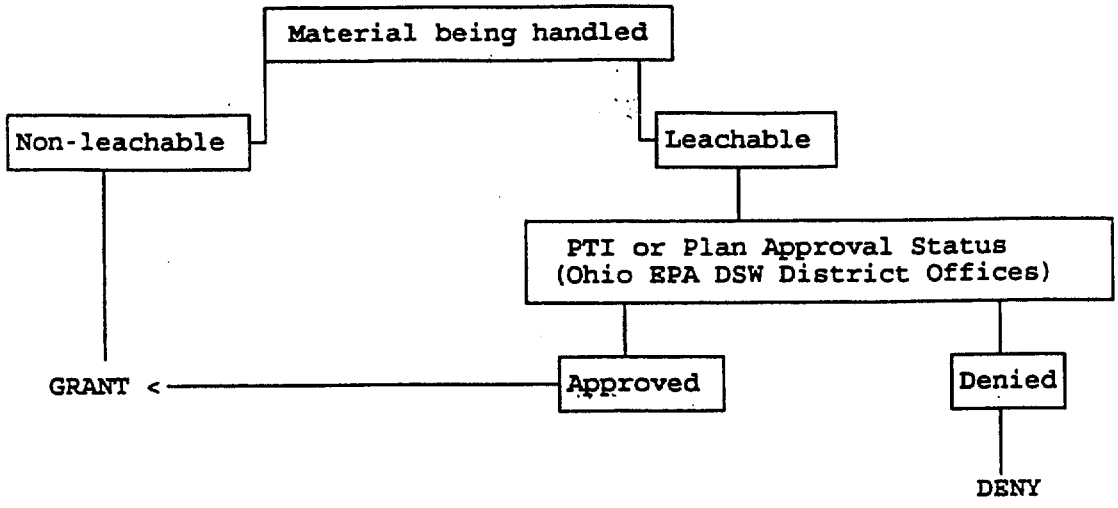
   Wetland evaluations should include a plant and wildlife inventory and an evaluation of the wetland functions. High quality wetlands include, but are not limited to, those which provide habitat for threatened or endangered species and/or wetlands which are locally or regionally scare or threatened.

g. Dredging in other wetlands should be limited to the minimum volumes. Alternatives to dredging in wetlands should include excavation of upland property and reduction in total project size.

h. Mitigation: All wetlands in Ohio are classified as State Resource Waters in Ohio's Antidegradation Policy (OAC Section 3745-1-05(C)) and are protected from degradation. However, in certain instances, limited degradation is permitted provided the applicant has worked to avoid impacts due to hydromodication (including reducing the scale of the proposed project), minimize the impacts, and agreed to mitigate for the destruction of wetland habitat.

   Acceptable mitigation includes construction of a wetland designed to replace the wetland functions destroyed, and restoration or enhancement of an existing degraded wetland. Protection of an existing functional wetland is not acceptable mitigation for destruction of a wetland; however, as part of a mitigation plan, certification conditions may require protection of on-site wetlands through establishment of deed restrictions or easements.

*Figure 3: Bulk Commodity Facilities*



STATE OF OHIO
ENVIRONMENTAL PROTECTION AGENCY
EXCEPTIONS TO SECTION 404 NATIONWIDE PERMITS
(EXCERPTED)

The State of Ohio Environmental Protection Agency (Ohio EPA) has denied water quality certification for the following nationwide permits: nationwide permit number 17 – hydropower projects and nationwide permit number 21 – surface coal mining activities. The following general conditions apply to Nationwide Permits 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 18, 19, 20, 22, 23, 25, 26, 27, 29, 30, 31, 32, 33, 34, 36, 37, 38 and 40:

Steps shall be taken, upon completion of the projects, to ensure bank stability. This may include, but is not limited to, the placement of riprap or bank seeding.

Any damages to the immediate environment of the project by equipment needed for construction or hauling will be repaired immediately.

Care must be employed throughout the course of this project to avoid the creation of unnecessary turbidity which may degrade water quality or adversely affect aquatic life outside the project areas.

For Nationwide Permits 14, 21, 26 (1-3 acres), 29, 33, 37, 38, that require Agency coordination, in accordance with the Nationwide Permit General Condition entitled "Notification", Number 13(e)(i), the Corps shall submit a pre-construction notification to Ohio EPA for review and comment.

In addition to the general conditions listed above, the following conditions apply to the Nationwide Permits as specified:

5. Scientific Measurement Devices:

   This Nationwide Permit shall not authorize weirs and flumes.

7. Outfall Structures:

   This Nationwide Permit shall authorize outfall structures which have been authorized by a Permit-to-Install and National Pollutant Discharge Elimination System permit by Ohio EPA pursuant to Ohio Revised Code Sections 6111.44 and 6111.04, and Ohio Administrative Code Sections 3745-31 and 3745-33.

12. Utility Line Backfill and Bedding:

   The length of utility line crossings in streams and/or rivers shall not exceed twice the width of the waterbody at that location.

   This Nationwide Permit shall authorize sidecasting or stockpiling of dredged material for a maximum of 3 months.

   In wetlands, at least the top six inches of backfill over a utility line shall consist of the topsoil material removed from the trench.

   The Ohio Administrative Code Rule 3745-1-01 requires that notice must be given to the Director of Ohio EPA before chemicals are applied for the control of aquatic plants or animals in waters of the State (including wetlands). Applicants who intend to use chemicals in waters of the State shall contact

the Ohio EPA, Division of Surface Water, P.O. Box 1049, Columbus, OH 43216-1049 prior to the applications of any chemicals.

This Nationwide Permit shall not authorize utility line installations greater than 1000 feet in length in forested wetlands, which are defined by Cowardin, Lewis M., 1979. Classification of Wetlands and Deepwater Habitats of the United States. U.S. Department of the Interior, Washington, D.C. to be characterized by woody vegetation that is 6 meters tall or taller. All water regimes are included except subtidal.

13. Bank Stabilization:

This Nationwide Permit shall not authorize the installation of vertical bulkheads and associated backfill except on river and harbor banks adjacent to federal navigation channels within the following harbors:

| | |
|---|---|
| Sandusky Harbor | Rocky River Harbor |
| Huron Harbor | Cleveland Harbor |
| Vermilion Harbor | Fairport Harbor |
| Lorain Harbor | Ashtabula Harbor |
| Conneaut Harbor | Toledo Harbor |
| Port Clinton Harbor | |

This Nationwide Permit shall only authorize the use of rock, stone, vegetative erosion control measures, broken concrete (without exposed reinforcing bar) and clean soil.

No material shall be placed in such a manner so as to restrict surface water flow into or out of any tributary.

This Nationwide Permit shall not authorize bank stabilization projects over 1000 feet in length.

16 Return Water from Upland Contained Disposal Areas:

This Nationwide Permit shall be limited to the authorization of the disposal of dredged materials dredged from state-owned properties, where there are no known areas of contaminated sediments, provided best management practices are used to minimize adverse impacts to water quality.

18 Minor Discharges:

This Nationwide Permit shall not authorize the installation of vertical bulkheads and associated backfill except on river and harbor banks adjacent to the federal navigation channels within the following harbors:

| | |
|---|---|
| Sandusky Harbor | Rocky River Harbor |
| Huron Harbor | Cleveland Harbor |
| Vermilion Harbor | Fairport Harbor |
| Lorain Harbor | Ashtabula Harbor |
| Conneaut Harbor | Toledo Harbor |
| Port Clinton Harbor | |

If used to authorize utility line backfills and bedding, this Nationwide Permit shall authorize sidecasting or stockpiling of dredged or fill material for a maximum of 3 months.

Dredged material shall be placed directly at an upland site in such a way that sediment runoff to any surface water is controlled and minimized.

This Nationwide Permit shall not authorize disposal of fill material into Lake Erie, where that is the primary project purpose.

19. Minor Dredging:

General conditions apply.

This Nationwide Permit shall not authorize dredging in stream riffles as defined in 40 CFR 230.45.

This Nationwide Permit shall not authorize dredging in surface waters that contain contaminated sediments. The applicant shall contact Ohio EPA for a determination whether a particular surface water contains contaminated sediments.

23. Approved Categorical Exclusions:

General conditions apply.

This Nationwide Permit shall only authorize activities described in 23 CFR Part 771.117 of the Federal Highway regulations except activities that impact 1) streams which are designated Exceptional Warmwater Habitat or Coldwater Habitat in Ohio's Water Quality Standards (Chapter 3745-1 of the Ohio Administrative Code (OAC), or 2) surface waters that contain contaminated sediments.

26. Headwaters and Isolated Waters Discharges:

This Nationwide Permit shall not authorize impacts to streams designated Exceptional Warmwater Habitat or Coldwater Habitat in Ohio's Water Quality Standards (Chapter 3745-1 of the OAC).

This Nationwide Permit shall not authorize the discharge of fill of any acreage in bogs or fens or wetlands adjacent to headwater lakes as defined below:

- Fens are carbon accumulating (peat, muck) wetlands that are saturated, primarily by a discharge of free flowing ground water during most of the year. Fens are rarely inundated. Fens often have a sloped surface which prevents the accumulation of stagnant or ponded water. The water of fens is usually mineral rich and has a circumneutral pH (5.5-9.0). In calcareous fens, soil may be dominated by deposits of calcium carbonate rich sediments (marl). Characteristic indicator vegetation species may include, but are not limited to, Potentilla fruiticosa, Solidago ohioensis, Lobelia kalmii, Cacalia plantaginea, Deschampsia caespitosa, Triglochin spp., Parnassia glauca, Gentiana sp., Rhychospora spp., and some Eleocharis spp.

- Bogs are peat-accumulating wetlands that have no significant inflows or outflows and supports acidophilic mosses, particularly Sphagnum. (from Mitsch, W.J. and J.G. & Gosselink, 1993. Wetlands. 2nd edition Van Nostrand Reinhold, New York).

- Headwater lakes are lakes that are part of a surface tributary system to a navigable water of the U.S. located upstream of the point on the river or stream at which the average annual streamflow is less than 5 cubic feet per second.

In accordance with the Nationwide Permit General Condition entitled "Notification", Number 13(e)(i), the Corps shall submit a pre-construction notification to Ohio EPA for review and comment.

29. Single Family Housing:

This Nationwide Permit shall not authorize the discharge of fill material into the following waterbodies:

- Bogs and fens (see definitions in conditions to Nationwide Permit 26); or
- Headwater lakes or wetlands adjacent to headwater lakes (see definition in conditions to Nationwide Permit 26); or
- Designated components of the State Scenic River System; or
- Streams which are designated Coldwater, Exceptional Warmwater or Seasonal Salmonid aquatic life use habitat in Ohio's Water Quality Standards (Section 3745-1 of the Ohio Administrative Code); or
- Lake Erie, including Sandusky Bay, or wetlands adjacent to Lake Erie.

This Nationwide Permit shall not authorize fills which would result in stream channel diversions or rerouting.

This Nationwide Permit shall not authorize fills which would create impoundments of water.

In accordance with the Nationwide Permit General Condition entitled "Notification", Number 13(e)(i), the Corps shall submit a pre-construction notification to Ohio EPA for review and comment.

31. Maintenance of Existing Flood Control Projects:

This Nationwide Permit shall only authorize projects constructed by the Corps of Engineers and maintained by the Corps or transferred by the Corps to a local sponsor.

32. Completed Enforcement Actions:

This Nationwide Permit shall not authorize any impacts to bogs, fens, wetlands adjacent to headwater lakes (see definitions in condition to Nationwide Permit 26) or to streams which are designated as Exceptional Warmwater Habitat or Coldwater Habitat in Ohio Water Quality Standards (OAC 3745-1).

This Nationwide Permit shall not authorize any project with greater than 3 acres of wetland impacts, or impacts over 500 linear feet in any stream unless Ohio EPA has been informed in writing of each specific project that exceeds these criteria, and based on this information, has chosen not to issue a State Administrative Order, or Consent Order resulting from a State enforcement action.

The Corps of Engineers shall provide notification to Ohio EPA prior to any settlement agreement being finalized. The Corps shall provide such notification with a copy of the draft settlement document for Ohio EPA's review and comment. Ohio EPA will provide notice to the Corps that it intends to provide substantive site-specific comments within 5 days of the receipt of the draft settlement document. Ohio EPA will provide these comments to the Corps within 16 days of the receipt of the draft document. The Corps shall fully consider Ohio EPA's comments prior to finalizing the settlement document, and provide Ohio EPA with a copy of the final settlement agreement.

33. Temporary Construction and Access:

Temporary shall be defined as less than one year in duration.

This Nationwide Permit does not authorize construction, or maintenance, or modification of marina basins.

This Nationwide Permit does not authorize activities in special aquatic sites as defined in 40 CFR 230.3(q-1).

This Nationwide Permit shall not authorize temporary construction access and dewatering associated with mining activities.

In accordance with the Nationwide Permit General Condition entitled "Notification", Number 13(e)(i), the Corps shall submit a pre-construction notification to Ohio EPA for review and comment.

35. Maintenance Dredging of Existing Basins:

    The dredged material shall be placed away from the water's edge and stabilized to prevent re-entry to any water of the State.

    This Nationwide Permit shall not authorize changes in configuration, size, purpose, use or location of the marina basin.

    Dredging must be conducted in accordance with all conditions of the original authorization including subsequent modification(s).

36. Boat Ramps:

    This Nationwide Permit shall not authorize boat ramps where dredging is required to establish water depths necessary for boat launching.

    In accordance with the Nationwide Permit General Condition entitled "Notification", Number 13(e)(i), the Corps shall submit a pre-construction notification to Ohio EPA for review and comment.

The director of Ohio EPA may revoke a section 401 water quality certification if he concludes at any time that any applicable laws or regulations have been or are likely to be violated (Ohio Administrative Code (OAC) Rule 3745-32-06). A section 401 water quality certification shall be issued, modified, revoked, or denied and may be challenged in accordance with the provisions of the rules of procedure of the Ohio EPA, Chapter 3745-47 of the Administrative Code. The Corps' regulation (33 CFR 330.4(c)(7)) states that the Corps' Division Engineer will review justifications for a State's attempt to modify, suspend or revoke a Section 401 certification action on a Nationwide Permit.

# WETLANDS MITIGATION POLICIES
# USED IN SECTION 401 REVIEWS

The following policies describe Ohio EPA's guidelines for reviewing applications for Clean Water Act Section 401 certifications. All applications must adhere to the Section 404(b)1 guidelines prior to approval of a mitigation proposal. These guidelines stipulate that an applicant must demonstrate there is no practicable alternative and then demonstrate that impacts will be minimized before proceeding with a mitigation proposal.

-The mitigation ratio shall be a minimum of 1.5 acres of mitigated (restored or created) acres for every one acre of impacted wetlands. Ratios greater than 1.5:1 are encouraged. Ratios less than 1.5:1 are generally not acceptable unless agreed to by the resource agencies. Enhancement may be considered as part of the mitigation proposal.

-Mitigation shall replace the functions and values of the impacted wetlands. Final assessments of the functions and values of the impacted wetlands shall be determined by the resource agencies. It is the applicant's responsibility to provide the data and information necessary to make such a determination. The resource agencies shall provide any relevant data to a specific project site.

-Wetland mitigation projects shall replace the impacted wetland type. For example, an application proposing to fill a shrub/scrub wetland (subsequent to the avoidance and minimization demonstrations) shall propose mitigation to restore, enhance or create a shrub/scrub wetland.

-Wetland mitigation sites shall be located as close as possible to the impacted wetlands as practicable, preferably at the project site or within the same watershed. Mitigation sites at distant locations will be considered on a case by case basis after on-site or near-site locations have been determined to be impractical.

-Mitigation bank proposals will be reviewed on a case by case basis, adhering to the sequencing review and all the above listed policies.

-Applicants shall be required to monitor the establishment of the mitigated wetland for a period of at least five years and to submit this data to Ohio EPA. Ohio EPA will provide a list of standard monitoring requirements to applicants. Requirements for each project will be tailored to the specific needs of the mitigation site.

## OHIO EPA POLICY FOR PURCHASE OF HIGH QUALITY WETLANDS AS PARTIAL MITIGATION FOR WETLANDS DESTRUCTION

This interim policy describes Ohio EPA's procedures for review of applications for Clean Water Act Section 401 certifications when an applicant proposes to mitigate for wetlands destruction by purchasing high quality wetlands. The policy describes a sequence of steps by which the Ohio EPA will review the application.

Ohio EPA may consider an applicant's proposal to purchase high quality wetlands as partial mitigation for direct and indirect impacts to wetlands associated with activities regulated by Clean Water Act Section 401 providing:

1. The wetland which will be impacted by the proposed project does not exhibit multiple wetland functions which are regionally significant.

2. The applicant demonstrates that it is not practical (for economic, technologic or sociologic reasons) to utilize alternative upland sites to fulfill the basic project purpose. (Upland sites are defined as sites which do not meet the definition of "waters of the state" according to Ohio Revised Code Chapter 6111.01(H).) Ohio EPA will presume that alternate upland sites do exist, until an applicant demonstrates otherwise.

3. Once the applicant successfully demonstrates that it is not practical to utilize alternative upland sites, the applicant will minimize unavoidable adverse impacts to wetlands which occur as a result of project construction and/or operation. As requested by Ohio EPA, the applicant will modify his/her project plans appropriately to reduce or minimize adverse impacts and enhance water quality or other wetland functions.

4. To the extent practicable, the applicant will mitigate for wetland destruction caused by the construction and/or operation of his/her project by either creating, restoring or enhancing wetlands to replace the functions provided by the impacted wetlands. The total acreage of the on-site wetland mitigation project should be as close as possible to a ratio of 1 acre of wetland created, restored or enhanced for every 1 acre of wetland destroyed or adversely impacted by project construction and/or operation. Ohio EPA prefers that wetland mitigation sites be located as close as possible to the impacted wetlands, preferably at the project site or within the same watershed. The mitigation should replace the lost functions and values of the impacted wetland.

5. The wetland to be purchased is of high quality, as determined by Ohio EPA in consultation with the Ohio Department of Natural Resources and other environmental resource agencies. The high quality wetland should have important habitat and/or

water quality characteristics which are imminently threatened. The purchase and management of the wetland will result in preservation and/or enhancement of habitat and/or water quality characteristics.

6. The total acreage of purchased wetlands will be determined using a ratio of at least 0.5 acres of purchased wetland for every 1 acre of wetland which is adversely impacted by the project construction and/or operation. The total acreage of on-site mitigation and purchased wetland acreage must total at least 1.5 acres for every acre impacted. The purchased wetland must be deeded to a responsible party for management and/or enhancement in accordance with an Ohio EPA-approved plan. Ohio EPA prefers the purchased wetland acreage to be located in the same watershed as the impacted wetland.

7. Purchase and transfer of the deed for the high quality wetland will occur prior to any filling of wetlands at the project site.

8. The applicant demonstrates that a responsible, established professional party will undertake long-term management of the purchased wetland parcel in perpetuity. The purchased wetland must be maintained in perpetuity to prevent degradation of habitat and water quality functions and values.

9. Ohio EPA may require the preparation and submittal up to five annual wetland monitoring reports to be submitted to Ohio EPA. The applicant will be responsible for implementing and complying with all Section 401 water quality certification conditions.

## OHIO EPA
## STANDARD WETLAND MITIGATION CONDITIONS

NOTE: Each set of mitigation conditions is tailored to met the unique factors involved with each wetland created, restored or enhanced. The following represent the conditions most often appearing in Section 401 water quality certifications:

- Annual water quality, hydrology and vegetation surveys shall be conducted. A report containing these data shall be submitted to Ohio EPA for each of five consecutive years following completion of mitigation construction. The first annual report is due to Ohio EPA by December 31 of the year following completion of mitigation construction. All subsequent reports shall be submitted by December 31 of each of the five monitoring years. The reports shall contain, at a minimum, the following information:

  Water Quality Monitoring: A grab sample shall be collected in May of each monitoring year in each wetland mitigation area. The samples shall be analyzed for ammonia, nitrates, total nitrogen, total and ortho-phosphorus, total organic carbon, total sulfates, total iron, total manganese, specific conductivity, pH, turbidity, total suspended solids, metals, and biochemical oxygen demand.

  Hydrology Monitoring: Water level data shall be collected in May and late-August of each monitoring year. Ground water levels shall be measured in the absence of inundated conditions.

  Vegetation Monitoring: The location and name of each plant community type within the mitigation area and buffer area shall be marked on a scaled drawing or scaled aerial photograph (base map) and named.

  A representative observation point shall be selected in each plant community type in each distinct wetland mitigation area. This shall be a point which best represents the characteristics of the entire plant community. The observation points shall be marked on the base map.

  The dominant plant species shall be visually determined in each vegetation layer of each community type, and the scientific names of these species shall be included in the report. Dominant species are those species which have the greatest relative basal area (wood overstory), greatest height (woody understory), greatest percentage of aerial coverage (herbaceous understory, and/or greatest number of stems (woody vines)

  Each sample point shall be photo-documented from the same position and angle during July of each monitoring year.

- The applicant shall arrange an on-site meeting with Ohio EPA on the third year of the post-mitigation construction. The purpose of this inspection is to determine if the mitigation project has been constructed in accordance with the agreement between the applicant and Ohio EPA. If necessary, Ohio EPA may make recommendations to improve the wetland. The applicant is responsible for undertaking any reasonable modifications identified by the Ohio EPA.

- The applicant is responsible for ensuring the wetland is not filled, drained or otherwise converted to upland. If the property is sold, the deed shall ensure that the wetland will not be filled, drained or otherwise converted to upland. .

STATE OF OHIO

# Executive Department

OFFICE OF THE GOVERNOR

*Columbus*

## EXECUTIVE ORDER 90-68

**WHEREAS**, Ohio's wetlands consist of marshes, bogs, fens, bottomland forests, and other areas which may be isolated or connected with other waters of the state such as lakes, streams and ground waters; and

**WHEREAS**, wetlands are assets to society serving many functions important to the general public interest including critical habitat for fish and wildlife and endangered animals and rare plants and plant communities, water quality maintenance and improvement, flood and storm damage protection, groundwater recharge and surface water supply, harvest of natural products such as timber, furs, fish and fowl, aesthetics, scientific study and education, and outdoor recreation; and

**WHEREAS**, wetlands are critical natural resources because of their fragile physical and biological interconnection with other land and water resources, and because wetlands have become so diminished in Ohio and the nation through destruction, alteration, various forms of pollution and activities of man; and

**WHEREAS**, state government can profoundly affect the conservation of wetlands or their conversion to other uses through land acquisition, land management and surplus property disposal, state development projects, regulatory programs, and state financial assistance for public and private projects; and

**WHEREAS**, it is essential that conservation of soil, water, wetlands and other natural resources of the state be accomplished in a workable and practicable manner and that state actions do not irretrievably convert wetlands to other uses when alternatives are available.

**NOW THEREFORE**, I, Richard F. Celeste, Governor of the State of Ohio, pursuant to the authority vested in me by the Constitution and the laws of the State of Ohio, do hereby declare and order the following:

I. Each state agency shall provide leadership and shall take action to minimize adverse effects to wetlands and conserve, restore and enhance the environmental values and beneficial functions of wetlands in carrying out the agency's responsibilities. Each agency will do so with the overall goal to retain the state's remaining wetlands and to restore and create wetlands where feasible to increase the state's wetlands resource base.

II. (a) Each state agency, to the extent permitted by law, shall avoid undertaking or providing financial assistance for construction which will substantially degrade or destroy for long or permanent duration the functions of wetlands areas, unless the head of the agency finds that (1) the project or activity is in the overall public interest, (2) there is no reasonable alternative to such construction, and (3) the proposed action includes all practicable measures to minimize undesirable alterations and compensate or mitigate for unavoidable adverse impacts. These considerations shall also apply to offsite project impacts such as stormwater runoff and erosion and sedimentation and "offsite" activities attendant to construction projects such as borrow site excavations and disposal of demolition debris, dredged material or excess excavated materials.

(b) Consistent with the policies of the Ohio Nonpoint Source Management Program and Coastal Management Program, each state agency shall apply this policy in support of decisions to issue or deny permits or to authorize activities subject to the approval of the agency. To the extent permitted by law, state agencies will enforce the following sequence of mitigation options: avoidance of adverse impacts to wetlands, minimization of impacts to wetlands, and finally, mitigation or compensation measures for unavoidable wetlands impacts.

(c) Each agency which has regulatory responsibilities will act affirmatively to develop or modify administrative policies and procedures consistent with this order.

III. Each agency of the state, in considering the acquisition of real property, disposal of surplus real property, or granting of any lease, license or other interest in state real property, will determine whether wetlands may be affected by the proposed action. To the extent permitted by law, all necessary steps will be undertaken to protect existing wetlands, restore wetlands, and otherwise implement this policy.

When state-owned properties are proposed for lease, license, easement, right-of-way, or disposal to a non-state public or private interest, the state agency shall (a) attach appropriate restrictions to the uses of the property by the grantee or purchaser and any successor to help ensure the continued protection of wetlands, except where prohibited by law; or (b) withhold such properties from disposal.

It is further ordered that:

A cabinet cluster consisting of the Directors of Natural Resources, Environmental Protection, Health, and the Ohio Historical Society or their designates shall convene for the purposes of (1) development and implementation of a state wetlands regulatory program; and (2) development and implementation of an accelerated statewide funding program to assist the wetlands acquisition-protection initiatives of local, state, federal and independent organizations. In recognition of the need for swift action on wetlands protection, the cabinet cluster may at any time during its tenure make recommendations for administrative action and express its views regarding any impending state or federal legislative initiative that affects wetlands conservation.

The cluster will consult with and seek the views of the Attorney General, the Directors of Development, Transportation, and Agriculture, and other state, local, regional and federal agencies, and representatives of public interest and special interest groups. A report with recommendations shall be submitted to the Governor and legislative leaders within one year of the effective date of this order.

**IN WITNESS WHEREOF**, I have hereunto subscribed my name and caused the Great Seal of the State of Ohio to be affixed at Columbus, this 25th day of October in the year nineteen hundred and ninety.

Richard F. Celeste
Governor

ATTEST:

Sherrod Brown
Secretary of State

Filed in the Office of the Secretary of State at Columbus, Ohio
on [illegible]
SHERROD BROWN
Secretary of State
Per [illegible]

OHIO DEPARTMENT OF NATURAL RESOURCES

POLICY STATEMENT

WETLANDS

The purpose of this statement is to affirm departmental policy to protect, restore and create wetland ecosystems thereby ensuring that Ohio and the nation continue to enjoy the many natural and beneficial functions Ohio's wetlands perform. This statement establishes the overall policy framework for the Ohio Department of Natural Resources' (ODNR) planning and land management and development, all regulation and financial assistance, water resources development, Lake Erie resources management, nonpoint source management and other cooperative programs, technical assistance and consultation, and external communication of departmental policy.

## The Wetland Resource

Wetlands are ecosystems of unique and major importance to the people of Ohio. Wetlands are critical natural resources because of their many beneficial functions, their importance to many wildlife species, and their fragile physical and biological interconnection with other land and water resources. They have become so diminished through destruction, alteration, pollution and other activities of man that their benefits to man and the natural environment are being lost.

### Definition of Wetlands

> "Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas." 33 C.F.R. 328.3(b); 40 C.F.R. 230.3(t).

In identifying and delineating wetlands, ODNR will utilize a multi-parameter approach which examines vegetation, soils, geology and hydrology. Potential atypical circumstances (such as below normal precipitation, and recent human activities) will be investigated when any wetland indicator (hydric soils, hydrophytic vegetation) at an apparent wetland site is absent. Also, the relative permanence of natural or man-induced changes in the landscape will be considered. Sites with wetland vegetation and hydrology (other than from irrigation) that have not yet developed hydric soil characteristics shall be considered to have soils that are functioning as hydric soils, and will be identified as wetlands.

Beneficial Functions of Wetlands

Ohio wetlands serve as habitat for mammals, many species of fish, waterfowl and other birds, reptiles and amphibians, rare and endangered species and significant plant and animal associations. These areas moderate extremes in water flow, aid in the natural purification of water and maintain and recharge ground water. They are the feeding, resting, nesting, spawning and nursery areas for a great number of wetland-dependent species and other wildlife. They are significant recreational areas of incalculable aesthetic value, and contain delicate and irreplaceable types of flora and fauna. Wetlands directly and indirectly support hunting, trapping, fishing, nature study, wildlife observation, scientific research, and many other beneficial human uses.

Wetlands support adjacent or downstream ecosystems in addition to the complex web of life developed within the wetland environment itself. The nature of wetlands causes them to be vulnerable and fragile. When wetlands are destroyed, the environmental effects are not limited to the wetland area.

ODNR seeks to preserve, protect and restore Ohio's wetlands and the beneficial functions they perform with a comprehensive approach to land and water management, ODNR-sponsored developments, financial assistance, regulatory and environmental review activities, and public education.

## POLICY

The goal of the Ohio Department of Natural Resources is to retain the state's remaining wetlands and to restore and create wetlands in order to increase Ohio's wetland resource base. The Department will therefore use its utmost influence to preserve and protect wetlands from damaging misuses. Consistent with provisions in Ohio Water Quality Standards (Chapter 3745-1-05 Ohio Administrative Code, Antidegradation Policy), the Department will work in partnership with the Ohio Environmental Protection Agency to protect wetlands as state resource waters. It is the Department's policy to disallow harmful alterations in the natural flow of water that nourishes wetlands and to protect wetlands from alteration by dredging, filling or draining, solid waste disposal, direct and indirect effects of construction activities, siltation, or the addition of pesticides and other pollutants arising from point and nonpoint sources of pollution.

Implementation

ODNR's wetlands conservation goal does not imply that alteration of individual wetlands will be avoided in every instance, nor that ODNR's preservation goal should be applied in every circumstance. ODNR acknowledges that programmatic implementation provides flexibility to accomplish wetlands conservation objectives on a watershed basis or within specific geographic or ecological contexts. The following provisions shall guide planning and decision making when ODNR projects or activities may affect wetlands resources:

1. ODNR's water resource developments and capital improvements will be planned and implemented with a clear preferred sequence of mitigation options that begins with avoidance of adverse impacts on wetlands and the reduction of unavoidable adverse impacts. Compensation measures for unavoidable impacts should be used only as a last resort. Opportunities for wetland restoration or creation will be identified and pursued.

   Early in the planning process, ODNR will identify whether there are potential direct or secondary impacts upon wetlands. If wetlands would be affected by a proposed project, detailed planning and design will commence only after an alternatives analysis has been completed including consideration of no action as an alternative. Unavoidable impacts upon wetlands will be assessed in terms of acreage, beneficial functions and ecological significance. Mitigation plans will be developed and implemented in order to achieve ODNR's goal of retaining wetlands and restoring and creating wetlands, as defined by acreage and function. Planning will include consultation among appropriate ODNR divisions and other resource and regulatory agencies. An environmental assessment of site suitability will be made prior to wetland development activities. Mitigation or compensation measures will be planned (and may be implemented in advance of project construction when desirable) concurrent with project planning and development. ODNR will utilize pre-bid and pre-construction conferences to advise contractors of measures necessary to protect wetlands including offsite impacts.

2. Funds for wetlands acquisition and protection will be a top priority in capital improvements budget requests. Where possible, ODNR will allocate funds from the various federal and state assistance programs for wetlands acquisition and restoration.

3. ODNR will not provide federal or state financial assistance for projects which may directly or secondarily degrade or destroy wetlands, unless the sequence of mitigation options described above is followed. There must be no reasonable alternative to the project (including no action) and the project must include all practicable measures to minimize adverse impacts to wetlands, including compensation measures. Decision making will consider ODNR's overall goal of no net loss of wetlands. Each division and office will take appropriate steps to incorporate this policy in procedural guides and other documents and materials which provide guidance to grant applicants and recipients of state assistance.

4. The agencies administering ODNR regulatory programs will, to the extent permitted by law, avoid unnecessary wetlands damages or losses which may occur as a consequence of a regulated activity (such as mineral extraction activities or construction) and will develop policies and procedures which encourage wetland creation as a part of project plans. To the extent possible, discretionary authority will be exercised and variances to normal standards will be granted if such action will avoid the loss or degradation of wetlands. Regulatory agencies will first seek to avoid impacts to wetlands, and second, will attempt to mitigate unavoidable losses. Each division which has regulatory responsibilities will act affirmatively to develop or modify administrative policies and procedures and promulgate rules which may be necessary to implement this policy.

5. Land managing divisions will act affirmatively to manage wetlands which occur on ODNR property in order to preserve and enhance their beneficial functions. ODNR offices and divisions will cooperate with one another and with other governmental and independent agencies to meet ODNR's goal and accomplish the objectives of applicable plans and programs. These include, but are not limited to, the North American Waterfowl Management Plan, The Statewide Comprehensive Outdoor Recreation Plan, Natural Areas and Scenic Rivers Preservation, Nongame and Endangered Species Management, and Floodplain Management. Wetlands will be inventoried and delineated in master plans and land management plans. Recreational uses and facility developments on or adjacent to any wetland will be controlled to protect the beneficial functions of the wetland and ensure its long-term productivity.

6. In considering the acquisition of property, disposal of surplus property or granting of any lease, license or other interest in state property, ODNR will determine whether wetlands may be affected by the proposed action. To the extent permitted by law, all necessary steps will be undertaken to protect existing wetlands, restore wetlands, and otherwise implement this policy.

Divisions and offices within the Department will work collaboratively to effect this policy to the maximum extent of authority in all program activities, planning, research, technical assistance, cost-sharing projects with other agencies, public education and the dissemination of information related to Departmental activities.

JOSEPH J. SOMMER
Director
September 8, 1989

OHIO DEPARTMENT OF NATURAL RESOURCES

1501-6-01 TO 1501-6-06

RULES FOR LEASING OF LAKE ERIE SUBMERGED LANDS


| | |
|---|---|
| 1501-6-01 | Definitions |
| 1501-6-02 | Application |
| 1501-6-03 | Director's Recommendations |
| 1501-6-04 | Public Hearing/Meeting |
| 1501-6-05 | Lease |
| 1501-6-06 | Rental |

1501-6-01 DEFINITIONS OF TERMS.

(A) "APPLICANT" MEANS ANY PERSON WHO APPLIES TO THE DEPARTMENT TO DEVELOP OR IMPROVE ANY PART OF THE TERRITORY AS DEFINED IN DIVISION (A) OF SECTION 1506.11 OF THE REVISED CODE.

(B) "APPLICATION" MEANS THE SIGNED AND COMPLETED FORM(S) AND ANY SUPPLEMENTAL INFORMATION WHICH MAY BE REQUIRED BY THE DIRECTOR IN ACCORDANCE WITH THESE RULES AND SUBMITTED TO THE DIRECTOR AS PROVIDED IN DIVISIONS (B) AND (G) OF SECTION 1506.11 OF THE REVISED CODE.

(C) "DEPARTMENT" MEANS THE DEPARTMENT OF NATURAL RESOURCES.

(D) "DEVELOPMENT" OR "IMPROVEMENT" MEANS, BUT SHALL NOT BE LIMITED TO, WHARFS, BREAKWATERS, PIERS, DOCKS, BULKHEADS, MARINAS, GROINS, JETTIES, REVETMENTS, FILL FOR THE PURPOSE OF CREATING NEW LANDS OR ANY STRUCTURE OF ANY KIND WHICH ENCROACHES UPON THE TERRITORY.

(E) "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT OF NATURAL RESOURCES.

(F) "FILL" MEANS ANY MATERIAL USED FOR THE PRIMARY PURPOSE OF REPLACING LAKE ERIE AQUATIC AREAS WITH DRY LAND OR CHANGING THE BOTTOM ELEVATION OF LAKE ERIE.

(G) "GOVERNMENTAL INCOME PRODUCING FACILITY" MEANS ANY FACILITY BUILT IN THE TERRITORY MANAGED BY A GOVERNMENTAL AGENCY OR BY A CONTRACTED PRIVATE MANAGEMENT COMPANY WHICH BY THE NATURE OF THE FACILITY PRODUCES INCOME ABOVE AND BEYOND NORMAL CHARGES ASSOCIATED TO COVER OPERATING COSTS. SAID GOVERNMENTAL AGENCY SHALL INCLUDE, BUT NOT BE LIMITED TO, A COUNTY, TOWNSHIP, VILLAGE, MUNICIPALITY, PORT AUTHORITY, PARK DISTRICT OR CONSERVANCY DISTRICT.

(H) "GOVERNMENTAL NON-INCOME PRODUCING FACILITY" MEANS ANY FACILITY BUILT IN THE TERRITORY INCLUDING, BUT NOT LIMITED TO, MUNICIPAL WATER INTAKE PIPES, SEWER OUTFALL PIPES, STORM SEWER OUTFALL PIPES, SUBMERGED CABLES OR ANY OTHER FACILITY WHICH IS MANAGED, OWNED, OPERATED, OCCUPIED OR UTILIZED BY A GOVERNMENTAL AGENCY FOR A GOVERNMENTAL USE OR PURPOSE AT NO CHARGE OR A NOMINAL CHARGE TO COVER OPERATING COST. SAID GOVERNMENTAL AGENCY SHALL INCLUDE, BUT NOT BE LIMITED TO, A COUNTY, TOWNSHIP, VILLAGE, MUNICIPALITY, PORT AUTHORITY, PARK DISTRICT, SEWER DISTRICT OR CONSERVANCY DISTRICT.

(I) "LARGE FACILITY" MEANS ANY SEMI-PRIVATE OR COMMERCIAL FACILITY BUILT IN THE TERRITORY WHICH EXCEEDS FOUR ACRES IN TOTAL AREA AND SHALL INCLUDE BUT NOT BE LIMITED TO, AN INDUSTRIAL FACILITY SUCH AS A LOADING AND OFF LOADING FACILITY, AN INDUSTRIAL WATER INTAKE AND AN INDUSTRIAL WATER OUTFALL, OR FILL TO EXPAND AN UPLAND OR SUPPORT FACILITY FOR SUCH USE.

(J) "LEASE" MEANS A DOCUMENT PREPARED BY THE DEPARTMENT CONTAINING TERMS AND CONDITIONS FOR DEVELOPMENT OR IMPROVEMENT OF THE TERRITORY OF THE STATE IN LAKE ERIE FOR A SPECIFIED TIME, APPROVED BY THE GOVERNOR, AND EXECUTED BY THE DIRECTOR IN THE MANNER PRESCRIBED BY SECTIONS 1501.01, 1506.11 AND 5301.13 OF THE REVISED CODE.

(K) "LITTORAL RIGHTS" MEANS THE RIGHT OF AN UPLAND PROPERTY OWNER TO MAKE REASONABLE USE OF THE WATERS FRONTING THE UPLAND PROPERTY AND THE RIGHT TO WHARF OUT TO NAVIGABLE WATERS WITHIN THE PROJECTED BOUNDARIES OF THE UPLAND PROPERTY, SAID RIGHTS BEING SUBJECT TO THE RIGHTS OF THE STATE OF OHIO AND THE UNITED STATES.

(L) "LITTORAL ZONE" MEANS THE INDEFINITE ZONE BETWEEN THE SHORELINE EXTENDING LAKEWARD TO THE FURTHERMOST LINE WHERE WAVES BEGIN TO BREAK.

(M) "OHIO COASTAL MANAGEMENT PROGRAM" MEANS THE COMPREHENSIVE ACTION OF THE STATE AND ITS POLITICAL SUBDIVISIONS TO PRESERVE, PROTECT, DEVELOP, RESTORE OR ENHANCE THE RESOURCES OF THE COASTAL AREA IN ACCORDANCE WITH ESTABLISHED OBJECTIVES, POLICIES, STANDARDS AND CRITERIA CONCERNING PROTECTION OF THE NATURAL RESOURCES IN THE COASTAL AREA; MANAGEMENT OF COASTAL DEVELOPMENT AND REDEVELOPMENT; PRESERVATION AND RESTORATION OF HISTORIC, CULTURAL AND AESTHETIC COASTAL FEATURES; PUBLIC ACCESS TO THE COASTAL AREA FOR RECREATIONAL PURPOSES; AND AS OTHERWISE DESCRIBED IN DIVISIONS (B) AND (C) OF SECTION 1506.01 OF THE REVISED CODE AND THE OHIO COASTAL MANAGEMENT PROGRAM DOCUMENT.

(N) "NONPOINT SOURCE MANAGEMENT PROGRAM" MEANS THE MANAGEMENT PROGRAM FOR CONTROLLING POLLUTION ADDED FROM NONPOINT SOURCES TO THE WATERS OF THE STATE AND IMPROVING THE QUALITY OF SUCH WATERS SUBMITTED BY THE GOVERNOR TO THE U.S. ENVIRONMENTAL PROTECTION AGENCY AND APPROVED NOVEMBER 21, 1989, IN ACCORDANCE WITH SECTION 319 OF THE FEDERAL WATER QUALITY ACT OF 1987 AND ANY FEDERALLY APPROVED AMENDMENTS TO THE PROGRAM

ADOPTED IN ACCORDANCE WITH SECTION 6217 OF THE COASTAL ZONE ACT REAUTHORIZATION AMENDMENTS OF 1990.

(O) "PRIVATE FLOATING DOCK OR STRUCTURE" MEANS A DOCK OR STRUCTURE PLACED IN THE TERRITORY OF LAKE ERIE FOR THE SOLE USE OF THE UPLAND OWNER FOR UPLAND OWNER'S PERSONAL BENEFIT. SAID STRUCTURE OR DOCK SHALL NOT BE USED FOR ANY MONETARY GAIN SUCH AS, BUT NOT LIMITED TO, DOCK SPACE FOR RENT, LEASE OR SALE.

(P) "PUBLIC HEARING" MEANS A FORMAL HEARING CONDUCTED BY THE DIRECTOR, OR DESIGNEE, IN WHICH EVIDENCE MAY BE PRESENTED AND TESTIMONY GIVEN. THESE PROCEEDINGS ARE RECORDED AND AN OFFICIAL TRANSCRIPT IS MADE A PART OF THE ADMINISTRATIVE RECORD MAINTAINED BY THE DEPARTMENT FOR THE SUBJECT SUBMERGED LANDS LEASE APPLICATION AS PROVIDED FOR IN DIVISION (C) OF SECTION 1506.11 OF THE REVISED CODE.

(Q) "PUBLIC MEETING" MEANS AN ASSEMBLY CONDUCTED BY THE DEPARTMENT, THE PURPOSE OF WHICH IS TO PROVIDE AN OPPORTUNITY FOR A LEASE APPLICANT TO EXPLAIN THE DEVELOPMENTS, IMPROVEMENTS AND/OR ACTIVITIES UPON LAKE ERIE SUBMERGED LANDS TO CONCERNED AGENCIES AND THE GENERAL PUBLIC AND AFFORD AN OPPORTUNITY FOR INTERESTED PARTIES TO EXPRESS ANY RELEVANT ISSUES OR CONCERNS AS PROVIDED FOR IN DIVISION (C) OF SECTION 1506.11 OF THE REVISED CODE.

(R) "SEMI-PRIVATE FACILITY" MEANS ANY FACILITY BUILT IN THE TERRITORY IN CONJUNCTION WITH, BUT NOT LIMITED TO, CONDOMINIUMS, TRAILER PARKS, COOPERATIVES, RESIDENTIAL ASSOCIATIONS, CAMPGROUNDS, OR APARTMENTS.

(S) "SMALL COMMERCIAL FACILITY" MEANS ANY FACILITY BUILT IN THE TERRITORY IN CONNECTION WITH THE PROVIDING OF COMMERCIAL SERVICES AND DOES NOT OCCUPY MORE THAN FOUR ACRES OF TOTAL AREA. A SMALL COMMERCIAL FACILITY SHALL INCLUDE, BUT NOT BE LIMITED TO, A COMMERCIAL MARINA, PRIVATE CLUB, YACHT CLUB, SAILING CLUB, TRANSIT FERRY BOAT FACILITY, OR BREAKWALLS CONSTRUCTED TO PROTECT INLAND MARINA CHANNELS AND/OR BOAT BASIN FOR ACCESS TO LAKE ERIE.

(T) "STATE RESOURCE WATERS" MEANS SURFACE WATERS OF THE STATE THAT LIE WITHIN NATIONAL, STATE AND METROPOLITAN PARK SYSTEMS, WETLANDS, WILDLIFE REFUGES, WATERS OF EXCEPTIONAL RECREATIONAL OR ECOLOGICAL SIGNIFICANCE, AND AS OTHERWISE

DESCRIBED IN STATE WATER QUALITY STANDARDS, RULE 3745-1-05 OF THE ADMINISTRATIVE CODE.

(U) "STRUCTURE" MEANS ANY FACILITY WHICH REQUIRES FILL BEING PLACED UPON THE SUBMERGED LAND OF LAKE ERIE, INCLUDING, BUT NOT LIMITED TO, A RUBBLE MOUND DOCK, RUBBLE MOUND WALK, ROCK FILLED TIMBER CRIB DOCK, ROCK FILLED TIMBER CRIB WALL, PILINGS, STEEL SHEET PILE WALL, REVETMENT, UNATTACHED BREAKWALL, PRECAST CONCRETE MODULAR STRUCTURE AND RIPRAP SHORE PROTECTION.

(V) "TERRITORY" AS USED IN THESE RULES SHALL BE AS IT IS DESCRIBED IN SECTION 1506.10 AND AS IT IS DEFINED IN DIVISION (A) OF SECTION 1506.11 OF THE REVISED CODE. WHERE THE TERRITORY HAS BEEN ARTIFICIALLY FILLED, THE DIRECTOR SHALL DETERMINE THE NATURAL SHORELINE AS ACCURATELY AS POSSIBLE, USING THE BEST PRACTICABLE MEASURES INCLUDING BUT NOT LIMITED TO AN ANALYSIS OF THE EARLIEST KNOWN CHARTS, MAPS OR PHOTOGRAPHS.

(W) "UTILITY" SHALL MEAN ANY UTILITY COMPANY REGULATED BY; WITHIN THE JURISDICTION OF; REGISTERED WITH, OR LICENSED TO DO BUSINESS IN THE STATE OF OHIO BY THE PUBLIC UTILITIES COMMISSION OF OHIO, THAT IS ENGAGED IN AN ACTIVITY IN THE TERRITORY INCLUDING, BUT NOT LIMITED TO, THE PLACEMENT OF SUBMERGED CABLES, WATER INTAKE PIPES, WATER OUTFALL PIPES, SEWER OUTFALL PIPES, STORM SEWER OUTFALL PIPES, AND THE RELATED STRUCTURES NECESSARY FOR PROTECTION. THIS DEFINITION SHALL NOT INCLUDE ANY EXISTING FILL OR ANY PROPOSED NEW FILL USED OR PROPOSED TO BE USED FOR EXISTING BUILDINGS, EXPANSION OF EXISTING BUILDINGS, OR ANY FACILITIES RELATED TO THE OPERATION OF THE UTILITY, INCLUDING, BUT NOT LIMITED TO, ELECTRIC POWER PLANTS, COAL STORAGE FACILITIES, COAL LOADING AND OFF LOADING FACILITIES, OR DISPOSAL SITES FOR FLY ASH, BOTTOM ASH, DREDGED MATERIALS OR OTHER PRODUCTS.

EFFECTIVE: April 30, 1992

CERTIFICATION

FRANCES S. BUCHHOLZER, DIRECTOR
OHIO DEPARTMENT OF NATURAL RESOURCES

4/20/92
DATE

PROMULGATED UNDER R.C. Ch. 119
RULE AUTHORIZED BY R.C. 1506.02
RULE AMPLIFIES R.C. 1506.10 AND 1506.11

1501-6-02 APPLICATION.

AN APPLICATION SHALL BE DEEMED UNACCEPTABLE BY THE DIRECTOR IF IT IS FOUND TO HAVE INCOMPLETE OR INSUFFICIENT INFORMATION FOR PROPER EVALUATION OF THE DEVELOPMENT, IMPROVEMENT OR ACTIVITY UPON LAKE ERIE SUBMERGED LANDS. THE APPLICANT SHALL BE NOTIFIED BY THE DIRECTOR IF THE APPLICATION IS UNACCEPTABLE WITHIN SIXTY DAYS OF ITS RECEIPT BY THE DIRECTOR. UPON RECEIPT OF SAID NOTIFICATION, THE APPLICANT MAY RESUBMIT A NEW APPLICATION FOR EVALUATION. THE DIRECTOR MUST, WITHIN A REASONABLE PERIOD OF TIME, PROCESS THE APPLICATION.

WHEN THE DIRECTOR FINDS THAT THE EFFORT TO SUPPLEMENT THE INFORMATION ON THE APPLICATION WILL BE UNAVAILING AND THAT THE APPLICATION IS NOT IN ACCORDANCE WITH THE REQUIREMENTS OF SECTIONS 1506.10 AND 1506.11 OF THE REVISED CODE AND APPLICABLE RULES, OR THAT THE APPLICANT FAILED TO RESPOND TO REQUEST FOR INFORMATION WITHIN SIXTY DAYS OF NOTICE, THE DIRECTOR SHALL ISSUE AN ORDER DENYING THE APPLICATION FOR A SUBMERGED LANDS LEASE, AND SHALL NOTIFY THE APPLICANT OF THE OPPORTUNITY FOR A HEARING PURSUANT TO SECTION 119.06 TO 119.13 OF THE REVISED CODE.

EFFECTIVE: April 30, 1992

CERTIFICATION FS Buchholzer

FRANCES S. BUCHHOLZER, DIRECTOR
OHIO DEPARTMENT OF NATURAL RESOURCES

4/20/92
DATE

Promulgated under R.C. Ch. 119
Rule authorized by R.C. 1506.02
Rule amplifies R.C. 1506.10 and 1506.11

1501-6-03 DIRECTOR'S RECOMMENDATIONS.

(A) THE DIRECTOR'S RECOMMENDATION TO THE GOVERNOR AS TO WHETHER TO APPROVE AN APPLICATION FOR A LEASE OF SUBMERGED LAND SHALL BE BASED UPON AN EVALUATION OF WHETHER THE DEVELOPMENT, IMPROVEMENT OR ACTIVITY IS CONSISTENT WITH THE POLICIES OF THE OHIO COASTAL MANAGEMENT PROGRAM DOCUMENT, IN ACCORDANCE WITH SECTION 1506.03 OF THE REVISED CODE AND DOES NOT OTHERWISE CONTRAVENE THE GENERAL PUBLIC'S INTEREST IN LAKE ERIE SUBMERGED LANDS, WATERS OF THE STATE, FISH AND WILDLIFE, OR CULTURAL OR OTHER PUBLIC TRUST RESOURCES. NOTWITHSTANDING THE POLICIES OF THE OHIO COASTAL MANAGEMENT PROGRAM DOCUMENT, THE DIRECTOR, IN SAID EVALUATION, SHALL GIVE DUE CONSIDERATION TO ANY ARTIFICIALLY FILLED AREA OR FILLED PORTION OF ANY AREA OF THE TERRITORY OR ANY DEVELOPMENT, IMPROVEMENT OR ACTIVITY THEREON EXISTING ON MARCH 15, 1989, AS SET FORTH IN THIS RULE.

(B) CONSISTENT WITH THE PROTECTION OF COASTAL AREA RESOURCES, THE DEPARTMENT WILL COORDINATE POLICIES AND DECISION-MAKING WITH THE RULES AND POLICIES OF OTHER STATE AND FEDERAL RESOURCE AND REGULATORY AGENCIES. IN CONSIDERING AN APPLICATION FOR A SUBMERGED LANDS LEASE, THE DEPARTMENT MAY SOLICIT COMMENTS AND RELEVANT INFORMATION FROM ADJACENT PROPERTY OWNERS, PORT AUTHORITIES, LOCAL JURISDICTIONS AND PLANNING AGENCIES, THE OHIO ENVIRONMENTAL PROTECTION AGENCY, THE OHIO HISTORIC PRESERVATION OFFICE, THE GENERAL PUBLIC AND OTHER AGENCIES OR INDIVIDUALS AS DEEMED APPROPRIATE BY THE DIRECTOR.

(C) THE DEPARTMENT IN DETERMINING WHETHER THE DEVELOPMENT, IMPROVEMENT OR ACTIVITY AS SET FORTH IN AN APPLICATION FOR A LEASE WILL BE COMPATIBLE WITH THE RIGHTS OF THE PUBLIC AND THE PUBLIC TRUST USES OF THE AFFECTED AREA WILL CONSIDER THE FOLLOWING:

(1) WHETHER THE PROJECT PREJUDICES THE LITTORAL RIGHTS OF ANY OWNER OF LAND FRONTING ON LAKE ERIE WITHOUT PERMISSION OF THAT OWNER.

(2) WHETHER THE PROJECT CONFORMS TO THE PERMITTED USES AS REGULATED BY THE LOCAL GOVERNMENT, WHERE APPLICABLE.

(3) WHETHER PUBLIC USES SUCH AS, NAVIGATION, WATER COMMERCE, AND FISHING IN THE AFFECTED AREA WOULD BE DESTROYED OR GREATLY IMPAIRED.

(4) WHETHER THE DIMINUTION OF THE AREA OF ORIGINAL USE WOULD BE SMALL COMPARED TO THE USE OF THE ENTIRE AREA.

(5) WHETHER THE AREA HAS A HISTORY OF USE INCLUDING, BUT NOT LIMITED TO, SERVICES RENDERED TO THE GENERAL PUBLIC.

(D) IN ADDITION TO ANY OTHER LAWS OR RULES ADMINISTERED BY ANY OTHER STATE, LOCAL OR FEDERAL AGENCY, THESE ARE THE CRITERIA, IF APPLICABLE, AGAINST WHICH EACH APPLICATION FOR A LEASE OF SUBMERGED LANDS WILL BE EVALUATED:

(1) WATER DEPENDENCY

GENERALLY, AN APPLICATION FOR A LEASE TO PLACE FILL AND/OR TO CONSTRUCT FACILITIES IN THE TERRITORY FOR A NON-WATER DEPENDENT DEVELOPMENT OR ACTIVITY (I.E. AN IMPROVEMENT WHICH BY ITS NATURE DOES NOT DEPEND ON BEING LOCATED IN OR UPON THE WATER) WILL NOT BE APPROVED. AN EXCEPTION TO THIS WATER DEPENDENCY CRITERION WOULD BE AN IMPROVEMENT IN THE TERRITORY WHICH IS BENEFICIAL AND IMPORTANT TO THE GENERAL PUBLIC'S HEALTH, SAFETY OR WELFARE AS DETERMINED BY THE DIRECTOR. UNDER THIS EXCEPTION, THERE SHALL BE NO PRACTICABLE ALTERNATIVE TO THE IMPROVEMENT INCLUDING AN ALTERNATIVE UPLAND SITE, AND ALL REASONABLE MEASURES SHALL BE UNDERTAKEN BY THE APPLICANT TO MINIMIZE ANY ADVERSE IMPACTS UPON THE WATERS AND UNDERLYING LANDS OF LAKE ERIE AND THE BENEFICIAL FUNCTIONS THESE RESOURCES PERFORM.

THIS CRITERION SHALL NOT APPLY TO A LEASE APPLICATION FOR DEVELOPMENT OF THE TERRITORY WHERE THE TERRITORY HAS BEEN ARTIFICIALLY FILLED PRIOR TO MARCH 15, 1989.

(2) PROTECTION OF ENVIRONMENTAL QUALITY

THE DIRECTOR MAY REQUIRE AN ENVIRONMENTAL IMPACT ASSESSMENT OR OTHER INFORMATION IN ORDER TO DETERMINE THE PROBABLE DIRECT, SECONDARY AND CUMULATIVE IMPACTS OF THE DEVELOPMENT, IMPROVEMENT OR ACTIVITY UPON THE NATURAL AND HUMAN ENVIRONMENT. WITH REGARD TO ANY ARTIFICIALLY FILLED AREA OR FILLED PORTION OF ANY AREA OF THE TERRITORY EXISTING ON MARCH 15, 1989, THE REQUIREMENT FOR AN ENVIRONMENTAL IMPACT ASSESSMENT SHALL BE LIMITED TO ANY NEW DEVELOPMENT, IMPROVEMENT OR ACTIVITY OR ANY CHANGE IN AN EXISTING

DEVELOPMENT, IMPROVEMENT OR ACTIVITY ON SAID AREA OF THE TERRITORY.

THE ENVIRONMENTAL IMPACT ASSESSMENT SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING ISSUES:

(a) POTENTIAL IMPACT UPON AIR AND WATER QUALITY;

(b) THE LIKELIHOOD THAT THE DEVELOPMENT, IMPROVEMENT OR ACTIVITY MAY AFFECT HISTORIC, CULTURAL AND AESTHETIC RESOURCES;

(c) OPEN SPACE OR RECREATIONAL USES OF THE SHORELINE WHERE INCREASED ACCESS TO THE SHOREFRONT IS A PARTICULARLY IMPORTANT CONCERN;

(d) FLORAL AND FAUNAL COMMUNITIES WHERE LOSS OF BIOLOGICAL RESOURCES OR THREATS TO ENDANGERED OR THREATENED SPECIES ARE OF PARTICULARLY IMPORTANT CONCERN.

(e) POTENTIAL IMPACT UPON WETLANDS, OR OTHER STATE RESOURCE WATERS.

(f) POTENTIAL IMPACT UPON THE LITTORAL ZONE INCLUDING SAND TRANSPORT.

(g) THE POTENTIAL INDIVIDUAL AND CUMULATIVE IMPACTS OF THE LEASE ACTIVITY IN CONJUNCTION WITH OTHER SIMILAR ACTIVITIES IN THE PROJECT AREA OR GEOGRAPHIC REGION WILL BE CONSIDERED.

TO THE MAXIMUM EXTENT PRACTICABLE THE DEPARTMENT'S REVIEW OF A LEASE APPLICATION WILL UTILIZE INFORMATION AND FINDINGS WHICH MAY BE DEVELOPED IN THE PUBLIC REVIEW PROCESS CONDUCTED BY THE U.S. DEPARTMENT OF THE ARMY, CORPS OF ENGINEERS FOR AUTHORIZATION OF ACTIVITIES IN NAVIGABLE WATERS, THE SECTION 401 WATER QUALITY CERTIFICATION BY THE DIRECTOR OF THE OHIO ENVIRONMENTAL PROTECTION AGENCY, AND THE CONSISTENCY REVIEWS OF THE STATE UNDER THE OHIO COASTAL MANAGEMENT AND NONPOINT SOURCE MANAGEMENT PROGRAMS.

(3) PUBLIC RECREATION.

THE POTENTIAL IMPACT OF ANY DEVELOPMENT, IMPROVEMENT OR ACTIVITY UPON THE PUBLIC RIGHT OF RECREATION, INCLUDING

PRESENT OR PROSPECTIVE RECREATIONAL USES BY THE PUBLIC DURING THE TERM OF THE LEASE, WILL BE EVALUATED. PROVISION FOR PUBLIC ACCESS MAY BE REQUIRED AS A CONDITION OF A LEASE OR PERMIT DEPENDING UPON HISTORIC USE PATTERNS AND SUITABILITY OF THE LEASE SITE FOR EXISTING OR PROSPECTIVE RECREATIONAL USES.

(4) RELATIONSHIP TO PLANS FOR PORT DEVELOPMENTS, COMMERCIAL NAVIGATION AND URBAN WATERFRONT DEVELOPMENT.

THE DEPARTMENT IN DETERMINING THE COMPATIBILITY OF THE DEVELOPMENT, IMPROVEMENT OR ACTIVITY WITH EXISTING WATERFRONT MASTER PLANS, LOCAL LAND USE PLANS AND REGULATIONS AND ANY OTHER RELEVANT PLANS OR PROGRAMS ADOPTED BY LOCAL OR REGIONAL AUTHORITIES, WILL CONSIDER THE FOLLOWING:

(a) WHETHER THE DEVELOPMENT, IMPROVEMENT OR ACTIVITY ASSISTS IN THE REDEVELOPMENT OF DETERIORATING URBAN WATERFRONTS AND PORTS, AND IS SENSITIVE TO THE PRESERVATION AND RESTORATION OF HISTORIC, CULTURAL AND AESTHETIC COASTAL FEATURES.

(b) WHETHER THE DEVELOPMENT, IMPROVEMENT OR ACTIVITY ALLOWS FOR PUBLIC ACCESS TO THE WATERFRONT FOR RECREATIONAL PURPOSES CONSISTENT WITH ORDERLY COASTAL-DEPENDENT USES. THE POTENTIAL FOR A DEVELOPMENT, IMPROVEMENT OR ACTIVITY IN THE TERRITORY TO DIRECTLY OR INDIRECTLY, PREEMPT FUTURE PUBLIC ACCESS TO THE COAST OR WATERS OF LAKE ERIE WILL BE EXAMINED.

(c) TO THE MAXIMUM EXTENT PRACTICABLE, PRIORITY CONSIDERATION WILL BE GIVEN TO NEW COMMERCIAL AND PORT-RELATED DEVELOPMENTS, IMPROVEMENTS OR ACTIVITIES IN OR ADJACENT TO AREAS WHERE SUCH DEVELOPMENT, IMPROVEMENT OR ACTIVITY ALREADY EXISTS.

(d) THE IMPORTANCE OF THE DEVELOPMENT, IMPROVEMENT OR ACTIVITY TO THE LOCAL AND REGIONAL ECONOMY. INTERSTATE COMMERCE AND ANY OTHER IDENTIFIED NATIONAL, STATE OR GREAT LAKES REGION INTEREST WHICH WOULD BE AFFECTED BY THE DEVELOPMENT, IMPROVEMENT OR ACTIVITY WILL BE CONSIDERED. TO THIS END, DOCUMENTATION OF RELEVANT INTERGOVERNMENTAL CONSULTATION MAY BE SUPPLIED BY THE APPLICANT.

(e) THE HISTORY OF PRE-EXISTING USES INCLUDING, BUT NOT LIMITED TO, SERVICES TO THE GENERAL PUBLIC. TO THE MAXIMUM EXTENT PRACTICABLE, CONSIDERATION SHALL BE GIVEN TO SUCH USES ON ANY ARTIFICIALLY FILLED AREA OR FILLED PORTION OF ANY AREA OF THE TERRITORY EXISTING ON MARCH 15, 1989.

EFFECTIVE: April 30, 1992

CERTIFICATION

FRANCES S. BUCHHOLZER, DIRECTOR
OHIO DEPARTMENT OF NATURAL RESOURCES

DATE 4/20/92

Promulgated under R.C. Ch. 119
Rule authorized by R.C. 1506.02
Rule amplifies R.C. 1506.10 and 1506.11

1501-6-04 PUBLIC HEARING/PUBLIC MEETING.

AT ANY TIME DURING THE LEASE APPLICATION REVIEW PERIOD OR UPON COMPLETION OF THE DEPARTMENT'S EVALUATION, IF THE DIRECTOR FINDS THAT THERE IS INSUFFICIENT INFORMATION UPON WHICH TO BASE A DECISION, OR IF THERE ARE SIGNIFICANT UNRESOLVED ISSUES, THE DIRECTOR MAY REQUEST THE APPLICANT TO SUPPLY ADDITIONAL INFORMATION AND MAY DECLARE THAT A PUBLIC HEARING OR A PUBLIC MEETING BE HELD TO OBTAIN THE NECESSARY INFORMATION.

(A) IF A PUBLIC HEARING IS SCHEDULED, SAID HEARING SHALL BE HELD AT A TIME AND PLACE DESIGNATED BY THE DIRECTOR. THE HEARING SHALL BE OF A FORMAL NATURE. A COURT REPORTER SHALL BE PRESENT AND ALL PARTIES SHALL HAVE AN OPPORTUNITY TO PRESENT EVIDENCE AND/OR PROVIDE TESTIMONY. NOTICE OF SAID HEARING SHALL BE ADVERTISED IN ACCORDANCE WITH DIVISION (C) OF SECTION 1506.11 OF THE REVISED CODE. ALL COSTS PERTAINING TO THE HEARING, INCLUDING BUT NOT LIMITED TO THE COURT REPORTER AND ADVERTISEMENT, SHALL BE PAID BY THE APPLICANT.

(B) IF THE DIRECTOR DETERMINES THAT A PUBLIC MEETING WOULD SERVE TO PROVIDE SUFFICIENT INFORMATION TO SUPPLEMENT THE ADMINISTRATIVE RECORD AND SUPPORT A DECISION WHETHER OR NOT A LEASE MAY PROPERLY BE ENTERED INTO, THE DIRECTOR SHALL ORDER A PUBLIC MEETING TO BE HELD IN THE GEOGRAPHIC LOCALITY OF THE APPLICANT'S LEASE REQUEST. NOTICE OF SAID PUBLIC MEETING SHALL BE ADVERTISED IN A MANNER TO BE DETERMINED BY THE DIRECTOR. ALL COSTS OF THE MEETING SHALL BE PAID BY THE APPLICANT.

(C) THE PUBLIC HEARING OR PUBLIC MEETING SHALL BE LIMITED TO THE GATHERING OF INFORMATION WHICH DIRECTLY PERTAINS TO THE APPLICATION IN QUESTION AND TO THE EVALUATION OF THE DEVELOPMENT, IMPROVEMENT OR ACTIVITY IN ACCORDANCE WITH SECTION 1506.11 OF THE REVISED CODE AND RULES CONTAINED HEREIN.

EFFECTIVE: April 30, 1992

CERTIFICATION

FS Buchholzer

FRANCES S. BUCHHOLZER, DIRECTOR
OHIO DEPARTMENT OF NATURAL RESOURCES

4/20/92
DATE

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Rule authorized by R.C. 1506.02
Rule amplifies R.C. 1506.10 and 1506.11

1501-6-05 LEASE.

A LEASE FOR LAKE ERIE SUBMERGED LAND SHALL BE PREPARED BY THE DEPARTMENT OF NATURAL RESOURCES AND SHALL CONTAIN, BUT NOT BE LIMITED TO, LANGUAGE WHICH REFLECTS THE FOLLOWING:

(A) A METES AND BOUNDS DESCRIPTION OF THE SUBMERGED LAND TO BE OCCUPIED AS PROVIDED BY APPLICANT.

(B) THE DIRECTOR SHALL SET THE PERIOD OF TIME (TERM) OF THE LEASE. THE TERM OF THE LEASE SHALL BE FIFTY YEARS UNLESS THE DIRECTOR RECOMMENDS A LONGER OR SHORTER TERM. SHOULD THE DIRECTOR RECOMMEND A LEASE TERM LESS THAN OR GREATER THAN FIFTY YEARS, THE DIRECTOR SHALL STATE IN WRITING THE SPECIFIC FINDINGS, RATIONALE AND JUSTIFICATION FOR THE DIFFERENTIAL IN SETTING THE TERM. APPLICANT SHALL HAVE THE RIGHT OF APPEAL IN ACCORDANCE WITH SECTIONS 119.06 TO 119.13 OF THE REVISED CODE.

(C) A COMPLETE DESCRIPTION OF THE DEVELOPMENT, IMPROVEMENT OR ACTIVITY UPON THE SUBMERGED LANDS. SAID CLAUSE SHALL CONTAIN THE FOLLOWING "ANY CHANGE IN USE APPROVED BY THE DIRECTOR, OHIO DEPARTMENT OF NATURAL RESOURCES, MAY ALSO RESULT IN A RE-EVALUATION OF THE RENT. SAID LEASE SHALL BE AMENDED TO REFLECT THE PROPER RENT AS ASSIGNED BY THE DIRECTOR, BASED UPON THE NEW USE," OR WORDS OF SIMILAR IMPORT.

(D) THERE SHALL BE NO ASSIGNMENT, SUBLEASE OR MORTGAGE OF THE LEASEHOLD WITHOUT THE EXPRESSED WRITTEN CONSENT OF THE DIRECTOR, WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD OR UNREASONABLY CONDITIONED.

(1) A WRITTEN REQUEST TO ASSIGN, SUBLET, OR MORTGAGE SHALL BE DELIVERED BY THE LESSEE TO THE DIRECTOR NOT LESS THAN NINETY DAYS PRIOR TO THE PROPOSED EFFECTIVE DATE THEREOF, AND THE DIRECTOR SHALL RESPOND WITHIN THIRTY DAYS OF THE DIRECTOR'S RECEIPT OF SUCH REQUEST. ANY ASSIGNMENT SHALL BE HELD IN ESCROW BY THE CLOSING OFFICER OF THE TITLE COMPANY, BANK, OR ATTORNEY UNTIL THE SALE OF THE UPLANDS HAS BEEN COMPLETED. SHOULD

THE SALE NOT BE CONSUMMATED THEN THE ASSIGNMENT SHALL AUTOMATICALLY BE NULL AND VOID. IF THE DIRECTOR FAILS TO ACT IN ANY MANNER WITHIN NINETY DAYS OF THE RECEIPT OF THE WRITTEN REQUEST, THEN THE REQUEST SHALL BE DEEMED APPROVED BY THE DIRECTOR.

(2) RENT AND OTHER LEASE TERMS SHALL BE SUBJECT TO REVISION AT TIME OF ASSIGNMENT.

(3) APPLICANTS FOR THE DIRECTOR'S CONSENT TO SUBLEASE, ASSIGN OR MORTGAGE SHALL BE ENTITLED TO AN ADMINISTRATIVE REVIEW OF AND APPEAL FROM ANY DECISION OF THE DIRECTOR PURSUANT TO SECTION 119.06 OF THE REVISED CODE.

(E) EACH LEASE AREA SHALL BE SUBJECT TO THE PUBLIC'S RIGHT TO NAVIGATION IN AND AROUND ANY STRUCTURES COVERED IN THE LEASE. HOWEVER, THE PUBLIC'S RIGHT OF NAVIGATION IS LIMITED TO THE EXTENT THAT IT DOES NOT INTERFERE WITH LESSEE'S SAFE USE OF LESSEE'S STRUCTURE.

(F) NO LESSEE SHALL REFUSE, DURING STORMS OR OTHER ADVERSE CONDITIONS, SAFE HARBOR REFUGE TO ANY VESSEL SEEKING SUCH REFUGE, PROVIDED THAT THE HARBOR CAN SAFELY ACCOMMODATE SUCH VESSEL.

(G) EACH LEASE SHALL REQUIRE ADEQUATE LIABILITY INSURANCE OR SELF INSURANCE DOCUMENTATION FOR LESSEE, MUNICIPAL CORPORATIONS OR POLITICAL SUBDIVISIONS OF THE STATE FOR LESSEE'S DEVELOPMENT, IMPROVEMENT OR ACTIVITY IN THE TERRITORY AND LESSEE'S OCCUPATION OF THE TERRITORY. MINIMUM LIMITS OF LIABILITY INSURANCE SHALL BE ESTABLISHED BY THE DEPARTMENT AND SHALL CONTAIN A CLAUSE NAMING THE STATE OF OHIO AS ADDITIONAL INSURED.

(H) EACH LEASE SHALL BE SUBJECT TO ANY AND ALL LOCAL, STATE OR FEDERAL LAWS OR REGULATIONS. THE ISSUANCE OF THE LEASE DOES NOT RELEASE THE LESSEE FROM OBTAINING ANY AND ALL OTHER PERMITS OR DOCUMENTS FROM ANY LOCAL, STATE OR FEDERAL AGENCY AS REQUIRED FOR THE USE OF THE TERRITORY. FAILURE TO OBTAIN ANY REQUIRED PERMITS OR DOCUMENTS SHALL BE A VIOLATION OF THE LEASE AND SUBJECT TO CANCELLATION UNDER THE DEFAULT PROVISIONS THEREIN.

EFFECTIVE: April 30, 1992

CERTIFICATION

FRANCES S. BUCHHOLZER, DIRECTOR
OHIO DEPARTMENT OF NATURAL RESOURCES

4/20/92
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1501-6-06 RENTAL.

THE RENT RATES HEREIN DETERMINED SHALL BE APPLIED EQUALLY THROUGHOUT THE ENTIRE LAKE ERIE SHORELINE, INCLUDING SANDUSKY BAY, MAUMEE BAY AND THE ISLANDS. RATES WILL BE DETERMINED BY THE DIRECTOR USING THE DESCRIPTION OF THE DEVELOPMENT, IMPROVEMENT OR ACTIVITY PROVIDED BY THE APPLICANT ACCORDING TO THE FOLLOWING SCHEDULE:

(A) EXISTING FILL - ANY ARTIFICIALLY FILLED AREA OR FILLED PORTION OF ANY AREA OF THE TERRITORY EXISTING ON MARCH 15, 1989, SHALL BE CHARGED $0.01 PER SQUARE FOOT PER YEAR FOR THE TERM OF THE LEASE OR RENEWALS. THIS RENTAL RATE SHALL APPLY ONLY TO THE USE OF THE FILLED AREA AS IT EXISTED ON MARCH 15, 1989. IF THE LESSEE OR ITS ASSIGNS CHANGE THE USE OF THE FILLED AREA, THE RENT MAY BE MODIFIED TO REFLECT THE RENT RATE IN EFFECT FOR THE NEW USE AT THE TIME OF THE CHANGE OF USE.

THE RENTAL RATE FOR ANY ARTIFICIALLY FILLED AREA OF THE TERRITORY EXISTING ON MARCH 15, 1989, WHICH QUALIFIES AS A GOVERNMENTAL NON-INCOME PRODUCING FACILITY AS DETERMINED BY THE DIRECTOR, SHALL BE $1.00 PER YEAR.

(B) PRIVATE FLOATING DOCK - $50 PER YEAR.

(C) PRIVATE STRUCTURE - $50 PLUS $0.02 PER SQUARE FEET OF LEASED AREA PER YEAR.

(D) SEMI-PRIVATE AND SMALL COMMERCIAL FACILITY OCCUPYING NO MORE THAN FOUR ACRES - $0.03 PER SQUARE FEET OF LEASED AREA PER YEAR.

(E) LARGE FACILITY AND AN INDUSTRIAL FACILITY - $0.04 PER SQUARE FEET OF THE LEASED AREA PER YEAR.

(F) UTILITY - $500 PER YEAR.

(G) GOVERNMENTAL INCOME PRODUCING FACILITY SHALL PAY THE RENT FOR THE CATEGORY OF THE FACILITY.

(H) GOVERNMENTAL NON-INCOME PRODUCING FACILITY SHALL PAY $1.00 PER YEAR. WHERE PRACTICABLE, A LEASE FOR ALL SUCH GOVERNMENTAL USES OR PURPOSES SHALL BE COVERED IN ONE INSTRUMENT FOR EACH POLITICAL SUBDIVISION.

(I) "ESCALATOR CLAUSE" - THE RENTAL RATES AS PROVIDED FOR IN PARAGRAPHS (B) TO (G) OF THIS RULE, SHALL BE RECALCULATED EVERY FIVE YEARS BEGINNING ON THE FIFTH ANNIVERSARY OF THE EFFECTIVE DATE OF THIS RULE AND ANY INCREASE SHALL BE AT THE SAME RATE OF INCREASE AS THE "NATIONAL CONSUMERS PRICE INDEX" (C.P.I.). THE ANNUAL BASE RATE FOR CALCULATION PURPOSES SHALL BE THE RATE ESTABLISHED BY THE U.S. DEPARTMENT OF LABOR FOR THE CITY OF CLEVELAND, OHIO, URBAN, ALL CATEGORIES (C.P.I.U.) FOR FEBRUARY, 1992. THAT ANNUAL BASE RATE IS 136.2. THE NEW RATE SHALL BE MOST RECENT C.P.I.U. ANNUAL RATE ESTABLISHED TO THE NEAREST MONTH PRIOR TO THE DATE OF RECALCULATION BY THE U.S. DEPARTMENT OF LABOR. ONCE THE NEW ANNUAL RATE HAS BEEN DETERMINED AND THE AMOUNT OF INCREASE HAS BEEN CALCULATED, THEN THE NEW ANNUAL RATE SHALL BECOME THE BASE ANNUAL RATE FOR CALCULATION PURPOSES FOR THE NEXT FIVE YEAR PERIOD OF TIME. THIS CHANGE IN RATES SHALL CONTINUE UNTIL SUCH TIME AS THE C.P.I.U. IS NO LONGER USED OR THE DIRECTOR DETERMINES THAT ANOTHER METHOD MAY BE MORE ACCURATE. THE RENTAL RATE PERCENTAGE INCREASE SHALL BE THE LESSER OF THE FOLLOWING:

(1) THE BASE ANNUAL RATE SHALL BE SUBTRACTED FROM THE NEW ANNUAL RATE, THE BASE RATE SHALL BE DIVIDED INTO THE DIFFERENCE BETWEEN THE BASE RATE AND THE NEW RATE AND THE ANSWER WILL BE THE PERCENTAGE OF INCREASE OR DECREASE OVER THAT FIVE YEAR PERIOD OF TIME:

EXAMPLE:

| | |
|---|---|
| NEW RATE (NR) | 140.2 |
| -BASE RATE (BR) | 136.2 |
| DIFFERENCE (DF) | 4.0 |

$$\frac{DF \quad 4.0}{BR \quad 136.2} = .0293 \text{ OR } 2.93\% \text{ INCREASE}$$

CURRENT RENT: $10,000.00 X .0293 INCREASE = $293.00
NEW RENT $10,293.00

(2) AT NO TIME SHALL THE INCREASES OF THE RENTAL RATE EXCEED 20 PERCENT IN ANY GIVEN FIVE YEAR PERIOD OF TIME, NOR SHALL THE AGGREGATE INCREASE OF THE RENTAL RATE EXCEED 150 PERCENT OVER THE TERM OF THE LEASE. ALSO AT NO TIME SHALL THE RENTAL RATE CHARGED IN ANY LEASE WRITTEN BY THE STATE OF OHIO PURSUANT TO SECTIONS 1506.10 AND 1506.11 OF THE REVISED CODE OR BY THESE RULES BE LOWERED.

SHOULD THE UNITED STATES DEPARTMENT OF LABOR DISCONTINUE THE USE OF C.P.I. THE DIRECTOR SHALL SELECT AS NEARLY COMPATIBLE A STATISTICAL FORMULA ON THE PURCHASING POWER OF THE CONSUMER DOLLAR AS IS THEN AVAILABLE AND PUBLISHED IN SOME RESPONSIBLE GOVERNMENTAL PUBLICATION.

THIS ESCALATOR METHOD SHALL NOT AFFECT THE RENT CHARGED UNDER PARAGRAPH (A) OF THIS RULE EXISTING FILL OR PARAGRAPH (H) OF THIS RULE GOVERNMENTAL NON-INCOME PRODUCING FACILITY.

EFFECTIVE: April 30, 1992

CERTIFICATION FS Buchholzer

FRANCES S. BUCHHOLZER, DIRECTOR
OHIO DEPARTMENT OF NATURAL RESOURCES

4/20/92
DATE

Promulgated under R.C. Ch. 119
Rule authorized by R.C. 1506.02
Rule amplifies R.C. 1506.10 and 1506.11

APPENDIX M

SUMMARY OF SPECIAL MANAGEMENT AREA NOMINATIONS

The following Special Management Area (SMA) nominations were compiled from public comments submitted to ODNR in 1977 and the results of a survey conducted by the Lake Erie Shore Area Redevelopment Task Force in 1988. To simplify the list, duplicate nominations have been condensed into one reference.

The list begins with Ohio's easternmost coastal county, Ashtabula, and ends at Lucas, the westernmost coastal county in the state. Within each county, the sites are also listed from east to west. The issues or problems of each site are briefly described, followed by the nominator's recommended course of action. This list is not intended to be all-inclusive, nor is it a workplan outlining SMAs that will be the focus of the Ohio Coastal Management Program. Furthermore, the recommendations are not necessarily those that will be implemented. The list merely reflects public concern and opinion. It is offered here as background material to show how ODNR staff created the eight generic APC categories described in the document text.

**Ashtabula County**

1. Conneaut – Turkey Creek area
   Cold water stream that provides excellent fish habitat; undeveloped natural area and coastline with state park or preserve potential.

2. Conneaut – Port of Conneaut
   Industrial and commercial uses must be balanced with recreation and public access needs; increased sedimentation within breakwalls requires solution.

3. Conneaut – Conneaut Creek
   Unique cold-water stream that should be protected from pollution; needs public access.

4. Conneaut – Conneaut Township Park
   Needs erosion prevention and park maintenance to protect park's recreational values.

5. Route 531 Access Area
   Increased access to lakefront could help area realize recreational use potential.

6. Geneva-on-the-Lake – Indian Creek
   Beach area should be protected; creek offers scenic area and good fishing opportunities.

7. Geneva-on-the-Lake – Geneva Township Park
   Needs erosion prevention structures and park maintenance; pollution from public use of area should be monitored.

8. Ashtabula – Lake Shore Park
   Heavy public use necessitates facility improvement; increasing sedimentation threatens use of boat ramps and requires either dredging or building of sand control structures.

9. Ashtabula – Port of Ashtabula
   Increasing and competing uses threaten harbor's role in shipping, thus requiring locally directed shore area development; proposal for boat ramps threatens natural dunes area; dredging needed to keep harbor open; approved disposal facility for contaminated sediments must be secured.

10. Ashtabula - Ashtabula River
    Water pollution must be controlled; dredging needed to improve boating and fishing opportunities.

11. Ashtabula – Walnut Beach Park
    Development should be restricted to prevent degradation of natural values.

12. Saybrook-on-the-Lake
    Damage from erosion is a continual concern that must be addressed.

**Lake County**

1. Arcola Creek Estuary
   One of Lake Erie's few remaining estuaries; harbors endangered plant species and may serve as spawning grounds; should be managed as a natural area.

2. Lake Erie Viticultural Region
   Prime agricultural lands should be maintained for grape production.

3. North Perry – Perry Nuclear Power Plant
   Must be carefully managed to prevent nuclear contamination of Lake Erie and surrounding area.

4. Painesville-on-the-Lake – Painesville Township Park
   Severe coastal erosion threatens park and recreational use.

5. Diamond Shamrock
   Hazardous waste site that must be protected from shoreline erosion.

6. Fairport Harbor – Grand River
   Intense competition between users requires comprehensive management; need for increased boating facilities; dredge spoil disposal problems.

7. Fairport Harbor – Marsh along Grand River
   Natural preserve or passive recreational area should be established to protect marshlands.

8. Mentor – Mentor Headlands State Park
   Should be protected from increasing development pressures along adjacent proper ties.

9. Mentor – Mentor Marsh
   Should be protected from threat of improper waste disposal and development.

10. Mentor – Mentor Lagoons
    Area is used as a dump and public access is limited; should be managed to pro vide fishing and recreational use access.

11. Eastlake – Chagrin River
    Low water levels and lack of dredging has created problems for recreational boaters; Chagrin River Islands are unique natural areas that should be protected against development.

12. Willowick
    Severe erosion threatens private property; lakefront park and recreational access should be developed.

**Cuyahoga County**

1. Euclid – East 270th Street
   Small, undeveloped area should be maintained as a park.

2. Euclid – Euclid Park
   Park's natural values are endangered by proposed marina development and shoreline erosion.

3. Euclid – Sims Park
   Natural area is threatened by proposed development and erosion.

4. Euclid – Shoreline area
   Needs additional Lake Erie access facilities and erosion control structures.

5. Cleveland – Lakefront State Park
   Parks (Edgewater, Donald Gray Gardens, Kirtland, Gordon, White City, Wildwood) need regular maintenance to provide adequate Lake Erie Access; erosion and pollution problems.

6. Cleveland to Lorain
   Underwater park should be developed to preserve shipwrecks and maritime heritage.

7. Cleveland – Villa Angela site
   Property adjacent to Wildwood Park offers recreational benefits that warrant protection for minimal development.

8. Cleveland – Nicholson Terminal
   Should be managed as a State Park to utilize recreation potential.

9. Cleveland – E. 55th Nike Site
   Increased parking and access facilities are needed to develop use as a recreation area.

10. Cleveland – Lakefront between E. 9th and E. 55th.
    Intensive competition between users (recreational, industrial, commercial, shipping, etc.) requires comprehensive management to provide balance.

11. Cleveland – The Flats
    Increasing competition for land and growing conflicts between industrial, residential, and entertainment/retail concerns requires clear land-use planning.

12. Cleveland – East bank of Cuyahoga River near Superior Ave.
    Only part of downtown Cuyahoga River that is not bulkheaded; offers aesthetic and recreational values.

13. Cleveland – Cuyahoga Riverfront/Harbor
    Commercial harbor should be managed primarily for shipping concerns.

14. Cleveland – Whiskey Island
    Recreational development could yield better Lake Erie access.

15. Lakewood – Lakewood Park
    Threatened by intensive use and erosion of shale bluffs.

16. Rocky River – Rocky River Park
    Threatened by coastal erosion and overuse; needs facilities and safe harbor access.

17. Bay Village – Bay Village Boat Club
    Use of existing private launch area would yield greater public benefits if purchased and managed by the state.

18. Bay Village – Huntington Park
    Congested use dictates need for increased access and parking facilities.

**Lorain County**

1. Avon Lake
   Breakwater needed to minimize erosion damage to property.

2. Avon Lake – Avon Lake Point
   Good fishing structure needs better access facilities.

3. Avon Lake – Veteran's Memorial Park
   Needs erosion control and additional development to maximize recreation potential.

4. Avon Lake – Miller Road Park
   Needs additional access facilities (especially for anglers).

5. Sheffield Lake – City Park
   Offers Lake Erie access, boating and fishing opportunities; proposed boat ramp would encourage use.

6. Lorain – Cromwell Park Area
   Recreational boating should be encouraged by new marina development.

7. Lorain – Black River southwest of Henderson Ave. Bridge
   Undeveloped, riverfront land that could support marina development.

8. Lorain – Black River south of Bascule Bridge
   Revitalization would stimulate economy and provide access to riverfront.

9. Lorain – Griffith Asphalt Property
   Launch facility is needed; only remaining site on the Black River where boat ramp is feasible.

10. Lorain – Diked Disposal Site
    Could be developed to provide additional Lake Erie access.

11. Lorain – Port of Lorain
    Commercial and recreational uses must be balanced by clear land-use planning.

12. Lorain – Lorain County Lakefront
    Limit industry; emphasize recreation; develop Ohio version of "New York Seaway Trail;" revive lakefront state park idea.

13. Lorain – Lorain Lighthouse
    Listed in National Register of Historic Places; needs structural restoration.

14. Lorain – Hole-in-the-Wall Beach
    Natural beach needs protection and improvement, particularly increased access and clean-up; artificial reef should be completed.

**Erie County**

1. Vermilion – Vermilion River Park
   Develop historical area, scenic park, beach, fishing wall, and boat harbor; provide for public access in Central Basin.

2. Vermilion – Lagoons Beach
   Recreational area is being damaged by beach pollution and coastal erosion.

3. Vermilion – Port of Vermilion
   Competing recreational and industrial uses must be balanced.

4. Vermilion – West Lake Road
   Bird sanctuary that suffers from lakefront exposure to storm and flood erosion needs protection.

5. Vermilion – Sherod Park
   City park needs increased access, erosion control, facilities and beach restoration.

6. Chappel Creek
   Wetland characteristics and fish spawning potential should be preserved by state acquisition of land.

7. Old Woman Creek
   As only remaining, undeveloped estuary in Lake Erie, should be further protected against additional encroachment.

8. Huron – Dikes Disposal Site
   Increase recreational access for anglers on fill area.

9. Huron – Huron Harbor
   Competing recreational and industrial concerns must be balanced by clear, land-use planning; area with little commercial use could be developed for recreation al boating.

10. Huron – Huron River marshes
    Valuable ecological characteristics of riverine marsh should be protected.

11. Sandusky – Sheldon's Marsh State Nature Preserve
    Potential development threatens wildlife; State should acquire additional lands, restrict development, and assure adequate funding for continued operations.

12. Sandusky – Cedar Point
    Represents one of only three major sand spit complexes on Lake Erie; remaining undisturbed sand spits should be preserved whenever possible (such designation should be included within the Cedar Point Amusement Park Master Plan).

13. Sandusky – Port of Sandusky
    Recreational interests are threatening industrial uses; proper balance must be maintained.

14. Kelleys Island – Kelleys Island State Park
    Needs increased public access to realize recreational use potential (campground improvement and boating facilities).

15. Sandusky Bay – Mudflats
    Natural values should be protected through government acquisition.

16. East Sandusky Bay
    Comprehensive master plan must be developed to address shipping, hunting, fishing, marina, condominium, wetland issues; state park status could guard against threats to natural integrity.

17. East Sandusky Bay – Big Island Wetlands
    Should be managed as wildlife refuge and outdoor education area.

**Sandusky County**

1. Miller's Spring
   Wildlife values of unique natural spring should be protected.

2. Southern Sandusky Bay – Ohio Power lands
   Beaches, woodlands and marshes should be preserved in a natural state.

3. Western Sandusky Bay (including Muddy Creek Bay)
   Important stopover point for migratory waterfowl should be preserved in a natural state.

4. Fremont – Eastern Sandusky River Shoreline
   Extensive riverbank erosion needs stabilization.

5. Fremont – Peninsular Farms
   Area of great historical and natural value should be converted into a regional park.

6. Fremont – Brady's Island
   Aesthetic and wildlife values must be protected against development.

**Ottawa County**

1. Bay Point
   Wetlands should be protected from development.

2. Sandusky Bay
   Needs organized zoning and planning to alleviate boat launch pressure; additional public access.

3. Sandusky Bay – West Harbor, East Harbor, Marblehead
   Limit encroaching sprawl, condominium development, and boat overcrowding.

4. Marblehead – Marblehead Lighthouse
   Historical significance of lighthouse could be preserved and promoted with more expenditures on signs, displays and parking.

5. East Harbor State Park
   Excessive shoreline erosion should be controlled to prevent negative impacts on recreational use; development should be carefully planned to minimize negative impacts.

6. Catawba Island – Gem Beach
   Only sand beach on island should be acquired for public benefit rather than private development.

7. Catawba Island – West Harbor Channel
   Channel should be dredged and widened to promote access.

8. South Bass Island – Put-In-Bay
   Needs better management to limit over-development and control shore erosion.

9. Middle Bass Island
   Aesthetic and natural values should be preserved by using "planned" development.

10. North Bass Island – Fox's Marsh
    Acquire this special island habitat for preservation purposes.

11. Port Clinton Area
    Preserve natural areas against development pressures and manage harbor for water-dependent shipping interests.

12. Portage River
    Channel from Port Clinton to Oak Harbor should be dredged to allow passage of recreational craft; canal from Portage River to Sandusky Bay should be considered; wetlands should be preserved.

13. Little Portage River, Oak Harbor, and Meadow Brook Area
    Wetlands should be protected against encroaching growth.

14. Toussaint River
    Should be dredged to allow for navigation into Lake Erie.

15. Turtle Creek
    Boater safety problems require improved management.

16. Davis-Besse Nuclear Power Plant
    Site should be carefully regulated to prevent destruction or harm to Lake Erie drinking water source.

**Lucas County**

1. Metzger Marsh
   Prohibit erosion from damaging marshland values.

2. Jerusalem Township Shoreline
   Restore sand beaches and minimize impact of shoreline erosion; protect historical sites; discourage development on sand beaches; rebuild pier and entrance to Cooley Canal.

3. Jerusalem Township – Niles Beach
   Limit development to protect archaeological site.

4. Cedar Point National Wildlife Reserve
   Control erosion to maintain marshland and wildlife values.

5. Oregon – Southshore Park
   Needs renovation to enhance shoreline for public access.

6. Otter Creek
   Because creek runs through two landfills and an oil refinery, water quality must be monitored.

7. Duck Creek
   Lime sludge and refinery wastewater pollute creek; requires water quality monitoring.

8. Toledo – Port of Toledo
   Industrial, shipping, and commercial activities yield substantial local, economic gains and must be properly managed to ensure continual benefits.

9. Toledo – Maumee River and Bay
   Toxic effluents, siltation, raw sewage from ditches, waste landfills, and dredging all affect ecosystem; must be managed to protect natural values (particularly fisheries industry).

10. Toledo – Ottawa River
    River runs through heavy industrial area and must be monitored for water quality.

11. Toledo – Point Place
    Subject to lake and river flooding and poor internal drainage; structural protection is needed to minimize flooding damages.

| Area of Concern/Major Known Impairments | Background | Fiscal Year 1992 Activities in AOC | Fiscal Year 1993 Activities in AOC | Long-Term Agenda |
|---|---|---|---|---|
| LAKE ERIE<br>Black River<br><br>This AOC is identified as the main stem, East and West Branches, French Creek, and those stretches of the upper basin and tributaries where use impairments exist. The AOC contains the nearshore area from the public swimming beaches at Lakeview Park (west side of Lorain) to Century Park (east side). This includes the inner and outer harbors and the areas surrounding the drinking water intakes of Elyria and Lorain.<br><br>Previous water quality problems due to metals, ammonia, phenol, bacteria, and cyanide; sediments heavily polluted with metals, oil and grease, and PAHs; fish consumption advisories for all species; bacteriological contamination of water column; fish tumors, degraded biological communities, eutrophication, dredging restrictions, habitat destruction. | In 1979, USEPA sued USX for alleged Clean Air Act violations at its Lorain facility. In 1980, USEPA and USX filed a Consent Decree under which USX was to spend $4 M during 4 years to suppress dust.<br><br>In 1983, USX closed coke plant operations, eliminating coking wastewater discharges to the river.<br><br>In 1985, EPA and USX filed an amendment to the 1980 Consent Decree under which USX agreed to dredge sediments contaminated with PAHs and cadmium from the Black River around a USX outfall, reduce nitrogen oxide emissions, reduce thermal pollution to the Black River, and pay a $200 K penalty.<br><br>West Side Lorain WWTP began operation in 1988, and upgrades completed in Oberlin, Wellington, and Lodi.<br><br>Stanadyne eliminated its major river discharge by connecting to Elyria sanitary sewers.<br><br>Elyria WWTP upgrade completed in 1989 under a Consent Judgement. GMC Lorain Plant closed, eliminating major industrial discharge. | Public workshop held to solicit the public perception of the environmental status of the Black River.<br><br>The Black River RAP Coordinating Committee conducted a tour of the river to enhance their knowledge of the AOC and its concerns.<br><br>Preliminary beneficial use impairment assessment completed.<br><br>Ohio EPA conducted an intensive survey of the Black River, investigating water chemistry, fish tissue, fish and macroinvertebrate populations, sediment chemistry and habitat at 40 sites throughout the basin. Volunteers from the Black River RAP Committee and the Friends of the Black River are utilized in conducting the survey and sampling.<br><br>The Friends of the Black River began a Volunteer River Sampling network using Hach kits to provide additional data to the OEPA survey and to promote interest in the health of the river.<br><br>A Riparian Wildlife census project conducted using funds from planning and local health agencies. Further funding being sought for future RAP projects and investigations. | Ohio EPA to complete report on 1992 intensive survey results. This report to be utilized by Black River RAP Coordinating Committee as basis for completing use impairment identification for Stage 1 report.<br><br>Drafting of Stage 1 report to be conducted by Study Team and approved by Coordinating Committee. Stage 1 report expected to be completed and submitted to IJC by end of 1993.<br><br>RAP Committee to participate in Lorain Port Awareness Days and to conduct public participation/Stage 1 report review meetings.<br><br>Funding/resources being sought to conduct creel survey, habitat investigations, wildlife surveys, and continuation of Volunteer River Monitoring program with Friends of the Black River.<br><br>Elyria will not be able to complete relief sewer construction by end of 1993 as required under USEPA Consent Order. The City has undertaken an aggressive sewer rehabilitation program to reduce overflows from CSOs/SSOs. | Ohio EPA to provide Stage 2 RAP report to IJC in 1995.<br><br>Ohio EPA to issue renewal NPDES permits for dischargers in Black River basin in FY 94.<br><br>Development of biocriteria for the harbor and nearshore as a baseline for tracking progress in restoration of beneficial use.<br><br>Continued improvements to Elyria sewer system. |

| Area of Concern/Major Known Impairments | Background | Fiscal Year 1992 Activities in AOC | Fiscal Year 1993 Activities in AOC | Long-Term Agenda |
|---|---|---|---|---|
| LAKE ERIE<br>Black River | In 1990, USX completed dredging about 32,000 cubic meters of contaminated sediments pursuant to the 1985 Consent Decree at a cost of $1.5 M to USX. The dredged material was placed in a containment cell on USX property.<br><br>In 1991, Ohio EPA established a local advisory board and began the public involvement process for the RAP.<br><br>Oberlin College received a grant from the Nord Family Foundation to produce public information materials and to compile available data (1991).<br><br>The Friends of the Black River, a citizens environmental action group, formed (1991). | | Lorain to initiate monitoring of SSOs as required by NPDES permit. | |

| Area of Concern/Major Known Impairments | Background | Fiscal Year 1992 Activities in AOC | Fiscal Year 1993 Activities in AOC | Long-Term Agenda |
|---|---|---|---|---|
| LAKE ERIE<br>Cuyahoga River<br><br>AOC identified as lower 45 miles of the river with basin upstream identified as a source.<br><br>Most of the significant impairments occur in the navigation channel (lower 5 miles).<br><br>Major impairments include: impoverished fish populations, elevated incidence of fish tumors/deformities, beaches and river impacted by high bacteria levels following wet weather, dredging restrictions, lowered aesthetics and habitat in the navigation channel. | Ohio EPA began the RAP process by forming a 35 member Cuyahoga Coordinating Committee in 1988. Numerous stakeholders became involved in the development of the plan.<br><br>In 1989 RAP stakeholders began a 3-year fish tissue sampling program.<br><br>Stakeholders conducted a study of bacterial contamination of the river downstream of Akron: the findings were that water quality standards are met during dry weather conditions.<br><br>Stakeholders formed a non-profit corporation to provide funding support to the RAP.<br><br>In 1990, stakeholders monitored bacterial conditions in river near Cleveland: the findings were significantly improved water quality.<br><br>Fish tissue results from Akron area indicated no exceedences of FDA action levels.<br><br>LTV Steel took steps that have cut contaminant loadings from their coking operations by 50%<br><br>At a cost of $200 K, the City of Akron reinforced the river bank near "Old City Landfill" to prevent debris entering river. | Cuyahoga Coordinating Committee approved the release of the Stage 1 RAP for public hearing in early 1992. The RAP was submitted to Ohio EPA 7/92.<br><br>Stage 1 is to be submitted to the IJC 10/92.<br><br>Promote and participate in River Sweep '92.<br><br>Complete intensive water quality survey with report due late 1992. Findings indicate a general achievement of chemical water quality standards except for D.O. in the ship channel, recovery of benthic community in flowing portions of river, and impoverished fish community.<br><br>2-year modeling effort indicates low D.O. in the navigation channel cannot be resolved by reductions in loadings.<br><br>Completion of public opinion poll to assess attitudes, knowledge and priorities of cleanup.<br><br>RAP process was utilized to obtain a community supported water quality standard use designation for the navigation channel.<br><br>Will complete third year of fish tissue collection to assess safety for consumption. | Stage 1 Report reviewed and approved by IJC.<br><br>Update of Stage 1 Report to be compiled.<br><br>Initiate development of Stage 2 with emphasis on developing lists of remedial alternatives.<br><br>Work groups established to address wildlife habitat, education and pollution prevention, land use and institutional management, and recreation/ access issues for Stage 2.<br><br>Proposed standards rulemaking for Cuyahoga Ship Channel recognize "shipping interests" in the Cleveland area partially responsible for attaining the new standards. The RAP process will continue to play a key role as the responsibilities of the "shipping interests" are delineated in the proposed rule.<br><br>Begin activities/surveys to develop biocriteria for the harbor/nearshore area. | Continue studies and education projects for nonpoint source (NPS), stormwater, and combined sewer overflow sources; produce NPS video.<br><br>Assess benefits of remedial alternatives using a contingent evaluation.<br><br>Public hearing on Stage 2 and submittal to Ohio EPA in 1994.<br><br>Seek grants to support public education and awareness programs.<br><br>Seek funding to continue investigation of nearshore biological community status.<br><br>Seek funding to create challenge grants to fund priority research items.<br><br>Complete NEORSD Master Plan for CSO Control (93-94). |

| Area of Concern/Major Known Impairments | Background | Fiscal Year 1992 Activities in AOC | Fiscal Year 1993 Activities in AOC | Long-Term Agenda |
|---|---|---|---|---|
| LAKE ERIE<br>Cuyahoga River | Stakeholders agreed to the type of model of navigation channel. Ohio EPA started a 2-year study with support from stakeholders; estimated cost is $200 K.<br><br>Ohio EPA conducted intensive water quality surveys on Cuyahoga, including surveys of fish and benthic populations.<br><br>Stakeholders identified 2 bacterial sources in the Cuyahoga Falls-Akron area. The City of Cuyahoga Falls effected an $80 K repair to a section of sewer, and Akron effected a $70 K repair to its source.<br><br>NE Ohio Regional Sewer District and City of Akron started CSO studies to characterize contaminant loads<br><br>The USEPA issued public notice that it intended to promulgate water quality standards for the Cuyahoga channel if Ohio EPA does not do so. Stakeholders recommended waiting for the results of Ohio EPA's intensive 2-year quality survey. | Developing work plan for Stage 2 process. | | |

| Area of Concern/Major Known Impairments | Background | Fiscal Year 1992 Activities in AOC | Fiscal Year 1993 Activities in AOC | Long-Term Agenda |
|---|---|---|---|---|
| LAKE ERIE<br>Ashtabula River<br><br>The AOC includes the lower 2 miles of the river, the harbor, adjacent shore, and Fields Brook, a tributary. Sediments heavily polluted with metals and PCBs, fish consumption advisories for all species, fish with tumors, loss of habitat, degraded benthic communities; dredging has been delayed due to issues of siting a disposal facility for polluted sediments, and the cost and responsibility for dredging. | Fields Brook was designated a Superfund NPL site in 1981. A RI/FS was conducted between 1983 and 1986. A ROD was issued in 1986 which included the removal of contaminated sediments.<br><br>A RAP Advisory Council and subcommittees were formed in 1988.<br><br>In 1989, the Ohio EPA conducted a biological study of the river as part of a natural resource damage assessment.<br><br>USEPA issued Administrative Order for PRPs at Fields Brook Superfund site.<br><br>The City of Ashtabula levied a boat dock tax to obtain revenue to improve the river (est. $25 K per year).<br><br>The river has not been dredged since 1962. Increased sedimentation has impaired full recreational use/enjoyment of the popular boating area.<br><br>There are 20 NPDES dischargers to the Ashtabula AOC, 13 of which have had toxic substances in their discharge. Of these 13, 12 are now required to biomonitor their effluents. Due to the NPDES program, water quality has significantly improved. | Investigation on Fields Brook continues.<br><br>Stage 1 RAP approved by IJC.<br><br>ARCS conducted pilot-scale field demonstration of a thermal stripping process on contaminated sediments.<br><br>Survey findings under USEPA's ARCS program indicate high incidence of tumors in brown bullheads in river.<br><br>Superfund is currently investigating design of remediation for Fields Brook. Ecological assessment of floodplains begun.<br><br>Human health risk assessment of river by GLNPO-ARCS.<br><br>USEPA restrictions in place on COE open-lake disposal of harbor sediments (>1 ppm PCB).<br><br>COE begins planning CDF for harbor maintenance dredgings. | Corps of Engineers will conduct interim dredging of non-toxic sediments from the river to relieve navigation problems. Sediments will be deposited in rehabilitated CDF on adjacent Conrail property.<br><br>RAP Council to develop a Stage 2 program.<br><br>Further assessment of sediments in outer harbor to determine PCB concentrations and options for harbor maintenance until CDF is constructed.<br><br>RAP Council to place more emphasis on development of environmental education programs.<br><br>Improve communication coordination between Fields Brook and river cleanup programs.<br><br>ARCS program is conducting cost feasibility studies for potential application of thermal stripping technology process to remediate river sediments. | Human Health and ecological risk assessment of river (SF).<br><br>Further negotiations with PRPs for brook cleanup (SF) 1993 and beyond.<br><br>Remediation of Fields Brook NPL site; final cleanup projected to begin in 1994.<br><br>Dredging and disposal of toxic and heavily polluted river sediments or alternative options.<br><br>Siting and construction of CDF to contain heavily polluted sediments from outer harbor/commercial navigation channel by 1998.<br><br>Submit Stage 2 Report to IJC in 1994. |

| Area of Concern/Major Known Impairments | Background | Fiscal Year 1992 Activities in AOC | Fiscal Year 1993 Activities in AOC | Long-Term Agenda |
|---|---|---|---|---|
| LAKE ERIE<br>Ashtabula River | Ohio EPA found the biological community of the river is the most improved among all major Ohio tributaries to Lake Erie. Nearshore water has become clearer and contaminants have declined in fish. Since 1985, recreational boat dockage has increased from 175 to 1,300.<br><br>Results of PRPs intensive river study document TSCA regulated PCB contaminated sediments are buried deep and covered by less polluted sediments. Indicates no active sources of PCB.<br><br>Ohio EPA has committed $7 M towards removal and disposal of the contaminated Ashtabula River sediments contingent on matching federal funds.<br><br>Oxychem Corporation completed a project to collect and treat stormwater runoff and ground water prior to discharge to Fields Brook. Estimated cost was $3.5 M. Oxychem also contributed $7,500 to the RAP process.<br><br>Detrex Chemical Company constructed a system to collect and treat runoff from its property. | | | |

| Area of Concern/Major Known Impairments | Background | Fiscal Year 1992 Activities in AOC | Fiscal Year 1993 Activities in AOC | Long-Term Agenda |
|---|---|---|---|---|
| LAKE ERIE<br>Maumee River<br><br>AOC is the lower 22.8 miles of river and Maumee Bay. Water quality problem due to ammonia, metals, pesticides, arsenic, low dissolved oxygen, nitrates and bacteria; sediments moderately to heavily polluted with metals, PCBs, and PAHs; fish advisories for carp and catfish in Lake Erie; fish advisory for all species due to PCBs in lower 5.7 miles of Ottawa River which empties into north Maumee Bay; restrictions on swimming; Duck, Swan and Otter creeks have poor water quality, impaired fish and wildlife populations, habitat change and loss. | In 1984, Maumee began a 4-phase program to separate its combined sewers by 1996 at an estimated cost of $6 M. Toledo, which has 34 CSO points, began a 9-phase abatement program in 1985 to be completed in 1996 at an estimated cost of $48 M. Perrysburg plans to expand its treatment plant and abate CSOs.<br><br>The King Road Landfill (owned by Lucas County) and the Dura and Stickney landfills (owned by Toledo) are potential sources of pollution to the Ottawa River. The jurisdictions began remedial investigations.<br><br>In 1986, Ohio EPA contracted with Toledo Metropolitan Area Council of Governments to develop RAP process (ongoing).<br><br>In 1986, Dura and Stickney landfills were investigated.<br><br>In 1987, Toledo dredged lime sludge from Duck Creek (87/-88).<br><br>Upgrades of Toledo WWTP completed.<br><br>In 1989, NPS and CSO control measures were instituted; RI and actions at several dump sites and landfills in river basin. | Stage 1 was approved by IJC 03/92.<br><br>USEPA/OEPA/ODNR/SCS continued NPS project to educate local land users on pollution prevention methods.<br><br>Began joint development of long-term dredged materials management plan among ACOE, OEPA, City of Toledo, USEPA, Toledo Port Authority, ODNR, USFWS and SCS.<br><br>Dredging contracts (FY92) continued in accordance with the water quality certification.<br><br>$600 K awarded through USEPA's 319 program for agricultural equipment buy-down land use management.<br><br>$1.3 M in Congressional add-on was appropriated for a Maumee River and Bay basin-wide water quality assessment with focus on impacts from landfills.<br><br>Maumee RAP Advisory Council reorganized as the Implementation Committee.<br><br>Education/monitoring program development with local high schools.<br><br>RAP group proposes expansion of AOC to address more agricultural NPS. | Develop priorities for focus of Stage 2.<br><br>Analyze results of 1992 field investigations.<br><br>$1.2 M additional to Congressional add-on to continue investigation of landfills and Maumee AOC water quality.<br><br>Implement sediment screening of Ottawa River via coordinated effort with GLNPO.<br><br>Expand public education awareness projects. | Upgrade various municipal WWTPs at an estimated cost of $27 M.<br><br>Correct CSOs at an estimated investment of $420 M.<br><br>Abate agricultural and urban nonpoint source pollution in watershed.<br><br>Address contaminated sediment problems in Swan Creek, Ottawa River and Maumee River; preserve Maumee Bay from further filling; protect wetlands and restore lost wetlands.<br><br>River investigation to document impacts on environment and potential problems associated with landfill runoff.<br><br>Negotiate for solution to sediments dredged from Toledo Harbor.<br><br>Completion of Stage 2 RAP by June 1994. |

| Area of Concern/Major Known Impairments | Background | Fiscal Year 1992 Activities in AOC | Fiscal Year 1993 Activities in AOC | Long-Term Agenda |
|---|---|---|---|---|
| LAKE ERIE<br>Maumee River | Libbey Owens Ford (LOF) installed collection system to capture leachate from its plant #6 and has eliminated previous discharge of arsenic to the Maumee River.<br><br>LOF diverted Otter Creek so it does not flow under a contaminated lagoon at its plants, 4 and #8, and is de-watering this lagoon.<br><br>The Village of Whitehouse was connected to the Lucas County sewage system in order to provide improved treatment. Cost was $1.4 M.<br><br>In 1990, Ohio EPA continued RAP development activities. Stage 1 RAP was drafted. The Maumee River RAP Advisory Committee (RAPAC) has 9 subcommittees.<br><br>Swan Creek cleanup drew 779 volunteers who removed 164 tons of trash along the creek.<br><br>1990-1991<br><br>USEPA/Ohio EPA/ODNR/SCS nonpoint source project educated local land users on how to prevent pollution.<br><br>Perrysburg completed a 5-year upgrade to its WWTP, doubling its treatment capacity. | | | |

| Area of Concern/Major Known Impairments | Background | Fiscal Year 1992 Activities in AOC | Fiscal Year 1993 Activities in AOC | Long-Term Agenda |
|---|---|---|---|---|
| LAKE ERIE<br>Maumee River | Toledo continued construction of two downtown tunnels to store stormwater at a cost of $12.5 M (phases 1 and 2 of CSO plan). Smaller tunnels are also being built along Swan Creek in phases 3 and 4. | | | |

The table in Appendix N provides a basic history of each AOC and progress through 1993. The following narrative updates the table and focuses on the some of the primary initiatives currently underway in each AOC.

**Black River**

The Black River RAP has expanded to include the entire basin and has recognized that nonpoint sources have the greatest impact on the watershed. The Black River RAP group is currently organizing a major initiative to address restoration of the Black River Riparian Corridor as a priority activity to improve the river quality. Organizational efforts and outreach to develop a proposal and seek grant funding is underway. Several habitat restoration projects have been implemented, mainly focusing on stabilizing streambanks with willow postings.

Both Elyria and Lorain continue to address problems with combined and separate sewer overflows. The Clean Water Section 319 program funded a low-cost loan equipment buydown to encourage farmers to adopt conservation tillage practices. Follow-up monitoring after the removal of PAH contaminated sediments near the USS/KOBE Steel outfall indicated an initial rise in tumor incidence in brown bullhead. Recent monitoring indicates the incidence is progressively decreasing. An agricultural wetland-habitat restoration project is underway in the upper watershed.

**Cuyahoga River**

Through the efforts of the many stakeholders in the Cuyahoga RAP, considerable resources, technical support, and volunteer participation have been amassed for RAP development and implementation. Some recent highlights are presented as follows:

> Several habitat restoration projects have been implemented and several more are planned. An ad hoc group of health officials and wastewater treatment managers developed a brochure to advise beach-goers of potential health risks from elevated bacteria levels. The Northeast Ohio Regional Sewer District and the City of Akron have completed studies of their CSOs and are reviewing Master Plans. The Cuyahoga County Board of Heath created an annual fee to be collected from homeowners with septic systems. This fee is used to support an aggressive inspection and management process for these systems. The RAP also sponsored a workshop on stormwater controls that promoted a model ordinance for stormwater control and sediment erosion, conducted an intensive analysis of contaminants in fish tissue that for the first time provided enough information to justify the issuance of a fish advisory for the lower Cuyahoga River, and conducted numerous public outreach events.

**Ashtabula River**

The Ashtabula River Partnership (ARP) has been established to address the main RAP issue of dredging the river to remove all contaminated sediments and restore beneficial uses. Additional sediment sampling has been conducted to better determine exactly what areas of the river need to be dredged and how deep to go. This effort has significantly elevated the level of local interest in the river restoration and brought together federal, state and local groups as equal partners. Extensive outreach and awareness efforts are underway to keep the public informed during every stage of the

process. Several upland sites have been identified as potential disposal sites for the dredged sediment, and environmental assessments are underway. An interim dredging project to remove non- to lightly-contaminated sediments to maintain recreational navigation was conducted in 1993. The RAP is exploring other options for river restoration beyond the removal of contaminated sediments, and continues an active public outreach effort.

**Maumee River**

The Maumee River is in the middle of a four-year multi-million-dollar effort to further investigate contamination at the numerous abandoned hazardous waste disposal sites in the AOC and their potential impact on the environmental quality of the river. Additional sediment sampling is being conducted under a supplemental effort for the mainstem Maumee River and Maumee Bay. Several landfills along the Ottawa River are in the midst of cleanup efforts. CSOs on Swan Creek have been eliminated, and additional CSO control programs are underway. Funds from the Clean Water Act 319 program supported a highly successful effort in the AOC to encourage farmers to adopt conservation tillage practices. A workshop was held to assist local officials in dealing with urban runoff issues. A number of public outreach efforts were implemented. A student monitoring program involves more than 300 students in monitoring of local streams and an annual student congress. A habitat restoration project was completed early in 1996.

# APPENDIX O

## PROGRAM MODIFICATIONS

To address changes in coastal resources concerns or public needs during OCMP implementation, procedures are needed to modify the initially adopted program. The procedures described below for program amendments and refinements will provide for such modifications and also meet Office of Ocean and Coastal Resource Management (OCRM) regulations pursuant to Section 306(e) of the Coastal Zone Management Act. 15 C.F.R. Part 923, Subpart I.

Substantive or "major" changes in policies or authorities related to the following aspects of the program will be amendments to the OCMP:

- Boundaries,
- Uses subject to management
- Criteria or procedures for designating Special Management Areas, and
- Policies or procedures for considering the national interest in planning or siting of facilities.

ODNR may propose amendments (including those suggested by any local or state agency or citizen participating in the program) to OCRM for approval subsequent to review by state and local agencies and the general public review, including hearings. The Director of ODNR is responsible for submitting program amendments to the Office of Ocean and Coastal Resource Management for federal approval. Depending upon the scope of the proposed amendment, OCRM may require an Environmental Impact Statement or may solicit comments from federal agencies and the public through the Federal Register.

When approved amendments change the requirements regarding data and other information necessary to assess the consistency of private activities requiring federal licenses or permits, the Ohio Department of Natural Resources shall send a copy of the amendment(s) to each relevant federal agency, pursuant to 15 C.F.R. § 930.56.

Changes in the OCMP other than those described above ("minor" changes) will be considered routine program implementation (RPI). An RPI is defined as "further detailing of a state's program that is the result of implementing provisions approved as part of a state's approved management program, that does not result in the type of action" that would define it as an amendment (15 C.F.R. § 923.84). ODNR may adopt RPI's subsequent to review by state and local agencies and the public. ODNR will notify OCRM and all affected parties of proposed and adopted program refinements.

State law requires that amendments to the OCMP document be preceded by a prescribed public notification process that may include public hearings (O.R.C. § 1506.02(A)). Rule changes likewise are guided by statute, requiring public notification, consultation, and hearings as required by O.R.C. Chapter 119 (O.R.C. § 1506.02(A)(3)).

## APPENDIX P

## COASTAL PROPERTY OWNED, LEASED OR MANAGED BY THE U.S. GOVERNMENT

| Agency | Property | Location | Acreage (if known) | Map Key App. B |
|---|---|---|---|---|
| U.S. Air Force | National Guard Facility (leased from State of Ohio) | Camp Perry, Port Clinton | 40 | FEL-1 |
| U.S. Army Corps of Engineers | Projects Office | Toledo | 2.4 | |
| | Breakwater Maintenance Access | Port Clinton | | |
| | Breakwater | Huron | | |
| | Breakwater Maintenance Access | Cleveland | | |
| | Piers | Rocky River | | |
| | Breakwater Maintenance Access | Lorain | | |
| | Breakwaters and Piers | Fairport | | |
| | Breakwaters and Piers | Ashtabula | | |
| | Breakwaters and Piers | Conneaut | | |
| | East Ninth Street (warehouses, mooring slip, pier, wharf, dock) | Cleveland | 20.4 | FEL-2 |
| | Disposal Site #14 | Cleveland | 88 | FEL-3 |
| | Disposal Site | Lorain | 58 | FEL-4 |
| | Disposal Site | Huron | 63 | FEL-5 |
| | Disposal Site (Island 18) | Toledo | 150 | FEL-6 |
| | Disposal Site (Facility 3) | Toledo | 242 | FEL-7 |

| Agency | Property | Location | Acreage (if known) | Map Key App. B |
|---|---|---|---|---|
| U.S. Coast Guard | Ashtabula CG Station | Ashtabula | .3 | |
| | Ashtabula Harbor Light | Ashtabula | Offshore | |
| | Ashtabula LS Switch House | Ashtabula | 1.6 | |
| | Ballast Island Light | Put-in-Bay | .1 | |
| | Cleveland Flag Quarters | Lakewood | .4 | |
| | Cleveland West Pierhead Light | Cleveland | Offshore | |
| | Cleveland CG District Office/Dwellings | Cleveland | .3 | |
| | Cleveland Sta. and MSO Office | Cleveland | 1.3 | |
| | Fairport CG Station | Fairport | 4.8 | |
| | Fairport Lifeboat Station | Fairport Harbor | .2 | |
| | Green Island Light | (Off Put-In-Bay) | 1.3 | |
| | Huron Harbor Light | Huron | Offshore | |
| | Huron Island Station | Huron | .8 | |
| | Lorain Coast Guard Station | Lorain | 1.0 | |
| | Lorain Dwelling | Lorain | .3 | |
| | Manhattan Front Range Light | Maumee Bay, Lake Erie | .9 | |
| | Manhattan Rear Range Light | North Toledo | .2 | |
| | Marblehead CG Station | Marblehead | 1.9 | |
| | Marblehead Housing | Port Clinton | 1.8 | |

| Agency | Property | Location | Acreage (if known) | Map Key App. B |
|---|---|---|---|---|
| | Marblehead Light Station | Marblehead | .2 | |
| | Marblehead Lifeboat Station | Marblehead | 1.1 | |
| | Sandusky Bay Light Station (Range Lights) | Sandusky | 11.9 | |
| | Sandusky Inner Range Lights | Sandusky | 11.9 | |
| | South Bass Island Light | Put-in-Bay | .4 | |
| | Toledo Coast Guard Station | Toledo | .9 | |
| | Toledo Harbor Light Station | Toledo | 1.6 | |
| | West Sister Island Light | | 3.0 | |
| | Light (under license from Norfolk and Western RR) | Huron | | |
| | Antenna Tower (under license from Chemstone Corp.) | Marblehead | | |
| | Light (under license from Vermilion Yacht Club) | Vermilion | | |
| USFWS | Ottawa National Wildlife Refuge | Lucas and Ottawa Counties | 8,316 | FEL-8 |
| | • Ottawa Unit | | 4,683 | |
| | • Darby Marsh Unit | | 520 | |
| | • Navarre Marsh Unit (owned by Cleveland Electric Illuminating and Toledo Edison, managed by U.S. FWS) | | 591 | |
| | • Cedar Point NWR | | 2,445 | |

| Agency | Property | Location | Acreage (if known) | Map Key App. B |
|---|---|---|---|---|
| | • West Sister Island Unit | | 77 | |
| NASA | Rye Beach Pumping Station | Rye Beach | 1.35 | |
| NPS | International Peace Memorial | Put-in-Bay, South Bass Island | 25 | |

# APPENDIX Q

## REGIONAL AND NATIONAL CONSIDERATION

### Land and Water Uses of Regional Benefit

Subsection 306(e)(2) of the Coastal Zone Management Act requires a finding by the Secretary of Commerce that the OCMP provides for a method of assuring that local land and water use regulations within the coastal area do not unreasonably restrict or exclude land and water uses of regional benefit. In accordance with requirements of 15 C.F.R. § 930.12, the Ohio Coastal Management Program:

1. Identifies what constitute uses of regional benefit; and

2. Identifies methods to assure that local land and water use regulations do not unreasonably restrict or exclude land and water uses of regional benefit.

Uses of regional benefit are those land or water uses that serve or affect more than a single unit of local government. Potential uses of regional benefit were identified by OCMP guidelines, Section 208 water quality management studies, federal agencies, and coastal regional planning and development organization studies. The following criteria were used to determine which of the potential uses would be subject to the regional benefit requirements:

1. Does the use affect or serve people in more than one unit of government?

2. Does this use provide a recognized regional or national need or value?

3. Does the use have a direct and significant impact on the land or waters in Ohio's identified coastal area?

A use must satisfy all three criteria to be considered a use of regional benefit.

By definition, the designated uses of regional benefit are essential or of importance to all Ohioans. Their siting, location and associated impacts sometimes result in conflicts between use or project proponents and local and state governments.

To assure adequate governmental consideration of regional uses, ODNR coordinates a review of proposed projects included as uses of regional benefit with coastal area planning and development agencies. The review process helps assure governmental consideration of regional uses in planning.

Uses of regional benefit identified in the OCMP also represent uses of statewide concern. Each use is administered by a state agency under existing statutory authority. The existence of these statutory authorities at the state level can preclude the unreasonable restriction or exclusion of the use of regional benefit by local regulation. This does not mean, however, that local concerns are not sought and addressed. Each state agency administers a review process or other mechanism to assure consideration of all interests in the exercise of its authorities related to the regional use.

Energy Production, Generation and Transmission – Siting of electrical generating and transmission facilities is regulated by the Ohio Power Siting Board (O.R.C. Chapter 4906). Although its detailed review process provides for substantial local input, siting decisions ultimately rest with the board. A certificate issued pursuant to O.R.C. Chapter 4906 preempts any approval, consent, permit, certificate or other condition by other political subdivisions of the state. Board analyses of demand for electricity require consideration of regional, state and national benefits.

ODNR's Division of Geological Survey has authority to issue permits and leases for oil and gas production from the bed of Lake Erie (O.R.C. § 1505.07). The Division of Oil and Gas regulates offshore oil and gas drilling operations (O.R.C. § 1509.05-06). The Department of Development, Division of Energy formulates state energy policy that considers needs of more than local concern (O.R.C. Chapter 1551).

Recreation – ODNR is charged with providing outdoor recreation facilities for all Ohioans. State park development and public recreation projects using federal Land and Water Conservation Fund money are guided by Ohio's Statewide Comprehensive Outdoor Recreation Plan. The siting of state facilities is coordinated with local governments, but is not subject to local regulations. Purchase of recreation land is accomplished by negotiation and agreement with landowners; if these efforts fail, ODNR may exercise its power of eminent domain. The Ohio Parks and Recreation Council and the Recreation and Resources Commission review and advise ODNR on park acquisition and management policies (O.R.C. Chapters 1541, 1547, 1571).

Transportation – The Ohio Department of Transportation (ODOT) is responsible for the development of a balanced system of transportation throughout Ohio (O.R.C. Chapter 5501). The Division of Highways is responsible for planning, constructing, and maintaining state and federal roads. Although planning of state and federal roads is accompanied by substantial local coordination and review, final siting decisions are under the authority of ODOT. ODOT also may exercise its power of eminent domain when necessary to acquire lands for highway purposes (O.R.C. Chapter 163 and O.R.C. § 5511.01).

Unique Historic and Cultural Areas – Designated historic and archaeological sites in Ohio are studied and protected by the legislatively created Ohio Historical Society. Sites on the State Registry of Historic Landmarks or the State Registry of Archaeological Landmarks cannot be demolished or altered by any person or governmental agency without notifying the Director of OHS and allowing a survey of the property. Sites can also be protected by the power of eminent domain of the Ohio General Assembly through the request of OHS. The Ohio Historic Site Preservation Board guides OHS efforts, which may include the purchase, lease and excavation of significant sites (O.R.C. Chapter 149).

Unique Environmental Areas – The Division of Natural Areas and Preserves is authorized to establish state nature preserves to protect Ohio's unique natural areas, rare plants and animals, and valuable scenic resources. These preservation efforts are guided by the Natural Areas Council. The Division of Wildlife manages and acquires lands to protect wildlife habitat. The Wildlife Council advises the Division in these efforts (O.R.C. Chapter 1571).

Wastewater Treatment and Public Water Supply – The Ohio Environmental Protection Agency administers several programs to ensure that regional wastewater and public water supply facilities are not arbitrarily excluded. These programs include effluent discharge permits for public and private dischargers, stream use designations and water quality standards, and Section 208 water quality management planning. Planning, design and construction of wastewater treatment facilities in Ohio, under Section 201 of the Clean Water Act, satisfies regional treatment needs. Federal funds are matched with state and local money for treatment facilities construction (O.R.C. Chapters 3701, 6111).

The Ohio Water Development Authority (OWDA) also finances construction of wastewater facilities and water management facilities cooperatively with public and private interests. OWDA's eight-member board is empowered to make loans or grants to governmental agencies, construct water development projects, issue water development revenue bonds, and acquire public or private lands through negotiated purchase or condemnation (O.R.C. Chapter 6121).

Responsibility for statewide water supply planning rests in the Ohio Department of Natural Resources (O.R.C. § 1521.03). A long-term Lake Erie Basin water resources plan is to be developed by the Division of Water by 1994 (O.R.C. § 1521.15).

Solid Waste Disposal – The Ohio EPA Division of Solid and Hazardous Waste Management administers Ohio's solid waste law, which, among other provisions, requires the formation of single or multi-county solid waste districts to help assure a more comprehensive approach to solid waste management, including the siting and management of landfills, recycling facilities and incinerators (O.R.C. Chapter 3734).

Hazardous Waste Regulation and Disposal – The Ohio EPA, Division of Solid and Hazardous Waste administers the state's hazardous waste law. In 1989, Ohio received federal approval to manage the Resource Conservation and Recovery Act. Siting of hazardous waste treatment, storage and disposal facilities is regulated by the Hazardous Waste Facility Board, which is the permitting body for hazardous waste facilities (O.R.C. § 3734.05).

Air Quality – The Ohio EPA Division of Air Pollution Control administers the state's air pollution laws, implements the federal Clean Air Act in Ohio, and regulates existing and new sources of air pollution (O.R.C. Chapter 3745). The Ohio Air Quality Development Authority provides reduced-cost financing of air pollution control facilities (O.R.C. Chapter 5703).

The following is a list of uses of regional benefit and the agencies responsible for assuring that they are not excluded or unreasonably restricted within Ohio's coastal area.

USES OF REGIONAL BENEFIT

| Categories | Agencies Preventing Arbitrary Exclusion |
|---|---|
| Energy Production | Power Siting Board,<br>Department of Natural Resources |
| Recreation | Department of Natural Resources |
| Transportation | Department of Transportation |
| Unique Historic and Cultural Areas | Ohio Historical Society |
| Unique Environmental Areas | Department of Natural Resources |
| Wastewater Treatment and Public Water Supply | Water Development Authority,<br>Environmental Protection Agency,<br>Department of Natural Resources |
| Solid Waste Management | Environmental Protection Agency |
| Hazardous Waste Management | Environmental Protection Agency,<br>Hazardous Waste Facility Board |
| Air Quality Management | Environmental Protection Agency,<br>Air Quality Development Authority |

**Coordination with Federal Agencies**

During Program Development

Many federal and state agencies have cooperated in the past to manage resources and construct facilities in Ohio's coastal area. Direct contact with federal agencies provided information on the national interest and federally owned or managed lands in Ohio's coastal area. Ongoing cooperation will strengthen such arrangements during implementation of the OCMP.

The OCMP has incorporated federal agency concerns into this document to the extent that they do not conflict with state and local concerns.

During Program Implementation

Coordination of federal agency activities in the coastal area during program implementation will be provided through the following existing mechanisms as well as direct contact among local, state and federal agencies as appropriate:

Joint State-Federal Programs – Currently, many state agencies administer programs encouraged or mandated by the federal government, often with accompanying financial assistance. Generally, such state-administered programs are reviewed and approved by the sponsoring federal agency. These programs provide for substantial coordination as well as for meeting the goals of both state and federal agencies. Some of these programs serve as important means of OCMP implementation.

Review of Environmental Impact Statements – The National Environmental Policy Act of 1969 requires development of an Environmental Impact Statement (EIS) for any "major federal action significantly affecting the quality of the human environment." EIS's describing coastal impacts will be closely reviewed to determine if program objectives and policies have been adequately considered.

Intergovernmental Review – This process was established by the Intergovernmental Cooperation Act of 1968, Demonstration Cities and Metropolitan Development Act of 1966, and the National Environmental Policy Act of 1969 [Section 102(2)(C)]. Procedures have been established by the State of Ohio, Office of Budget and Management, State Clearinghouse, consistent with Presidential Executive Order 12372 of July 14, 1982. This OMB executive order revoked former Circular A-95, and each federal agency has promulgated rules consistent with new federal Office of Management and Budget Guidelines.

The "single point of contact" for transmitting the results of intergovernmental reviews is the State Clearinghouse. The process is designed to include state and local governments' elected officials in the review of federal and federally assisted programs and projects. Basically, applicants for federal assistance and agencies sponsoring federal development projects must notify the State Clearinghouse and areawide clearinghouses of their intent to apply for federal assistance. The Toledo Metropolitan Area Council of Governments (TMACOG), and the Northeast Ohio Areawide Coordinating Agency (NOACA) serve as areawide clearinghouses in the coastal area.

## Consideration of the National Interest

Many facilities and resources in which there is a national interest are found in Ohio's coastal area. Section 306 of the Coastal Zone Management Act requires consideration of the national interest, defined as the planning for and siting of facilities, activities, or resources that are necessary to meet other than local needs. Coordination with federal agencies has helped assure the incorporation of adequate consideration of the national interest in the OCMP. Sources of information used during both program development and implementation include:

- Federal laws and regulations;

- Policy statements and executive orders from the President of the United States;
- Reports and studies from federal and state agencies and commissions; and
- Statements of national interest issued by federal agencies.

Input from these sources led to the development of a list of facilities and resources in which there is a current or potential national interest in Ohio's coastal area.

National interests in the listed facilities and resources may conflict with each other. Because the OCMP does not create a site-specific land use plan, it is impossible to prevent all such potential conflicts. The OCMP policies listed, and the authorities upon which they are based, regulate impacts of many land-use activities and thereby prevent potential conflicts. These policies also use or establish review procedures within which the national interest is considered.

ODNR, as designated lead agency for the OCMP, will help assure adequate consideration of the national interest through its coordinating role and through its role in monitoring policy implementation.

The points at which the national interest are considered are briefly described below and are more specifically described in the policies.

Energy

Ohio's coastal area provides many sites for electric generating and transmission facilities due to availability of large quantities of cooling water, proximity to coal reserves and presence of a large market. The electricity generated serves a large regional area. Transshipment and processing of basic energy resources, mainly coal and oil, is an important activity in Lake Erie ports. Existing statutory authority and OCMP policies ensure that adequate consideration of the national interest in these energy facilities will occur.

Specifically, Ohio's Power Siting Board regulates siting of electric generating facilities. The Board's review procedures prior to licensing, including public hearings and local, state and federal review, provide extensive opportunities for consideration of the national interest.

Exploration and recovery of offshore oil and gas is regulated by ODNR; prior approval of these activities is required by ODNR, Ohio EPA, the Attorney General and the Governor. Formulation of state energy policy, consideration of bills in the legislature, and processing of drilling permits and mineral extraction permits are points at which the national interest in these resources is considered.

In most cases, transshipment, storage and processing of energy resources is not regulated at the state level except when impacts on air and water quality occur. The OCMP recognizes the importance of these activities and encourages planning for them in port and electric generating sites. The State of Ohio has a legislative mandate to protect air and water quality. Through adherence to adopted air and

water quality standards, the mandated protection of air and water will take precedence over the siting of transshipment facilities, and the storage and processing of energy resources.

To determine the national interest in activities related to energy production and transmission, the following were consulted: National Energy Plan, Federal Energy Policy and Conservation Act, U.S. Department of Energy, U.S. Geological Survey, Federal Power Act, Natural Gas Act, East Central Area Reliability Commission.

Historic and Archaeological Sites

The coastal area is rich in history. The programs and regulations of the Ohio Historical Society preserve and interpret this record, which is of value to all Americans (O.R.C. Chapter 149). OHS assists in implementing the National Historic Preservation Act of 1974. Specifically, its Historic Site Preservation Advisory Board receives nominations for historic and archaeological sites, solicits local comments and may recommend national designation to the Department of the Interior. The Department publishes proposed designations in the Federal Register, soliciting comments from agencies and citizens. After 30 days, they may add the site to the National Register of Historic Places. The OCMP supports preservation and restoration of historic and archaeological sites in the coastal area by local and state agencies through their designation as Areas of Particular Concern.

To determine the national interest in historic and archaeological sites, sources consulted include: The Antiquities Act of 1906, Historic Site Act of 1935, National Historic Preservation Act of 1966, Archaeological and Historic Preservation Act of 1974, National Historic Preservation Act of 1974, National Environmental Policy Act of 1969, and Executive Order 11593.

Hazard Areas

Erosion and flooding in the coastal area are serious problems, leading to loss of life and property. Average annual dollar losses reach far into the millions. Sediments degrade water quality in Lake Erie as well as the other Great Lakes. Management of these hazards is therefore in the national interest and requires the use of several means to effectively accomplish this management.

The OCMP will encourage property owners to establish Conservancy Districts and other special purpose districts to develop joint projects to control erosion. Judicial hearings prior to district establishment may consider the national interest in the proposed district. ODNR will continue to provide financial assistance where possible to local governments and citizens for erosion control.

All flood and erosion hazard areas are designated as Special Management Areas. Coordination of programs will continue with the Flood Insurance Administration and the U.S. Army Corps of Engineers, both in proposed Corps projects and in Section 10 and Section 404 permit reviews.

To determine the national interest in such hazard areas, the following sources were consulted: Flood Disaster Protection Act, National Flood Insurance Act of 1968, Water Resources Development Planning Act of 1974, and Executive Order 11988 on Flood Plain Management.

Wetlands

The extensive but diminishing wetlands in Ohio along Lake Erie provide important habitat for many kinds of animals and plants, support migratory waterfowl populations, and help protect lake water quality. Protection of remaining wetlands, therefore, is in the national interest. ODNR will review implementation of Section 404 of the federal Clean Water Act, which regulates the filling of wetlands, and the Presidential Executive Order 11990, which directs federal agency activities to avoid impacts on wetlands. Ohio EPA issues or denies Section 401 Water Quality Certification for projects involving disposal of dredged material or placement of fill material into waters of the state, including wetlands. ODNR staff will work with the Corps of Engineers to adopt comprehensive but streamlined permit review criteria. Adoption of these criteria (with public review) and hearings held on permit applications are points at which the national interest in wetlands is considered. ODNR staff will assist local governments in preserving environmentally sensitive areas of all kinds, including wetlands.

To determine the national interest in wetlands, the following sources were consulted: Fish and Wildlife Service, U.S. Army Corps of Engineers, Fish and Wildlife Coordination Act, Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act of 1899, Executive Order No. 11990 (protection of wetlands), Executive Order No. 11988 (floodplain management), Fishery Conservation and Management Act of 1976, Food Security Act of 1985, Water Resources Development Act of 1986, North American Wetlands Conservation Act of 1989 and the National Wetlands Priority Conservation Plan.

Transportation

The Ohio Department of Transportation works with local governments and federal agencies to develop a safe, efficient, multi-modal transportation system to meet local, regional and national needs. For many projects, hearings are held at various preconstruction phases to assure that plans meet citizen needs and that environmental and social impacts are addressed. Such projects are subject to federal Department of Transportation approval and also the intergovernmental review process. The OCMP will encourage consideration of coastal concerns and resource protection in transportation planning.

Lake Erie's ports are a major link in the region's freight and cargo transportation network. State law authorizes creation of port authorities to plan and develop port facilities. The ports are also designated as Special Management Areas. Review procedures for the various permits required for typical port projects (Section 10 and Section 404) are the major points at which national interest in ports is considered.

To determine the national interest in transportation, the following sources were consulted: Railway Safety Act of 1970, Environmental Impact Statements on the extended commercial navigation season and state participation on the Winter Navigation Board, Activities and development projects conducted by the Department of Commerce's Maritime Administration, Department of Transportation Act, Coast Guard, Primary Duties, technical studies sponsored by the U.S. Army Corps of Engineers, and the National Transportation Plan.

Recreation

Lake Erie provides extensive recreational opportunities for residents of Ohio and surrounding states. ODNR has established many recreation facilities along the shoreline and plans to expand them to meet the increasing demand for recreation areas. Every five years, ODNR develops and implements a Statewide Comprehensive Outdoor Recreation Plan (SCORP). The SCORP must be approved by the U.S. Department of the Interior's National Park Service (NPS) to receive continued funding from the Land and Water Conservation Fund. SCORPs are submitted to other federal agencies for review prior to NPS approval (principally the Fish and Wildlife Service, Bureau of Land Management, and the Forest Service). The proposed SCORP also undergoes State Clearinghouse review. Projects using LWCF money must have NPS approval and also undergo State Clearinghouse review. These procedures identify principal points at which the national interest in recreation is considered.

All state and local parks in the coastal area are designated as Special Management Areas. Also, the ODNR Division of Real Estate and Land Management administers the local community grants for the Lake Erie Access Program and encourages recreational use of urban rivers and lakefronts through other means as well.

To determine the national interest in recreation, the following sources were consulted: Statewide Comprehensive Outdoor Recreation Plan, National Park Service, Fish and Wildlife Service, Historic Preservation Act, Land and Water Conservation Fund Act, and the President's Commission on Americans Outdoors.

National Defense

Ohio cannot prevent siting of facilities related to national defense in the coastal area. The program recognizes the importance of such facilities to Ohio and the nation. Also, federally controlled lands are exempt from the authority of state programs. Through coordination with federal agencies, especially the Department of Defense, OCMP will ensure that any proposed facilities are developed with minimal environmental impact and that those with proposed locations on the immediate shoreline do, in fact, require lake frontage.

To determine the national interest in defense, the Department of Defense , and the Army, Navy, Air Force, U.S. Coast Guard, and the U.S. Army Corps of Engineers were consulted.

Air and Water Quality

Sources of pollution generated in one location may damage air and water many miles away. These resources that are vital to all Americans, and their management is therefore in the national interest. By incorporating Ohio EPA's federally approved air and water quality standards, criteria, rules, and regulations into the OCMP as well as its planning processes, the OCMP will actively work to protect coastal air and water resources. Review of Ohio EPA proposed programs, regulations, and projects by U.S. EPA and other federal agencies is the principal point for consideration of the national interest. These activities also undergo State Clearinghouse review. Additionally, hearings are conducted prior

to adoption of new air and water quality regulations. The Environmental Board of Review considers appeals from citizens and agencies when their concerns are felt to have been inadequately or improperly addressed by Ohio EPA.

To determine the national interest in air and water quality, the following sources were consulted: Federal Water Pollution Control Act, Federal Clean Air Act and U.S. Environmental Protection Agency.

Endangered Species

A variety of rare or endangered plant and animal species is found in the coastal area. Several state and federal laws have been enacted to protect such species. ODNR's Division of Natural Areas and Preserves maintains the Natural Heritage Database. Resource planners may refer to this database information to determine whether a proposed project might impact rare species. All species native to Ohio that are listed on the federal list of endangered and threatened wildlife and plants, pursuant to the Endangered Species Act of 1973, as amended, are included on the state lists of endangered species of native plants and wild animals.

To determine the national interest in endangered species, the Endangered Species Act of 1973 and the U.S. Department of the Interior were consulted. As a result of ongoing coordination with the U.S. Department of the Interior, Fish and Wildlife Service, and in response to that Department's comments on the DEIS, ODNR and U.S.F.W.S. have entered into a Memorandum of Understanding (MOU). That MOU, signed by the Director of ODNR and the U.S.F.W.S. Reynoldsburg Field Office Supervisor, is included at the end of this appendix.

## FEDERAL AGENCIES CONSULTED DURING PROGRAM DEVELOPMENT

- Department of Agriculture
  - Agricultural Stabilization and Conservation Service
  - Farmers Home Administration
  - Forest Service
  - Soil Conservation Service
- Department of Commerce
  - Economic Development Administration
  - National Marine Fisheries Service
  - Office of Ocean and Coastal Resource Management
- Department of Defense
  - Department of the Air Force, Central Region
  - Department of the Army
  - Department of the Army, Corps of Engineers, Buffalo District
  - Department of the Navy
- Department of Energy
- Department of Health and Human Services
- Department of Housing and Urban Development
- Department of the Interior
  - Bureau of Land Management
  - Fish and Wildlife Service
  - Geological Survey
  - National Park Service
  - Office of Surface Mining
- Department of Justice
- Department of Transportation
  - Coast Guard
  - Federal Railroad Administration
  - Maritime Administration
- Environmental Protection Agency
- Federal Aviation Administration
- Federal Emergency Management Agency
- Federal Energy Regulatory Commission
- Federal Highway Administration
- Federal Maritime Commission
- General Services Administration
- Interstate Commerce Commission
- National Aeronautics and Space Administration
- Nuclear Regulatory Commission

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE OHIO DEPARTMENT OF NATURAL RESOURCES
AND
THE U.S. FISH AND WILDLIFE SERVICE

This Memorandum of Understanding (MOU) is made and entered into on this 28th day of February, 1997, by and between the Ohio Department of Natural Resources (ODNR), and the U.S. Fish and Wildlife Service (FWS).

## PURPOSE

This MOU establishes project/program review responsibilities related to Federally listed threatened and endangered species that pertain to Ohio's Coastal Management Program. The general responsibilities and species-oriented roles of ODNR and the FWS are described below. The roles and responsibilities identified in this MOU represent necessary coordination of project/activity reviews under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1533), and the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.). The roles and responsibilities identified in this MOU also represent integral coordination for consistency determinations on projects and activities subject to consistency requirements of the Coastal Zone Management Act (CZMA; 16 USC 1456) with implementing Federal regulations (30 CFR 930) and the Ohio Coastal Management Law (O.R.C. Section 1506.03) as further defined in the Ohio Coastal Management Program Document.

## PERTINENT GENERAL RESPONSIBILITIES

The FWS is a primary Federal agency responsible for administration of the Endangered Species Act (ESA). The Reynoldsburg, Ohio, FWS Field Office implements the ESA for Federally listed threatened and endangered species in Ohio. The National Oceanic and Atmospheric Administration (NOAA) administers the Coastal Zone Management Act (CZMA) and, under the ESA, retains certain responsibilities for the conservation of Federally listed species which include ensuring ESA compliance of section 306A low cost construction projects, authorized by 16 U.S.C. 1455a.

The ODNR is the primary State agency in Ohio responsible for both State and Federally listed species. The ODNR contains three divisions involved in project/activity reviews that evaluate the impacts of projects/activities on State and Federally listed species. These are the Divisions of Wildlife (ODNR-DOW), Natural Areas and Preserves (ODNR-DNAP) and Real Estate and Land Management (ODNR-REALM). The ODNR-DOW is responsible for enforcing the laws of the state for the protection, preservation, propagation, and management of wild animals including restricting the take or possession of species that are Federally listed under the ESA. The ODNR-DNAP is responsible for managing and regulating take of plant species that are Federally listed under the ESA. Within ODNR-DNAP, the Data Services Section maintains the Natural Heritage database containing

records with specific plant and animal species locations and other pertinent data. Lead implementation of Ohio's Coastal Management Program is performed by ODNR-REALM.

## ROLES IN SPECIES REVIEW

Projects and activities that are reviewed by ODNR for consistency with the policies of the Ohio Coastal Management Program shall undergo review for impacts to State and Federally listed species. As mutually agreed upon between FWS and ODNR, applicants shall be instructed by ODNR-REALM, or by any other state agency networked in the Ohio Coastal Management Program, to contact the FWS, the ODNR-DOW Environmental Section, and the ODNR-DNAP Data Services Section for lists of State and Federally listed species that may be affected by the applicant's action. The State shall also ask the applicant to provide any other available information regarding State and Federally listed species on or near a proposed project site or otherwise affected by a proposed activity.

### A. Projects Subject to Federal Consistency

Potential impacts to State and Federally listed species shall be assessed by the applicant and such assessment shall be reviewed for accuracy and concurrence by ODNR. If an adverse impact may occur to Federally listed species as the result of a Federal project or a project receiving Federal funding or a Federal license or permit, ODNR-REALM will contact the FWS to advise them of the need to initiate ESA Section 7 consultation with the Federal agency undertaking, funding or permitting the project or activity. The ODNR will also use any other available information to evaluate potential impacts of the project/activity on Federally listed species.

If a Federal agency, or a permit applicant or a Federal funds applicant seeking consistency approval has not adequately protected Federally listed species, ODNR will, to the extent permitted by law, determine that the applicant's project or activity is not consistent with coastal management policies. In this event, ODNR will clearly identify the rule, regulation or policy that the action does not meet and will describe alternative measures (if they exist) which would permit the proposed project/activity to be conducted in a manner consistent with coastal management policies and in compliance with the ESA.

### B. Projects Subject to State Consistency

It is hereby recognized that Section 9 of the ESA prohibits the take of federally listed animal species. It is also recognized that ESA Section 9 prohibits the take of federally listed plant species in cases that violate State law, or in cases where the plants occur in areas under Federal jurisdiction. In certain cases, take of federally listed species may be authorized under ESA Section 10 (incidental take permits), ESA Section 6 (cooperative agreements with States), and ESA Section 7 (consultation on incidental take).

In the case of non-Federal projects, including projects that do not use CZMA Section 306A funds or other Federal funds, compliance with ESA Section 9 is required, even though consultation under Section 7 is not required. For non-federal projects, ODNR or the applicant may voluntarily choose to consult with FWS about possible impacts to federally listed species. Such consultation would assure compliance with ESA Section 9 on the part of ODNR or the applicant in the event of a non-jeopardy biological opinion. ODNR will voluntarily ensure that non-Federal and non-Section 306A CZMA projects subject to state consistency will not take or otherwise adversely impact Federally listed species, unless authorized under State law and Sections 6, 7 or 10 of the ESA. Should biological opinion indicate possible jeopardy or adverse modification of designated critical habitat, agreement by ODNR or applicant to adopt all reasonable and prudent alternatives identified in the biological opinion would similarly ensure that the project or activity subject to State consistency, will not take or otherwise adversely impact federally listed species unless authorized under State law and Sections 6, 7 or 10 of the ESA.

C. **Projects/Activities Receiving Federal Section 306A CZMA Assistance**

The majority of Ohio's coastal projects/activities that will receive Federal funds from NOAA are low cost construction projects under Section 306A of the CZMA. The Office of Ocean and Coastal Resource Management (NOAA-OCRM) reviews specific Section 306A project proposals. As part of its annual application to NOAA-OCRM, the ODNR-REALM will submit a categorical checklist for each proposed Section 306A project. As part of the checklist, ODNR-REALM must certify that the proposed Section 306A project(s) will not result in adverse environmental impacts, including impacts to Federally listed species or their critical habitat.

For projects receiving Section 306A funds from NOAA, ODNR will ensure that the project will not result in adverse impacts on Federally listed species or Federally designated critical habitat. If ODNR-REALM indicates through completion of a categorical checklist, or other means, that there may be impacts on Federally listed species or critical habitat, ODNR-REALM will either prepare a detailed environmental assessment or environmental impact statement or will withdraw the proposed project from the application to NOAA-OCRM. It is understood that NOAA-OCRM may also opt to not fund the project. If a Section 306A project "may affect" a Federally listed species of plant or animal, and ODNR-REALM intends to proceed with the project, early consultation with FWS and NOAA-OCRM will be undertaken to ensure responsibilities are met under Section 7 and 9 of the ESA.

To reduce workload, the ODNR-REALM and the FWS will mutually develop a list of types of projects or other activities, submitted by applicants for Coastal Zone Management Act Section 306A funding, that will not normally require FWS consultation under Section 7 of the ESA. The project/activity list will be attached to this MOU as an Appendix and mutually modified as needed.

## COOPERATION, CONFLICT AVOIDANCE AND MEDIATION

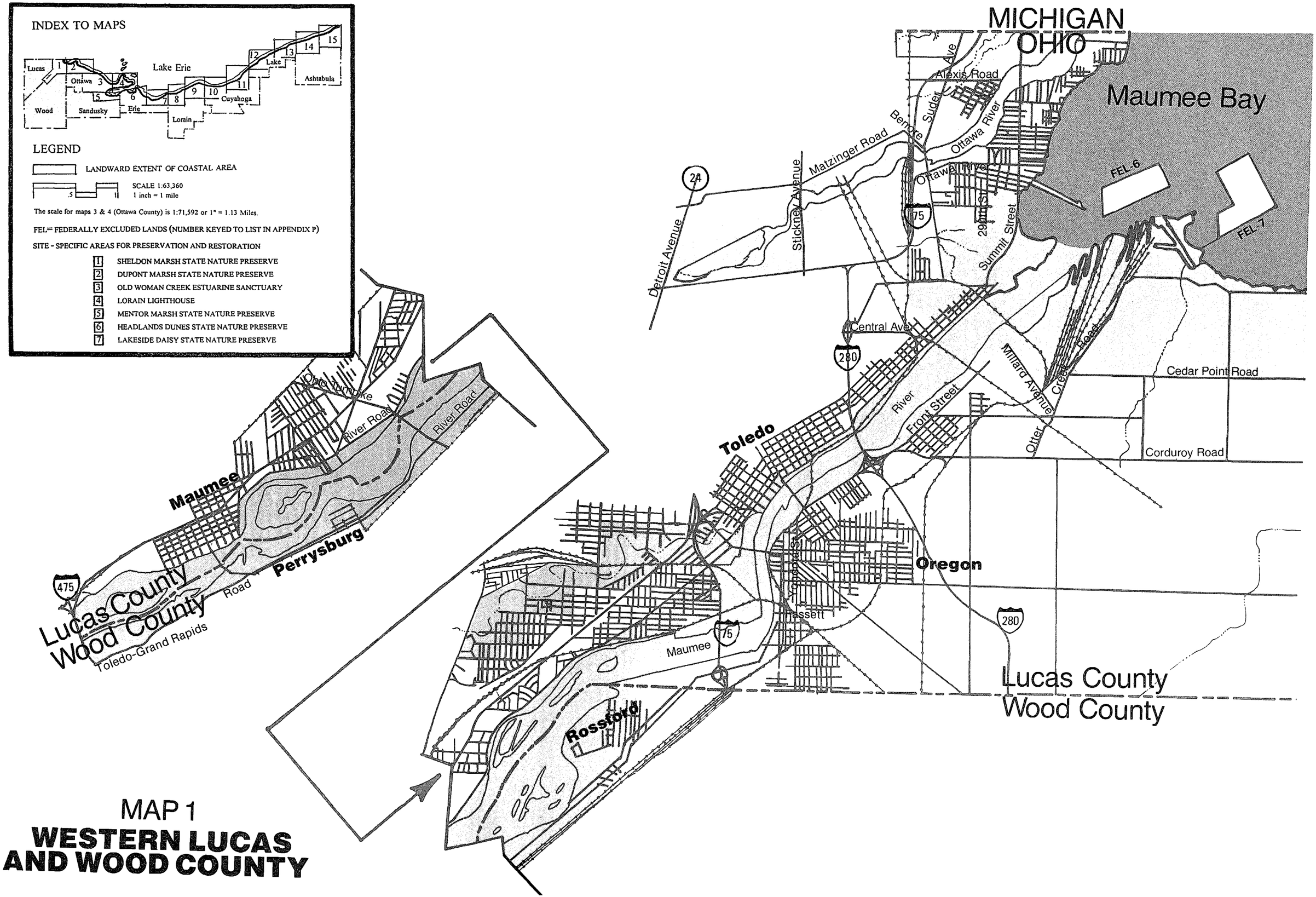
The protection and preservation of threatened and endangered species is one of ODNR's highest priorities. Protection, enhancement and restoration of threatened and endangered species and their habitat are some important goals of the Ohio Coastal Management Program. The ODNR will work in close accord with the FWS to achieve these goals. This relationship will promote positive and unified initiatives for the conservation of threatened and endangered species and the maintenance of biodiversity important to a sustainable coastal ecosystem. If, for some reason, the FWS and ODNR disagree over determination of how impacts of a coastal area project/activity may affect Federally listed species, it is acknowledged and understood that the FWS may invoke the authority of the U.S. Endangered Species Act.

Donald C. Anderson, Director
Ohio Department of Natural Resources

Kent Kroonemeyer, Supervisor
U.S. Fish and Wildlife Service,
Reynoldsburg, OH

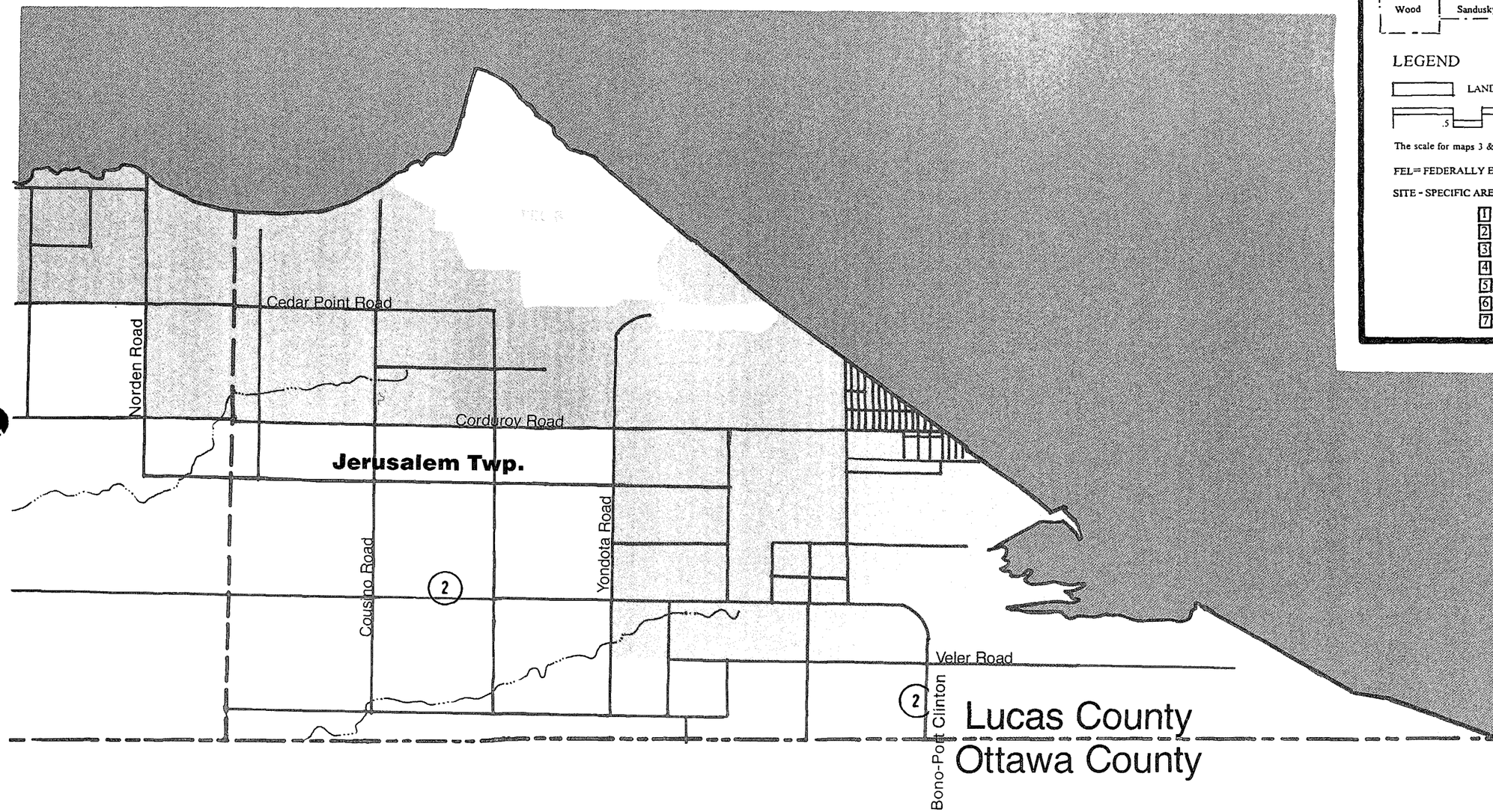
Wayne R. Warren, Chief
Division of Real Estate and Land Management

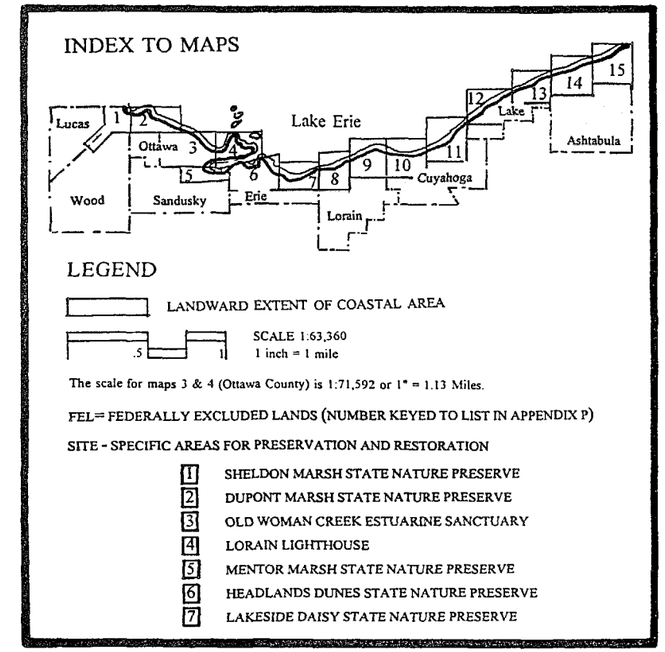
The above is mutually agreed between ODNR and the FWS from this date on, or until modified or discontinued by mutual consent, or discontinued unilaterally with a minimum of ninety (90) days advance notice by either party. Obligations of the State are subject to O.R.C. § 126.07. If this MOU is discontinued, reinitiation of consultation with the FWS by NOAA for Ohio's Coastal Management under the CZMA may be necessary under the Endangered Species Act.




MAP 1

**WESTERN LUCAS AND WOOD COUNTY**

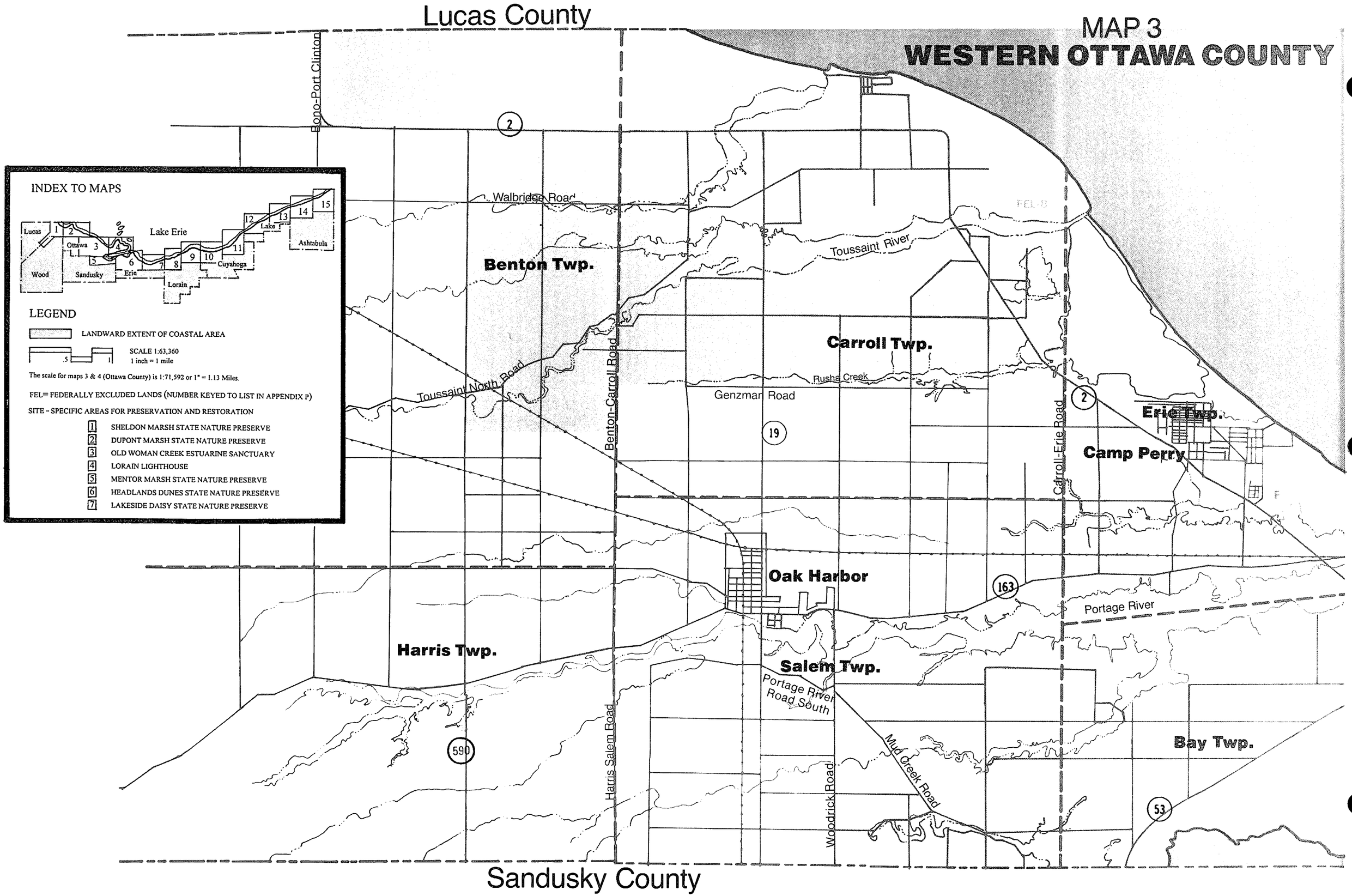


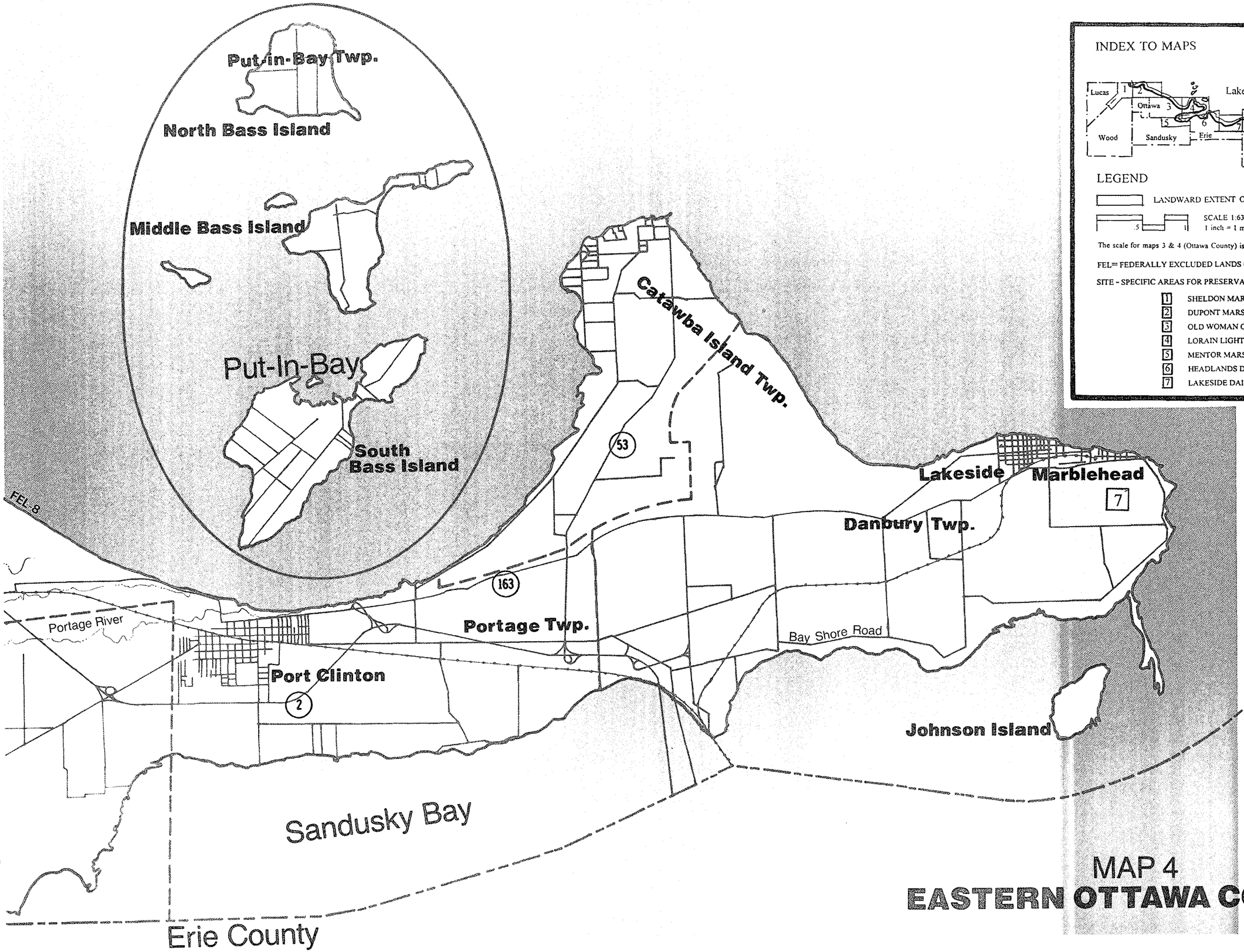



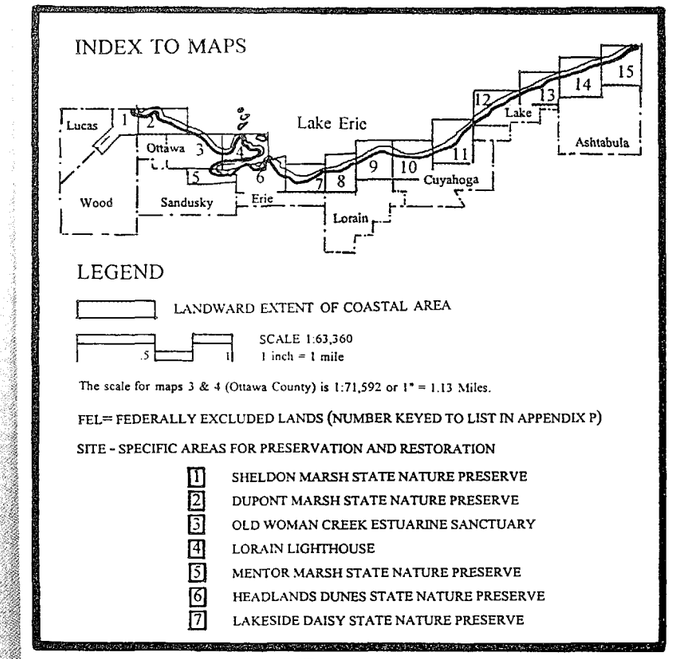

MAP 2

**EASTERN LUCAS COUNTY**

# MAP 3
# WESTERN OTTAWA COUNTY






MAP 4
**EASTERN OTTAWA COUNTY**

Ottawa County

Church Road

53

Sandusky River

Pipeline

Marzke

Werth Road

Township Line Road

Ohio Turnpike

Port Clinton Road

Kelly Road

North River Road

20

6

Fremont

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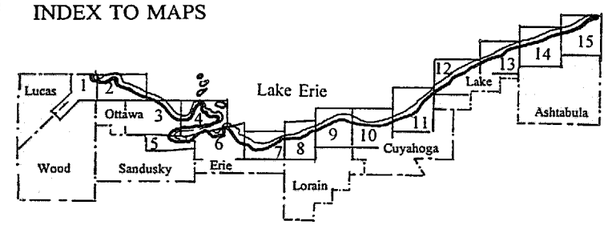



LEGEND

LANDWARD EXTENT OF COASTAL AREA

SCALE 1:63,360
1 inch = 1 mile

The scale for maps 3 & 4 (Ottawa County) is 1:71,592 or 1" = 1.13 Miles.

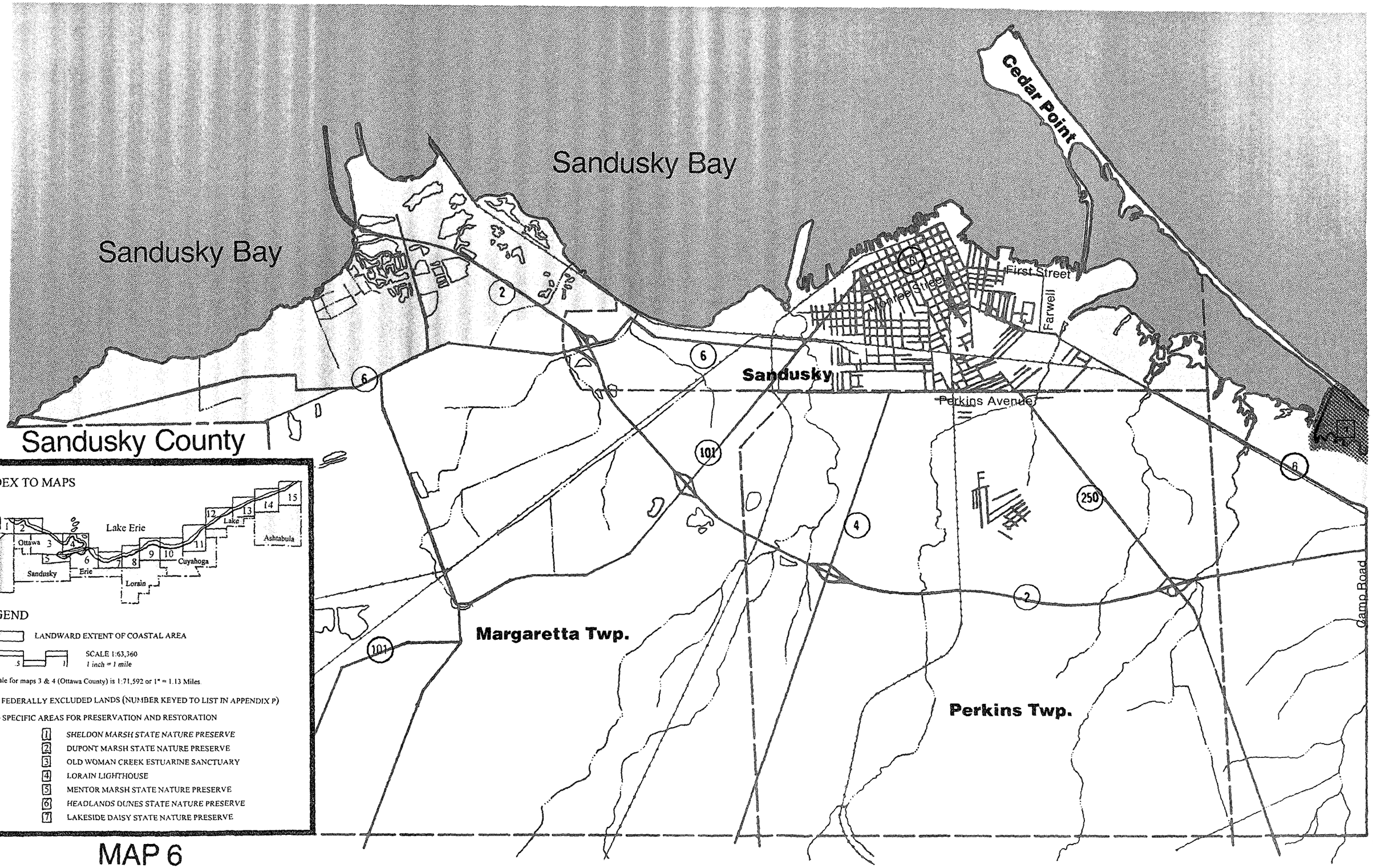
FEL= FEDERALLY EXCLUDED LANDS (NUMBER KEYED TO LIST IN APPENDIX P)

SITE - SPECIFIC AREAS FOR PRESERVATION AND RESTORATION

1. SHELDON MARSH STATE NATURE PRESERVE
2. DUPONT MARSH STATE NATURE PRESERVE
3. OLD WOMAN CREEK ESTUARINE SANCTUARY
4. LORAIN LIGHTHOUSE
5. MENTOR MARSH STATE NATURE PRESERVE
6. HEADLANDS DUNES STATE NATURE PRESERVE
7. LAKESIDE DAISY STATE NATURE PRESERVE

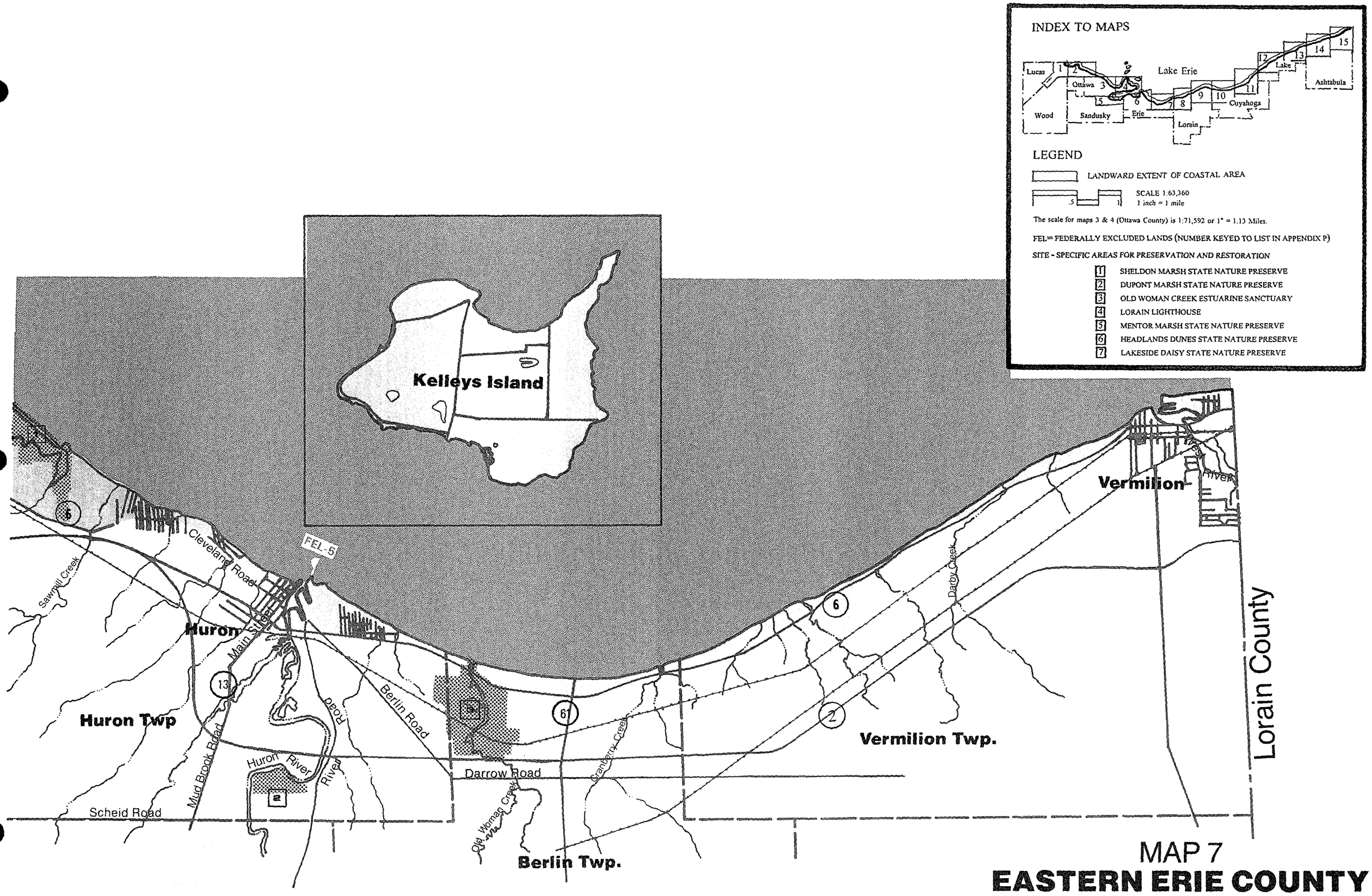
MAP 5

**SANDUSKY COUNTY**




MAP 6

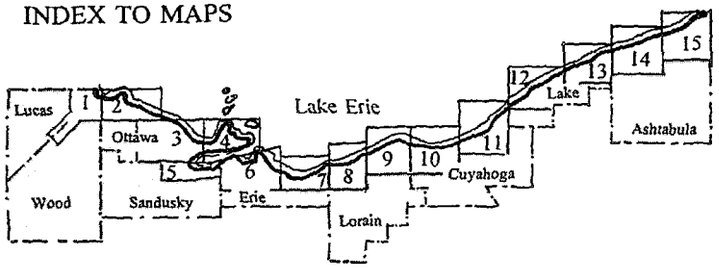
**WESTERN ERIE COUNTY**




MAP 7

**EASTERN ERIE COUNTY**

## INDEX TO MAPS

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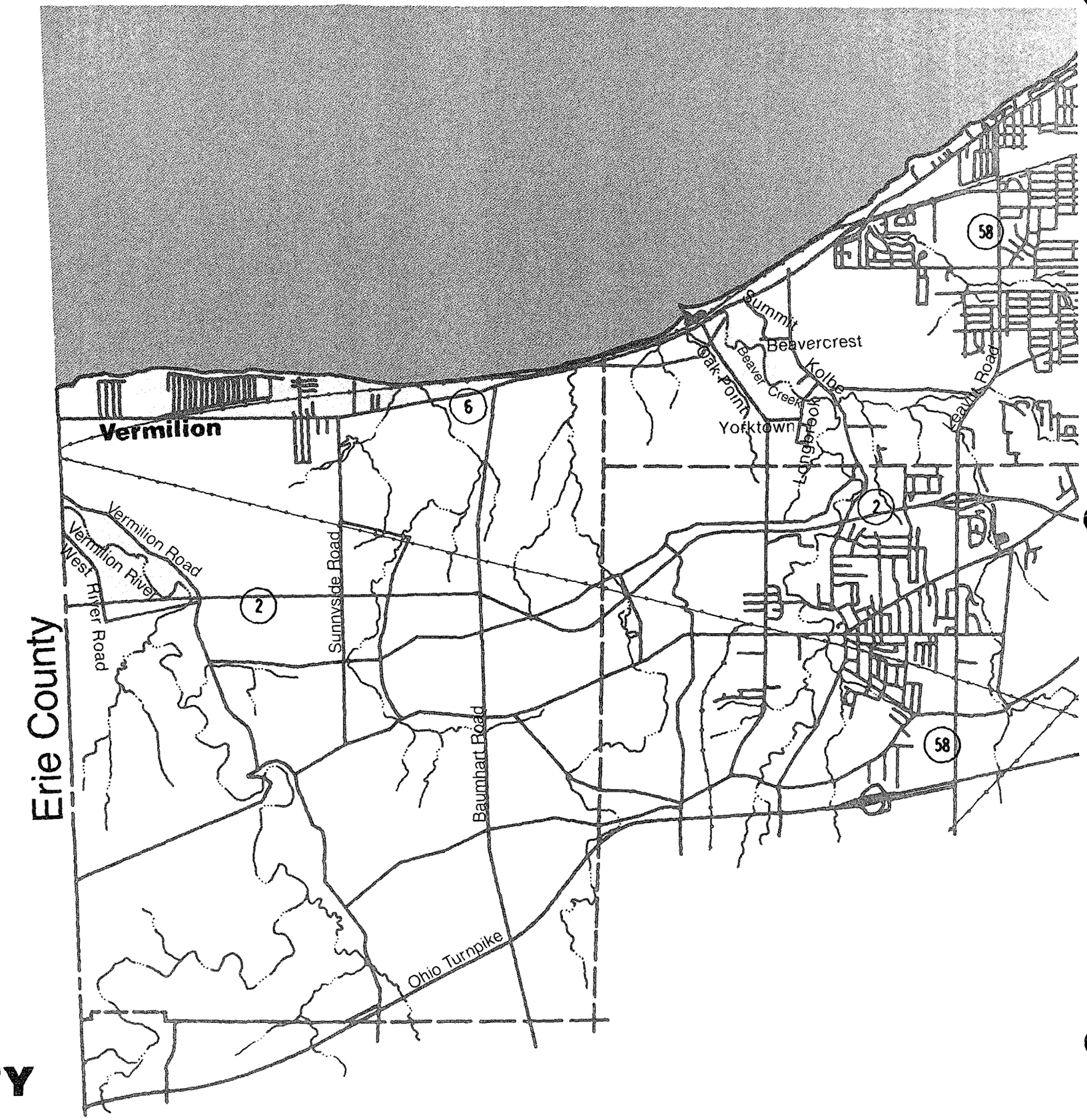
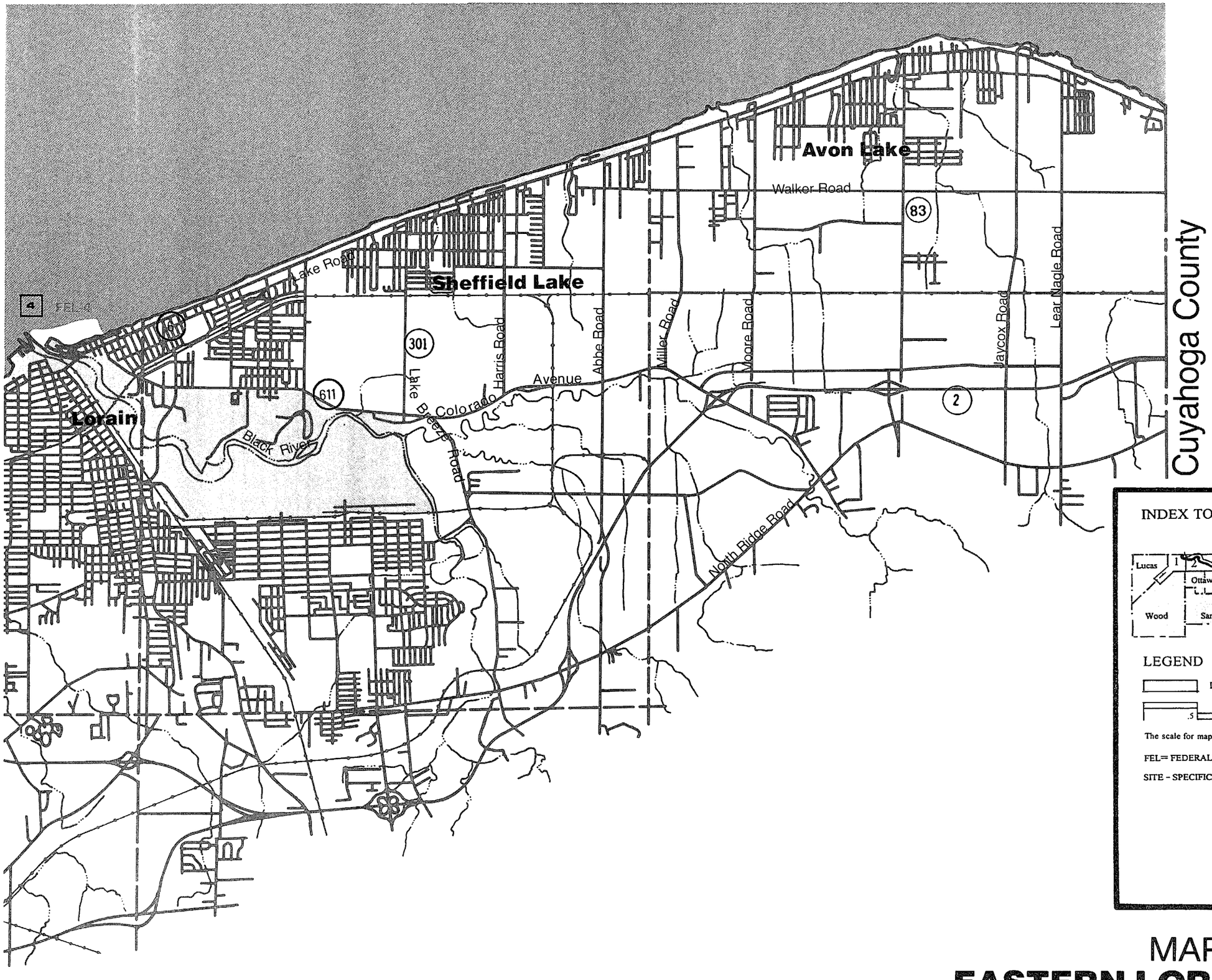



MAP 8

# WESTERN LORAIN COUNTY

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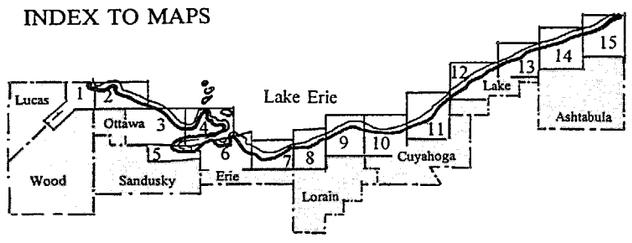


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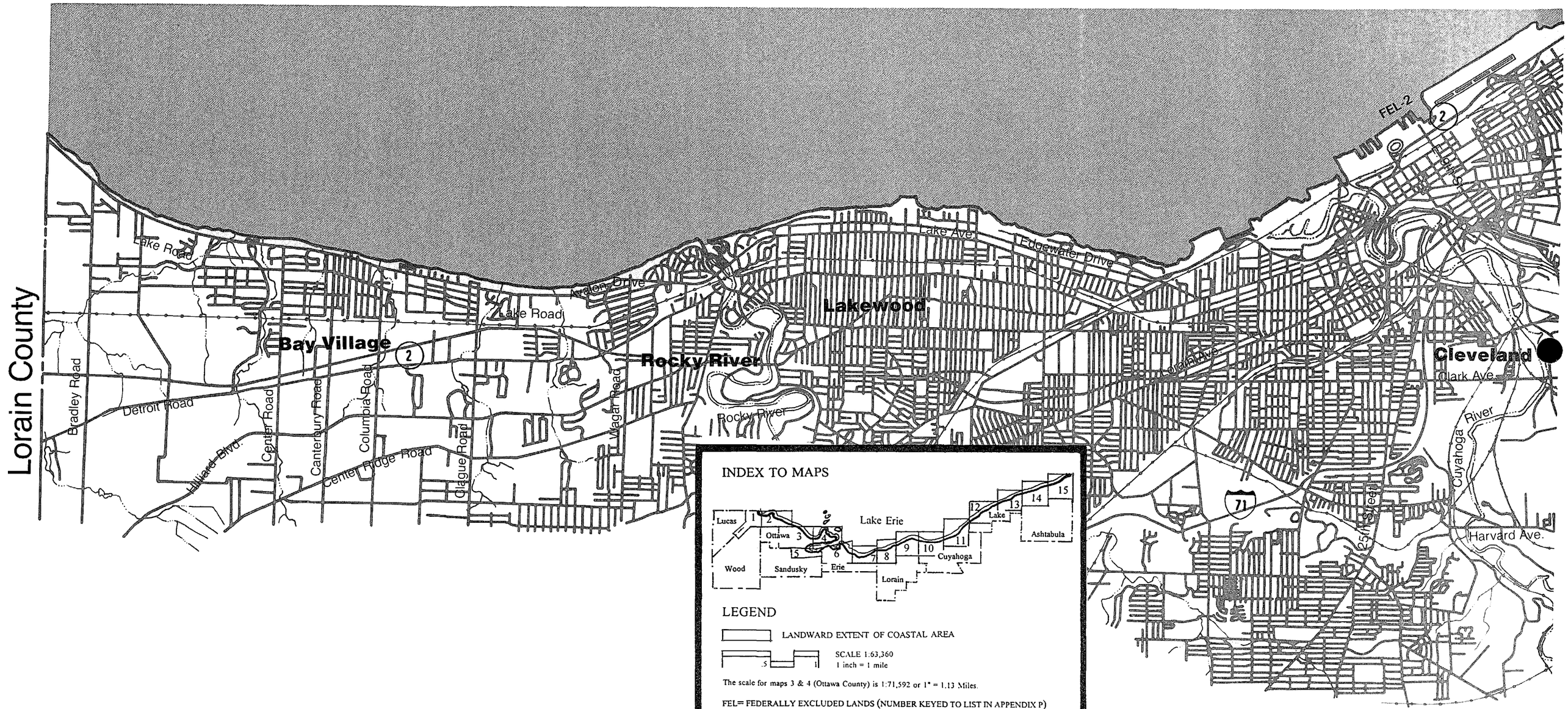
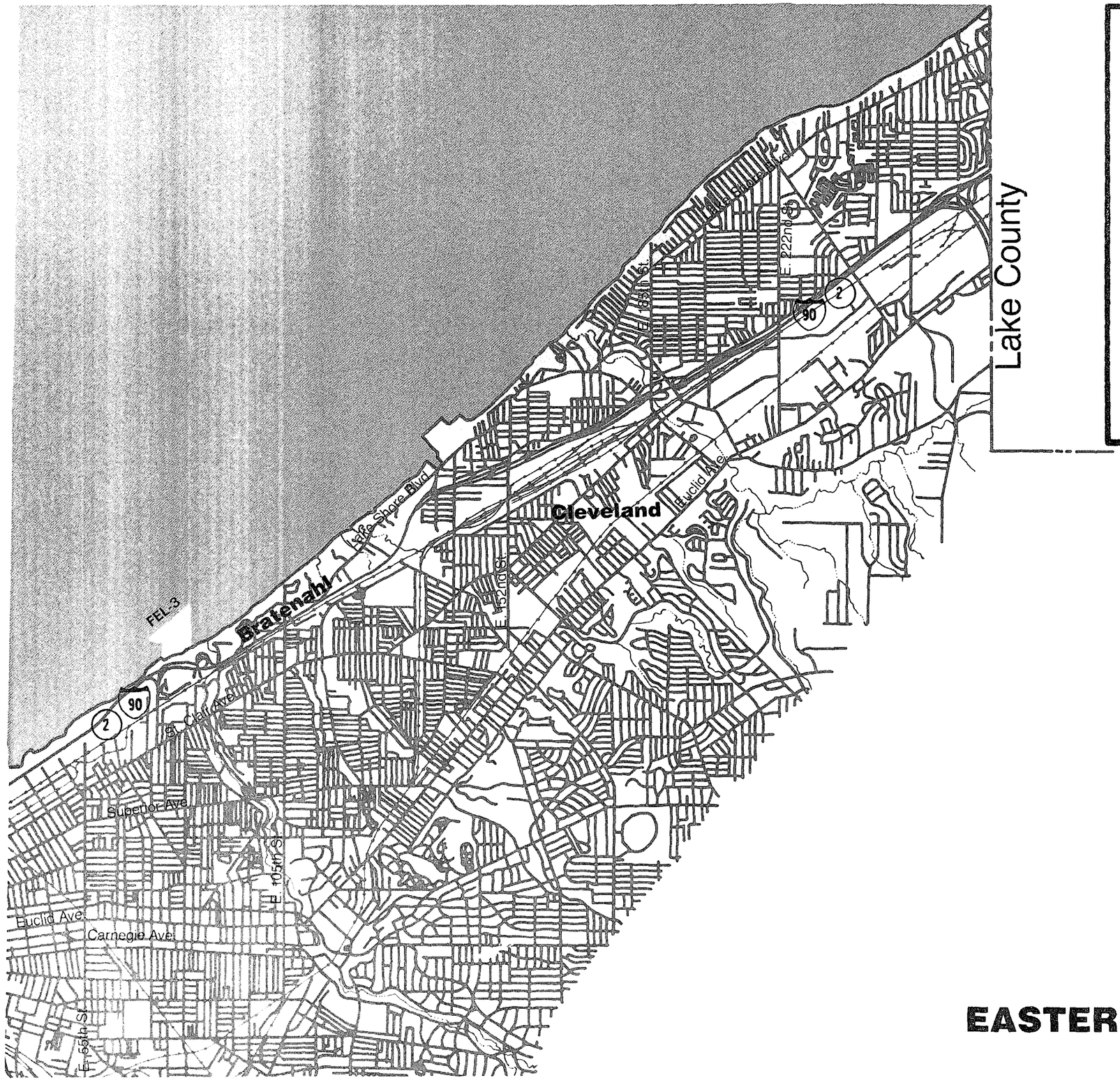
7. LAKESIDE DAISY STATE NATURE PRESERVE

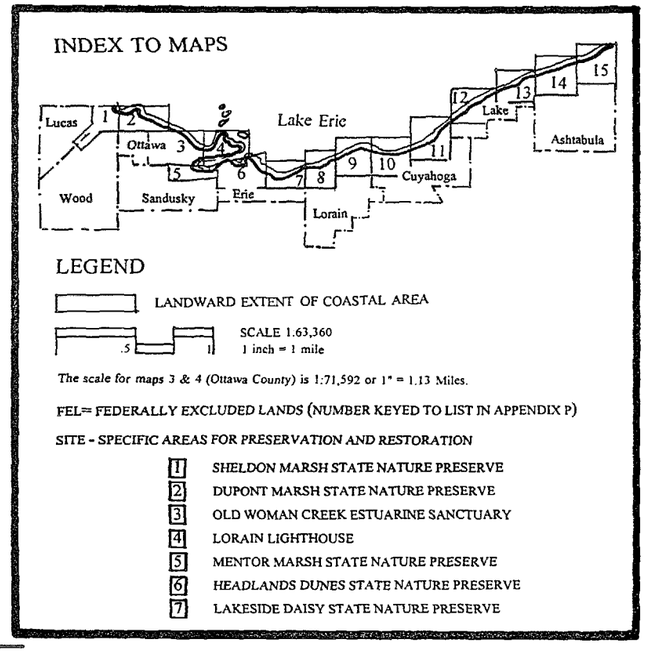
# MAP 9
# EASTERN LORAIN COUNTY




MAP 10

# WESTERN CUYAHOGA COUNTY

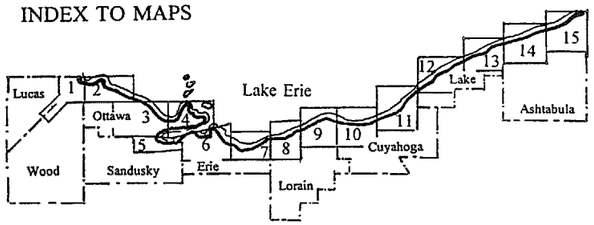



MAP 11

**EASTERN CUYAHOGA COUNTY**

## INDEX TO MAPS

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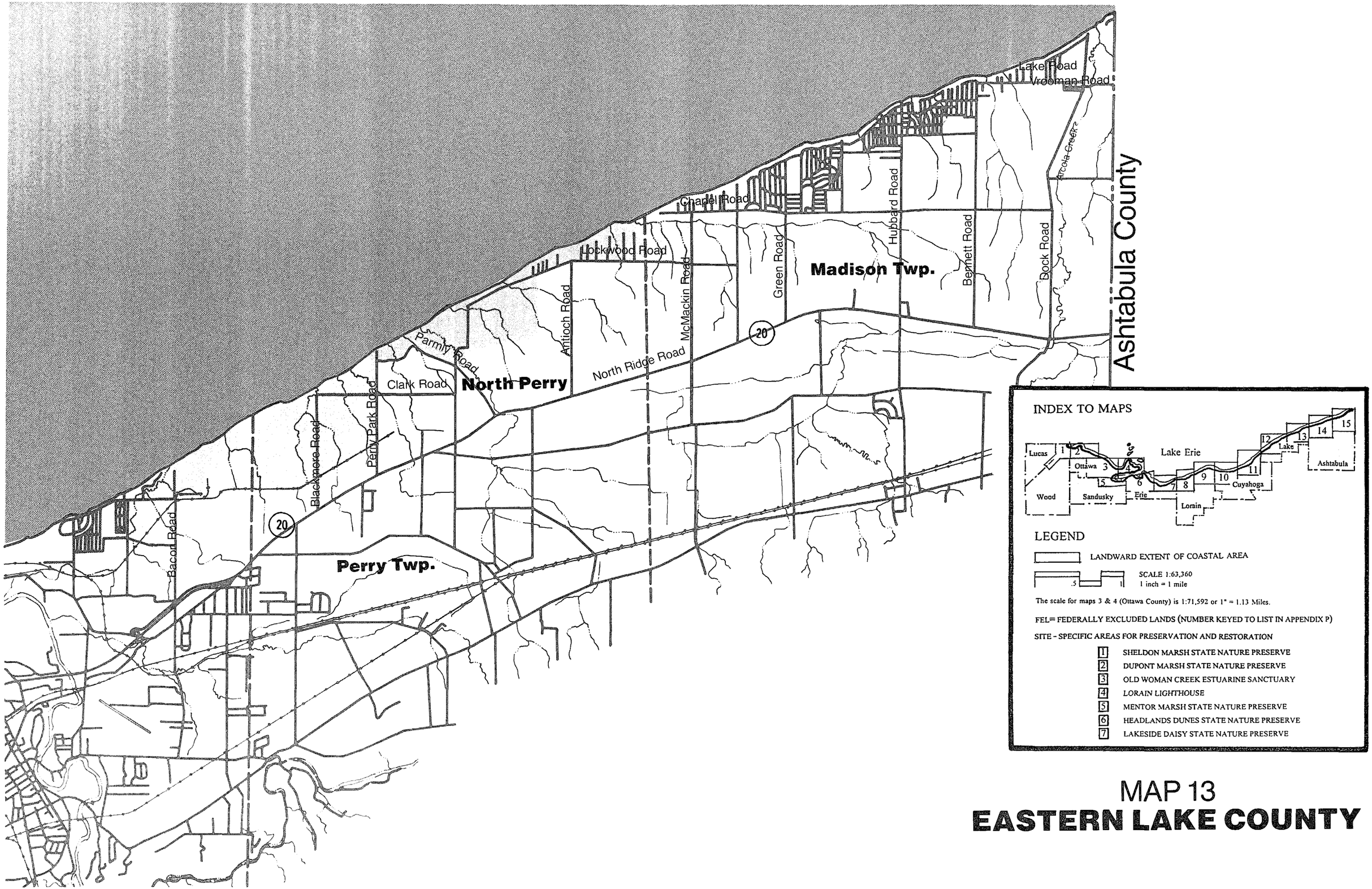
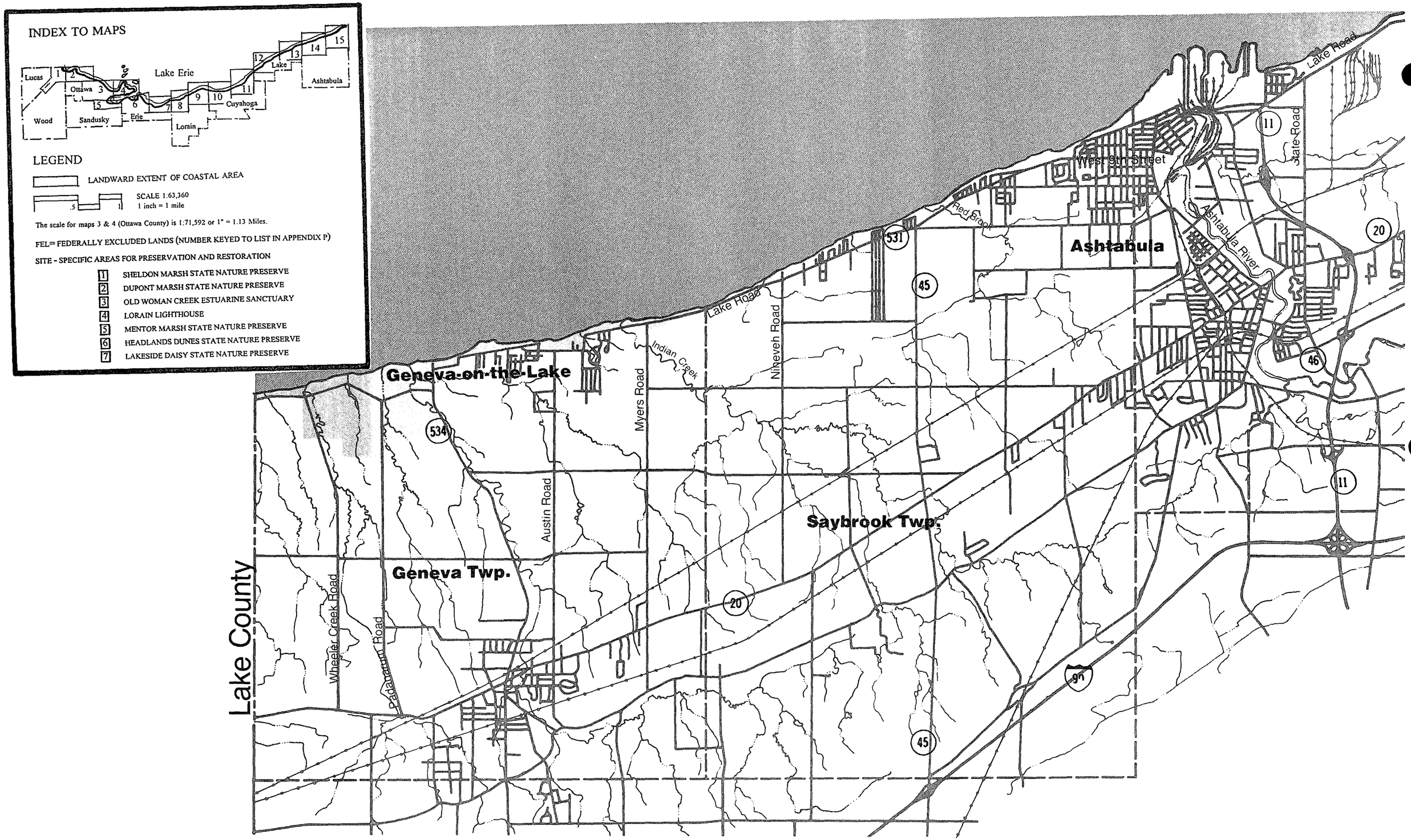
5. MENTOR MARSH STATE NATURE PRESERVE
6. HEADLANDS DUNES STATE NATURE PRESERVE
7. LAKESIDE DAISY STATE NATURE PRESERVE

Fairport Harbor
Grand River
Painesville
Mentor Marsh
Lakeshore Blvd.
44
283
Mentor
Salida Road
Andrews Road
Mentor-on-the-Lake
Munson Road
Beachview
Eagle Woods
Orchard
306
Lost Nation Road
Lost Nation Airport
Lakeshore Blvd.
Eastlake
Timberlake
Minnewawa Road
Chagrin River
2
Lakeline
Willowick
E. 305th St.
Euclid Ave.
20
91
90
Cuyahoga County

MAP 12
**WESTERN LAKE COUNTY**

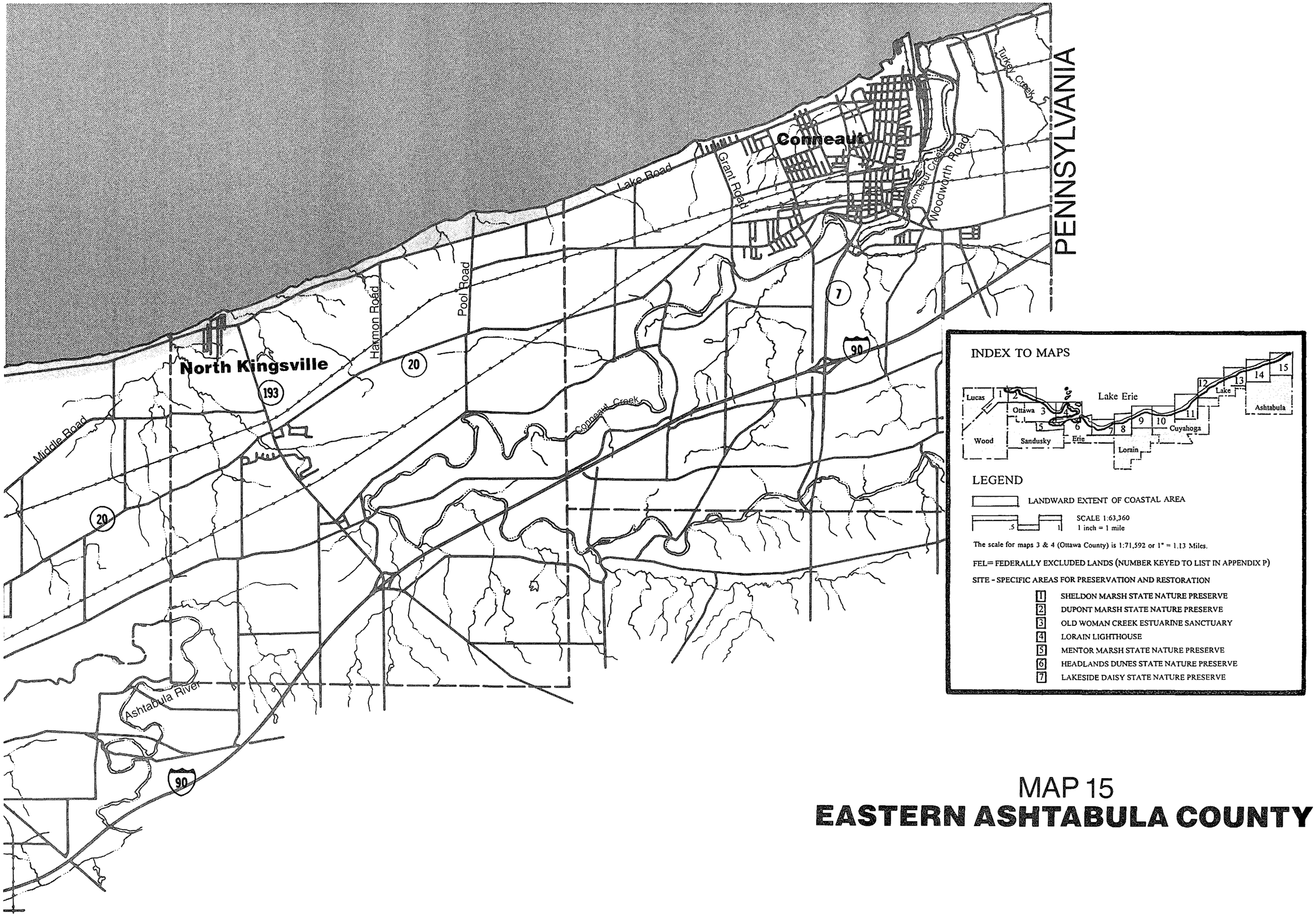



# MAP 13
# EASTERN LAKE COUNTY




MAP 14

# WESTERN ASHTABULA COUNTY




MAP 15

# EASTERN ASHTABULA COUNTY