

Part II

DESCRIPTION OF THE
OHIO COASTAL MANAGEMENT
PROGRAM

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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
CNPCPP	Coastal Nonpoint Pollution Control Program Plan
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
DOW	Division of Wildlife
DPR	Division of Parks and Recreation
DSW	Division of Surface Water (Ohio EPA)
DSWC	Division of Soil and Water Conservation
EBR	Environmental Board of Review
EDATA	Eastgate Development and Transportation Agency
EIS	Environmental Impact Statement
FEMA	Federal Emergency Management Agency
FONSI	Finding Of No Significant Impact
FWPCA	Federal Water Pollution Control Act
GAPC	Geographic Areas of Particular Concern
GLPF	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
OCM	Office of Coastal Management
OCMP	Ohio Coastal Management Program
OCRMR	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

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 tilled 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 OCMF 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-

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). Since the creation of ODNR's Office of Coastal Management (OCM) in July, 2002, program administration has been conducted by OCM. Section 3 of this chapter provides details regarding OCM'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, as well as the Office of Coastal Management, are located in the coastal area. Fourteen divisions carry out ODNR's statutory responsibilities with respect to coastal area resource management:

- The **Office of Coastal Management** administers the Ohio Coastal Management Program. The ODNR created the Office of Coastal Management in 2002 as the first step in a reorganization effort designed to better serve Ohioans' coastal needs. Prior to this time, the Office of Coastal Management's role was carried out by various ODNR divisions. However, knowing the importance of Lake Erie to the economic, aesthetic, cultural and natural well-being of Ohio residents, ODNR felt it would be best to have coastal issues coordinated through one office. The Office of Coastal Management, located on Sandusky's waterfront, is the only ODNR division or office to be headquartered outside of Columbus.

- The **Division of Real Estate and Land Management** 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; and managing property including canal lands. 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, Willow Point, North Bass, Kuehnle Wildlife Area, Bay Bridge Access, and Fox's Marsh Wildlife Area. The division also maintains three wildlife production areas as well as Crane Creek Wildlife Research 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 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).

- 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 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 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 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. 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.
- 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, Marblehead Lighthouse 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 administers the Ohio Coastal Nonpoint Source Pollution (NPS) Control Program and Plan. This includes employing the 6217 Coordinator at the Office of Coastal Management. The division administers the Ohio Clean Marinas Program Grant. The Ohio Clean Marinas Program has one full time employee housed at the Office of Coastal Management and is designed to implement the Coastal NPS Management Measures for Marinas and Recreational Boating. The Ohio Watershed Coordinator Grant Program funds watershed coordinator positions in the Lake Erie Watershed. The watershed coordinators develop a sustainable watershed organization and produce and implement a local watershed action plan that incorporates the Coastal NPS Management Measures. The division also administers the local Stormwater Specialist Grant Programs and Soil and Water Information Management System in the Lake Erie Watershed.

- 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 Recycling and Litter Prevention** administers a statewide litter prevention and recycling program and makes grants to local governments, solid waste management districts and businesses for specific recycling and litter prevention projects.

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

- The **Division of Mineral Resources Management** regulates all oil and gas field operations to protect the resource base, the environment and public safety, and 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 and household/small flow onsite sewage treatment 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 Housing and Community Partnerships administers the federal Community Development Block Grant program to promote community and economic development in small cities and nonurban counties. ODOD, through its Office of Urban Development, also administers the Clean Ohio Revitalization Fund (CORF) and related loan funds authorized under O.R.C. 122.658 to undertake brownfield site clean up and remediation activities. ODOD works closely with the Ohio EPA and other agencies in managing these resources.

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 fulfills the responsibilities of the State Historic Preservation Office as outlined in the National Historic Preservation Act of 1966 (16 U.S.C. 470). 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 Directors of Ohio EPA and the Ohio Departments of Agriculture, Development, Health, and Natural Resources serve as members of the Board.

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, marinas, and campgrounds.

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 addressing erosion and flood hazard concerns (O.R.C. 1507.10 and § 1521.13)
- 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 in connection with a flood event within counties and municipalities determined to have noncompliant floodplain management regulations (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 and the implementation of nonpoint source pollution management programs (O.R.C. 6111.03, 6111.036, 6111.037 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 treatment systems (O.R.C. 3701.04, 3701.344, 3718.02, 6111.03, 6109.07, and O.A.C. 3701-28, 3701-29, 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 ODNR responsibilities (ODNR Policy Statement - Wetlands)
- 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, 1531.02, and 1531.202)
- 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 relative to sanitary facilities (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. 4906 and O.A.C. 4906)
- Require 10-year demand, resource and site inventory forecasts for energy generation and transmission activities (O.R.C. 4935.04 and O.A.C. 4901:5)
- Regulate storage of energy related resources (coal, oil and gas) (O.R.C. 4906.06 and 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. 1514, O.A.C. 1501:14-1 through 1501:14-4 and O.R.C. 1561, 1563, 1565 and 1567)

Water Quantity

- Regulate water diversions from Lake Erie (O.R.C. 1501.30 through 1501.32 and O.A.C. 1501-2-01 through 1501-2-12); 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 Office of Coastal Management

The Office of Coastal Management (OCM) 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 OCM are illustrated in Figures 3 and 4, respectively.

OCM contains four sections: Fiscal/Administration, Coastal Lands, Coastal Network, and Engineering. The programs operating within these sections work in an integrated management setting. The Fiscal/Administration section conducts the office's human resources and fiscal activities and administers the federal grant from NOAA. The Coastal Engineering section conducts review of applications for Shore Structure Permits and Coastal Erosion Area permits, as well as providing technical support for applicants, consultants, and local and state government agencies. The Coastal Lands section provides resources for information management and dissemination, including the Lake Erie GIS project and the Ohio Coastal Atlas. The section also administers the Submerged Land program. The Coastal Network section conducts ODNR's state and federal consistency reviews, administers the Coastal Management Assistance Grant program, oversees implementation of the Coastal and Estuarine Land Conservation Program (CELCP), and coordinates OCMP network initiatives, including the IMT and PPCC.

An Assistant Attorney General provides legal advice and assistance in rulemaking, regulatory and contractual actions, and represents ODNR in coastal-related legal proceedings. 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.

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

- Coastal Management Program Administration. OCM 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 Administration 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 Chief is responsible for coordinating with ODNR's federal counterpart, the National Oceanic and Atmospheric Administration (NOAA), Office of

FIGURE 3

OHIO DEPARTMENT OF NATURAL RESOURCES

March 2007

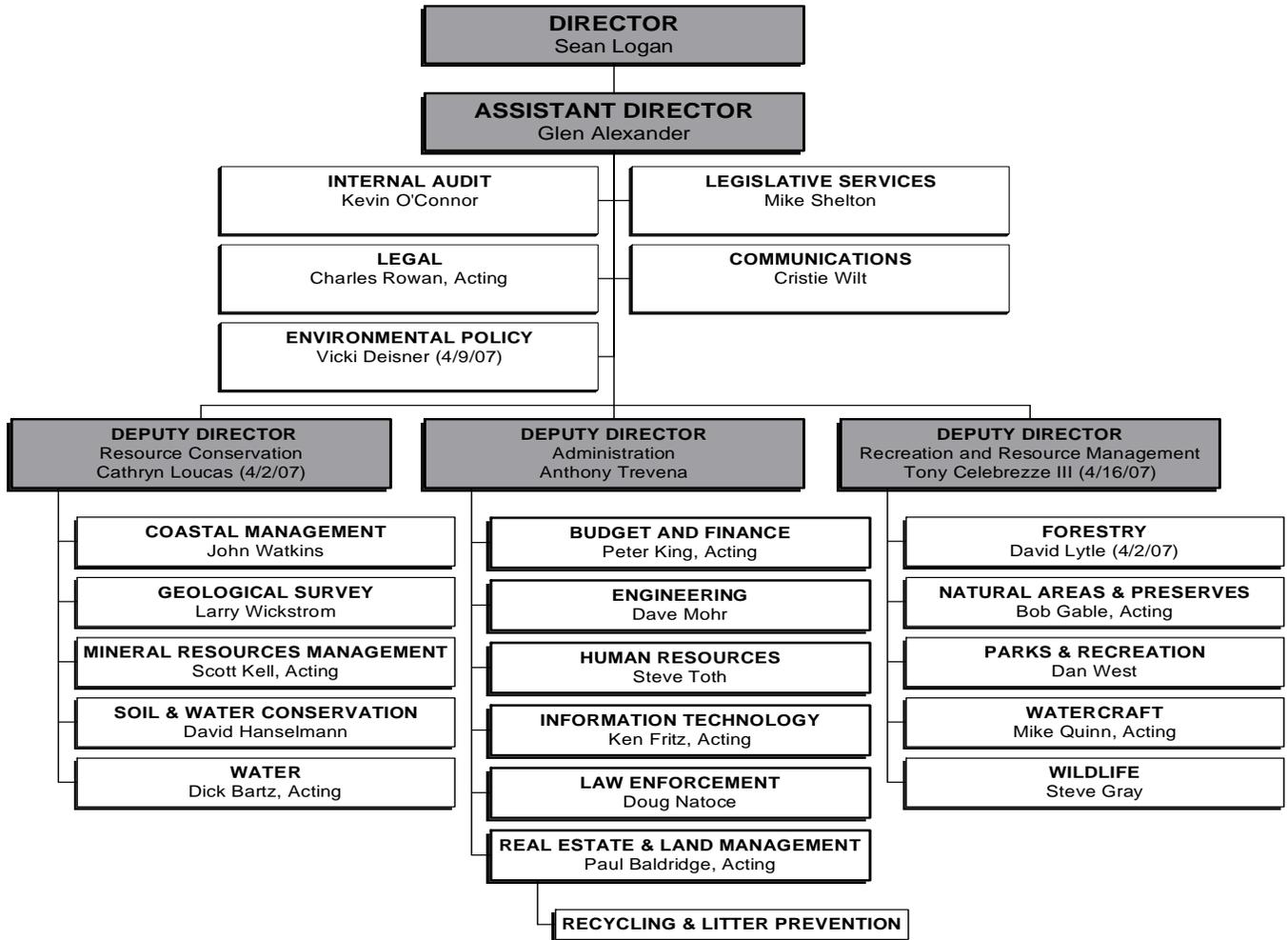
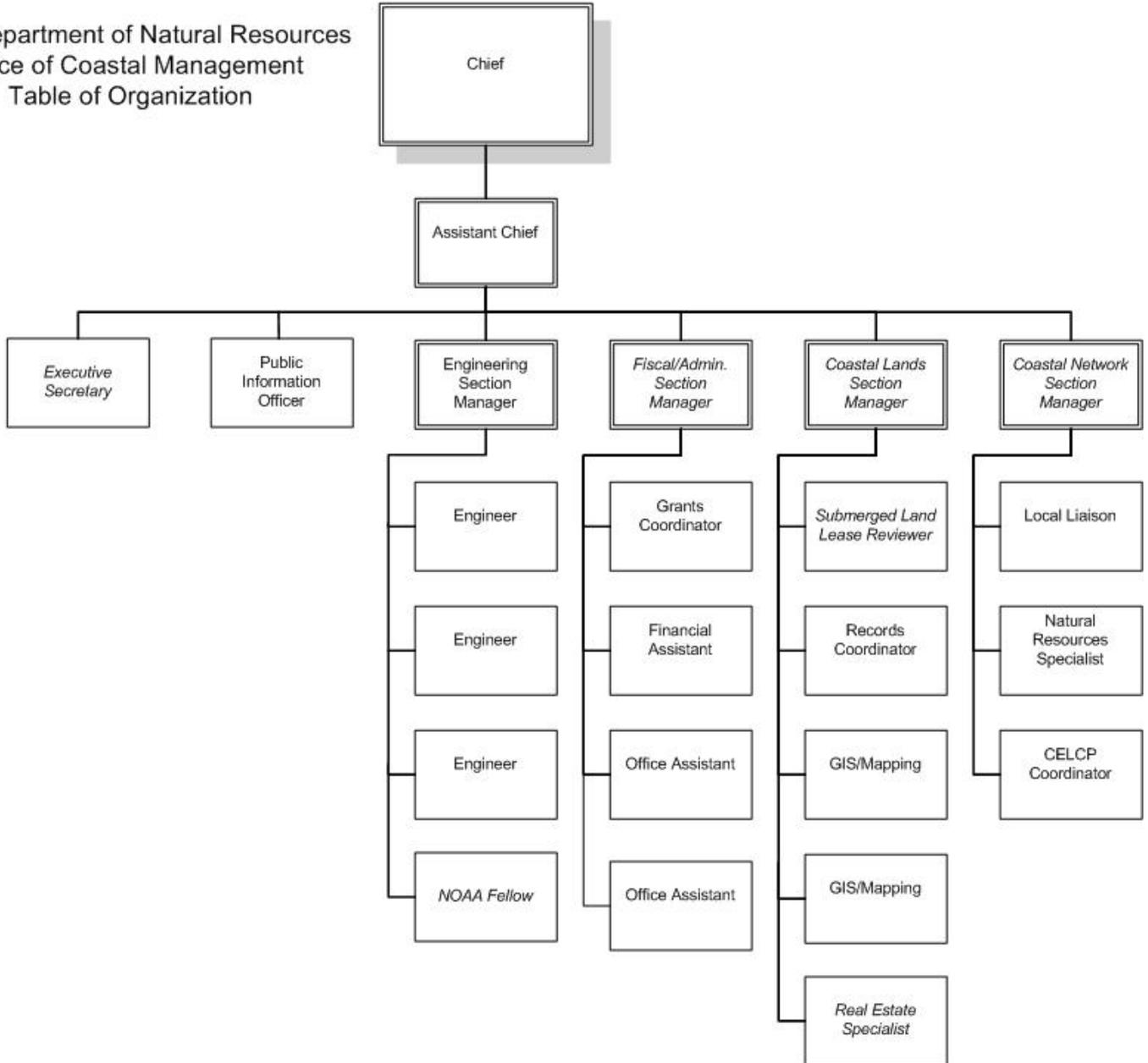


FIGURE 4

Ohio Department of Natural Resources
Office of Coastal Management
Table of Organization



- 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 Network 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 Network 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).

OCM exercises significant direct controls over activities in the coastal area. Among OCM'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 OCM 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 OCM in coordinating and executing coastal management responsibilities. The Integrated Management Team consists of key individuals representing ODNR's divisions who work cooperatively with OCM 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 OCM and the divisions of Natural Areas and Preserves, Parks and Recreation, Forestry, Real Estate and Land Management, 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, REALM, and OCM 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. OCM's Engineering and Coastal Lands sections coordinate ODNR's review of consolidated permit applications.

ODNR's various divisions provide input in department-wide environmental reviews conducted by REALM. The Coastal Network 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 Ohio EPA and the Departments of Health, Agriculture, Transportation and Development.

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 Chief of OCM, 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.

The Ohio Coastal Training Program is a national education program initiated in Ohio by Old Woman Creek National Estuarine Research Reserve, the Office of Coastal Management, and Ohio Sea Grant College Program. The mission of the Program is to enhance coastal resource management training by developing partnerships and coordinating activities among organizations that serve the training and information needs of Lake Erie coastal decision-makers. Coastal decision-makers are individuals who, in a professional, volunteer, or way-of-life capacity, make decisions that affect Lake Erie coastal or watershed resources. This may include appointed and elected officials, environmental agency staff, business representatives, farmers, nonprofit organizations, or natural resource managers. To better serve the training and information needs of these professionals, the Ohio Coastal Training Program is developing a web-based information clearinghouse, designing core courses, providing marketing and program evaluation support for training throughout the Lake Erie watershed.

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 Wildlife 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. 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. OCM assures effective interaction between the Council and OCMP by involving members of the Integrated Management Team and PPCC in meetings of the Council as

necessary. The Council assists ODNR with public participation in the development of the OCMP, including public meetings and hearings.

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.

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 Network section, OCM, 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, OCM has the administrative responsibility for consistency reviews, using the existing interdisciplinary environmental review process. OCM 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 (Consistency Coordinator, OCM), 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 60 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 (Consistency Coordinator, OCM) 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 Act, 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.

OCM 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. OCM 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 "pre-application 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 OCM's Consistency Coordinator. The PPCC will assist OCM 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 OCM 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 Chief of the Office of Coastal Management will within 15 days schedule a meeting of the parties involved. If mediation efforts by OCM 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. OCM 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 to ensure adequate sanitary facilities.
Registration of private water system contractors.

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.
Permit for the recovery, alteration, salvage or destruction of abandoned property.
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. ODNR made a final identification of coastal erosion areas in 1998. The Lake Erie shoreline will be reviewed again within 10 years to reassess and update the designated coastal erosion areas.

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 were completed according to the procedures described in those administrative rules. Shoreland property owners and local governments were notified that property or territory may lie in a coastal erosion area, in accordance with the procedures discussed above.

- 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 Office of Coastal Management.

Erosion control measures typically require a permit from the State of Ohio under O.R.C. 1521.22, 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. 1521.22] will incorporate evaluation of the first five 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 has developed a consolidated permit application form and 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. 1521.22);**
- B. PROVIDING TECHNICAL ASSISTANCE TO THE PUBLIC ON SHORELINE EROSION CONTROL STRUCTURES (O.R.C. 1521.29); AND**
- C. DEVELOPING A PLAN FOR THE CONTROL OF SHORE EROSION AND MAKING THE PLAN AVAILABLE TO THE PUBLIC (O.R.C. 1521.29).**

Authorities and Administration

- A. Any person planning to construct a beach, groin or other structure that will arrest or control erosion, wave action or inundation along or near the Ohio shore of Lake Erie must first submit plans and specifications to ODNR for review in accordance with O.R.C. 1521.22. Plans and specifications for erosion control structures along or near the shore will be reviewed in accordance with coastal engineering standards specific to the proposed structure. A permit to construct the structure will be issued by ODNR if the proposed structure will comply with applicable laws and rules; is consistent with the policies of the Ohio Coastal Management Program, and is of sound coastal engineering design. Administrative rules for the administration, implementation and enforcement of this authority will be developed and adopted as needed by ODNR.

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 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, the desired level of erosion protection, and the effects of the project on the regional shore area. Consideration also should be given to the design and construction of coordinated

erosion control projects among adjacent property owners. Properly designed and coordinated shoreline erosion control projects have the potential to be more effective, less disruptive to natural processes and less costly than individual projects.

- C. The Chief of the Division of Water of ODNR, in cooperation with the Division of Geological Survey, is authorized by O.R.C. 1521.29 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. The Chief of the Division of Water and the Division of Geological Survey shall work collectively to prepare a shore erosion prevention plan and develop a program to provide technical assistance to the public.

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.
- 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.

TABLE 1

Table 1 has been removed so that outdated information is not provided to readers of this Document. In order to view the most complete and accurate list of communities participating in the National Flood Insurance Program, please visit the ODNR Division of Water's website at www.ohiodnr.com/water.

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. 1521.23); AND**
- B. PROVIDING TECHNICAL INFORMATION AND ASSISTANCE FOR ADDRESSING EROSION AND FLOOD HAZARD CONCERNS (O.R.C. 1521.29 AND 1521.13).**

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. 1521.22 (O.R.C. 1521.23). 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. 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. 1521.24).

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. ODNR administers a technical assistance program on shore erosion protection for local governments and property owners (O.R.C. 1521.29). The Office of Coastal

Management 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 (OEMA) 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. OEMA is also the lead on mitigation grants and planning for support of mitigation project funding.

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 the Lake Erie LaMP. The geographic boundaries will include the lake proper, nearshore, bays and river mouths. The institutional structure of the LaMP consists of a Management Committee (senior managers), a technical work group, public forum and several subcommittees to address specific issues. The LaMP is currently working to complete a beneficial use impairment assessment, calculate loads and potential sources of the Lake Erie critical pollutants, develop ecosystem objectives and promote and solicit public review and participation.

A Status Report highlighting the progress of the LaMP thus far is available in hard copy or on the Lake Erie LaMP web site. Most of the background support documents are also available on the web site. There are many programs that already focus on improving and restoring Lake Erie. The LaMP will work with the existing programs and identify the additional actions needed to restore all beneficial uses to the lake.

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 AND THE IMPLEMENTATION OF NONPOINT SOURCE POLLUTION MANAGEMENT PROGRAMS (O.R.C. 6111.03, 6111.036, 6111.037 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). Ohio EPA adopted water quality standards and implementation procedures under the Great Lakes Initiative (GLI) on October 16, 1997. These rules became effective on October 31, 1997. USEPA determined that, with one exception, Ohio has adopted requirements consistent with the GLI. The one exception relates to procedures for determining reasonable potential and establishing water quality based effluent limitations for whole effluent toxicity (OAC 3745-33-07(B)). Effective September 5, 2000, the requirements of Paragraphs C.1 and D of Procedure 6 in Appendix F of the federal GLI regulation (40 CFR Part 132 shall apply to discharges within the Lake Erie drainage basin in Ohio.

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, Superior High Quality 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.

TABLE 2 - TRIBUTARY DESIGNATIONS

Stream Segment (in coastal area)	Use Designations												
	Aquatic Life Habitat						Water Supply			Recreation			
	S R W	W W H	E W H	M W H	S S H	C W H	L R W	P W S	A W S	I W S	B W	P C R	S C R
Maumee River - I-75 to confluence with Maumee Bay - Perrysburg Bridge to I-75 - remaining segment within coastal area	*	∇ * *							*	*		*	
Portage River		*						*	*		*		
Toussaint River		*						*	*		*		
Sandusky River - Fremont Sewage Treatment Plant to confluence with Muskellunge Creek - remaining segment within coastal area		∇ *						*	*		*		
Huron River - East Branch/West Branch confluence to Lake Erie - bordering Dupont Marsh	+	+			+			+	+		+		
Old Woman Creek - Estuary - within boundaries of Old Woman Creek NERR - remaining segment within coastal area	∇ ∇	* * *						*	*		*		
Vermilion River			*		∇			*	*		*		
Black River		+			+			+	+		+		
Rocky River	+	+			+			+	+		+		

+ = based on results of biological field assessment performed by Ohio EPA;

* = based on 1978 Water Quality Standards;

o = based on justification other than the results of a biological field assessment performed by Ohio EPA;

Stream Segment (in coastal area)	Use Designations												
		Aquatic Life Habitat					Water Supply			Recreation			
	S R W	W W H	E W H	M W H	S S H	C W H	L R W	P W S	A W S	I W S	B W	P C R	S C R
Cuyahoga River - Entirety of ship channel (Newburgh and South Shore (N&SS) RR bridge (RM 5.6) to mouth, including the old river channel)* - remaining segment within coastal area		+							+	+		+	
Chagrin River	*	+			+			+	+		+		
Grand River		*			∇			*	*		*		
Ashtabula River		+			∇					+		+	
Conneaut Creek			+		+			+	+			+	

*June-Jan -- Limited Resource Water; Feb-May -- Fish Passage

SRW = State Resource Water; WWH = Warmwater Habitat; EWH = Exceptional Warmwater Habitat; MWH = Modified Warmwater Habitat; SSH = Seasonal Salmonid Habitat; CWH = Coldwater Habitat; LRW = Limited Resource Water; PWS = Public Water Supply; AWS = Agricultural Water Supply; IWS = Industrial Water Supply; BW = Bathing Water; PCR = Primary Contact Recreation; SCR = Secondary Contact Recreation.

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. Antidegradation is applied in situations where there is a requested authorization to increase the discharge of pollutants to a surface water body or otherwise significantly impact the physical habitat of a surface water body. Federal law allows states to permit increased discharges of pollutants up to the safe environmental levels (i.e., up to the water quality based requirements) provided that: 1) Federal technology requirements are still met; 2) there is public involvement in the decision-making process; and 3) the increased discharge is needed to accommodate important social or economic development.

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, and the disposal or utilization of sewage sludge 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. "Permits-to-install" (PTI) are issued for construction of new or expanded wastewater treatment facilities, sewers, and for disposal of sludge from wastewater treatment facilities (O.A.C. 3745-42-02).
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. Class 1, 4 and 5 injection wells are regulated by Ohio EPA. 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 and Nonpoint Source Pollution Controls (O.R.C. 6111.037).

As the designated lead agency, Ohio EPA is authorized to administer the Water Pollution Control Loan Fund (O.R.C. 6111.036, 6111.037), 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/RELEASE REPORTING LAWS; AND**

- B. PROVIDING FOR EMERGENCY RESPONSE TO ALL APPROPRIATE SPILLS WITH A COORDINATED AND PLANNED EFFORT MAXIMIZING RESOURCES AND MINIMIZING ENVIRONMENTAL DAMAGE (O.R.C. CHAPTERS 6111, 3734, 3704, 6109 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 Air Pollution Control (DAPC). 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.

Ohio EPA's Division of Emergency and Remedial Response (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 responsible party's cleanup efforts. DERR also coordinates efforts to assure compliance with cleanup levels and disposal methods.

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 Plan. 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 and 1999 by ODNR under an agreement with Ohio EPA. (The 1993 update was never approved by U.S. EPA.) A 1999 program upgrade was developed and approved by U.S. EPA to enable Ohio to receive supplemental 319 funding. 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. 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 and Ohio State University Extension to help implement local nonpoint projects.

The State of Ohio developed the Coastal Nonpoint Pollution Control Program (CNPCP) Plan and submitted it in September 2000 to NOAA and U.S. EPA for their review. The CNPCP is based upon and expands the existing statewide Ohio Nonpoint Source Management Program and will be integrated as part of the existing Ohio Coastal Management Program. 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.

Ohio has received conditional approval of the Ohio Coastal Nonpoint Pollution Control Program, administered by ODNR, Division of Soil and Water Conservation on June 04, 2002. This conditional approval included conditions that need to be met within one year and conditions that need to be met within 2 years. The one year conditions on enforceable policies and mechanisms of the Ohio Coastal Nonpoint Pollution Control Program Plan were met by submitting a Legal Opinion to the National Oceanic and Atmospheric Administration in letter form on June 04, 2003. The “two year” conditions require that Ohio have in place programs and policies that will result in implementation of specific coastal nonpoint program management measures.

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. All new public water systems, and existing systems making changes in their source of water, must provide treatment to meet the secondary standards for iron and manganese if they would otherwise exceed the secondary standards. Public water systems are encouraged to meet the other 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. The Ohio Department of Health (ODH) and 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 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. Additionally, the ODH implements and enforces the registration of private water systems contractors (O.R.C. 3701.344, O.A.C. 3701-28).

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, 3701.344, 3718.02, 6111.03, 6109.07, AND O.A.C. 3701-28, 3701-29, 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 and O.A.C. 3701-28. ODH regulates onsite household and small flow sewage treatment systems as required in O.R.C. 3718.02 and O.A.C. 3701-29.

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 Mineral Resources Management, 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 has prepared 67 county ground water pollution potential maps that illustrate the relative vulnerability of ground water to contamination. Of the 67 maps, 28 are for counties located completely or partially within the Lake Erie watershed. 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 and a State Management Plan for Pesticides. Technical standards for well construction and sealing have been developed by the SCCGW.

ECOLOGICALLY SENSITIVE RESOURCES

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 are 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:

<u>Ownership</u>	<u>Wetland Acreage</u>	<u>Total Acreage Owned</u>
<u>ODNR</u>		
Parks and Recreation	1,400	5,653
DNAP	1,200	1,849
DOW 4,500	6,762	
<u>USFWS (Ottawa NWR)</u>	5,350	8,316
<u>The Nature Conservancy</u>	133	770
<u>Hunting Clubs</u>	<u>4,300</u>	<u>8,000</u>
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, DuPont Marsh, Lakeside Daisy and Sheldon Marsh, which are managed by ODNR's Division of Natural Areas and Preserves, as well as Old Woman Creek, managed by ODNR's Division of Wildlife. 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. 3745-1-05, 3745-1-50 TO 54 AND 3745-32);**
- B. REGULATING ACTIVITIES IN ISOLATED WETLANDS THROUGH THE ENFORCEMENT OF STATE ISOLATED WETLAND PERMITS (O.R.C. 6111.02, 6111.021, 6111.022, 6111.023, 6111.024, 6111.025, 6111.026, 6111.027, 6111.028, and 6111.029);**
- C. PROVIDING LEADERSHIP AND TAKING ACTION TO MINIMIZE ADVERSE EFFECTS TO WETLANDS IN CARRYING OUT ODNR RESPONSIBILITIES, AND, TO THE EXTENT ALLOWED BY LAW, AVOIDING UNDERTAKING CONSTRUCTION, PERMITTING ACTIVITIES, OR PROVIDING FINANCIAL ASSISTANCE FOR CONSTRUCTION THAT MAY DIRECTLY OR SECONDARILY DEGRADE OR DESTROY THE NATURAL AND BENEFICIAL FUNCTIONS OF WETLANDS (ODNR DIRECTIVE - WETLANDS);**
- D. 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;**
- E. 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**
- F. PROVIDING INFORMATION ON WETLANDS RESOURCES AND TECHNICAL ASSISTANCE TO ORGANIZATIONS AND INDIVIDUALS REQUESTING HELP IN WETLANDS CONSERVATION PROJECTS; AND**
- G. DEVELOPING A STATEWIDE WETLAND RESTORATION AND MITIGATION STRATEGY.**

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)).

Ohio has developed wetland water quality standards (See Appendix K). This rule-making was a joint effort of Ohio EPA and the ODNR. The basic structure of the wetland standards is to assign one designated use to all jurisdictional wetlands. Under OAC 3745-1-53, all of these surface water bodies receive the "wetland" use designation. The OAC Rule 3745-1-51 also contains narrative criteria, composed of goal statements that support the wetland use designation. Numeric chemical criteria for the wetland use, in OAC Rule 3745-1-52, apply to point source discharges. Those discharges are held to the warmwater habitat aquatic life use chemical criteria. For wetland discharges this criteria needs to be met at the Aend of pipe≡.

The wetland antidegradation provisions found in OAC Rule 3745-1-54, have a tiered system of protection. A wetland under review is placed into one of three antidegradation categories. These categories are based on a wetland's relative functions and values, sensitivity to disturbance, rarity and the ability to adequately mitigate for its loss through wetland restoration or creation.

Category 1 wetlands are those which support minimal wetland functions. Wetlands assigned to Category 1 do not provide critical habitat for threatened or endangered species or contain rare, threatened or endangered species. Category 1 wetlands are likely to be hydrologically isolated, have low species diversity, be dominated by non-native species in the plant community and have no significant wildlife habitat or use. Category 1 wetlands would have limited potential for reestablishment of lost wetland functions. Typical Category 1 wetlands would include wetlands that are acidic ponds created on mined lands, those wetlands that have little or no plants, and wetlands that are hydrologically isolated and comprised primarily of invasive, opportunistic plant species such as purple loosestrife (*Lythrum salicaria*), reed canary grass (*Phalaris arundinacea*) and giant reed (*Phragmites australis*).

Category 2 wetlands are those which support moderate hydrological, habitat, recreational and other wetland functions. Wetlands assigned to Category 2 are likely to be dominated by native species but generally would not have habitat for rare, threatened or endangered species.

Category 2 wetlands could be wetlands that are degraded but still have a reasonable potential for reestablishing lost wetland functions.

Category 3 wetlands are those that support superior wetland functions. Wetlands assigned to Category 3 would typically have high levels of biodiversity, a high proportion of native species or other high functional values. Category 3 wetlands might include wetlands which contain or provide habitat for threatened or endangered species, high quality forested wetlands, including old growth forested wetlands, mature forested riparian wetlands, vernal pools and wetlands which are scarce regionally or statewide including bogs and fens.

OAC Rules, 3745-1-05 and 3745-1-54, establish criteria for determining when the Director of Ohio EPA can allow a lowering of water quality in wetlands and what is appropriate mitigation for those impacts. OAC Rule 3745-1-05 identifies Category 1 wetlands as Limited Resource Waters and Category 2 and Category 3 wetlands as General High Quality Waters.

In order for an applicant to impact a Category 1 wetland the applicant must show that alternatives to impacting the wetland have been considered. Unavoidable wetland impacts must be minimized by replacing the storm water and some water quality functions on-site. The impacted Category 1 wetlands must then be mitigated for at a ratio of one and a half acres of wetland mitigation for every acre of wetland destroyed (1.5:1). This mitigation can occur anywhere within the same U.S. Army Corps of Engineers District. Ohio is divided into four of these districts which are based on drainage areas.

Category 2 wetlands require that the applicant has considered all alternatives to their destruction. For unavoidable impacts the applicant must demonstrate that they have minimized the acreage of wetland impacts. The applicant must then demonstrate that the proposed lowering of water quality is necessary for important social and economic development. Applicants must demonstrate that they can successfully mitigate for their project by restoring or creating wetlands of equal or higher quality than those being impacted. Approved wetland impacts must be mitigated on-site (within a one mile radius) if there exists a high likelihood of success for such an endeavor. If the applicant can demonstrate that on-site mitigation is not practicable then mitigation can occur anywhere within the same watershed, of a grouping of thirty-seven watersheds comprising Ohio. Mitigation ratios for Category 2 wetland impacts range from 1.5:1 to 2.5:1, with higher ratios required for off-site mitigation and for replacement of forested wetlands.

Approved impacts to Category 3 wetlands must meet all of the demonstrations required for impacts to Category 2 wetlands. Additionally, for Category 3 wetland impacts to be approved, the applicant must show that there is a public need for their project. Again, approved impacts must be mitigated for by restoration or creation of wetlands of equal or higher quality than those being impacted. Mitigation ratios for Category 3 wetlands range from 2:1 to 3:1 with higher ratios for off-site mitigation and for impacts to forested systems.

OAC Rule 3745-1-54 also singles out a subset of Category 3 wetlands, those that are scarce either regionally or statewide, where only temporary disturbances of water quality can be

authorized. This subset includes such wetland ecosystems as bogs, fens and other wetland systems that are high quality and rare.

OAC Rule, 3745-1-05 allows the Director to designate surface waters with outstanding ecological or recreational values as Outstanding National Resource Waters. Amendments to OAC Rule 3745-1-05 address review requirements for some wetlands designated Outstanding National Resource Waters. Disturbances to the water quality of wetlands and other surface waters designated as Outstanding National Resource Waters can only be authorized if they are short-term.

As well as providing mitigation for impacted Category 2 and Category 3 wetlands, the applicant must always replace the storm water and some water quality functions on-site. Peak post-development rates of surface runoff cannot exceed peak pre-development surface runoff rates on the project site. Retention or detention structures built on-site to accommodate this requirement must also incorporate chemical water quality improvement measures to the maximum extent practicable.

All approved wetland mitigation projects must be protected in perpetuity and are subject to a five year monitoring program under OAC Rule 3745-1-54. The monitoring includes information on hydrology, plants, soils and chemical water quality. The monitoring includes submittal of an annual report by the applicant and a third year site visit by Ohio EPA staff. The applicant is responsible to undertake any recommendations made by Ohio EPA to improve the mitigation wetlands. At the end of the five year monitoring period, if they can show that the mitigation is successful, the applicant is released from any further monitoring requirements.

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 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. Ohio House Bill 231, effective July 17, 2001, mandates regulation of dredge and fill impacts to isolated wetlands and requires appropriate mitigation. Ohio EPA now regulates isolated wetlands deemed non-jurisdictional by the U.S Army Corps of Engineers as a result of SWANCC v. U.S. Army Corps of Engineers (O.R.C. Sections 6111.02, 6111.021, 6111.022, 6111.023, 6111.024, 6111.026, 6111.027, 6111.028, and 6111.029). The law also gave the Director of the Ohio Department of Natural Resources authority to establish a list of approved wetland mitigation banks and to establish and operate wetland mitigation banks under O.R.C. 6111.025. The state isolated wetland permit law and the approved wetland mitigation bank list (August 2001) are included in Appendix K.
- C. Above and beyond the state's water pollution control laws, Section 401 implementing regulations and review guidelines, ODNR's Directive on Wetlands (1999 revision to the 1989 Policy Statement) "establishes a framework for the Ohio Department of Natural Resources' (ODNR) planning, land management and development; all regulation and financial assistance; water resources development, nonpoint source management and other cooperative programs, technical assistance and consultation; and external communication of departmental directives, procedures and policies."

ODNR follows this published wetlands directive in providing input to Section 404 permitting by the Corps of Engineers and Section 401 certification actions by Ohio EPA. 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 Directive on Wetlands.)

- D. 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 ten years, ODNR's Division of Wildlife and its many partners have protected, restored and enhanced approximately 13,000 acres of Lake Erie wetlands under the North American Waterfowl Management Plan (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 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.D.A. 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 \$600,000 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.

- E. 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.

- F. 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.

- G. ODNR & Ohio EPA have secured a U.S. EPA grant to develop a statewide wetland restoration and mitigation strategy. This effort will include identification of high quality wetlands to be designated Outstanding National Resource Waters and to receive the corresponding high level of protection. Undoubtedly, one element of this plan will be an emphasis to restore and protect valuable Lake Erie coastal wetland systems.

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 the Division of Wildlife as a nature preserve. Budget and policy decisions are made by the chief of Wildlife 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 Wildlife Diversity 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.**
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- 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. 1521.22 [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 1505.99, AND CHAPTERS 1561, 1563, 1565 AND 1567; AND**
- D. **COORDINATING INTERDISCIPLINARY REVIEWS OF DREDGING PROJECTS AT OHIO'S LAKE ERIE PORTS, PROVIDING TECHNICAL AND FUNDING ASSISTANCE TO 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. Returning to the littoral system all sand and gravel dredged during construction or maintenance of navigation channels, harbors, or marinas located in nearshore areas or in stream mouths will help mitigate more than 150 years of damage to the littoral system caused by ill-conceived practices for disposal of sandy sediments dredged from these channels, basins, and marinas. The historical practice of open-lake disposal, upland disposal, or commercial sale of sandy sediment dredged from channels, harbors, and marinas has contributed to long-term degradation of Ohio's beaches, loss of natural shore protection, and increased erosion. Increased erosion has increased turbidity and sedimentation in nearshore aquatic habitats.

To facilitate return of sandy sediments to the littoral system, ODNR advocates adoption of innovative dredging technologies to bypass sandy sediment to the littoral system downdrift of the harbor, channel, or marina. In addition, ODNR advocates modification of existing harbor structures to capture sand before it enters channels, harbors, or marinas. Capturing sandy littoral sediment before it enters harbors, channels, or marinas would prevent it from becoming unsuitable for nearshore disposal due to mixing with polluted and/or fine-grained sediment.

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 Operating Officer and Deputy Executive Director 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), updated approximately every five years, 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.

In 1998, ODNR completed a two-year planning process that culminated in the publication of a strategic plan for recreation opportunities. Commonly referred to as the Recreation Opportunities Priority (ROP), the strategic plan contains a number of issues and actions that

have relevance to the Ohio Coastal Management Program. Specifically, strategies for enhancing recreation resource protection, improving access to water-based recreation opportunities, and becoming more actively involved in the recreational corridors/greenways movement are consistent with the Ohio Coastal Management Program.

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. The NatureWorks grant program provides up to 75% reimbursement assistance for local government subdivisions (townships, villages, cities, counties, park districts, joint recreation districts, and conservancy districts) to for the acquisition, development, and rehabilitation of recreational areas. Since NatureWorks' inception, over 1,300 applications totaling over \$63 million have been funded.

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 eligible as match.

- 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 Recreational Trails Program (RTP) component of the Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users (SAFETEA-LU), (2) administer the NatureWorks and LWCF programs and the NRTF component of SAFETEA-LU 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 breakwaters. In addition to actual access facilities, support accommodations such as parking, rest rooms, lighting, 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 and the RTP 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 RTP. The RTP was established with the passage of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 (PL 102-240) and was reauthorized by SAFETEA-LU through 2009. RTP funds can be

used to assist governmental agencies and non-profit trail groups in the rehabilitation, development, maintenance and acquisition of recreational trails and related facilities. RTP 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 throughout the bathing beach season. Additional samples are taken in response to unusual conditions or to evaluate water quality problems when identified.

If E.coli bacteria counts exceed standards, ODH recommends to DPR or the beach operator that a 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 E.coli levels. Subsequent testings determine whether or not the beach advisory remains posted.

- D. ODH encourages local health districts 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 districts with guidelines for developing regulations and strongly recommends adoption of regulations through their program surveys and reviews of local procedures. Cuyahoga, Erie, and Lake 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 four area 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). Completion of a Boating Education Course is mandatory for all watercraft operators born in 1982 or later operating a vessel with a horsepower rating of 10 or more (O.R.C. 1547.05). Also, Educational Grants are available to non-profit corporations and political subdivisions to conduct Ohio Boater Education Courses (O.R.C. 1547.68).

- 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 7/8 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). Section 106 of the National Historic Preservation Act of 1966, requires federal agencies to consider the effects of "undertakings" they fund or license in Ohio. "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 6,000 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 reasonable alternative, the state and the federal Advisory Council on Historic Preservation may agree to the loss of a significant property if steps adequate to mitigate the impact of its loss 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

130,000 properties in all parts of the state are kept at the Ohio Historic Preservation Office 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, preservation conferences, 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 has harmed migratory waterfowl, for which 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 persons 16 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.
- 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.

ENVIRONMENTAL QUALITY

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 (PM₁₀); 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*			
CUYAHOGA			X
LAKE*			
ASHTABULA*			

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 determine 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 1240 large-quantity generators of hazardous waste in Ohio, 397 are located in the coastal counties, according to Ohio EPA records based on Generator Annual Reports filed for 1998. There are more than 11,000 small quantity generators in Ohio. There are approximately 50 hazardous waste storage, treatment and disposal facilities operating within Ohio, 15 in coastal counties. Three coastal counties rank in the top ten generators of hazardous waste: Cuyahoga (2), Lucas (8) and Ashtabula (10).

Of the top 10 counties for hazardous waste shipments listed in Annual Reports, three are coastal counties. These counties and their statewide rank are: Cuyahoga (1), Lucas (4) and Ashtabula (5). The coastal counties with significant treatment, storage or disposal activity are Ashtabula, Sandusky, Cuyahoga and Lucas.

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 underwent SIP revisions to reduce point and mobile sources which contributed to the moderate ozone nonattainment. Automobile inspection and maintenance are required in these areas, with the exception of Lucas and Wood counties.

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.

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 59; 3745-65 THROUGH 69; 3745-273; AND 3745-279);**
- 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 management, 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 3745-59, 3745-65 through 3745-69, 3745-273, and 3745-279. 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 management, 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.). Generator standards for the management 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 or disposal of hazardous waste at nonpermitted facilities is prohibited. Decisions on siting for new hazardous waste treatment, storage and disposal facilities and certain modifications to such facilities are made by the Ohio Hazardous Waste Facility Board (HWFB). Other modifications may be approved by the Director of Ohio EPA. The terms "storage," "treatment," "disposal" and "facility" are defined in O.R.C. 3734.01 and O.A.C. 3745-50-10. Rules governing the operation of permitted hazardous waste 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. 3745-52-41, 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. These efforts focus on providing technical assistance to help minimize the amount of waste generated and measuring the results of these activities. Site visits are provided to help companies implement pollution prevention programs, and presentations and training events are provided to educate Ohio businesses and organizations about pollution prevention. An Internet site has been developed that provides practical pollution prevention information that companies can use to reduce waste and improve operations. Low interest capital improvement loans are provided through the Pollution Prevention Loan Program, jointly administered through Ohio EPA and the Ohio Department of Development.

Ohio EPA is also working to integrate pollution prevention into the agency's standard operations. These changes will enable each part of the agency to more effectively encourage and educate companies on the economic and environmental benefits of pollution prevention in their inspection, enforcement and permitting processes. The focus of this effort is to modify existing programs to encourage pollution prevention rather than pollution control.

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 inspection 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 and 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 construction, 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).

Additionally, the Ohio Clean Marinas Program, implemented in 2003, is a proactive partnership to encourage marinas and boaters to use simple, innovative solutions to keep Ohio's coastal and inland waterway resources clean. Information can be found at www.sg.ohio-state.edu/cleanmarina/.

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. Violations 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 Mineral Resources Management (DMRM), 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 DMRM. The Chief 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, INCLUDING ADVERSE IMPACTS ON LITTORAL OWNERS' RIGHTS (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).

O.R.C. 1505.07 requires that any taking or removal must be within “fixed boundaries that do not conflict with the rights of littoral owners.”

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, ENSURE RECLAMATION OF ALL AFFECTED AREAS THROUGH THE ISSUANCE OF OHIO DEPARTMENT OF NATURAL RESOURCES PERMITS AND SEE TO THE HEALTH AND SAFETY OF ALL PERSONS WITHIN THE MINING FACILITY (O.R.C. 1514.02, 1514.021, 1561, 1563, 1565 AND 1567).

Authorities and Administration

ODNR, Division of Mineral Resources Management (DMRM), 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 DMRM 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 DMRM. 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 DMRM 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.

In addition, the Chief of DMRM shall enforce and supervise the execution of all laws enacted for the health and safety of persons and the protection and conservation of property within, about, or in connection with mines, mining and quarries, and for such purpose shall adopt, publish, and enforce necessary rules not inconsistent with the mining laws of the state.

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 PROPOSALS FOR DIVERSIONS OUT OF THE GREAT LAKES BASIN AS WELL AS ALL NEW PROPOSALS FOR FEDERAL STUDIES THAT WOULD INVOLVE DIVERSIONS OUT OF THE GREAT LAKES BASIN, AND GRANTING OR DENYING PERMISSION FOR SUCH DIVERSIONS OR STUDIES (42 U.S.C. 1962D-20).**

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 1501-2-12). A diversion is any withdrawal of water from either the Lake Erie or Ohio River drainage basin and transfer to another basin without return. Diversion does not include evaporative loss within the basin of withdrawal. Any proposed 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 determined that: (1) some or all of the water to be diverted will be needed for use within the basin, (2) the public health, safety, or welfare would be endangered, (3) the applicant has not demonstrated that the proposed diversion is for a reasonable and beneficial use and is necessary to serve the applicant's needs, (4) reasonable efforts to develop and conserve water resources in the importing basin have not been made, (5) the proposed diversion, alone or in combination with other diversions and water losses, will have a 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 of a permit application or modification of an existing permit 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 waters of the Great Lakes. 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. Subsequent to the signing of the Great Lakes Charter, the federal Water Resources Development Act of 1986 (WRDA-1986) was passed. Section 1109 of WRDA-1986 (42 U.S.C. 1962d-20) prohibits the diversion of water from the U.S. portion of the Great Lakes and Great Lakes Basin without the approval of all the governors of the Great Lakes states. It also prohibits federal agencies from studying the feasibility of such diversions without the approval of the Great Lakes states' governors.

When applications are received for diversion of water from the Ohio portion of the Lake Erie basin in quantities greater than 100,000 gallons per day, the Director of ODNR shall consult and seek consensus with the governors and premiers of the Great Lakes states and provinces as called for in the Great Lakes Charter (O.R.C. 1501.32). The director shall not grant a permit for a diversion that is subject to the jurisdiction of Section 1109 of WRDA-1986 until all the governors of the Great Lakes states have approved the diversion (O.R.C. 1501.32). Further, pursuant to Section 1109 of WRDA-1986, the Governor of the State of Ohio must approve proposals for diversion of water out of the Great Lakes Basin in the other Great Lakes states before they can be implemented.

- C. The Council of Great Lakes Governors developed a process, pursuant to the Great Lakes Charter, 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. States and provinces have 45 days from notification to provide comments or request a consultation meeting. The Great Lakes states have used a modified form of the Great Lakes Charter process to consider diversion proposals under Section 1109 of WRDA-1986. Instead of seeking consensus, as under the Charter, states seek the approval of the governors.

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. REQUIRING THE FILING OF WELL LOGS AND WELL-SEALING REPORTS (O.R.C. 1521.05);**
- C. PREPARING WATER SUPPLY PLANS;**
- D. PREPARING A LONG-TERM WATER RESOURCES PLAN FOR THE LAKE ERIE DRAINAGE BASIN;**
- 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. 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).
- C. 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.

- D. ODNR's Division of Water is required to develop a long-term water resources plan for the Lake Erie drainage basin (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.
- 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) is 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 decision making. 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, Sheldon Marsh, Dupont Marsh and Lakeside Daisy, as well as Old Woman Creek National Estuarine Research Reserve (OWC-NERR), which is managed by the ODNR Division of Wildlife. 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.

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, OCM. 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 Consistency Coordinator, OCM.

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 Agency 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)). The term "federal agency activity" means any function 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 or the granting of federal assistance to an applicant agency. The term federal "development project" means a federal agency activity involving the planning, construction, modification, or removal of public works,

facilities, or other structures, and includes the acquisition, use, or disposal of any coastal use or resource.(15 C.F.R. 930.31).

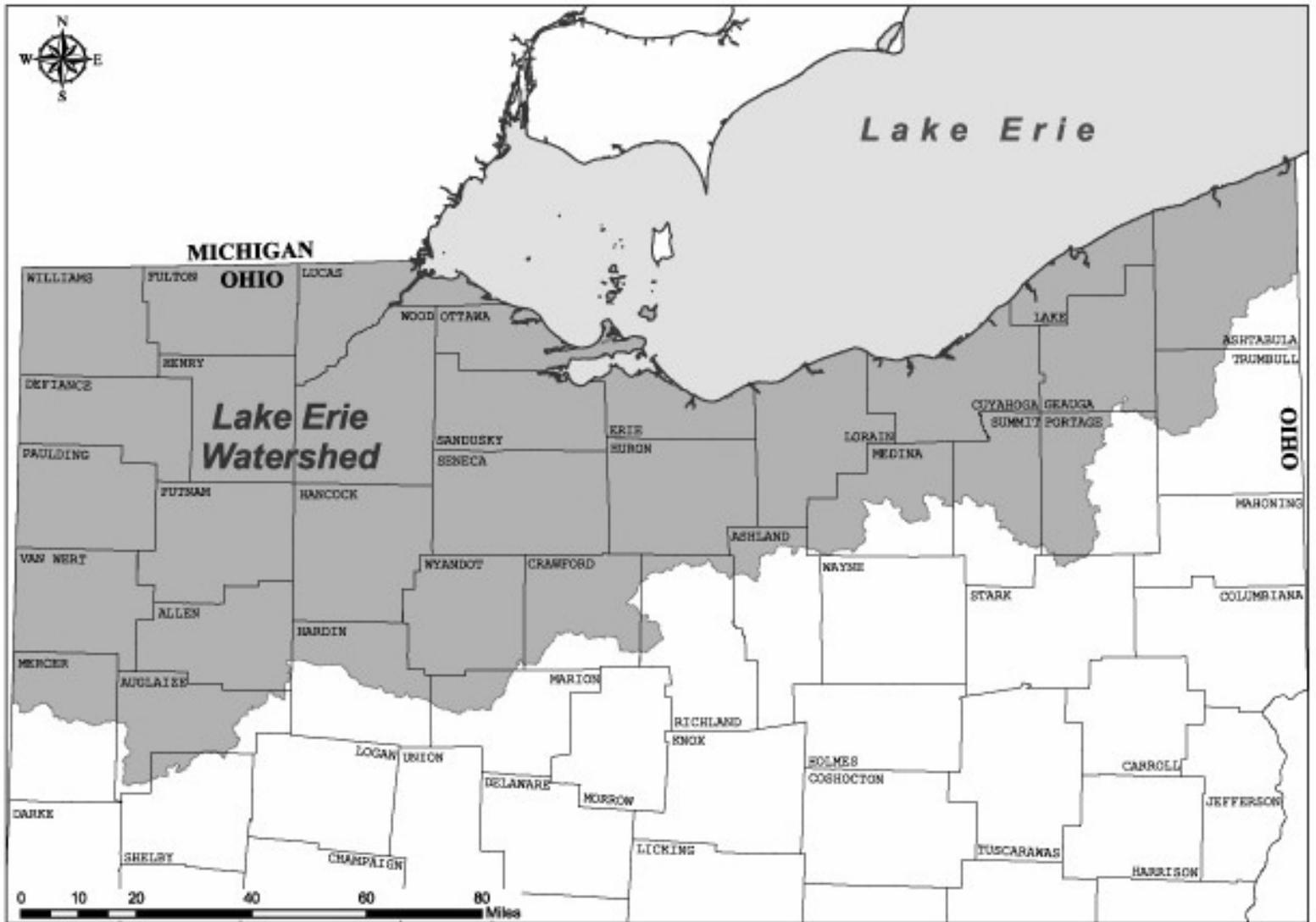
Federal agencies must review proposed actions, whether within or outside the coastal area, affecting any land or water use or natural resource of the coastal area, to determine that they are consistent with the OCMP. The determination provides Ohio with the opportunity to ensure that proposed activities 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. 930.36(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 activities 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. (See Figure 6.) 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 any coastal use or resource of Ohio's coastal area. The Consistency Coordinator, OCM, 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, conducted by the Division of Real Estate and Land Management (REALM), and consultation with other agencies with responsibilities in the coastal area. As necessary, the Consistency Coordinator, OCM, will solicit and incorporate comments beyond those received through REALM's environmental review process into findings that will support the director's concurrence with or objection to 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.

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 any proposed federal activity, regardless of location, that, in the opinion of ODNR, may affect any coastal use or resource of Ohio's coastal area. 15 C.F.R. § 930.33(5)(c). 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 30 days from notice of the license or permit application, that has been submitted to the approving federal agency, , otherwise the State agency waives its right to review the unlisted activity. The waiver does not apply in cases where the State agency does not receive notice of the federal license or permit application, . 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. § 930.36(c).

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. § 930.36(d).

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 60 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 60 days, agreement by the state shall be presumed. 15 C.F.R. § 930.41.

If Ohio objects to 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 letter of objection shall include the rationale for the objection; 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 Ohio objects to 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. § 930.43.

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 930.45.

Mediation of Conflicts

In the event of a serious disagreement between Ohio and a federal agency regarding the consistency of a proposed federal activity affecting any coastal use or resource, either party may request the Secretarial mediation or OCRM mediation services provided for in subpart G. 15 C.F.R. § 930.44

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, or
- 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 Homeland Security, 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 (c) 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)).

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 Homeland Security, 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
- 10.901 Resource Conservation and Development Loans
- 10.415 Rural Rental Housing Loans
- 10.760 Water and Waste Disposal Systems for Rural Communities
- 10.904 Watershed Protection and Flood Prevention Loans
- 10.420 Rural Self-Help Housing Technical Assistance
- 10.768 Business and Industry Loans
- 10.766 Community Facilities Loans and 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 Watershed Surveys and Planning

Department of Commerce

- 11.300 Grants for Public Works and Economic Development Facilities
- 11.302 Economic Development - Support for Planning Organizations
- 11.303 Economic Development - Technical Assistance
- 11.307 Economic Adjustment Assistance
- 11.405 Anadromous Fish Conservation Act Program
- 11.407 Interjurisdictional Fisheries Act of 1986
- 11.417 Sea Grant Support
- 11.419 Coastal Zone Management Administration Awards
- 11.420 Coastal Zone Management Estuarine Research Reserves
- 11.427 Fisheries Development and Utilization Research and Development Grants and Cooperative Agreements Program
- 11.550 Public Telecommunications Facilities Planning and Construction

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 Community Economic Adjustment Planning Assistance for Joint Land Use Studies

Department of Housing and Urban Development

- 14.218 Community Development Block Grants/Entitlement Grants
- 14.219 Community Development Block Grants/Small Cities Program

Department of the Interior

- 15.605 Sport Fish Restoration
- 15.611 Wildlife Restoration
- 15.614 Coastal Wetlands Planning, Protection and Restoration Act
- 15.616 Clean Vessel Act
- 15.630 Coastal Program
- 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

- 20.106 Airport Improvement Program
- 20.205 Highway Planning and Construction
- 20.219 National Recreation Trails Program
- 20.500 Federal Transit – Capital Investment Grants
- 20.509 Formula Grants for Other Than Urbanized Areas
- 20.801 Development and Promotion of Ports and Intermodal Transportation

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
- 66.454 Water Quality Management Planning
- 66.456 National Estuary Program
- 66.458 Capitalization Grants for Clean Water State Revolving Funds
- 66.469 Great Lakes Program
- 66.500 Environmental Protection - Consolidated Research
- 66.600 Environmental Protection Consolidated Grants - Program Support
- 66.700 Consolidated Pesticide Enforcement Cooperative Agreements
- 66.701 Toxic Substances Compliance Monitoring Cooperative Agreements
- 66.801 Hazardous Waste Management State Program Support
- 66.802 Superfund State, Political Subdivision, and Indian Tribe Site-Specific Cooperative Agreements
- 66.804 State and Tribal Underground Storage Tanks Program
- 66.805 Leaking Underground Storage Tank Trust Fund Program

Department of Energy

- 81.041 State Energy Program
- 81.087 Renewable Energy Research and Development
- 81.121 Nuclear Energy Research, Development and Demonstration

Department of Homeland Security

- 97.012 Boating Safety Financial Assistance
- 97.029 Flood Mitigation 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. OCOMP 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 four district offices along the Lake Erie coast in Maumee Bay, Sandusky, Ashtabula, and Cleveland, which also serves as the regional headquarters. 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 April 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 funding offered by the Division of Watercraft can be found online at www.ohiodnr.com/watercraft/grant.

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:

	<u>Number</u>	<u>Acreage</u>	<u>Beach Length</u>	<u>Shoreline Frontage</u>
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)** 7 miles (50-100 ft.) 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 board 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) incorrect (derived improperly or with poor data), (b) unsubstantiated (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.

Response to Comments on Notice of Intent

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 "the Lake Erie erosion hazard area" to "a 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.