

OHIO COASTAL MANAGEMENT PROGRAM
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.