

## 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.