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06/06/2008

Ohio Department of Natural Resources

2008 Draft Rules

For the Leasing and Permitting of Lake Erie Coastal Structures

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**1501-6-01 Definitions of terms.**

(A) “Accretion” means the natural process of the gradual and imperceptible deposition of sand or sediment along the shore of Lake Erie.

(~~AB~~) "Applicant" means any person who applies to the department to develop or improve any part of the territory as defined in division (A) of section 1506.11 of the Revised Code.

(~~BC~~) "Application" means the signed and completed form(s) and any supplemental information ~~which that~~ may be required by the director in accordance with these rules and submitted to the director as provided in divisions (B) ~~and~~ through (G) of section 1506.11 of the Revised Code.

(D) “Avulsion” means the sudden and perceptible loss of land along the shore of Lake Erie due to wave or ice forces from Lake Erie.

(E) “Boathouse” means a single story, covered structure with direct access to a navigable body of water designed exclusively for the docking of watercraft that:

(1) is anchored or fixed to any of the shorelines or submerged lands within the territory;  
and

(2) has no ground level floor.

(F) “Coastal structure” includes, but is not limited to: artificially nourished beaches; groins; weirs; dunes; revetments; bulkheads; seawalls; breakwaters; dikes; piers; docks; jetties; wharves; marinas; boat ramps; any associated fill used as part of the construction of structures that may control or affect coastal erosion, wave action, or inundation; and fill or debris placed along or near the shore including bluffs, banks or beach ridges for the purpose of stabilizing slopes.

(G) “Coterminous” means having the same or coincident boundaries without gap or overlap of interest.

(H) “Conveyance Record” means an instrument in writing by which an estate or interest in real estate is created or assigned from one person to another; such as a deed or plat, etc.

(~~EI~~) "Department" means the department of natural resources.

(~~DJ~~) "Development" or "improvement" means, but shall not be limited to, wharfs, breakwaters, weirs, piers, docks, bulkheads, marinas, groins, jetties, revetments, fill for the purpose of creating new lands or any structure of any other kind ~~which that~~ encroaches upon the territory.

(~~EK~~) "Director" means the director of the department of natural resources.

(L) “Erosion” means the gradual and imperceptible loss of sand, soil or other solid material by

the actions of the waters of Lake Erie.

(~~FM~~) "Erosion control structure measure" means a structure ~~solely and specifically~~ primarily designed to reduce or control ~~lake Lake~~ Erie-related erosion of the shore. Examples include, but are not limited to, groins, artificially nourished beaches, revetments, seawalls, bulkheads, and certain breakwaters and similar structures.

(N) "Facility" means all coastal structures, fills, developments, improvements or other stationary items located within the territory of Lake Erie which are located on a single site or on adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person)."

(GO) "Fill" means any material that replaces portions of the waters of used for the primary purpose of replacing lake Lake Erie ~~aquatic areas~~ with dry land or that changes changing the bottom elevation of ~~lake Lake~~ Erie.

(P) "Floating home" means a floating structure designed exclusively for human habitation that:

(1) is anchored or fixed to any of the shorelines or submerged lands within the territory; and

(2) has bathroom facilities, sanitary plumbing or sanitary drains of any kind, kitchen facilities, a heating system, beds or sleeping quarters.

(~~HQ~~) "Governmental income producing facility" means any facility built in the territory managed by a governmental agency or by a contracted private management company ~~which that,~~ by the nature of the facility, produces income above and beyond normal charges associated ~~to~~ ~~cover~~ with operating costs. Said governmental agency shall include, but not be limited to, a county, township, village, municipality, port authority, park district or conservancy district.

(~~IR~~) "Governmental non-income producing facility" means any facility built in the territory including, but not limited to, municipal water intake pipes, sewer outfall pipes, storm sewer outfall pipes, submerged cables or any other facility which is managed, owned, operated, occupied or utilized by a governmental agency for a governmental use or purpose at no charge or a nominal charge to cover operating cost. Said governmental agency shall include, but not be limited to, a county, township, village, municipality, port authority, park district, sewer district or conservancy district.

(S) "International Great Lakes Datum (IGLD)" means the current elevation reference system used to describe water levels above a vertical datum within the Great Lakes.

(~~JT~~) "Large facility" means any semi-private or commercial facility, built in the territory which exceeds four acres in total area and shall include, but not be limited to, an industrial facility such as a loading and off loading facility, an "industrial water" intake and an industrial water outfall,

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or fill to expand an upland or support facility for such use.

~~(K)~~ "Lease" means a document prepared by the department containing terms and conditions for development or improvement of the territory of the state in lake Erie for a specified time, approved by the governor, and executed by the director in the manner prescribed by sections 1501.01, 1506.11 and 5301.13 of the Revised Code.

~~(L)~~(U) "Littoral rights" means, but may not be limited to, the right of an upland property owner to access or make reasonable use of the waters fronting the upland property and the right to wharf out to navigable waters within the projected boundaries of the upland property, said rights being subject to the rights of the state of Ohio and the United States.

~~(M)~~(V) "Littoral zone" means the indefinite zone between the shoreline extending lakeward to the furthestmost line where waves begin to break. The term "Littoral Zone" does not imply any limitation upon littoral rights, is not defined by any property boundary, and is not intended to describe any property boundary.

~~(N)~~(W) "Nonpoint source management program" means the management program for controlling pollution added from nonpoint sources to the waters of the state and improving the quality of such waters submitted by the governor to the U.S. environmental protection agency and approved November 21, 1989, in accordance with section 319 of the federal water quality act of 1987 and any federally approved amendments to the program adopted in accordance with section 6217 of the coastal zone act reauthorization amendments of 1990.

~~(O)~~(X) "Ohio Coastal Management Program" means the comprehensive action of the state and its political subdivisions to preserve, protect, develop, restore or enhance the resources of the coastal area in accordance with established objectives, policies, standards and criteria concerning:

- (1) protection of the natural resources in the coastal area;
- (2) management of coastal development and redevelopment;
- (3) preservation and restoration of historic, and/or cultural ~~and aesthetic~~ coastal features;
- (4) public access to the coastal area for recreational purposes; and
- (5) as otherwise described in divisions (B) and (C) of section 1506.01 of the Revised Code and the Ohio coastal management program document.

(Y) "Person" means an individual, corporation, business trust, estate, trust partnership, association and also includes the United States, the state of Ohio, any political subdivision of the state, and any department, division, board, commission, agency or instrumentality of the United States, the State, or a political subdivision of the State.

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~~(P)~~(Z) "Private pier, floating dock or structure" means a pier, dock or structure placed in the territory of ~~lake~~ Lake Erie for the sole use of the upland owner for upland owner's personal benefit. Said structure or dock shall not be used for any monetary gain such as, but not limited to, dock space for rent, lease or sale.

~~(Q)~~(AA) "Public hearing" means a formal hearing conducted by the director, or designee, in which evidence may be presented and testimony given. These proceedings are recorded and an official transcript is made a part of the administrative record maintained by the department for the subject submerged lands lease and/or submerged lands permit application as provided for in division (C) of section 1506.11 of the Revised Code.

~~(R)~~(BB) "Public meeting" means an assembly conducted by the department, the purpose of which is to provide an opportunity for a lease or permit applicant to explain the developments or improvements and/or activities upon ~~lake~~ Lake Erie submerged lands to concerned agencies and the general public and afford an opportunity for interested parties to express any relevant issues or concerns as provided for in division (C) of section 1506.11 of the Revised Code.

~~(S)~~(CC) "Semi-private facility" means any facility built in the territory in conjunction with, but not limited to, condominiums, trailer parks, cooperatives, residential associations, campgrounds, or apartments.

~~(T)~~(DD) "Small commercial facility" means any facility built in the territory in connection with the providing of commercial services and does not occupy more than four acres of total area. A small commercial facility shall include, but not be limited to, a commercial marina, private club, yacht club, sailing club, transit ferry boat facility, or ~~breakwall~~ breakwater constructed to protect inland marina channels and/or boat basin for access to ~~lake~~ Lake Erie.

~~(U)~~(EE) "State resource waters" means surface waters of the state that lie within national, state and metropolitan park systems, wetlands, wildlife refuges, waters of exceptional recreational or ecological significance, and as otherwise described in state water quality standards, rule 3745-1-05 of the Administrative Code.

~~(V)~~(FF) "Structure" means facility which requires fill being placed, upon the submerged lands of ~~lake~~ Lake Erie, including, but not limited to, a rubble mound docks, rubble mound walks, rock filled timber crib docks, rock filled timber crib walls, pilings, steel sheet pile walls, revetments, unattached breakwaters and/or seawalls, precast concrete modular structures, and riprap shore protection.

~~(KGG)~~ "Submerged lands lease" means a document prepared by the department containing terms and conditions for development or improvement of the territory of the state in ~~lake~~-Lake Erie for a specified time, approved by the governor, and executed by the director in the manner prescribed by sections 1501.01, 1506.11 and 5301.13 of the Revised Code.

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(HH) “Submerged lands permit” means a document prepared by the department containing terms and conditions for development or improvement of the territory of the state in Lake Erie for a specified time, executed by the director in the manner prescribed by sections 1501.01 and 1506.11 of the Revised Code.

~~(W)~~(II) "Territory" as used in these rules shall be as it is described in section 1506.10 and as it is defined in division (A) of section 1506.11 of the Revised Code. Where the territory has been artificially filled, the director shall determine the natural shoreline as accurately as possible, using the best practicable measures including, but not limited to, an analysis of the earliest known charts, maps or photographs.

~~(X)~~(JJ) "Utility" shall mean any utility company regulated by s, within the jurisdiction of s, registered with, or licensed to do business in the state of Ohio by the public utilities commission of Ohio, that is engaged in an activity in the territory including, but not limited to, the placement of submerged cables, water intake pipes, water outfall pipes, sewer outfall pipes, storm sewer outfall pipes, and the related structures necessary for protection. This definition shall not include any existing fill or any proposed new fill used or proposed to be used for existing buildings, expansion of existing buildings, or any facilities related to the operation of the utility, including, but not limited to, electric power plants, coal storage facilities, coal loading and off loading facilities, or disposal sites for fly ash, bottom ash, dredged materials or other products.

History: Eff 4-30-92; 7-4-99  
Rule promulgated under: RC Chapter 119  
Rule authorized by: RC 1506.02  
Rule amplifies: RC 1506.10, 1506.11  
R.C. 119.032 review dates: 6/30/99. 12/30/03

**1501-6-02 Submerged Lands Application.**

(A) Structures, fills, developments or improvements of Lake Erie that existed prior to March 15, 1989 are not subject to certain criteria contained within Section 1501-6-03 (D) of the Administrative Code provided that the uses for such structures, fills, developments or improvements have not changed since March 15, 1989. Submerged lands lease and/or submerged lands permit applications under this section for structures, fills, developments or improvements in existence on or before March 15, 1989 are only required to contain the information described in paragraph (D) of this section.

(B) An application for a submerged lands lease and/or submerged lands permit to occupy the territory of Lake Erie shall be filed with the department of natural resources and shall not be deemed complete unless the application includes all information required pursuant to section 1506.11 of the Revised Code and rules adopted under the section and the filing fee as required by the rules of this chapter.

An application shall be deemed unacceptable by the director if it is found to have incomplete or insufficient information for proper evaluation of the development, improvement or activity upon ~~lake~~ Lake Erie submerged lands. The applicant shall be notified by the ~~director~~ department if the application is unacceptable within ~~sixty~~ fifteen days of its receipt by the ~~director~~ department. Upon receipt of said notification, the applicant may resubmit a new application for evaluation. The director must, within a reasonable period of time, process the application.

When the director finds that the effort to supplement the information on the application will be unavailing and that the application is not in accordance with the requirements of section 1506.10 and 1506.11 of the Revised Code and applicable rules, or that the applicant failed to respond to request for information within ~~sixty~~ one hundred-twenty days of notice, the director shall issue an order denying the application for a submerged lands lease or submerged lands permit and shall notify the applicant of the opportunity for a hearing pursuant to section 119.06 to 119.13 of the Revised Code.

(C) Each application for a submerged lands lease and/or submerged lands permit to occupy the territory of Lake Erie shall be accompanied by a non-refundable filing fee of \$50 in the form of a check or money order made payable to "Treasurer, State of Ohio.". The fee shall be used for the purpose of copying the application, mailing notice of receipt of the application to adjoining property owners, and providing public notice under Administrative Code Section 1501-6-04 of receipt of the application. The filing fee under this section is not required if a filing fee is provided for a coastal structure permit application under Section 1501-6-33 of the Administrative Code. The filing fee under this section is not considered as rental income under section 1506.11(C) of the Revised Code and is not subject to disbursement to local authorities under that section.

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(D) Each complete application for a submerged lands lease and/or submerged lands permit requesting authorization for the use and occupation within the territory of Lake Erie of structures, fills, developments or improvements as existing on March 15, 1989 shall consist of:

- (1) A completed application form as prescribed by the Director and signed by the current property owner(s).
- (2) A copy of the most current conveyance record of all parcels contained within the project site. (The conveyance record is needed to ensure that the permit or lease is executed with the property owner(s) who have littoral rights in the area(s) occupied by the structure, fill, development or improvement.)
- (3) A listing of all adjoining property owners including mailing addresses if known. (The list of property owners is needed to ensure that proper notification is sent to property owners who may be affected by the issuance of a permit or lease. Examples include but are not limited to other shoreline property owners, members of homeowners associations, or parties such as utilities or local governments that may have easements or other rights in the area where the submerged lands permit or lease is being requested.)
- (4) A certified copy of a resolution or ordinance in accordance with section 1506.11 of the Revised Code from the legislative authority where the territory is located. (The resolution or ordinance is required from the local authority before a permit or lease can be issued. The resolution or ordinance is obtained from the local authority and should state that the submerged lands in question are not necessary for the construction, maintenance, or operation by the municipal corporation, county, or port authority of breakwaters, piers, docks, wharves, bulkheads, connecting ways, water terminal facilities, and improvements, and marginal highways in aid of navigation and water commerce and that the land uses specified in the application comply with regulation of permissible land use under a waterfront plan of the local authority. The resolution or ordinance is used to determine if the use and occupation of the territory of Lake Erie by the structure, fill, development or improvement will meet the criteria set forth in OAC 1501-6-03 (D)(4).)
- (5) A map showing the site location with respect to county, township, and municipal corporation boundary lines and state, county, and local roads. The project site shall be clearly and accurately marked on the map. State and county highway maps, United States Geological Survey seven and one-half minute topographic maps, or other information such as aerial photographs may be used to provide an accurate location. (The map is only for the general purpose of illustrating the location of the proposed site to reviewers of the application.)
- (6) Detailed plans that include the following:

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- (a) A plat based upon a field survey, prepared by a professional surveyor in accordance with Chapter 4733. of the Revised and Administrative Code and referenced to the applicant's upland property description, of the territory of Lake Erie occupied by structure, fill development or improvement. (The plat is needed to depict the lateral dimensions of the structure(s) or fill(s) within the territory of Lake Erie. The limits must be described relative to the upland property description. The plat description is sufficient for use in issuing a permit.)
  - (b) A plan view of the location of the limits of all existing structures, fills developments or improvements shown relative to the coterminous property boundaries and littoral partition lines of adjoining within or adjacent to the project area. (The plan view is needed to determine the lateral dimensions of the structure(s) or fill(s) as they relate to property boundaries and littoral partition lines. This information is used to evaluate whether the structure, fill development or improvement will prejudice the littoral rights of any owner of land on Lake Erie.)
- (7) For a submerged lands lease application, the detailed plans shall also include the following:
- (a) A metes and bounds description, prepared by a professional surveyor in accordance with Chapter 4733. of the Revised and Administrative Code, referenced to the applicant's upland property description that identifies the perimeter of the proposed lease boundary and the area reported in square feet. (a metes and bounds description that is directly related to the upland parcel enables the real estate, law and surveying professional to clearly identify the geographical area contained within the leasehold interest. A metes and bounds description is needed to establish a leasehold interest within the territory of Lake Erie. )
- (E) Each complete application for a submerged lands lease and/or submerged lands permit for structures, fills, developments or improvements placed after March 15, 1989 shall consist of:
- (1) A completed application form as prescribed by the Director and signed by the current property owner(s).
  - (2) A copy of the most current conveyance record of all parcels contained within the project site. (The conveyance record is needed to ensure that the submerged lands permit or lease is issued to the property owner(s) who have littoral rights in the area(s) occupied by the structure, fill, development or improvement.)

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- (3) A listing of all adjoining property owners including mailing addresses if known. (The list of property owners is needed to ensure that proper notification is sent to property owners who may be affected by the issuance of a permit or lease. Examples include but are not limited to other shoreline property owners, members of homeowners associations, or parties such as utilities or local governments that may have easements or other rights in the area proposed to be permitted or leased.)
- (4) A certified copy of a resolution or ordinance in accordance with section 1506.11 of the Revised Code from the legislative authority where the territory is located. (The resolution or ordinance is required from the local authority before a submerged lands permit or lease can be issued. The resolution or ordinance is obtained from the local authority and should state that the submerged lands in question are not necessary for the construction, maintenance, or operation by the municipal corporation, county, or port authority of breakwaters, piers, docks, wharves, bulkheads, connecting ways, water terminal facilities, and improvements, and marginal highways in aid of navigation and water commerce and that the land uses specified in the application comply with regulation of permissible land use under a waterfront plan of the local authority. The resolution or ordinance is used to determine if the use and occupation of the territory of Lake Erie by the structure, fill, development or improvement will meet the criteria set forth in OAC 1501-6-03 (D)(4).)
- (5) A map showing the site location with respect to county, township, and municipal corporation boundary lines and state, county, and local roads. The project site shall be clearly and accurately marked on the map. State and county highway maps, United States Geological Survey seven and one-half minute topographic maps, and aerial photographs may be used to supplement the required location information. (The map is for the general purpose of illustrating the location of the proposed site to reviewers of the application.)
- (6) Detailed plans and specifications that include, but are not limited to the following:
- (a) A plat based upon a field survey, prepared by a professional surveyor in accordance with Chapter 4733. of the Revised and Administrative Code and referenced to the applicant's upland property description, of the territory of Lake Erie occupied by structure, fill development or improvement. (The plat is needed to depict the lateral dimensions of the structure(s), fill(s), development(s) or improvement(s) within the territory of Lake Erie. The limits must be described relative to the upland property description. The plat description is sufficient for use in issuing a submerged lands permit.)
- (b) An existing plan view showing:

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- (1) The location of the limits of all existing structures, fills, developments or improvements shown relative to the coterminous property boundaries and littoral partition lines of adjoining within or adjacent to the project area.
- (2) The existing site conditions and features such as the shoreline, bluff, creeks, docks, piers, buildings, utilities and other pertinent features. Elevations shown shall be referenced to the IGLD, and
- (3) Existing topographic and underwater contour lines and contour intervals.

(The existing plan view is needed to determine the lateral dimensions of the existing structure(s), fill(s), development(s) or improvement(s) as they relate to property boundaries, natural features and littoral partition lines. This information is used to ensure that the structure, fill, development or improvement does not prejudice the littoral rights of any owner of land on Lake Erie. The plan view is prepared by the Registered Professional Engineer and/or Surveyor and provides the reviewer with details as to the accurate location of artificial and natural features as they relate to the upland parcel boundary and any proposed occupation of the territory of Lake Erie.)

(c) A proposed plan view showing:

- (1) The location of the proposed or existing project, depicting the limits of all existing and proposed structure(s) within the project area;
- (2) The proposed site conditions and features such as the shoreline, bluff, creeks, docks, piers, buildings, utilities and other pertinent features. Elevations shown shall be referenced to the IGLD; (This provides the reviewer with information on the proposed changes to the site.)
- (3) Names and addresses of property owners, conveyance record reference, permanent parcel number/parcel identification number and the address of the site location as are readily available from the county recorder's and auditor's offices; (This provides the reviewer with information on the location of parcels and their corresponding information.)

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- (4) Proposed topographic and underwater contour lines and contour intervals; (This provides the reviewer with information regarding the impact to aquatic resources as defined by 1501-6-03(D)(2))
- (d) The plan views and any other drawings shall be to standard scales that accurately and adequately show the features of the proposed scope of the project and the site information. All drawings shall include a bar scale, and bear the signature, date and seal of the registered professional engineer and/or surveyor who prepared the drawings in accordance with section 4733 of the Revised and Administrative Code. (Drawings, reports and documented opinions by the Professional Engineer or Professional Surveyor are required to comply with chapter 4733 of the Revised Code and Administrative Code sections adopted under that chapter that define the requirements for professional services provided by engineers and surveyors registered in the state of Ohio.)
- (7) For a submerged lands lease application, the detailed plans shall also include the following:

  - (a) A metes and bounds description, prepared by a professional surveyor in accordance with chapter 4733. of the Revised and Administrative Code, referenced to the applicant's upland property description that identifies the perimeter of the proposed lease boundary and the area reported in square feet. (A metes and bounds description that is directly related to the upland parcel enables the real estate, law and surveying professional to clearly identify the geographical area contained within the leasehold interest. A metes and bounds description is needed to establish a leasehold interest within the territory of Lake Erie. )
- (8) Any other studies, investigations, and pertinent information as may be required by the director to fully evaluate proposed projects in accordance with Section 1501-6-03 of the Administrative Code that include, but are not limited to the following:

  - (a) Complete applications as submitted to the appropriate state and federal resource and regulatory agencies to provide for a coordinated review of the project as identified in section 1501-6-03(B) of the Administrative Code. These applications include the following:

    - (1) United States Army Corps of Engineers for authorizations contained within Section 10 (33 U.S.C. 403) of the Rivers and Harbors Act and Section 404 (33 U.S.C. 1344) of the Clean Water Act, (This information is used to evaluate impacts to environmental quality in section 1501-6-03(D) of the Administrative Code)

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(2) Ohio Environmental Protection Agency for authorizations contained within Ohio Revised Code Section 6111.30 and Section 401 of the Clean Water Act (Water Quality Certification). (This information is used to evaluate impacts to environmental quality in section 1501-6-03(D) of the Administrative Code)

(b) Original subdivision plat for the project area to evaluate whether the project prejudices the littoral rights of any owner of land fronting on Lake Erie as identified in Section 1501-6-03(C)(1).

(c) Written justification for any exception to water dependency, pre-existing uses or term of submerged lands lease and/or submerged lands permit as identified in Section 1501-6-03(D)(1)(c), 1501-6-03(D)(4)(e) and 1501-6-05(A)(2).

History: Eff 4-30-92

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Rule amplifies: RC 1506.10, 1506.11

R.C. 119.032 review dates: 6/30/99. 12/30/03

**1501-6-03 ~~Director's recommendations.~~ Review of submerged lands lease and/or submerged lands permit applications**

(A) The director's recommendation to the governor as to whether to approve an application for a ~~lease of submerged land~~ submerged lands lease and/or submerged lands permit shall be based upon an evaluation of the following:

(1) The location of the boundary of the Territory, as determined by an Ohio Registered Professional Surveyor, with consideration to natural processes such as accretion, avulsion and erosion; artificial changes to the shore such as placement of artificial fill and/or structures; and the effects of natural processes and artificial changes on adjacent property boundaries.

(2) Whether the development, improvement or activity is consistent with the policies of the Ohio coastal management program document, in accordance with section 1506.03 of the Revised Code.~~and~~

(3) Does not otherwise contravene the general public's interest in ~~lake~~ Lake Erie submerged lands, waters of the state, fish and wildlife, or cultural or other public trust resources.

(4) Notwithstanding the policies of the Ohio coastal management program document, the director, in said evaluation, shall give due consideration to any artificially filled area or filled portion of any area of the territory or any development, improvement or activity thereon existing on March 15, 1989, as set forth in this rule.

(B) Consistent with the protection of coastal area resources, the department will coordinate policies and decision-making with the rules and policies of other state and federal resource and regulatory agencies. In considering an application for a ~~submerged lands lease~~ submerged lands lease and/or submerged lands permit the department may solicit comments and relevant information from adjacent property owners, port authorities, local jurisdictions and planning agencies, the Ohio environmental protection agency, the Ohio historic preservation office, the general public and other agencies, entities or individuals as deemed appropriate by the director.

(C) The department in determining whether the development, or improvement or activity as set forth in an application for a ~~lease~~ submerged lands lease and/or submerged lands permit will be compatible with the rights of the public and the public trust uses of the affected area will consider the following:

(1) Whether the project prejudices the littoral rights of any owner of land fronting ~~on~~ Lake Erie without permission of that owner.

(2) Whether the project conforms to the ~~permitted~~ authorized uses as regulated by the local government, where applicable.

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(3) Whether public uses such as, navigation, water commerce, and fishing in the affected area would be destroyed or greatly impaired.

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

(5) Whether the area has a history of use including, but not limited to, services rendered to the general public. Such services may include, but are not limited to, public transport through ferry services, public boat launch, public trails, utility corridors or easements, and publicly maintained navigational channels. (purpose of language is to clarify the historic uses that can be considered for private uses of the territory)

(D) In addition to any other laws or rules administered by any other state, local or federal agency, these are the criteria, if applicable, against which each application for a lease of submerged lands submerged lands lease and/or submerged lands permit will be evaluated:

(1) WATER DEPENDENCY

(a) Generally, an application for a lease submerged lands lease and/or submerged lands permit to place fill and/or to construct facilities in the territory for a non-water dependent development or activity (i.e. an improvement which by its nature does not depend on being located in or upon the water) will not be approved.

(b) Examples of water dependent activities may include, but are not limited to, marinas, floating docks, piers, erosion control measures, crib structures and boathouses.

(c) An exception to this water dependency criterion would be an improvement in the territory which is beneficial and important to the general public's health, safety or welfare as determined by the director. Under this exception, there shall be no practicable alternative to the improvement including an alternative upland site, and all reasonable measures shall be undertaken by the applicant to minimize any adverse impacts upon the waters and underlying lands of Lake Erie and the beneficial functions these resources perform.

(d) This criterion shall not apply to a lease submerged lands lease and/or submerged lands permit application for development of the territory where the territory has been artificially filled prior to March 15, 1989.

(2) PROTECTION OF ENVIRONMENTAL QUALITY

The director may require an environmental impact assessment or other information in order to determine the probable direct, secondary and cumulative impacts of the

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development, improvement or activity upon the natural and human environment. With regard to any artificially filled area or filled portion of any area of the territory existing on March 15, 1989, the requirement for an environmental impact assessment shall be limited to any new development, improvement or activity or any change in an existing development, improvement or activity on said area of the territory.

The environment impact assessment shall include, but not be limited to, the following issues:

- (a) Potential impact upon air and water quality;
- (b) The likelihood that the development, improvement or activity may affect historic, and/or cultural ~~and aesthetic~~ resources;
- (c) Open space or recreational uses of the shoreline where increased access to the shorefront is a particularly important concern;
- (d) Floral and faunal communities where loss of biological resources or threats to endangered or threatened species are of particularly important concern.
- (e) Potential impact upon wetlands, or other state resource waters.
- (f) Potential impact upon the littoral zone including sand transport.
- (g) The potential individual and cumulative impacts of the lease submerged lands lease and/or submerged lands permit activity in conjunction with other similar activities in the project area or geographic region will be considered.

To the maximum extent practicable the department's review of a lease submerged lands lease and/or submerged lands permit application will utilize information and findings which may be developed in the public review process conducted by the U.S. department of the army, corps of engineers for authorization of activities in navigable waters, U.S. department of the interior, fish and wildlife services for authorization of activities carried out in a manner that safeguards wildlife, the section 401 water quality certification by the director of the Ohio environmental protection agency, and the consistency reviews of the state under the Ohio coastal management and nonpoint source management programs.

**(3) PUBLIC RECREATION.**

The potential impact of any development, or improvement or activity upon the public right of recreation, including present or prospective recreational uses by the public during the term of the submerged lands lease and/or submerged lands permit, will be evaluated.

- (a) Provision for public access may be required as a condition of a submerged lands lease and/or submerged lands permit depending upon historic use patterns and suitability of the lease site for existing or prospective recreational uses.
- (b) Provisions for public access shall not be required as a condition of a submerged lands lease and/or submerged lands permit for a private pier, dock, structure, boathouse or floating home with the exception that the lessee or permittee shall not refuse, during storms or adverse conditions, safe harbor refuge to any vessel seeking such refuge, provided that the pier, dock or structure can accommodate such a vessel.

(4) RELATIONSHIP TO PLANS FOR PORT DEVELOPMENTS, COMMERCIAL NAVIGATION AND URBAN WATERFRONT DEVELOPMENT.

The department in determining the compatibility of the development, or improvement or activity with existing waterfront master plans, local land use plans and regulations and any other relevant plans or programs adopted by local or regional authorities, will consider the following:

- (a) Whether the development, improvement or activity assists in the redevelopment of deteriorating urban waterfronts and ports, and is sensitive to the preservation and restoration of historic, and/or cultural and aesthetic coastal features.
- (b) Whether the development, or improvement or activity allows for public access to the waterfront for recreational purposes consistent with orderly coastal-dependent uses. The potential for a development, or improvement or activity in the territory to directly or immediately, preempt or impair future public access to the ~~east or waters~~ territory of lake Lake Erie will be examined.
- (c) To the maximum extent practicable, priority consideration will be given to new commercial and port-related developments, improvements or activities in or adjacent to areas where such development, improvement or activity already exists.
- (d) The importance of the development, or improvement or activity to the local and regional economy. Interstate commerce and any other identified national, state or great lakes region interest that which would be affected by the development, or improvement or activity will be considered. To this end, documentation of relevant intergovernmental consultation may be supplied by the applicant.
- (e) The history of pre-existing uses including, but not limited to, services to the general public. Such services may include, but are not limited to, public transport through ferry services, public boat launches, public trails, utility corridors or easements, and publicly maintained navigational channels. To the maximum extent

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practicable, consideration shall be given to such uses on any artificially filled area or filled portion of any area of the territory existing on March 15, 1989.

History: Eff 4-30-92

Rule promulgated under: RC Chapter 119

Rule authorized by: RC 1506.02

Rule amplifies: RC 1506.10, 1506.11

R.C. 119.032 review dates: 6/30/99. 12/30/03

**1501-6-04 Notification of submerged lands lease/submerged lands permit application; Public hearing/meeting.**

Upon receipt of a complete submerged lands lease and/or submerged lands permit application as described in section 1506-1-02 of the Administrative Code, the department shall provide notice of receipt of the application by certified United States mail to all adjoining property owners identified in the proposed application. The notice shall be in writing, state that an application for a submerged lands lease and/or submerged lands permit has been filed, summarize the proposed or existing construction, development or improvement that is the subject of the application, and state that the recipient of the notice may submit comments to the department. The notification shall identify a thirty day period starting seven days from the date of the notification to provide comments to the department regarding the proposed application. The department shall post notice of the receipt of the application on the internet at a site determined by the department and identify a thirty day public comment period corresponding to the same period as described in the written notification sent to all adjoining property owners. The initial thirty day comment period may be extended once for up to thirty additional days upon the request of any party.

At any time during the submerged lands lease and/or submerged lands permit application review period or upon completion of the department's evaluation, if the director reasonably finds that there is insufficient information upon which to base a decision, or if there are significant unresolved issues, the director may request the applicant to supply additional information and may declare that a public hearing or a public meeting be held to obtain the necessary information.

(A) If a public hearing is scheduled, said hearing shall be held at a time and place designated by the director. The hearing shall be of a formal nature. A court reporter shall be present and all parties shall have an opportunity to present evidence and/or provide testimony. Notice of said hearing shall be advertised in accordance with division (C) of section 1506.11 of the Revised Code. All costs pertaining to the hearing, including but not limited to the court reporter and advertisement, shall be paid by the applicant.

(B) If the director determines that a public meeting would serve to provide sufficient information to supplement the administrative record and support a decision whether or not a submerged lands lease and/or a submerged lands permit may properly be entered into, the director shall order a public meeting to be held in the geographic locality of the proposed developments or improvements and/or activities upon Lake Erie submerged lands applicant's lease request. Notice of said public meeting shall be advertised in a manner to be determined by the director. All costs of the meeting shall be paid equally between the department and by the applicant.

(C) The public hearing or public meeting shall be limited to the gathering of information which directly pertains to the application in question and to the evaluation of the development, or improvement or activity in accordance with section 1506.11 of the Revised Code and rules contained herein.

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History: Eff 4-30-92

Rule promulgated under: RC Chapter 119

Rule authorized by: RC 1506.02

Rule amplifies: RC 1506.10, 1506.11

R.C. 119.032 review dates: 6/30/99. 12/30/03

1501-6-05 Submerged Lands Lease/Submerged Lands Permit

(A) A submerged lands lease for ~~lake Lake~~ Erie ~~submerged land~~ shall be prepared by the department of natural resources and shall contain, but not be limited to, language which reflects the following:

(A) (1) A metes and bounds description, prepared by a professional surveyor in accordance with chapter 4733. of the Revised Code, of the ~~submerged land area~~ to be ~~occupied~~ contained in the submerged lands lease or an alternate description referenced to the applicant's upland property description may be ~~that is~~ considered adequate by the director as provided by the applicant.

~~(B)~~ (2) The director shall set the period of time (term) of the submerged lands lease. The term of the lease shall be fifty years unless the director recommends a longer or shorter term. Should the director recommend a submerged lands lease term less than or greater than fifty years, the director shall state in writing the specific findings, rationale and justification for the differential in setting the term. Applicant shall have the right of appeal in accordance with sections 119.06 to 119.13 of the Revised Code. Prior to the expiration of each five (5) year period, the director shall review the provisions of the lease for compliance with the current use and occupation of the territory.

~~(C)~~ (3) A complete description of the development, improvement or activity upon the submerged lands. Said clause shall contain the following "any change in use approved by the director, Ohio department of natural resources, may also result in a re-evaluation of the rent. Said submerged lands lease shall be amended to reflect the proper rent as assigned by the director, based upon the new use," or words of similar import.

~~(D)~~ (4) There shall be no assignment, sublease or mortgage of the submerged lands lease ~~held~~ without the ~~expressed~~ written consent of the director, which consent shall not be unreasonably withheld or unreasonably conditioned.

~~(E)~~ (a) A written request to assign, sublet, or mortgage shall be delivered by the lessee to the director not less than ninety days prior to the proposed effective date thereof, and the director shall respond within thirty days of the director's receipt of such request. Any assignment shall be held in escrow by the closing officer of the title company, bank, or attorney until the sale of the uplands has been completed. Should the sale not be consummated then the assignment shall automatically be null and void. If the director fails to act in any manner within ninety days of the receipt of the written request, then the request shall be deemed approved by the director.

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- ~~(2)~~ (b) Rent and other lease terms shall be subject to revision at time of assignment.
- ~~(3)~~ (c) ~~Lessees requesting Applicants for~~ the director's consent to sublease, assign or mortgage shall be entitled to an administrative review of and appeal from any decision of the director pursuant to section 119.06 of the Revised Code.
- ~~(E)~~ (5) Each submerged lands lease area shall be subject to the public's right to navigation in and around any development or improvement structures covered in authorized by the lease. However, the public's right of navigation is limited to the extent that it does not interfere with the lessee's safe use of the development or improvement structure.
- ~~(F)~~ (6) No lessee shall refuse, during storms or other adverse conditions, safe harbor refuge to any vessel seeking such refuge, provided that the harbor can safely accommodate such vessel.
- ~~(G)~~ ~~Each lease shall require adequate liability insurance or self insurance documentation for lessee, municipal corporations or political subdivisions of the state for lessee's development, improvement or activity in the territory and lessee's occupation of the territory. Minimum limits of liability insurance shall be established by the department and shall contain a clause naming the state of Ohio as additional insured.~~
- ~~(H)~~(7) Each development or improvement authorized by a submerged lands lease shall be subject to any and all local, state or federal laws or regulations. The issuance of the lease does not release the lessee from obtaining any and all other permits or documents from any local, state or federal agency as required for the use of the territory. Failure to obtain any required permits or documents shall be a violation of the lease and subject to cancellation under the default provisions therein.
- ~~(B)~~ A submerged lands permit for Lake Erie shall be prepared by the department of natural resources and shall contain, but not be limited to, language which reflects the following:
- ~~(1)~~ A plat based upon a field survey, prepared by a professional surveyor in accordance with chapter 4733. of the Revised Code, of the submerged lands to be contained in the permit referenced to the applicant's upland property description.
- ~~(2)~~ The director shall set the period of time (term) of the submerged lands permit. The term of the submerged lands permit shall be fifty years unless the director recommends a longer or shorter term. Should the director recommend a submerged lands permit term less than or greater than fifty years, the director shall state in writing the specific findings, rationale and justification for the differential in setting the term. Applicant shall have the right of appeal in accordance with sections 119.06 to 119.13 of the Revised Code.
- ~~(3)~~ A complete description of the development, improvement or activity upon the submerged lands. Said clause shall contain the following "any change in use approved by the

director, Ohio department of natural resources, may also result in a re-evaluation of the submerged lands permit. Said submerged lands permit shall be amended to reflect the proper rental as assigned by the director, based upon the new use," or words of similar import.

(4) At the time of transfer of any upland property associated with a submerged lands permit, the submerged lands permit must be assigned to the transferee of the upland property on a form prepared by the department. Once the assignment is approved by the Director, all terms and conditions of the submerged lands permit shall then transfer to the new owner of the upland property. (Proposed language would enable the transfer of permit for use and occupation to occur simultaneously with the upland property transfer)

(5) Each area described in a submerged lands permit shall be subject to the public's right to navigation in and around any development or improvement authorized by the submerged lands permit. However, the public's right of navigation is limited to the extent that it does not interfere with the permittee's safe use of the development or improvement.

(6) No permittee shall refuse, during storms or other adverse conditions, safe harbor refuge to any vessel seeking such refuge, provided that the harbor can safely accommodate such vessel.

(7) Each development or improvement authorized by a submerged lands permit shall be subject to any and all local, state or federal laws or regulations. The issuance of the permit does not release the permittee from obtaining any and all other permits or documents from any local, state or federal agency as required for the use of the territory. Failure to obtain any required permits or documents shall be a violation of the submerged lands permit and subject to cancellation under the default provisions therein.

(C) Within thirty days after the effective date of this rule, the director of natural resources will provide notice by certified United States mail to all lessees who obtained a submerged lands lease with the State of Ohio on or before the effective date of this rule. Such notification shall provide a period of two years from the date of notification for lessees to submit a written request to replace the lessee's existing submerged lands lease with a submerged lands permit or to modify the existing lease to exclude any areas that are determined to be outside the territory of Lake Erie.

As part of such a written request lessees may provide a revised description of the areas occupied by the structures, fills, developments or improvements within the territory of Lake Erie and request to have their submerged lands permit or modified submerged lands lease reflect only those areas located within the territory. Such a description shall note the approximate date, month and/or year and the approximate boundary of the territory of Lake Erie at the time of construction or placement of the structure, fill, development or improvement within the territory. The description shall be prepared by a registered surveyor in accordance with chapter 4733 of the Revised Code, and may be supported by historical

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water level records, surveys, photography and other pertinent information necessary to discern the location of the territory at the time of construction or filling.

The director shall review the revised description and based upon a review of historical water levels, surveys, photography and other pertinent information, may replace the existing description contained within the submerged lands lease with the revised description if the revised description can be determined to be reasonably accurate. Provided that the lessee is in full compliance with the terms of the existing submerged lands lease, including consideration due, the director shall approve such request and replace the lessee's existing lease with a revised submerged lands lease or a submerged lands permit. Rental for the occupation shall be as described within section 1501-6-06 of the Administrative Code.

Upon replacement of the existing submerged lands lease with a modified submerged lands lease or submerged lands permit, the department shall refund the portion of the rental amount due since July 2007 for previously leased areas determined not to be within the territory of Lake Erie.

(D) The director or an authorized representative may make inspections to ensure that the use and occupation of the territory of Lake Erie is in compliance with the submerged lands lease or submerged lands permit.

(1) If an inspection reveals that the use and/or occupation is not in compliance with the approved submerged lands lease or submerged lands permit or approved modifications, a notice of non-compliance shall be issued.

a) The notice of non-compliance shall identify what use and/or occupation is not in conformance with the submerged lands lease or submerged lands permit and state a specific time frame for compliance to occur.

b) The lessee or permittee shall notify the director when compliance has been achieved. The director or an authorized representative shall conduct an inspection to determine if compliance has occurred within the required time frame.

(2) If the lessee or permittee fails to comply with the notice of non-compliance within the specified time frame, and it is determined that the failure to comply is for good cause, the director may grant an extension of time for compliance. When the lessee or permittee complies with the requirements of the notice of non-compliance within the required time frame, the director shall issue a notice of compliance.

(3) If the lessee or permittee fails to comply with the requirements of the notice of non-compliance, the submerged lands lease or submerged lands permit may be revoked by the director, penalties assessed in accordance with section 1501-6-08 of the Administrative Code, and an order issued requiring the removal of structures, fills,

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developments or improvements from Lake Erie. Such actions by the Director may be appealed under the provisions of chapter 119 of the Revised Code, and are subject to the provisions of section 1506.11(E) of the Revised Code.

(E) Occupation of the territory or Lake Erie without a submerged lands lease or submerged lands permit is prohibited, and penalties may be assessed in accordance with section 1501-6-08 of the Administrative Code for occupation without such authorization. The department shall make the following efforts to notify owners of structures, fills, developments or improvements within the territory of Lake Erie of the requirement to obtain a submerged lands lease or submerged lands permit for the occupation of the territory of Lake Erie.

- a) The department shall issue a notice of non-compliance to the owner of the structure, fill, development or improvement. The notice of non-compliance shall state a specific time frame for compliance to occur, including removal of all structures, fills, developments or improvements within the territory if a submerged lands lease or submerged lands permit is not obtained.
- b) If a submerged lands lease or submerged lands permit for the occupation of the territory of Lake Erie is issued, and all provisions of the submerged lands lease and/or submerged lands permit are adhered to, the occupation shall be deemed to be in compliance and no further action shall be taken by the department.

History: Eff 4-30-92; 7-4-99  
Rule promulgated under: RC Chapter 119  
Rule authorized by: RC 1506.02  
Rule amplifies: RC 1506.10, 1506.11  
R.C. 119.032 review dates: 6/30/99. 12/30/03

**1501-6-06 Rental.**

The ~~lease rent rates rental rate paid by the lessee or permittee herein determined~~ shall be the applicable rental rate for the part of the territory used and occupied by the lessee's or permittee's fill(s), structure(s), development(s), or improvement(s) as set forth below. Base rental rates will be determined by the director using the description of the development or improvement provided by the applicant and confirmed by the department according to the applied equally throughout the entire lake Erie shoreline, including Sandusky bay, Maumee bay and the islands. Rates will be determined by the director using the description of the development, improvement or activity provided by the applicant according to the following schedule:

(A) Existing fill -any artificially filled area or filled portion of any area of the territory existing on March 15, 1989, shall be charged \$0.01 per square foot per year ~~for the term of the lease or renewals~~. This rental rate shall apply only to the use of the filled area as it existed on March 15, 1989. If the lessee or its assigns change the use of the filled area, the rent may be modified to reflect the ~~rent rental~~ rate in effect for the new use at the time of the change of use. Rental rates for existing fill shall remain in effect according to the terms and conditions of existing submerged lands leases until renewal or modification.

The rental rate for ~~fill that any artificially filled area of the territory existing on March 15, 1989,~~ ~~which~~ qualifies as a governmental non-income producing facility as determined by the director, shall be \$1.00 per year, pursuant to division (I) of this section.

(B) Private pier, floating dock, boathouse, floating home, -\$50 per year.

(C) Private structure -\$50 plus \$0.02 per square foot of leased area per year.

(D) Private erosion control structure -\$50 plus \$0.01 per square foot of leased area for the first year, and \$0.01 per square foot of leased area per year thereafter.

This rental rate shall be applied to all qualifying leases, or qualifying portion of the leased area for leases executed on or after the effective date of this rule. For existing leases executed after the April 30, 1992 effective date of the original rules, this lease rate will apply upon the rent renewal date for the lease, unless the lease is modified prior to such date. This rate shall not apply to leases executed prior to April 30, 1992 unless the lease is modified on or after the effective date of this rule.

(E) Semi-private and small commercial facility occupying no more than four acres -\$0.03 per square foot of leased area per year.

(F) Large facility and an industrial facility -\$0.04 per square foot of the leased area per year.

(G) Utility -\$500 per year.

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(H) Governmental income producing facility shall pay the rent for the category of the facility.

(I) Governmental non-income producing facility shall pay \$1.00 per year. Where practicable, a lease for all such governmental uses or purposes shall be covered in one instrument for each political subdivision.

(J) "Escalator clause" -the **base** rental rates as provided for in paragraphs ~~(B-A)~~ to (H) of this rule for all submerged lands leases and submerged lands permits, shall be recalculated every five years beginning on the fifth anniversary of the effective date of this rule and any increase shall be at the same rate of increase as the "National Consumers Price Index" (C.P.I.). The annual base rate for calculation purposes shall be the rate established by the U.S. department of labor for the city of Cleveland, Ohio, urban, all categories (C.P.I.U.) for the month corresponding to the effective date of these rules. ~~February, 1992. That annual base rate is 136.2.~~ The new rate shall be most recent C.P.I.U. annual rate established to the nearest month prior to the date of recalculation by the U.S department of labor. Once the new annual rate has been determined and the amount of increase has been calculated, then the new annual rate shall become the base annual rate for calculation purposes for the next five year period of time. This change in rates shall continue until such time as the C.P.I.U. is no longer used or the director determines that another method may be more accurate. The rental rate percentage increase shall be the lesser of the following:

- (1) The base annual rate shall be subtracted from the new annual rate, the base rate shall be divided into the difference between the base rate and the new rate and the answer will be the percentage of increase or decrease over that five year period of time:

example: new rate (nr) 140.2

-base rate (br) 136.2

difference (df) 4.0

df 4.0

\_\_\_\_\_ = .0293 or 2.93% increase br 136.2

current rent: \$10,000.00 × .0293 increase = \$293.00

new rent: \$10,293.00

- (2) At no time shall the increases of the rental rate exceed 20 percent in any given five year

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period of time, nor shall the aggregate increase of the rental rate exceed 150 percent over the term of the lease. Also at no time shall the rental rate charged in any lease written by the state of Ohio pursuant to sections 1506.10 and 1506.11 of the Revised Code or by these rules be lowered.

Should the United States department of labor discontinue the use of C.P.I. the director shall select as nearly compatible a statistical formula on the purchasing power of the consumer dollar as is then available and published in some responsible governmental publication.

This escalator method shall not affect the rent charged under paragraph ~~(A) of this rule existing fill or paragraph~~ (H I) of this rule for a governmental non-income producing facility.

History: Eff 4-30-92; 7-4-99

Rule promulgated under: RC Chapter 119

Rule authorized by: RC 1506.02

Rule amplifies: RC 1506.10, 1506.11

R.C. 119.032 review dates: 6/30/99. 12/30/03

**1501-6-07 Appeal Process**

- (A) Notice of disapproval of the submerged lands lease or submerged lands permit application shall be sent to the applicant by certified mail or another verifiable service. The applicant may request a hearing by submitting a written request to the director within thirty days of receipt of the notice.
  
- (B) If a hearing is requested in accordance with chapter 119. of the Revised Code, the director shall immediately set and notify the applicant of the date, time and place of the hearing. The hearing will take place within the county where the property is located. The hearing shall be within fifteen days, but not earlier than seven days after the applicant has requested a hearing, unless otherwise agreed to by both the director and the applicant.
  
- (C) The director shall issue a final decision on the application for a submerged lands lease or submerged lands permit regarding approval, disapproval, or approval with conditions, based on the record of the hearing. The applicant shall be notified, in writing, of the director's decision within thirty days of the date of the hearing.

Eff:

Rule promulgated under: RC Chapter 119

Rule authorized by: RC 1506.02

Rule amplifies: RC 1506.10, 1506.11

R.C. 119.032 review dates:

**1501-6-08 Penalties**

Whoever fails to comply with any requirement imposed by chapter 1501-6 of the Administrative Code shall be subject to the penalties set forth in section 1506.99 of the Revised Code.

Eff:

Rule promulgated under: RC Chapter 119

Rule authorized by: RC 1506.02

Rule amplifies: RC 1506.10, 1506.11

R.C. 119.032 review dates:

**1501-6-09 Severability**

The invalidation by a court of a rule adopted or amended pursuant to sections 1506.10 and 1506.11 of the Revised Code shall not affect the validity of any other rule or portion thereof adopted or amended thereunder by the director.

Eff:

Rule promulgated under: RC Chapter 119

Rule authorized by: RC 1506.02

Rule amplifies: RC 1506.10, 1506.11

R.C. 119.032 review dates:

**1501-6-31**    **Definitions**

The following definitions shall apply to the terms used in rules 1501-6-31 to 1501-6-40 of the Administrative Code.

(A) "Applicant" means a person who applies for a permit to construct a coastal structure under section 1506.40 of the Revised Code.

(B) "Application" means the signed and completed form(s) and any supplemental information which that may be required by the director in accordance with these rules and submitted to the director as provided pursuant to section 1506.40 of the Revised Code

(C) "Coastal structure" includes, but is not limited to: artificially nourished beaches; groins; weirs; dunes; revetments; bulkheads; seawalls; breakwaters; dikes; piers; docks; jetties; wharves; marinas; boat ramps; any associated fill used as part of the construction of structures that may control or affect coastal erosion, wave action, or inundation; and fill or debris placed along or near the shore including bluffs, banks or beach ridges for the purpose of stabilizing slopes.

(D) "Coastal Structure Permit" means a permit issued by the director authorizing a person to construct a coastal structure along or near the shore of Lake Erie.

(E) "Conveyance Record" means an instrument in writing by which an estate or interest in real estate is created or assigned from one person to another; such as a deed or plat, etc.

(F) "Director" means the director of the department of natural resources.

(G) "Erosion control measure" means a structure primarily designed to reduce or control Lake Erie-related erosion of the shore. Examples include, but are not limited to, groins, artificially nourished beaches, revetments, seawalls, bulkheads, and certain breakwaters.

(H) "International Great Lakes Datum (IGLD)" means the current elevation reference system used to describe water levels above a vertical datum within the Great Lakes.

(I) "Littoral zone" means the indefinite zone between the shoreline extending lakeward to the furthestmost line where waves begin to break. The term "Littoral Zone" does not imply any limitation upon littoral rights, is not defined by any property boundary, and is not intended to describe any property boundary.

(J) "Person" means an individual, corporation, business trust, estate, trust partnership, association and also includes the United States, the state of Ohio, any political subdivision of the state, and any department, division, board, commission, agency or instrumentality of the United States, the State, or a political subdivision of the State.

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(K) “Rehabilitation” means the return of a coastal structure to its original condition including but not limited to construction materials, dimensions and footprint.

History: Eff

Rule promulgated under: RC Chapter 119

Rule authorized by: RC 1506.40

Rule amplifies: RC 1506.40

R.C. 119.032 review dates:

**1501-6-32**     **Applicability of Permit Requirements for Coastal Structures**

(A) In accordance with the provisions of section 1506.40 of the Revised Code and chapter 1501-6 of the Administrative Code adopted pursuant thereto, a coastal structure permit shall be required for any coastal structure that will control erosion, wave action, or inundation along or near the Ohio shoreline of Lake Erie including related islands, bays and inlets.

(B) Applications for a coastal structure permit for coastal structures or portions of coastal structures shall include detailed plans and specifications prepared by a registered professional engineer and/or surveyor as applicable in accordance with chapter 4733 of the Revised Code unless the plans and specifications pertain to a project that solely involves any of the following:

(1) The rehabilitation of a structure for which a permit was previously issued under this section or previous sections, provided that the rehabilitation will return the structure to the specifications and details outlined in the original approval;

(2) The rehabilitation of a structure that was constructed prior to October 5, 1955, provided that the purpose of the rehabilitation is to return the structure to its condition prior to that date;

(3) The depositing of dredged sand in the near coastal or shore areas as part of the maintenance of navigable waterways or channels;

(4) A federal project that falls under the provisions of section 4733.18(B) (2) of the Revised Code.

(5) Design of projects that does not constitute the practice of engineering as defined in Section 4733.01(D) of the Revised Code.

(C) A temporary coastal structure permit shall be issued by the director for the construction of a temporary erosion control measure if it is determined by the Director that an emergency exists and immediate actions are necessary to safeguard life, health or property. Such structures are to be temporary and shall be completely removed within two years of the date when the temporary coastal structure permit is issued unless an extension of time is granted by the director.

History: Eff  
Rule promulgated under: RC Chapter 119  
Rule authorized by: RC 1506.40  
Rule amplifies: RC 1506.40  
R.C. 119.032 review dates:

**1501-6-33 Coastal Structure Permit Application**

- (A) An application for a permit to construct a coastal structure shall be filed with the department of natural resources and shall not be deemed complete unless the application includes all information and the filing fee as required by the rules of this chapter. Each application for a coastal structure permit shall be accompanied by a non-refundable filing fee of \$50 in the form of a check or money order made payable to “Treasurer, State of Ohio.”.
- (B) Each complete application for a permit to construct a coastal structure shall consist of:
- (1) A completed and signed application from the current property owner(s). The application shall be on a form prescribed by the director.
  - (2) A copy of the most current conveyance record of all parcels contained within the project site. (The conveyance record is needed to ensure that the permit is issued to the upland property owner)
  - (3) A listing of all adjoining property owners including mailing addresses if known. (The list of property owners is needed to ensure that proper notification is sent to property owners who may be affected by the issuance of a coastal structure permit. Examples include but are not limited to other shoreline property owners, members of homeowners associations, or parties such as utilities or local governments that may have easements or other rights in the area proposed to be permitted.)
  - (4) A map showing the site location with respect to county, township, and municipal corporation boundary lines and state, county, and local roads. The project site shall be clearly and accurately marked on the map. State and county highway maps, United States Geological Survey seven and one-half minute topographic maps, and aerial photographs may be used to supplement the required location information. (The map is for the general purpose of illustrating the location of the proposed site to reviewers of the application.)
  - (5) Detailed plans and specifications, including supporting design calculations, analyses, studies and other information used by the professional engineer/surveyor or the applicant in designing the structure. The engineering methods and design conditions (nearshore and upland geology, wave height, wind direction, water level, water depth, etc.) used in designing the structure shall also be specified. Design methodologies and procedures that have been established by the United States Army Corps of Engineers, the American Society of Civil Engineers and others that are recognized as valid coastal engineering practices will generally be acceptable.

Plans and specifications shall include, but not be limited to the following:

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(a) A plan view showing the existing site conditions including:

- (1) Adjoining property boundaries, names and addresses of adjoining property owners, and the address of the site location as are readily available from the county recorder's office;
- (2) Existing coastal structures along the shore of the project property and adjoining properties; (This information is used to assess the impacts of proposed structure to adjacent properties and determine how proposed project will tie into adjacent structures)
- (3) Site features such as the shore, bluff, creeks, docks, piers, buildings, utilities and other pertinent features. Elevations shown shall be referenced to the International Great Lakes Datum; (This information is used to assess impacts of proposed structure(s) on natural and man-made features)
- (4) Existing topographic contour lines and contour intervals of the shore, bank/bluff, and upland and underwater contour lines and contour intervals extending from the water's edge at least 100 feet from the most lakeward location of the proposed coastal structure. Elevations shown shall be referenced to the International Great Lakes Datum; (This information is used to assess the impacts of proposed structures on coastal processes and impacts to aquatic resources, and to review of design height of structure and functionality of structure based on water depth and wave climate)

(b) A plan view showing the proposed site conditions and coastal structure(s) including:

- (1) Information required on the existing conditions plan view drawing which is not modified by the proposed project;
- (2) Details and dimensions of all significant aspects of proposed coastal structure(s) including but not limited to the location of the proposed coastal structure(s) with the limits of the proposed coastal structure(s) shown relative to the boundaries of the parcels contained within the project area; (This information is used to assess the impacts of the proposed coastal structure to adjacent property owners)
- (3) Proposed post construction topographic contour lines and contour intervals of the shore, bank/bluff, and upland and underwater contour lines and contour intervals extending from

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the water's edge at least 100 feet from the most lakeward location of the proposed coastal structure. Elevations shown shall be referenced to the International Great Lakes Datum. (This information is used to assess impacts of the proposed structure on coastal processes, review the design height of structure and assess the functionality of structure based on water depth and wave climate)

- (c) Cross section views that accurately detail and dimension all significant aspects of the proposed coastal structure(s) and the existing and proposed topographic and underwater contour features of the site. Elevations shall be referenced to the International Great Lakes Datum. The locations and orientations of the cross-sections shall be shown on the plan view. (This information is used to assess the structural integrity of the proposed structure(s))
- (d) Design specifications of proposed structure(s) including elevations and dimensions, structural components, and material specifications. (This information is used to assess the structural integrity of the proposed structure(s))
- (e) A written description of the sequence of construction including work methods, standards that have been or will be used.
- (f) The plan views, cross sections and any other drawings shall be to standard scales and shall include a bar scale. The drawings shall accurately and adequately show the features of the proposed structures and the site information and can be reproduced so that all features of the site are presented in a clear and easily readable fashion.
- (g) The drawings and design specifications and calculations shall bear the signature, date and seal of the registered professional engineer/surveyor(s) who prepared the drawings, unless such a project falls under the provisions of 1501-6-32(B)(1) through (B)(5). Location maps, photos and other non-design portions of the application that are not the professional work of an engineer or surveyor should not be signed, sealed and dated. (Drawings, reports and documented opinions by the Professional Engineer or Professional Surveyor are required to comply with ORC and OAC sections that define these professional occupations)

(6) The anticipated starting and ending date of project construction.

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- (7) A plan for sand monitoring/bypassing for coastal structures that may interrupt or alter the flow of littoral drift.
- (8) Any other studies, investigations, and pertinent information as may be required by the director to fully evaluate proposed projects in accordance with Section 1501-6-34 of the Administrative Code that include, but are not limited to the following:
- (a) Complete applications as submitted to the appropriate state and federal resource and regulatory agencies to provide for a coordinated review of the project as identified in section 1501-6-03(B) of the Administrative Code. These applications include the following:
- (1) United States Army Corps of Engineers for authorizations contained within Section 10 (33 U.S.C. 403) of the Rivers and Harbors Act and Section 404 (33 U.S.C. 1344) of the Clean Water Act, (This information is used to evaluate impacts to environmental quality in section 1501-6-34(C) of the Administrative Code)
- (2) Ohio Environmental Protection Agency for authorizations contained within Ohio Revised Code Section 6111.30 and Section 401 of the Clean Water Act (Water Quality Certification). (This information is used to evaluate impacts to environmental quality in section 1501-6-34(C) of the Administrative Code)

History: Eff  
Rule promulgated under: RC Chapter 119  
Rule authorized by: RC 1506.40  
Rule amplifies: RC 1506.40  
R.C. 119.032 review dates:

**1501-6-34 Review of Coastal Structure Permit Applications**

(A) The applicant shall be notified in writing within fifteen days of receipt of an application for a coastal structure permit submitted under paragraphs (B) and (C) of 1501-6-32 of the Administrative Code that the permit application is complete or incomplete. If the application is incomplete, the applicant will be informed of the deficiencies and no further review will be conducted until the information needed to complete the application is received. If the information needed to address the deficiencies is not provided within one hundred and twenty days of the date requested in writing, the review of the application shall be fully terminated and the application will be denied.

(B) Upon receipt of a complete application as described in Section 1506-1-33 of the Ohio Administrative Code, the department shall provide notice of receipt of the application by certified United States mail to all adjoining property owners identified in the proposed application. The notice shall be in writing, state that an application for a coastal structure permit has been filed, summarize the proposed construction, development or improvement that is the subject of the application, and state that the recipient of the notice may submit comments. The notification shall identify a thirty day period starting seven days from the date of the notification to provide comments to the department regarding the proposed application. The department shall post notice of the receipt of the application on the internet at a site determined by the department and identify a thirty day public comment period corresponding to the same period as described in the written notification sent to all adjoining property owners. The initial thirty day comment period may be extended once for up to thirty additional days upon the request of any party.

(C) The director shall request changes, approve, conditionally approve, or deny the permit application not later than one hundred twenty days after receipt of a complete application. Except as noted below, if the director fails to request changes, approve, conditionally approve, or deny the coastal structure permit within one hundred twenty days after receiving the complete application, the application shall be deemed acceptable and the director shall issue the permit.

If during the one hundred and twenty day review period, the application is found to be inaccurate, or additional information is necessary to evaluate the proposed coastal structure, the applicant shall be immediately notified, in writing, of the inaccuracy or additional information required. Review of the application shall cease pending receipt of the corrected revisions or additional information. Upon receipt of the revisions from the applicant, the one hundred and twenty day review period shall resume from where it left off based upon the date of the letter noting the inaccuracy or requesting additional information. If the corrected revisions or additional information are not provided within one hundred and twenty days of the date requested in writing, the review of the application shall be fully terminated and the application will be denied.

In determining whether to request changes, approve, conditionally approve or deny the application, the director shall consider the following:

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- (1) Whether the project is of sound coastal engineering design, including the structural integrity of the proposed coastal structure, its appurtenances and component materials
- (2) The potential individual or cumulative impact, including any adverse effects on sand resources and coastal processes; and
- (3) The potential for the project to accelerate erosion along the adjacent shore,
- (4) The stability of the existing slope where the project is to be located or the proposed slope of the project associated with bank stabilization,
- (5) Whether the project will function as intended and will minimize the occupation of Lake Erie, its bays and inlets.
- (6) Whether the project is protective of environmental quality.

The director may require an environmental impact assessment or other information in order to determine the probable direct, secondary and cumulative impacts of the development, improvement or activity upon the natural and human environment. With regard to any artificially filled area or filled portion of any area of the territory existing on March 15, 1989, the requirement for an environmental impact assessment shall be limited to any new development, improvement or activity or any change in an existing development, improvement or activity on said area of the territory. The environmental impact assessment shall include, but not be limited to, the following issues:

(a) Potential impact upon air and water quality;

(b) Open space or recreational uses of the shoreline at public facilities where increased access to the shorefront is a particularly important concern;

(c) Floral and faunal communities where loss of biological resources or threats to endangered or threatened species are of particularly important concern.

(d) Potential impact upon wetlands, or other state resource waters.

(e) Potential impact upon the littoral zone including sand transport.

(f) The potential individual and cumulative impacts of the activity in conjunction with other similar activities in the project area or geographic region will be considered.

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To the maximum extent practicable the department's review of a permit application will utilize information and findings which may be developed in the public review process conducted by the U.S. Department of the Army, Corps of Engineers for authorization of activities in navigable waters, the section 401 water quality certification by the director of the Ohio Environmental Protection Agency, and the consistency reviews of the state under the Ohio Coastal Management and Nonpoint Source Management programs.

(D) In reviewing the application for a coastal permit the director shall consult with and provide coordination among state agencies, political subdivisions, the United States and its agencies, and interstate, regional and areawide agencies. Such coordination may include the development of consolidated permit processes regarding applicable permits with state agencies, political subdivisions and the United States and its agencies.

(E) The director shall disapprove an application for coastal structure permit or a temporary coastal structure permit if it is determined that the application does not meet the requirements of section 1506.40 of the Revised Code or the rules of this chapter or does not comply with any applicable provisions of chapters 1505, 1506, or 1521 of the Revised Code. The director shall issue a notice in writing, advising the applicant of the reasons for disapproval.

History: Eff  
Rule promulgated under: RC Chapter 119  
Rule authorized by: RC 1506.40  
Rule amplifies: RC 1506.40  
R.C. 119.032 review dates:

1501-6-35 The Coastal Structure Permit

(A) The coastal structure permit shall consist of the permit document and all supporting drawings submitted and approved per the above referenced rule. The permits shall be valid for a period of two years from the date of issue unless specified otherwise pursuant to provisions of this rule. No construction shall be performed until the coastal structure permit is issued by the director.

(B) If the period between the anticipated starting and ending date exceeds two years, the director may, upon written request of the applicant, issue a coastal structure permit which is valid for a longer period.

(C) If the coastal structure permit expires before construction has begun, no construction shall be performed, and a new application with supporting information, as prescribed by rule 1501-6-33 of the Administrative Code shall be submitted for renewed consideration. A new permit application fee shall be required.

(D) If after construction has commenced a revised construction schedule shows that the coastal structure permit will expire before work is complete, the director, upon written request of the applicant, may extend the duration of the coastal structure permit. No extension shall be granted unless the applicant has reasonably demonstrated to the satisfaction of the director that substantial effort has been made to complete construction.

(E) No modifications to a coastal structure may be implemented without prior written approval of the director or his authorized representative. Any proposed modifications submitted for approval that may affect or alter the design, location or structural integrity of the proposed structure, its appurtenances or component materials, shall be prepared by a registered professional engineer and/or surveyor as applicable, with the exception of those projects that are exempted from the requirements for a registered professional engineer and/or surveyor under rule 1501-6-32 of the Administrative Code.

History: Eff  
Rule promulgated under: RC Chapter 119  
Rule authorized by: RC 1506.40  
Rule amplifies: RC 1506.40  
R.C. 119.032 review dates:

**1501-6-36 Coastal Structure Permit Compliance and Prohibitions**

(A) The director or an authorized representative may make inspections to ensure that the coastal structure is being constructed in compliance with the coastal permit. Construction of a coastal structure prior to approval of the coastal structure permit is prohibited, and penalties may be assessed in accordance with rule 1501-6-38 for construction that occurs prior to issuance of a coastal structure permit.

(B) Placement or dumping of fill or debris along or near the shore for the purpose of controlling erosion, wave action or inundation is strictly prohibited unless authorized as part of a project by a permit under this section. Penalties may be assessed in accordance with rule 1501-6-38 for placement or dumping of fill or debris that occurs prior to issuance of a coastal structure permit.

(C) If an inspection reveals that a coastal structure is not in compliance with the approved permit or approved modifications, or that construction is occurring without an approved coastal structure permit being obtained, a notice of non-compliance shall be issued.

- a) If a coastal structure permit has been issued, the notice of non-compliance shall state what work is not in conformance with the coastal structure permit.
- b) If a coastal structure permit has not been issued, work shall immediately cease and removal of the portions of the structure that require authorization under a coastal structure permit shall begin.
- c) The notice of non-compliance shall state a specific time frame for compliance to occur, including removal of the structure if a coastal structure permit has not been obtained.
- d) The permittee shall notify the director when compliance has been achieved. The director or an authorized representative shall conduct an inspection to determine if compliance has occurred within the required time frame.

(D) If the permittee fails to comply with the notice of non-compliance within the specified time frame, the director may grant an extension of time for compliance if it is determined that the non-compliance is for good cause. When the permittee complies with the requirements of the notice of non-compliance within the required time frame, the director shall issue a notice of compliance.

(E) If the permittee fails to comply with the requirements of the notice of non-compliance, the coastal structure permit may be revoked by the director and penalties assessed in accordance with rule 1501-6-38. Such actions by the Director may be appealed under the provisions of Chapter 119 of the Revised Code.

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History: Eff

Rule promulgated under: RC Chapter 119

Rule authorized by: RC 1506.40

Rule amplifies: RC 1506.40

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1501-6-37 Appeal Process

(A) Notice of disapproval of the coastal structure permit application shall be sent to the applicant by certified mail or another verifiable service. The applicant may request a hearing by submitting a written request to the director within thirty days of receipt of the notice.

(B) If a hearing is requested in accordance with chapter 119. of the Revised Code, the director shall immediately set and notify the applicant of the date, time and place of the hearing. The hearing will take place within the county where the property is located. The hearing shall be within fifteen days, but not earlier than seven days after the applicant has requested a hearing, unless otherwise agreed to by both the director and the applicant.

(C) The director shall issue a final decision on the application for a coastal structure permit regarding approval, disapproval, or approval with conditions, based on the record of the hearing. The applicant shall be notified, in writing, of the director's decision within thirty days of the date of the hearing.

History: Eff

Rule promulgated under: RC Chapter 119

Rule authorized by: RC 1506.40

Rule amplifies: RC 1506.40

R.C. 119.032 review dates:

**1501-6-38**    **Penalties**

Whoever fails to comply with any requirement imposed by chapter 1501-6 of the Administrative Code shall be subject to the penalties set forth in section 1506.99 of the Revised Code.

History: Eff  
Rule promulgated under: RC Chapter 119  
Rule authorized by: RC 1506.40  
Rule amplifies: RC 1506.40  
R.C. 119.032 review dates:

**1501-6-39**    **Severability**

The invalidation by a court of a rule adopted or amended pursuant to section 1506.40 of the Revised Code shall not affect the validity of any other rule or portion thereof adopted or amended thereunder by the director.

History: Eff  
Rule promulgated under: RC Chapter 119  
Rule authorized by: RC 1506.40  
Rule amplifies: RC 1506.40  
R.C. 119.032 review dates: