

OHIO DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WATER

**CANAL LANDS REAL ESTATE POLICY AND PROCEDURES
October 2006**

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CANAL LANDS REAL ESTATE POLICY AND PROCEDURES

MISSION STATEMENT

The mission of the ODNR Canal Program is to protect and conserve the recreational, ecological and historical values of the canal corridors in Ohio, and promote economic development opportunities through the wise use of these resources.

Authority: The Director of the Ohio Department of Natural Resources retains “exclusive authority to administer, manage and establish policies governing Canal Lands” (Section 1520.02 of the Ohio Revised Code), “except those canals that are operated by the Ohio Historical Society (OHS) on July 1, 1989” (Section 1520.03 of the Ohio Revised Code).

Definitions: Canal Lands – Section 1520.01 of the Ohio Revised Code defines “Canal Lands” as those Canal Lands which are the property of the State and includes any part of the bed, berm, bank, or slope of any canal, canal basin, or reservoir or of any lock, aqueduct, dam, culvert, tunnel, feeder, or side cut formerly a part of any canal system in this state, whether or not abandoned; the outer slope of any tow path embankment formerly a part of any canal system in this state; and any tract of land that was a part of or intended for the use of any canal system in this state.

County Market Value is the appraised value of the property adjacent to Canal Lands used by the individual counties for tax purposes adjusted for time and also for an assemblage factor/stand alone values, utilizing a valuation factor as provided by the County Auditor’s Office.

An Easement is a right of use over the property of another. An easement is an interest in land in and over which it is to be enjoyed, and is distinguishable from a “license” which merely confers personal privilege or permission to do some act on the land.

A Lease is an agreement under which a property owner gives up possession and use of the property for valuable consideration and for a definite term. At the end of term, the owner has absolute right to retake, control and use the property.

A License is a personal or revocable privilege to perform an act or series of acts on the land of another.

The Miami and Erie Canal Corridor is that area of the Miami and Erie Canal from the City of Delphos south to the City of Piqua as defined by the Miami & Erie Canal Corridor Association.

The Non-Watered Sections are canal lands owned by the State of Ohio other than the watered sections.

The Ohio & Erie National Heritage Canalway is that area of the Ohio & Erie Canal from the mouth of the Cuyahoga River south to the southern limits of the City of New Philadelphia as defined by the Ohio & Erie Canal Association.

Public Use or Public Purpose is a use that would be for the convenience, safety or welfare of the entire community or the public in general and not the welfare of a specific individual or class of persons.

A Reversionary Clause is a right to the future enjoyment of property, presently in possession or occupation of another for a specific purpose, upon the occurrence of an expressly enumerated event.

A Transfer is any movement of property rights, which could entail all or part of the rights of the grantor to the grantee.

The Watered Sections are that area of the Miami & Erie Canal from Loramie Creek north to Jennings Creek including the St. Mary's Feeder and that area of the Ohio & Erie Canal from Lock #1 in Akron south to Snyder Rd., Barberton including the Tuscarawas Feeder as defined by the Division of Water for hydraulic purposes.

THE CRITERIA

Preamble: The following historical, economic development, environmental, recreational and general consideration criteria shall serve as guidelines to administer conveyance practices with the intent of carrying out the mission of the canal program.

Historical Criteria

Ohio began constructing its canal system in 1825. Contractors continued to add segments until nearly 1,000 miles of canal had been completed by 1845. Today, canal remnants can be found scattered throughout the state, ranging from now-dry canal prism (canal beds), to abandoned towpaths, or massive stone locks. These remnants of Ohio's first major transportation system depend on present and future generations for preservation.

1. Historical Features – Aqueducts, culverts, feeder canals, locks, lock tender's house, prism, reservoirs, towpaths, turning basins, waste weirs, weigh stations or other canal structures:

- Will proposed action remove protection of significant historical canal features and potentially become detrimental to the preservation of Ohio's canal heritage?

2. Historical purpose and functions:

- Does the canal continue to function as a waterway, water supply or water control structure reflective of its historical purpose?

3. Contiguous canal lands:

- Will proposed action reduce ODNR's real property holdings adjacent to significant historical canal features?

4. Local preservation support:

- Is there local preservation support to protect a significant canal feature?

Economic Development Criteria

The need for safe and reliable transportation to eastern markets was the driving force behind the construction of Ohio's canal system. It soon became evident that the canals would greatly benefit Ohio's agricultural industry. With nearly 1,000 miles of canals, feeders, and side cuts located in 44 counties, the canal had a major impact on the location of communities, businesses and people.

In the past, some of the canal lands were converted to transportation right-of-ways, commercial establishments, manufacturing facilities, residential developments, recreational facilities and more. Today, government entities, businesses, and individuals recognize that many opportunities still exist for canal land parcels to provide positive contributions to a community's economic development.

1. Regional/Local Planning:

- Will proposed action conflict with established regional and or community planning activities? Planning activities include but are not limited to comprehensive plans, master plans, and zoning regulations.

2. Site Conditions:

- Will proposed action be consistent with the existing site conditions of the area including the natural resource base and existing or proposed infrastructure?

3. Local Capability and Support:

- Does the local entity support and have the capability to oversee and or manage the proposed economic development activity?

Environmental Criteria

Canal lands may provide valuable environmental functions. They may have wetlands, forests, riparian lands, floodplains, wet meadows and prairies. These features can provide habitat for rare, threatened and endangered species. They can provide significant habitat that is indicative of the historic Ohio landscape but have become regionally scarce. Also, these features can protect water quality, recharge ground water resources, enhance water supply, increase drainage, and reduce pollution from storm water run-off. These features offer protection to Ohio's high quality streams and restoration potential

to streams that do not meet aquatic standards. Where these features exist on canal lands, they should be preserved for quality of life, habitat preservation, water supply safeguard, storm water alleviation, and water quality enhancement. Where possible these features should be held in perpetuity.

1. Wetlands

- Do wetlands exist on the site? Does the proposal preserve the values and function of the wetlands?
- Do these canal lands buffer adjacent wetlands? Does the proposal maintain the buffer values?

2. Habitat

- Do these canal lands contain any state or federally listed threatened or endangered species?
- Do these lands have the potential to provide significant critical habitat for introduced threatened or endangered species?
- Do they represent significant habitats, like prairies and wet meadows?
- Do these lands provide habitat in regions where wildlife habitat is limited, like in urban areas or densely populated suburban areas?
- Does the proposal preserve the habitat values of the lands?

3. Water Quality

- Do these canal lands play a role in recharging ground water aquifers?
- Are the canal lands within the riparian corridor of a stream?
- Do the canal lands have streamside forests?
- Do the canal lands impact streams that are designated as:
 - Exceptional warm water habitat by Ohio EPA?
 - Cold water habitat by Ohio EPA?
 - State or Federal scenic or wild river or exceptional recreation designations?
- Could they play a role in the restoration plan for the Total Maximum Daily Load (TMDL)?
- Does the proposal preserve the water quality elements and functions listed above?

4. Industrial, Commercial and Agricultural Water Supply

- Do these canal lands play a meaningful role in protecting or contributing to a water supply for residential wells, municipal drinking water, industrial water supply or agricultural supply?
- Does the canal provide a supply of water for watered canal sections, water for lease/purchase by industrial or municipal customers?
- Does the proposal protect the water supply functions of the lands?

5. Floodplains

- Are these canal lands considered to be floodplain?
- Does the proposal protect the values and functions of existing or potential floodplains?

6. Storm water

- Do these canal lands perform a meaningful drainage function relating to surface water run-off, emergency storage or flow for high water events?
- Do these canal lands provide drainage for roads or highways?
- Do these lands provide agricultural drainage use?
- Does the proposal protect the existing and potential storm water values of the site?

Recreational Criteria

State-owned canal lands (about 20% of the original property) were transferred to ODNR from the Ohio Department of Administrative Services in 1989. Using historic canals for hiking, canoeing, fishing and other forms of outdoor recreation can present a number of challenges. Long, intact sections are somewhat limited, and many other segments are fragmented. Making connections can be difficult. Also problematic is finding viable public agencies or trail groups to develop and/or manage the remnants. Numerous encroachments and political realities also threaten the integrity of the canal lands.

There are many success stories. In northeast Ohio, the canal was the impetus for the creation of the Ohio & Erie Canal National Heritage Canalway that stretches over 110 miles from the Cleveland lakefront to New Philadelphia in Tuscarawas County; and remnants of the Miami & Erie Canal in western Ohio are key components of ODNR's Miami & Erie Trail, the Buckeye Trail, and the North Country National Scenic Trail.

When opportunities exist to provide viable recreation opportunities, these historic resources should be preserved by ODNR in partnership with other government agencies and trail groups.

1. Connectivity/Linkages

- Will proposed action conflict with existing, proposed or potential trails as identified in statewide, regional, county or local plans?
- Will proposed action adversely impact water access points to existing, proposed or potential water trails?
- Will proposed action divest the state of a stand-alone recreational resource?

2. Recreation Opportunities

- Will proposed action eliminate significant recreational possibilities/activities including the promotion of health benefits?
- Will proposed action eliminate benefits of diverse recreation possibilities?
- Will proposed action adversely impact scenic values at the site and nearby?
- Will proposed action adversely impact site accessibility for public recreation activities/development?

3. Local Recreation Support

- Is a local agency/partner capable to operate or manage the subject canal lands?
- Is there local support for the recreational project?
- Is there organized opposition to the recreation project?

General Considerations

The purpose of these criteria is to give fair consideration to every request while maintaining the mission of ODNR. As such, in addition to the above listed specific criteria, it is important to also include the following general criteria when evaluating a request.

1. Public and/or attractive nuisance:

- Does the property present a public and/or attractive nuisance?

- Can the nuisance be defined and documented?
- Is there a viable plan to address the nuisance?

2. Encroachment(s) including delinquent leases:

- Does the encroachment impact the conveyance?
- Is there a viable plan to address the encroachment(s)?

POLICY AND FEES ESTABLISHED:

LICENSES, LEASES, SALES, TRANSFERS AND PERMANENT EASEMENTS

The following instruments shall be issued if the canal hydraulic and maintenance operations are not negatively impacted and the above criteria have been properly considered for each request for transfer.

I. Canal Real Estate Policy and Fees

A. Licenses

1) The one-time cost of a twenty-five year license on property not having historical value, economic development, environmental impact, or recreational value, or as needed for public use or public purposes shall be a minimum of \$2,700.00 or 85% of the county market value, whichever is greater. ODNR reserves the right to appraise if deemed necessary.

2) All licenses shall be presented by the Chief of the Division of Water for the Director's approval pursuant to Section 1501.01 of the Ohio Revised Code.

B. Leases

1) The annual rental rate of the lease shall be \$150.00 minimum for private residential use and \$250.00 minimum for commercial business use or 10% of the county market value annually, whichever is greater. ODNR reserves the right to appraise if deemed necessary.

2) The \$150.00 and \$250.00 minimum annual rent shall be charged for new leases and as the expired leases are renewed.

3) The State has the right to reevaluate the new leases every five years.

4) All leases shall be presented by the Chief of the Division of Water for

the Director's approval pursuant to Section 1501.01 of the Ohio Revised Code.

C. Sales

1) All sales shall be presented by the Chief of the Division of Water for the Director's approval pursuant to Section 1501.01 of the Ohio Revised Code. Sale actions shall consider the criteria set forth in this document for historical, economic development, environmental, recreational, and general consideration.

2) The sale price will be based on the county market value, or a minimum of \$500.00 whichever is greater. ODNR reserves the right to appraise if deemed necessary. With the approval of the Director, ODNR may negotiate the land sale price with a potential purchaser using the county market value and/or appraisal as the basis of the negotiations.

3) Properties may be sold reserving those rights necessary to preserve the historical, economic development, environmental, recreational, and general considerations set forth in this document.

D. Transfers to Public Entities/Not-for-Profits

1) Transfer of canal lands for economic development purposes may include a reversionary clause, reverting the property back to the department in those instances when the property ceases to be used for its intended public purpose.

2) Transfer of lands having historic, environmental, or recreational value shall be transferred at no cost except actual expenses of transfer, surveys etc. The land must be used for the intended purpose and if the purpose shall change, then the land shall be reverted to the ODNR or its successors. There shall be a permanent reversionary clause in favor of ODNR in the transfer of these canal lands.

3) All transfers to public entities shall be presented by the Chief of the Division of Water for the Director's approval pursuant to Section 1501.01 of the Ohio Revised Code.

E. Permanent Easements

1) All permanent easements shall be presented by the Chief of the Division of Water for the Director's approval.

2) The one-time cost of a permanent easement shall be a minimum of \$2,700.00, or 85% of the county market value which ever is greater. ODNR reserves the right to appraise if deemed necessary.

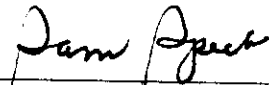
II. User/Maintenance Fees

ODNR reserves the right to assess user/maintenance fees that it deems necessary based on the necessary maintenance associated with any use of licenses and/or leases such as sediment removal caused by storm sewer drainage into the canal.

III. Exceptions

In all cases, exceptions to the canal lands policy may be granted by the Director.

APPROVED:



Samuel W. Speck, Director

Effective Date: 11/08/06