

**Draft OAC as of
09-28-07**

Ohio Department of Natural Resources

2007 Draft Rules

For the Leasing and Permitting of Lake Erie Coastal Structures

1501-6-01 to 1501-6-6
and
1501-6-31 to 1501-6-40

1501-6-01	Definition of terms
1501-6-02	Application
1501-6-03	Director's recommendations
1501-6-04	Public hearing/public meeting
1501-6-05	Lease
1501-6-06	Rental
1501-6-31	Definitions
1501-6-32	Permit Requirements for a Coastal Structure
1501-6-33	Permit Application Procedure
1501-6-34	Filing Fee
1501-6-35	Review of Permit Applications
1501-6-36	The Coastal Structure Permit
1501-6-37	Permit Compliance
1501-6-38	Appeal Process
1501-6-39	Penalties
1501-6-40	Severability

**Draft OAC as of
09-28-07**

1501-6-01 Definition of terms.

(A) "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.

(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 in divisions (B) ~~and~~ through (G) of section 1506.11 of the Revised Code.

(C) "Department" means the department of natural resources.

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

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

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

(G) "Fill" means any material used for the primary purpose of replacing ~~lake-Lake~~ Erie aquatic areas with dry land or changing the bottom elevation of ~~lake-Lake~~ Erie.

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

(I) "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.

(J) "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,

**Draft OAC as of
09-28-07**

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-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) "Littoral rights" means the right of an upland property owner to 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) "Littoral zone" means the indefinite zone between the shoreline extending lakeward to the furthestmost line where waves begin to break.

(N) "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 protection of the natural resources in the coastal area; management of coastal development and redevelopment; preservation and restoration of historic, cultural and aesthetic coastal features; public access to the coastal area for recreational purposes; and as otherwise described in divisions (B) and (C) of section 1506.01 of the Revised Code and the Ohio coastal management program document.

(O) "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.

(P) "Private floating dock or structure" means a 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)"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 application as provided for in division (C) of section 1506.11 of the Revised Code.

**Draft OAC as of
09-28-07**

(R) "Public meeting" means an assembly conducted by the department, the purpose of which is to provide an opportunity for lease applicant to explain the developments or improvements and/or activities upon 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) "Semi-private facility" means any facility built in the territory in conjunction with semi-private, but not limited to, condominiums, trailer parks, cooperatives, residential associations, campgrounds, or apartments.

(T) "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 breakwalls constructed to protect inland marina channels and/or boat basin for access to ~~lake~~ Lake Erie.

(U) "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) "Structure" means facility which requires fill being placed, upon the submerged land 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.

(W) "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) "Utility" shall mean any utility company regulated by; within the jurisdiction of; 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.

**Draft OAC as of
09-28-07**

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Rule amplifies: RC 1506.10, 1506.11
R.C. 119.032 review dates: 6/30/99. 12/30/03

**Draft OAC as of
09-28-07**

1501-6-02 Application.

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 if the application is unacceptable within sixty days of its receipt by the director. 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 days of notice, the director shall issue an order denying the application for a submerged lands lease and shall notify the applicant of the opportunity for a hearing pursuant to section 119.06 to 119.13 of the Revised Code.

History: Eff 4-30-92

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

**Draft OAC as of
09-28-07**

1501-6-03 Director's recommendations.

(A) The director's recommendation to the governor as to whether to approve an application for a lease of submerged land shall be based upon an evaluation of 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~~ 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. 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 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 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 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 uses as regulated by the local government, where applicable.
- (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.

(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 will be evaluated:

**Draft OAC as of
09-28-07**

(1) WATER DEPENDENCY

Generally, an application for a lease 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. 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.

This criterion shall not apply to a lease 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 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, 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.

**Draft OAC as of
09-28-07**

(g) The potential individual and cumulative impacts of the lease 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 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.

(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 lease or permit, will be evaluated. Provision for public access may be required as a condition of a lease depending upon historic use patterns and suitability of the lease site for existing or prospective recreational uses.

(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, 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 future public access to the coast or waters of 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

**Draft OAC as of
09-28-07**

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. To the maximum extent 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.

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Rule authorized by: RC 1506.02

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**Draft OAC as of
09-28-07**

1501-6-04 Public hearing/public meeting.

At any time during the lease application review period or upon completion of the department's evaluation, if the director 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 lease may properly be entered into, the director shall order a public meeting to be held in the geographic locality of the ~~applicant's lease request~~ proposed lease area. 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 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.

History: Eff 4-30-92

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Rule authorized by: RC 1506.02

Rule amplifies: RC 1506.10, 1506.11

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**Draft OAC as of
09-28-07**

1501-6-05 Lease

A lease ~~or permit~~ 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) A metes and bounds description, prepared by a professional surveyor in accordance with Chapter 4733. of the Revised Code. of the submerged land to be occupied 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) The director shall set the period of time (term) of the lease. The term of the lease shall be fifty years unless the director recommends a longer or shorter term. Should the director recommend a 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.

(C) 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 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) There shall be no assignment, sublease or mortgage of the leasehold without the expressed written consent of the director, which consent shall not be unreasonably withheld or unreasonably conditioned.

(1) 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.

(2) Rent and other lease terms shall be subject to revision at time of assignment.

(3) 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) Each 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

**Draft OAC as of
09-28-07**

public's right of navigation is limited to the extent that it does not interfere with lessee's safe use of lessee's development or improvement structure.

(F) 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)(G) Each 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.

~~(H) 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 lease of a part of the territory with the State of Ohio on or before the effective date of this rule. The notice will inform such lessees that they may submit a written request to the director to replace the lessee's existing lease with a modified lease for structures or fills outside the areas described within the limits of their deeded parcel, or to terminate the lease if all existing structures or fills falls within the limits described in their deeded parcel. Said written request may be on a form prepared and supplied by the department, and shall be accompanied by a metes and bounds description or an alternate description considered adequate by the director, and referenced to the applicant's upland property description prepared by a registered professional surveyor in accordance with Chapter 4733 of the Revised Code, of the area(s) occupied by fills, structures, developments or improvements within the territory of Lake Erie but outside the limits described in their deed. Provided that the lessee is in full compliance with the terms of the existing lease, the director shall approve such request and replace the lessee's existing lease with a modified lease, or terminate the lease if there are no structure, fills, developments or improvements occupying the territory outside the limits described in the deeded parcel. The existing lease, and all terms and conditions of the existing lease, including consideration due, shall terminate on the effective date of the modified lease .~~

~~(I) Any person who desires to apply to lease an area described within the limits of the territory of Lake Erie and the limits described within a valid deeded parcel may do so in accordance with these rules. Any lessee desiring to retain their lease in such an area may do so in accordance with these rules and the terms and conditions of the lease. Leases shall be required outside the limits described within a valid deeded parcel for all structures, fills, developments, improvements or other uses within the territory of Lake Erie.~~

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**Draft OAC as of
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Draft OAC as of
09-28-07

1501-6-06 Rental.

The ~~lease rent rates rental rate paid by the lessee herein determined~~ shall be the applicable rental rate for the part of the territory used and occupied by the lessee'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.

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 floating dock -\$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 any all qualifying leases, or qualifying portion of the leased area for leases executed on or after ~~the effective date of this rule July 4, 1999~~. For existing leases executed after the April 30, 1992 effective date of the original rules, this lease rate will apply upon the ~~rent rental rate recalculation renewal~~ date for such leases ~~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 July 4, 1999 ~~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 -\$10~~5~~00 per year.

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

**Draft OAC as of
09-28-07**

(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 rental rates as provided for in paragraphs (B) to (H) of this rule, 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 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 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~~

**Draft OAC as of
09-28-07**

~~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) of this rule governmental non-income producing facility.~~

(J) Base rental rates - The base rental rates as provided in divisions (A) through (H) of this rule shall be applied to each new or modified lease issued under Section 1506.11 of the Revised Code. The base rental rate as provided in divisions (A) through (H) of this rule shall increase each year by three percent of the original base rate described in divisions (A) through (H) upon the anniversary of the effective date of this rule.

(K) Rental rate increases -The rental rate for each lease shall be recalculated prior to the expiration of each five year period of the lease term and shall be increased at the rate of fifteen percent per five year period, at the beginning of each five year period of the lease term, and for every five year period thereafter. This method of rental rate increase shall continue throughout the original lease term, regardless of any change in use of the development, improvement or fill, and any subsequent renewals of the leases, until such time as the lease or any subsequent renewal of the lease is terminated by either the lessee or the state under the terms of the lease and all developments or improvements authorized thereunder are removed from the territory.

(L) 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.

(M) No rental rate increase under this section shall be applied to the base rental rates charged under division (I) of this section pertaining to governmental non-income producing facilities.

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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.
- (B) “Application” means a permit application for a coastal structure. The application shall be on a form prescribed by the director, and shall include all supplemental information as required pursuant to sections 1506.40 and 1506.11 of the Revised Code and this chapter.
- (C) “Director” means the director of the Department of Natural Resources, state of Ohio.
- (D) “International Great Lakes Datum (IGLD)” means the current elevation reference system used to define water levels within the Great Lakes.
- (E) “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.
- (F) “Coastal structure” includes, but is not limited to: nourished beaches; groins; revetments; bulkheads; seawalls; breakwaters; certain dikes designated by the director; piers; docks; jetties; wharves; marinas; boat ramps; any associated fill or debris 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) “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.
- (H) "Erosion control measure" means a structure solely and specifically designed to reduce or control lake Erie-related erosion of the shore. Examples include, but are not limited to, revetments, seawalls, bulkheads, and certain breakwaters and similar structures.
- (I) “Rehabilitation” means the return of a coastal structure to its original condition including but not limited to construction materials, dimensions and footprint.

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History: Eff

Rule promulgated under: RC Chapter 119

Rule authorized by: RC 1506.11, 1506.40

Rule amplifies: RC 1506.11, 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 sections 1506.11 and 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 or affect waves or flood waters emanating from Lake Erie 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, 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 nearcoastal 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.
- (C) A temporary coastal structure may be issued by the director or an authorized representative of the director for the construction of a temporary erosion control measure if it is determined that an emergency exists and immediate actions are necessary to safeguard life, healthy or property. Such permits may be granted for a period of time as deemed necessary by the director. Temporary erosion control structures that are proposed to remain in place for less than one hundred and twenty days shall be reviewed under paragraphs (D)(1) and (D)(2) of rule 1501-6-35 of the Administrative Code. Temporary erosion control structures that are proposed to remain in place for longer than one hundred and twenty days from the date of initial construction shall be required to be reviewed under the provisions of paragraphs (D)(1) through (D) (13) of rule 1501-6-35 of the Administrative Code.

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History: Eff

Rule promulgated under: RC Chapter 119

Rule authorized by: RC 1506.11, 1506.40

Rule amplifies: RC 1506.11, 1506.40

R.C. 119.032 review dates:

1501-6-33 **Permit application procedure**

- (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.
- (B) Each complete application for a permit to construct a coastal structure shall consist of:
- (1) A completed application form.
 - (2) A copy of the most current conveyance record of all parcels contained within the project site.
 - (3) A map showing the location of the proposed structure 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.
 - (4) Detailed plans and specifications, including supporting design calculations, analyses, studies and other information used by the professional engineer or the applicant in designing the structure. The engineering methods and design conditions (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:

- (a) A plan view showing the existing site conditions
- (b) A plan view showing:
 - (1) The location of the proposed structure, with the limits of the proposed structure shown relative to the boundaries of the parcels contained within the project area;
 - (2) Coterminous property boundaries, names and addresses of coterminous property owners, and the address of the site location;
 - (3) Existing coastal structures along the shore of the project property and coterminous properties;

**Draft OAC as of
09-28-07**

- (4) Existing and proposed topographic and bathymetric contour lines and contour intervals;
 - (5) Site features such as the shoreline, bluff, creeks, docks, piers, buildings, utilities and other pertinent features. Elevations shown shall be referenced to the IGLD;
 - (6) Bathymetry from shore a minimum distance of 50 feet beyond the toe of the proposed coastal structure. Elevations shown shall be referenced to the IGLD.
 - (c) Cross section views that accurately detail the proposed structure and the existing and proposed topographic and bathymetric features of the site. Elevations shall be referenced to the IGLD. The locations and orientations of the cross-sections shall be shown on the plan view.
 - (d) A written description of the sequence of construction including work methods, materials and standards that have been or will be used.
 - (e) The plan views, cross sections and any other drawings shall be to standard scales that accurately and adequately show the features of the proposed structures and the site information. All drawings shall include a bar scale, and bear the signature, date and seal of the registered professional engineer/ surveyor(s) who prepared the drawings.
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- (5) A proposed construction schedule.
 - (6) A plan for sand monitoring/bypassing for coastal structures that may interrupt or alter the flow of littoral drift.
 - (7) Any other studies, investigations, and pertinent information as may be required by the director to fully evaluate the design of the proposed coastal structure.

**Draft OAC as of
09-28-07**

History: Eff

Rule promulgated under: RC Chapter 119

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Rule amplifies: RC 1506.11, 1506.40

R.C. 119.032 review dates:

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09-28-07

1501-6-34 **Filing fee**

Each application for a coastal structure permit shall be accompanied by a non-refundable filing fee of \$500 in the form of a check or money order made payable to “Treasurer, State of Ohio.”

History: Eff
Rule promulgated under: RC Chapter 119
Rule authorized by: RC 1506.11, 1506.40
Rule amplifies: RC 1506.11, 1506.40
R.C. 119.032 review dates:

1501-6-35 **Review of permit applications**

- (A) The applicant shall be notified in writing within two weeks of receipt of an application for a 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, notification shall be provided to owners of property that is adjacent to the proposed areas of construction, development of improvement. The notice shall be in writing, state that an application for a 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 concerning the application not later than thirty days following the receipt of the notice.
- (C) The director shall request changes, approve, conditionally approve, or deny the permit 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 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 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:

- (1) Whether the project is of sound coastal engineering design,

**Draft OAC as of
09-28-07**

- (2) The potential for the project to accelerate erosion along the adjacent shore.
- (3) The stability of the existing slope where the project is to be located or the proposed slope of the project associated with bank stabilization.
- (4) Whether the project minimizes the limits of the occupation of Lake Erie, its bays and inlets.
- (5) Whether the project prejudices the littoral rights of any owner of land on Lake Erie without permission of that owner.
- (6) Whether the project conforms to the permitted uses as regulated by the local government, where applicable.
- (7) Whether public uses such as navigation, water commerce, and fishing in the affected area would be destroyed or greatly impaired.
- (8) Whether the occupation of the proposed project area would be small compared to the remaining area left for the original use.
- (9) Whether the area has a history of use including, but not limited to, services rendered to the general public.
- (10) Whether the project is water dependent.

Generally, an application for a 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. An exception to this water dependency criterion would be an improvement in the territory that 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. This criterion shall not apply to a PERMIT application for development of the territory where the territory has been artificially filled prior to March 15, 1989.

- (11) Whether the project is protective of environmental quality.

**Draft OAC as of
09-28-07**

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) The likelihood that the development, improvement or activity may affect historic, 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 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 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.

(12) Whether the project impacts public recreation.

The potential impact of any development, improvement or activity upon the public right of recreation, including present or prospective recreational uses by the public will be evaluated. Provisions for

**Draft OAC as of
09-28-07**

public access may be required as a condition of a permit depending upon historic use patterns and suitability of the site for existing or prospective recreational uses.

(13) Relationship of the project to plans for port developments, commercial navigation and urban waterfront development.

In determining the compatibility of the development, 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, the department 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, cultural and aesthetic coastal features.

(b) Whether the development, improvement or activity allows for public access to the waterfront for recreational purposes consistent with orderly coastal-dependent uses. The potential for a development, improvement or activity in the territory to directly or immediately, preempt future public access to the coast or waters of 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, 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, 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. To the maximum extent 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.

**Draft OAC as of
09-28-07**

- (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 sections 1506.11 and 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 1506.11, 1506.40

Rule amplifies: RC 1506.11, 1506.40

R.C. 119.032 review dates:

1501-6-36 The Coastal Structure Permit

- (A) The Coastal Structure Permit shall consist of the permit application and all supporting documents 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 proposed construction schedule required by rule 1501-6-33 of the Administrative Code exceeds a period of two years, the director may, upon written request of the applicant, issue a coastal structure permit which is valid for a longer period to be determined by the director.
- (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 not be required if the project described in the previously issued permit has not changed.
- (D) If, after construction has begun, 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 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 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 1506.11, 1506.40
Rule amplifies: RC 1506.11, 1506.40
R.C. 119.032 review dates:

1501-6-37 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 1501-6-39 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, or reclaiming property lost to erosion or avulsion is strictly prohibited unless authorized by a permit under this section. Penalties may be assessed in accordance with rule 1501-6-39 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.
- (1) 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.
 - (2) 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.
 - (3) 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.
 - (4) 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 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.

**Draft OAC as of
09-28-07**

(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 1501-6-39.

History: Eff

Rule promulgated under: RC Chapter 119

Rule authorized by: RC 1506.11, 1506.40

Rule amplifies: RC 1506.11, 1506.40

R.C. 119.032 review dates:

1501-6-38 **Appeal Process**

- (A) Notice of disapproval of the coastal permit application shall be sent to the applicant by certified mail. 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 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 ten days of the date of the hearing.

History: Eff
Rule promulgated under: RC Chapter 119
Rule authorized by: RC 1506.11, 1506.40
Rule amplifies: RC 1506.11, 1506.40
R.C. 119.032 review dates:

1501-6-39 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 1506.11, 1506.40
Rule amplifies: RC 1506.11, 1506.40
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09-28-07**

1501-6-40 Severability

The invalidation by a court of a rule adopted or amended pursuant to sections 1506.11 or 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 1506.11, 1506.40
Rule amplifies: RC 1506.11, 1506.40
R.C. 119.032 review dates: