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Hon. Sean D. Logan, Director
Ohio Dept. of Natural Resources
2045 Morse Rd.
Columbus, OH 43229

Mr. John Watkins, P.E., Chief
Office of Coastal Management
105 W. Shoreline Drive
Sandusky, OH 44870

Re: New Regulatory Approach to Permits and Leasing

Dear Sirs:

In the interest of immediate disclosure, I am an Intervening Plaintiff in the *Merrill* case. To save you the trouble, I will copy your counsel on this letter, but this relates to the new policy announced by Governor Strickland and the review and revision of regulations, not the court proceedings. As Mr. Watkins will recall, I have been involved in these issues for some years, and wanted to share some requests with you for a fairer approach to permits and leases than may have been involved in the past.

The determination to "honor the deed" of owners, absent strong evidence to the contrary, is a good start. However, if extreme limitations are placed on the use of the shore by littoral owners, much of the possible good from this result will be eliminated. At the same time, I think most lakefront owners would accept and even support reasonable regulation of the kinds of structures, uses, fill and the like to provide protection to both the lake and adjoining owners. I have heard complaints of tires and uncontained concrete pieces with rebar and the like washing onto adjoining owners' shore from uncontained or unrestrained fill. There have been irresponsible contractors who have built structures that readily failed (though I could point to a Corps of Engineers design that also failed massively and quickly, so the lake can be harsh sometimes).

At the same time, responsible shore protection that retards or prevents erosion stabilizes the lake from eutrophication or excessive silt that impairs the fishery. Too often, I have seen and heard the "coastal management" regulators, at NOAA and in Ohio, consider the erosion of the bluff a way to replenish sand (whereas 80% of the soil bluffs tend to be fine clays). A perched sand

beach is actually beneficial to lake health, and beach building should be encouraged, not disincentivized.

Thus, the first goal should be to allow the maximum use of their property and the lakefront by littoral owners consistent with good long term health of the lake, which allows the maximum enhanced value of the shore for taxation and property purposes, while legitimately protecting the public's concerns.

These principles should be extended to the near shore area, even below the deeded line or low water mark into the shallow waters of Lake Erie, though with greater emphasis on doing no demonstrable (not speculative) injury to the lake. This affirms the rights of littoral owners to access and use the waters of the Lake, but protects the public interest in the waters and the underlying lands as may relate to fisheries, etc.. For example, groins, breakwaters and beaches that do not extend near the depth of closure (e.g., more than 12 feet below *mean* high water) ought usually enhance, not harm, the lake environment. Erosion control structures, properly designed, should receive special favorable consideration.

In general, it would be better to use permits for littoral rights structures even beyond the deeded area (as permitted by statute), especially for erosion control and limited (residential) shallow water structures (boat storage and lift, beach protection and building, etc.). These permits would assure long term, relatively permanent recognition of littoral use unless the structures came to interfere with public rights for navigation, commerce and fishery.

A second important principal which, up until now, appears to be largely ignored, is the need for prompt, final determination on applications unless by agreement. The norm of applications for permits and leases appears to be a lengthy, very burdensome process. Typically, an application may take a year to process, which is unfair and unreasonable. There are many, many occasions where different demands, or conflicting requirements, have been "requested" of the same applicant at various times. Sometimes, this relates to differences of opinion of different personnel at different times. Sometimes, it appears to be an afterthought or even possibly a deliberate strategy to delay an application. In other cases, applicants have been "requested" to do things entirely differently than what the Office required of their neighbors. Applicants must have the right to a final determination, or an administrative hearing, within a reasonable time as contemplated by the Ohio Revised Code and by due process. I suggest a 30 day initial response to any application in writing, a final determination within 90 days of application unless the applicant agrees to a finite delay, and an ultimate decision within 6 months in any event, except in emergent circumstances regarding erosion control structures on damaged or threatened property, in which case, the limit should be 30 days in all cases.

A third principle which has not been observed is that there should be consistent design criteria, and these should be published and determined on a general level whenever possible. Just as the U.S. Army Corps of Engineers has "national" and "regional" permits that are largely predetermined, so ought ODNR have certain design standards and structures that are documented and automatically permitted. Most small scale or residential revetments, groins, breakwaters, and other structures are standard designs with standard materials that do not require a separate

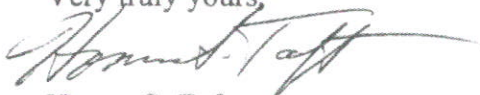
design by a professional engineer each time and a separate review process of ODNR staff or even EPA.

Precise metes and bounds descriptions of every structure, especially in the water and with the degree of surveying precision presently requested, are counterproductive and frankly largely irrelevant. The important thing for ODNR to review is the approximate location and outer boundaries of a project, and as close as possible to the exact dimensions and design of the structure itself, and in the case of leased land, how much area is used, not the exact location to each millimeter on the ground. It would actually be nearly impossible for any marine contractor to actually construct any structure in the water with precisely the location and detail of the plan. That does not even happen on public projects, which are regularly adjusted to facts on the ground. If the structure substantially meets the described structure and very closely follows the planned location as actual conditions may dictate, that should suffice.

Other issues which should be addressed are the separate liability insurance policy (with the State as an additional named insured), which is virtually impossible to actually obtain in the insurance market at a reasonable cost, particularly on small projects; the easy transferability of permits/leases without further consents; removing the requirement for prior notice to the rental, mortgaging or sale of the property, with a waiting period and option for the Department to cancel a lease or permit, and removing the requirement to remove the structure at a finite time so long as it does not constitute an impediment or danger to the public and continues to be used for its littoral purposes.

Most importantly, and pursuant to statute, the procedures, standards and policies of the Department need to be committed to writing and subjected to JCARR review and sunseting, as is required by statute. The temptation to substitute personal opinion for transparent public review and consistency requires that the rules be set down for all concerned to know.

Very truly yours,



Homer S. Taft

HST:ns

cc: Kathleen M. Trafford, Esq.
Sen. Neihaus, Senate Energy & Natural Resources
Sen. Spada, 25th District
Sen. Grendell
Rep. Aslinides, House Agriculture and Natural Resources
Rep. Brady

enc.