

## **OCRM Comments on Ohio Coastal Management Program's Draft Rule Changes November 15, 2007**

### **Consistency**

OCRM is concerned that the draft changes to Section 1501-6-03 eliminate the requirement that ODNR evaluate whether a proposed lease application is consistent with the policies of the OCMP Program Document. This language was also not included in the review of permit applications section (1501-6-35). Eliminating this requirement leaves open the possibility that the State may not be able to use OCMP policies to evaluate certain projects on the Lake Erie bottomlands.

### **Permit Review Criteria**

The draft revisions retain the application review criteria within O.A.C 1501-06-3 and 1501-6-35 that require consideration of a project's potential impact upon Lake Erie, taking into account factors such as: protection of environmental quality; relationship to port development, commercial navigation and waterfront development plans; water dependency; and impact upon the public right of recreation. As noted in the 1997 Findings approving the OCMP, and in OCRM's January 21, 2005, letter to ODNR Director Samuel W. Speck commenting on earlier proposed changes to the coastal regulations, OCRM identified these application evaluation criteria as providing an important tool for effective management of Lake Erie submerged lands. These criteria were essential for NOAA approval of the OCMP and, therefore, we encourage ODNR to continue to apply these evaluation criteria to all new lease and permit applications, as well as to any existing development or improvements.

We note that Section 1501-6-35, Review of Permit Applications, does not contain certain evaluation considerations that were originally considered within the ODNR's recommendation to approve an application for a lease for submerged land (Section 1501-6-03). For example, the proposed permit review is not required "to be based upon an evaluation of whether the development, improvement, or activity is consistent with the policies of the Ohio coastal management program document." Similarly, the permit application is not evaluated as to whether or not it "contravenes the general public's interest in Lake Erie submerged lands, waters of the state, fish and wildlife, or cultural or other public trust resources." OCRM believes that these provisions should be retained for purposes of the OCMP.

### **Consideration of the Public's Interest in Lake Erie**

The proposed permit review process does not specifically allow for the department "to solicit comments and relevant information from . . . the general public and other agencies or individuals as deemed appropriate by the director" as is currently specified within 1501-6-03(B). Proposed Section 1501-6-35(D) allows for consultation and coordination with various federal, state, and local agencies, and provisions within 1501-6-35(B) require that the adjacent property owners be notified; however, the permit process does not appear to consider comments from the general public and non-governmental organizations. When these differences are considered cumulatively, the proposed permit process appears to provide for less consideration of the public's interest in Lake Erie resources than is currently required within the existing submerged lands leasing authority. If these regulations were enacted, OCRM would need to evaluate whether they would satisfy the CZMA requirement for a meaningful opportunity for public participation in state coastal zone management programs.

### **Enforcement**

OCRM is concerned that the State is embarking upon a change in regulatory procedure before developing an enforcement plan for violations of the existing management structure. OCRM

notes that revised Section 1501-6-05(H) provides a mechanism whereby existing lessees 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 deeded area, or terminate the lease if all existing structures or fills fall within the limits described in their deeded parcel. It is not clear how the regulations specifically address enforcement issues for those structures or fills that were illegally constructed under OCMP lease evaluation criteria within Section 1501-06-03.

ODNR should allow adequate time to conduct a thorough review of all lease modification and termination requests authorized by the procedures proposed within Section 1501-6-5(H). ODNR staff will need to review applications to ensure that the project within the leased boundary is in compliance with the terms of the existing lease. Due to the anticipated high volume of requests, this review period will likely be significantly longer than the normal review period for new shore structure permits or lease applications. Otherwise, this policy change could contribute to the existing enforcement problem that has been noted in OCRM's recent evaluation of the OCMP<sup>1</sup> mandated by the Coastal Zone Management Act, and would have a detrimental impact on Ohio's ability to effectively manage the Lake Erie shoreline.

#### **Temporary Coastal Structure Permits**

Section 1501-6-32(C) authorizes the issuance of a temporary coastal structure permit if an emergency exists and immediate actions are necessary to safeguard life, health, or property. OCRM believes that these criteria are too broad since many erosion control structures could provide an immediate benefit for property protection even though the structure might also be immediately detrimental to adjacent littoral owners, environmental quality, or public recreation. Also, once a structure is constructed it will likely be difficult to require its removal, if it doesn't meet the provisions of paragraphs C(1) through C(13) of rule 1501-6-35. OCRM is concerned about this provision, especially in light of existing shore structure enforcement issues.

#### **Dredged Material Projects**

Section 1501-6-21 would exempt the depositing of dredged sand as part of the maintenance of navigable waterways or channels from the requirement to obtain detailed plans and specifications prepared by a registered professional engineer. Dredged material projects with detailed engineering designs are more likely to function in concert with the Lake's natural sediment transport processes than those projects that have been constructed without proper design and engineering input. OCRM urges Ohio to ensure consideration of the design, size, and potential impacts of dredging deposition projects before determining that exemption from the engineering requirements is appropriate.

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<sup>1</sup> OCRM Evaluation Findings for the Ohio Coastal Management Program, February 2005