



Ohio Administrative Code Rule 1501-6-03 Director's recommendations.

Effective: April 30, 1992

(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 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, 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:

(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.
- (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, improvement or activity upon the public right of



recreation, including present or prospective recreational uses by the public during the term of the lease, will be evaluated. Provision for public access may be required as a condition of a lease or permit 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, 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, 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 indirectly, 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 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.