

Friday, July 13, 2007 - Governor Strickland Announces New Regulatory Policy for Coastal Land Management

Columbus, Ohio – Governor Ted Strickland announced today plans to implement a new regulatory policy regarding the ownership and management of property along Lake Erie coastal lands.

“Under this new policy, the state will honor the valid deeds of local property owners along the coast of Lake Erie,” Strickland said. “I believe this policy ensures protection of our important natural resources without compromising the rights of landowners.”

The New Regulatory Policy Follows:

New Regulatory Policy Regarding Coastal Land Management

The State of Ohio, the Ohio Department of Natural Resources (“ODNR”), and its Director, Sean Logan, are defendants in a lawsuit filed in May of 2004 in the Lake County Court of Common Pleas regarding the ownership and management of property along the shores of Lake Erie. Since the inception of the case, the State and ODNR have argued that the lands along the shores of Lake Erie up to the “Ordinary High Water Mark” (OHWM) are lands held in trust by the State of Ohio on behalf of its people. Property owners along the lake, on the other hand, have insisted that their deeds demonstrating property ownership below the OHWM are valid and must be honored and that the State’s “public trust lands” position interferes with their private use of land that they own. As he has consistently stated for more than a year, Governor Strickland believes that apparently valid real property deeds must be honored unless a court of law determines that the deeds are limited by or subject to the public’s interest in those lands or are otherwise defective and/or unenforceable.

The Governor and ODNR recognize that there are arguable legal claims that some of the deeds have specific defects and that deeds purporting to cover lands below the OHWM [Ordinary High Water mark] may ultimately be found by the Ohio courts to be subordinate to the public’s interest in those lands. Still, without such a determination by the Ohio courts, ODNR believes that it must honor those deeds.

The Governor and ODNR also recognize that they have a solemn duty to manage coastal lands in a manner that protects the important resource that Lake Erie represents. In that regard, ODNR has begun the planning necessary to implement the following new regulatory policies:

1.) Property owners who wish to build structures along the shores of Lake Erie that could or would impact coastal lands will no longer be required to obtain leases for the lands within their deeds which are beneath such structures, but will be obligated to obtain appropriate permits from ODNR's Office of Coastal Management before commencing any such construction.

Much like local zoning laws which require homeowners to obtain permits from local officials before building a fence or garage on their own property, this requirement, utilizing the State's existing coastal management authority under Ohio law and the Ohio Administrative Code, will assure that coastal land management interests are not compromised by the construction of unauthorized break walls, docks or other structures.

2.) Consistent with the Governor's view that deeds should be honored unless they are found to be limited and/or unenforceable by a court of law, ODNR has determined that it is inappropriate to require deed holders to lease land that they maintain that they own.

Still, because some land owners would prefer to voluntarily obtain a lease for the property on which they intend to build permitted structures, ODNR will continue to make leases voluntarily available. This will accommodate those landowners wishing to hold an unchallenged, leasehold property interest in the lands beneath their permitted structures.

The Attorney General's office has appointed outside counsel to represent ODNR and Director Logan in the ongoing litigation, and that outside counsel will immediately make the above positions known to the Court in the pending Lake County case. **The Attorney General, in his role as counsel to the State of Ohio, has informed the Governor that his office will continue to pursue its current position in support of the public trust lands doctrine.**