Ohio Lakefront Group Annual Meeting Catawba Island Club Port Clinton, Ohio May 30, 2019



# What is the Ohio Lakefront Group

- Non-Profit and non-partisan
- Incorporated in 1999
- Shoreline property owners
- Grassroots volunteer organization --<u>Board</u>
   <u>Members are NOT paid or reimbursed</u>
- At present there are over 7,000 members
- There are 14,000 15,000 parcels along Lake Erie in Ohio



# **Purpose**

- Prevent taking of shoreline property by governmental entities
- Protect the use of Lake Erie and the environment
- We are <u>NOT</u> anti-environment, we just want our deeds honored!



# Nominees for Board of Directors for a 3-year term

# Baeppler, Greg Bay VillageBunsey, Bob HuronCyvas, Vitas Willowick



# **Treasurer's Report**

Jan. 1, 2018 Balance	\$664,558.56
Member Support	\$10,378.00
Total Assets	\$674,936.56
Expenses	\$41,376.27
Dec. 31, 2018 Balance	\$633,560.29



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# **History**

- We filed our lawsuit in 2004.
- The case was settled in 2016.
- We won in Federal Court once
- We won in the Trial Court 2 times
- We won in the Appeals Court 2 times
- We won in the Ohio Supreme Court 2
   times



# Judge Lucci's Decision

- Voided Leases on private/deeded property.
- Artificial fill is allowed to "reclaim land lost by avulsion." (Page 34)
- Simply, the Public Trust is essentially "where beachcombers may walk...where the walker's feet would be wet." (Page 34)



# Water Levels

Lauren Schifferle Water Management Branch Buffalo Office Army Corps of Engineers



# **Permitting and Structures**

Keith Sendziak Regulatory Branch Ohio Permit Evaluation Buffalo Office Army Corps of Engineers



U.S. Army Corps of Engineers Regulatory Program: Coastal Applications

- Keith Sendziak
- Biologist
- Army Corps of Engineers, Buffalo District
- Date: 30 May 2019







**USACE Regulatory Program Goals** 

- To provide strong protection of the Nation's aquatic environment, including wetlands.
- To enhance the efficiency of the Corps' administration of its regulatory program.
- To ensure that the Corps provides the regulated public with fair and reasonable decisions.







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Section 10 of the Rivers and Harbors Act of 1899
Prohibits the unauthorized obstruction or alteration of any navigable water of the United States

• Under Section 10, the Corps of Engineers regulates all activities, work, and structures within, above, or beneath navigable waters



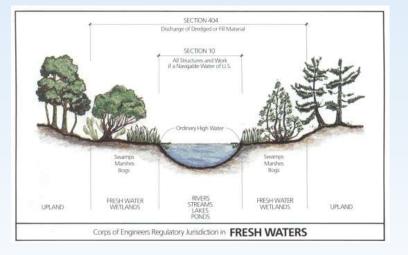




#### **Lake Erie Limits of Jurisdiction**

•Ordinary High Water Mark (OHWM): defining element for identifying the lateral limits of non-wetland waters

•Lake Erie has an established OHWM of <u>573.4 feet</u> International Great Lakes Datum, 1985.





#### Section 404 of the Clean Water Act of 1977

• Under Section 404, the Corps of Engineers regulates activities which involve a discharge of dredged or fill material into a water of the United States







**Ohio Lakefront Group** 

#### Jurisdiction examples



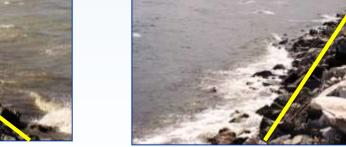
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#### **PERMIT APPLICATION REQUIRED MATERIALS**

- Applicant name, address, and contact information
- Location of proposed work
- Applicant (agent) signature
- Project Purpose
- Amount of material below ordinary high water
- Location Map
- Drawings (plan view (i.e. top view) and cross section (i.e. side view))

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### **PERMIT APPLICATION**

## https://www.lrb.usace.army.mil/Missions /Regulatory/OH-PERMIT-INFO/



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#### Department of the Army Permits Include:

# **Individual Permits**

- Letter of Permission (LOP)
- Standard Permit (SP)

# **General Permits**

• Nationwide Permits (NWP)





Nationwide Permits (NWPs)

- A type of general permit used to authorize specific types of activities (i.e. bank stabilization, housing, road crossing)
- Minimal impact to aquatic environment
- Expedited permit review process (45 days from complete application)
- Additional information may be required (Corps makes request within 30 days of receiving application)
- Mitigation may be required (avoid, minimize, compensate)
- Requires each District to include regional conditions to ensure impacts are minimal both individually and cumulatively

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Commonly Used Nationwide Permits on lake erie

- 3. Maintenance
- 7. Outfall and Associated Intake Structures
- 10. Mooring Buoys
- 11. Temporary Recreational Structures
- 13. Bank Stabilization
- 28. Modifications to Existing Marinas
- 35. Maintenance Dredging of Existing Basins36. Boat Ramps



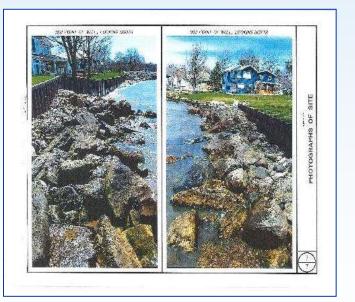




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Nationwide Permit 3 (Maintenance)

- Repair, rehabilitation, or replacement
- Previously authorized, currently serviceable structure or fill
- Not to be put to different use
- Minor deviations are authorized
- No more than 1 foot waterward for sheetpile





Nationwide Permit 13 (Bank Stabilization)

- Necessary for erosion control or prevention
- Minimum necessary for erosion protection
- No more than 500 feet (waiver can be obtained)
- No more than 1 cubic yard of material below ordinary high water elevation per running foot (waiver can be obtained)
- Sand prefill 2 cubic yards (CY) of sand per linear foot (LF) of shoreline stabilized (i.e. 100 LF revetment = 200 CY sand) (waiver can be obtained)





Nationwide Permits 3 and 13

- Must submit application and receive affirmation before starting work
- Coastal Consistency from ODNR required
- Sand below fill must be relocated and placed nearshore
- Must comply with other laws (Endangered species, Historic Preservation, etc)



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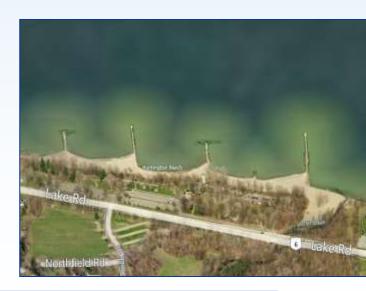


#### STANDARD PERMITS – OFFSHORE BREAKWATERS & GROINS

- More than minimal impact to aquatic environment
- Longer permit review process
- Adjacent property owners contacted
- Public notice (30 days) to solicit comments
- 120 days to complete
- Requires OEPA permit (180 days to complete)
- Mitigation may be required (avoid, minimize, compensate)

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#### **Permit Conditions**

- In-water work restriction April 15 June 30 (waiver can be obtained)
- Suitable material / appropriately sized armor stone (experience has shown at least 3 feet or greater) – no exposed concrete, asphalt, metal, wood, other debris
- Toe stone embedded in lake bottom to increase stability
- Sand relocation with nearshore placement
- Sand prefill 2 cubic yards / linear foot shoreline stabilized for Nationwide Permit 13 (waiver can be obtained)



## shore protection

## previous nearshore lakebed

### future nearshore lakebed

### toe failure

### lakebed downcutting



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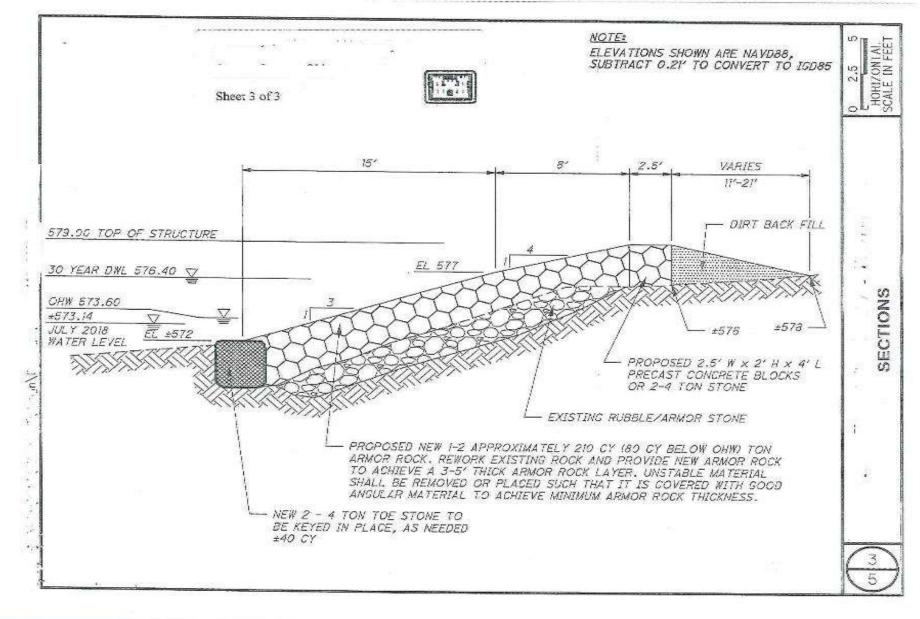


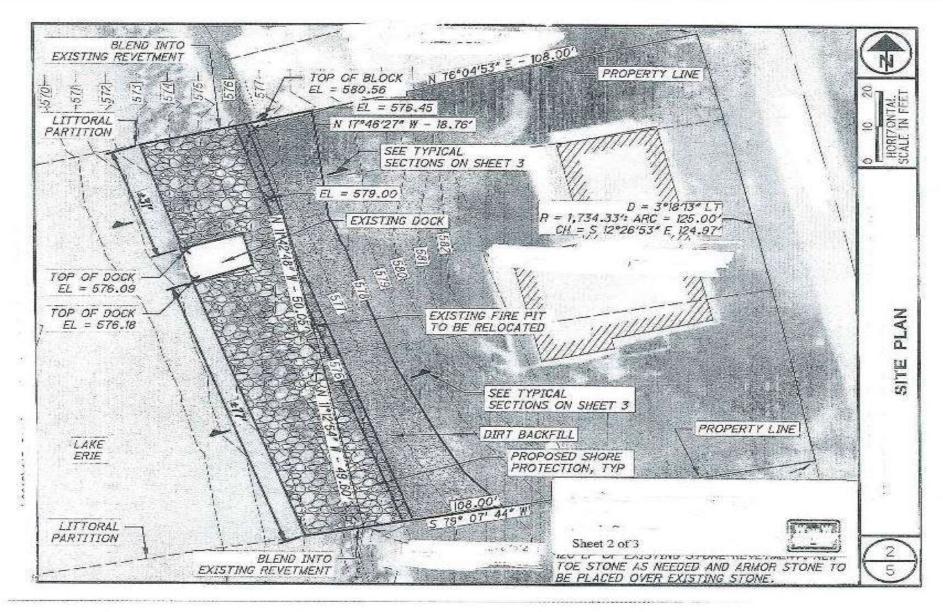




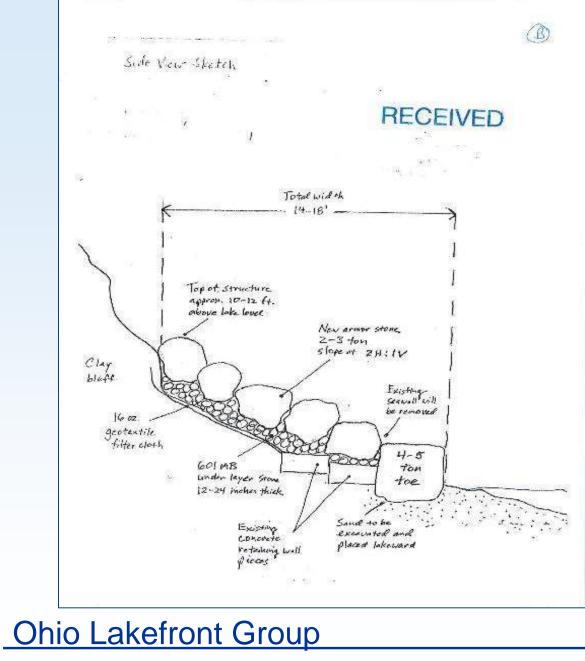
### REVETMENT EXAMPLE DRAWINGS





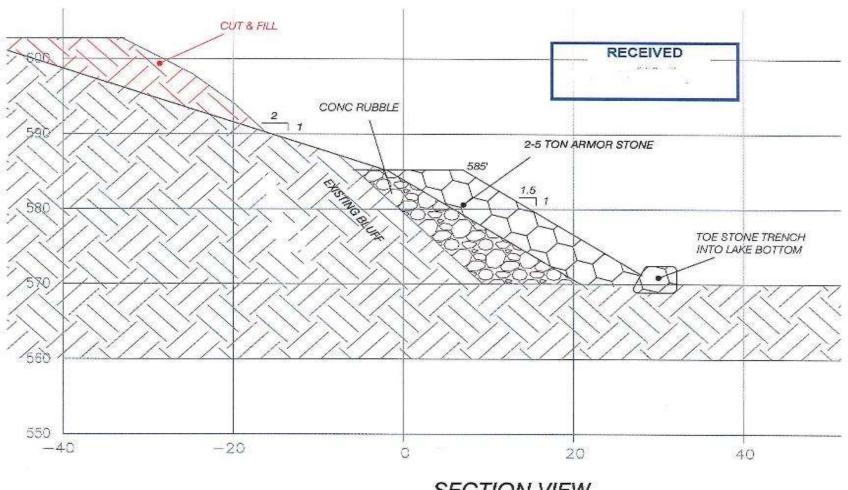






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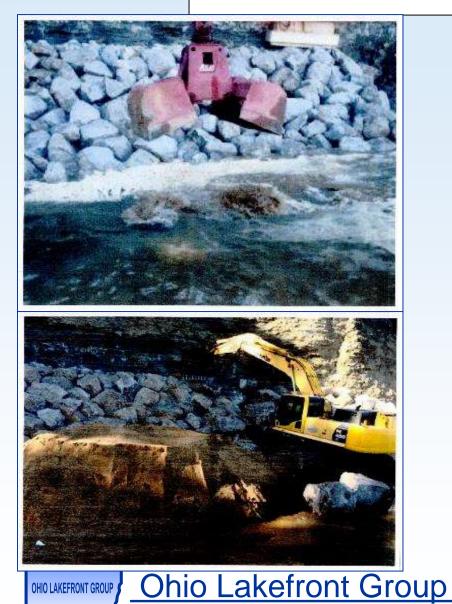


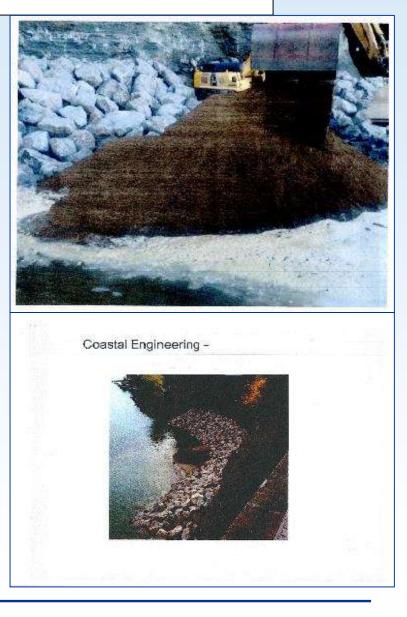


SECTION VIEW

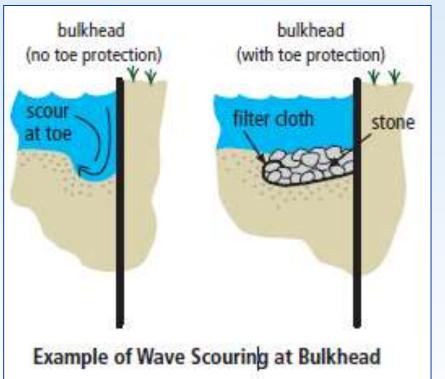


#### SAND PREFILL EXAMPLE





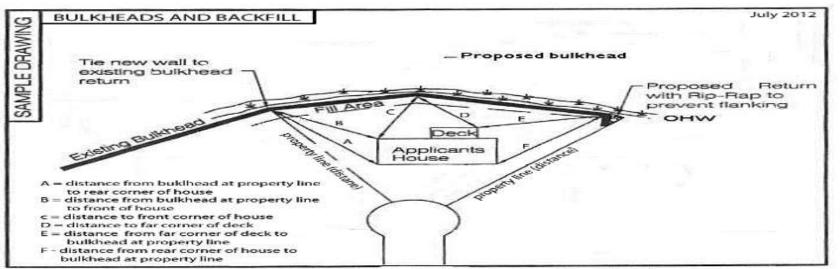
#### SEAWALL EXAMPLE DRAWINGS



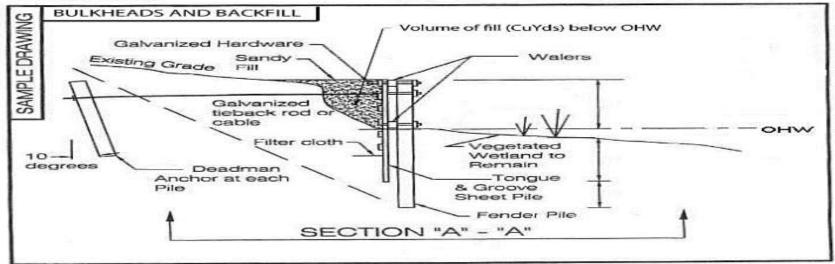




#### Seawall Example drawings

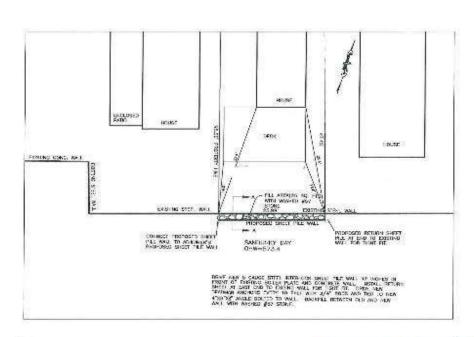


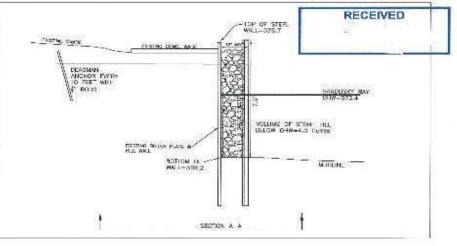
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www.ohiolakefrontgroup.com







#### How Can Government Help?

 U.S. Army Corps of Engineers Regulatory – provides permit assistance

> https://www.lrb.usace.army.mil/Missions/Regulatory.aspx LRB.Regulatory@usace.army.mil (716) 879-4330

- U.S. Army Corps of Engineers Civil Works emergency operations and technical assistance <u>https://www.lrb.usace.army.mil/Missions/Civil-Works/</u> <u>buffalo-civilworks@usace.army.mil</u>
- Soil & Water Conservation District provides technical assistance and possibly project design <u>https://ofswcd.org/</u> (614) 784-1900
- Ohio Department of Natural Resources Office of Coastal Management -provides permit assistance and technical reviews <u>http://coastal.ohiodnr.gov/</u> (419) 626-7980
   Ohio Lakefront Group

#### **Green Algae**

## Jim Stouffer President Lake Erie Foundation



#### What Is In The Future?

- OLG will need to continue to fight against inappropriate bureaucratic treatment.
- Need ODNR to recognize private property based on deeds.
- Vigilance
- Another lawsuit if necessary.



### Is ODNR Changing?

### It has changed, but not by very much.



#### How Has ODNR Changed?

- We have had a dialog with ODNR.
- We are not getting a sympatric ear.
- Last year we approached ODNR management with the idea of issuing temporary permits because of high water. They have, sort of, enacted our recommendation.



### ONDR's Temporary Permits Good

- -Do it yourself application
- -Like the Army Corps Nation Wide Permit Process
- -No professional engineer (cost) involved
- -Approximate one week turnaround



## **ONDR's Temporary Permits**

#### Not Good

- \* Requires a full Shore Structure Permit process within the next 2 years.
- \* You build it now, pay all the engineering later, then face possible change orders by ODNR.
- \* ODNR now has data on you.



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#### **Temporary Permit Considerations**

- If one does not trust ODNR, this looks like a very bad deal.
- Action is needed now to prevent further damage. Contractors may not work without a permit.
- What can ODNR do if you do not go through the full permitting process in 2 years?



#### What Else is OLG Doing To Work With ODNR

- Remove Residential leasing
   requirement
- Reducing Permitting Requirements to be proportional to size of project
- Codify the Merrill decision



#### **S.B.** 51

- SID for lakefront owners are a means where long-term financing could be provided.
- Not a grant or zero-interest loan.
- Paid back through property tax. assessments.
- Requires 100% participation of property owners for which the funds benefit.



## THANK YOU

# QUESTIONS

