



MERRILL ACT

Managing Lake Erie while Respecting the Rights of Individual Lakefront Landowners

In 2017, the Ohio Department of Natural Resources paid more than \$6 million in damages and other costs to members of the Ohio Lakefront Group. The settlement was the result of two decades of efforts to protect the private property rights of lakefront property owners. In its unanimous decision, the Ohio Supreme Court not only appropriately clarified the boundary between public and private property, it also stated: “All deeds are honored.” Despite this unanimous victory, Ohio has not modified its statutory or regulatory language to conform with the decision in the Merrill case and continues to require leases of privately deeded property.

The Ohio Lakefront Group is asking that the legislature bring Ohio law into line with the *Merrill* decision to honor our deeds, respect private property rights, and modernize the permitting process for erosion control structures while also ensuring the shared goal of maintaining Lake Erie as the Jewel of Ohio.

Ensure that deeds are honored

- Updates and define key terms related to the exercise of littoral rights including coastal structure, coastal restoration, natural shoreline, erosion, avulsion, accretion, submergence, etc.
- Create a rebuttable presumption that lands lost are due to avulsion and subject to restoration.
- Establishes a process for the review of existing submerged lands leases on private property to cancel or convert them to permits if appropriate.
- Modernizes public notice, permit timelines, and includes (as appropriate) public hearings, etc.
- Clarifies that permits are valid for the lifetime of the structure and transfer to new owners.

Streamline the erosion control measure (ECM) permit process by differentiating between facilities (utilities and governments), ECMs contained fully within privately property, and ECMs beyond deeded property.

Tier A: Facilities

- Largely consistent with existing law and/or changes proposed by SB 313 (134 GA).

Tier B: Construction of an ECM exclusively within the boundaries of privately deeded property

- Must obtain a boundary (not topographical) survey.
- Employ a contractor, PE, or both to prepare plans. A PE is not required if plans are consistent with ODNR’s Coastal Design Manual.
- Notification to adjacent landowners.
- “Within the property owner’s deed” includes deeded property plus any additional lakeward area needed to attain a required 3/1 slope for revetment stabilization, if applicable.
- ODNR reviews plans to ensure: design consistency; no danger to life, health, or property; and does not prejudice the rights of any other property owner.

Tier C - Construction of ECM exceeds the scope of Tier B projects (beyond privately deeded property, etc)

- Must obtain a boundary (not topographical) survey.
- Employ a contractor, PE, or both to prepare plans. A PE is not required for certain structures as listed (certain docks, nature-based shorelines, beaches, dunes, wetlands, certain revetments) or as in rules.
- Notification to adjacent landowners.
- “Within the property owner’s deed” includes deeded property plus any additional lakeward area needed to attain a required 3/1 slope for revetment stabilization, if applicable.
- ODNR reviews plans to ensure: design consistency; no danger to life, health, or property; does not prejudice the rights of any other property owner; or impair public uses.

Grandfathers existing structures and contains directives on converting them or leases to permits, as appropriate.