

*** DRAFT - NOT YET FILED ***

3745-1-50

Wetland definitions and availability of documents.

[Comment: For dates of non-regulatory government publications, publications of recognized organizations, federal rules and federal statutory provisions referenced in this rule, see rule 3745-1-03 of the Administrative Code.]

In addition to the definitions in ~~rule~~rules 3745-1-02 and 3745-32-01 of the Administrative Code technical words used in rules 3745-1-50 to 3745-1-54 of the Administrative Code shall be defined as follows:

(A) "33 C.F.R." means Title 33 of the Code of Federal Regulations effective July 1, 2016.

(B) "40 C.F.R." means Title 40 of the Code of Federal Regulations effective July 1, 2016.

~~(A)~~(C) "Alternatives analysis" means a systematic review and evaluation of practicable alternatives including avoidance, minimization and/or compensatory mitigation for impacts to a wetland.

(D) "Applicant" means any person required to obtain a section 401 water quality certification or isolated wetland permit from the Ohio environmental protection agency (Ohio EPA).

~~(B)~~(E) "Areal cover" means the per cent of vegetation covering any area of vegetated wetland. Areal measurements are those made as if the wetland were being viewed from the air.

~~(C)~~(F) "Avoidance" is the first step in the alternatives analysis and means that the applicant must demonstrate that alternatives ~~which~~that fulfill the basic project purpose and have less or no impacts to the wetland are not practicable, so long as the alternative does not have other significant adverse environmental consequences.

~~(D)~~(G) "Biodiversity" means the number of community types, different species, and genetic variants of species found in a given area.

~~(E)~~(H) "Bog" means a peat-accumulating wetland that has no significant inflows or outflows and supports acidophilic mosses, ~~particularly Sphagnum spp.~~ Characteristic indicator species may include, but are not limited to Calla palustris, Carex atlantica var. capillacea, Carex echinata, Carex oligosperma, Carex trisperma, Chamaedaphne calyculata, Decodon verticillatus, Eriophorum virginicum, Ilex mucronata, Larix laricina, Scheuchzeria palustris, Sphagnum spp., Vaccinium macrocarpon, Vaccinium corymbosum, Vaccinium oxycoccos, Woodwardia virginica, and Xyris difformis.

~~(F)~~(I) "Compensatory mitigation" refers to the final step in the alternatives analysis and means ~~restoration~~reestablishment (restoration), ~~creation~~establishment (creation), ~~enhancement~~rehabilitation (enhancement) or, in ~~exceptional~~certain circumstances; preservation of wetlands ~~expressly~~ for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization have been achieved.

~~(G)~~ "Creation" means ~~the establishment of a wetland where one did not formerly exist. This would involve wetland construction on non-hydric soils.~~

~~(H)~~(J) "Critical habitat" means the following:

- (1) The specific areas within the geographical area currently occupied by a species, at the time it is listed in accordance with the Endangered Species Act (~~16 U.S.C.A. section 1531 et seq., as amended~~) on which are found those physical or biological features essential to the conservation of the species, and that may require special management considerations or protection; ~~and~~.
- (2) Specific areas outside the geographical area occupied by a species at the time it is listed in accordance with the Endangered Species Act, upon a determination by the secretary of the department of the interior, that such areas are essential for the conservation of the species.

~~(I)~~(K) "Cumulative impacts" mean the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonable foreseeable future actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. Cumulative impacts shall be considered on a watershed basis.

~~(J)~~(L) "Direct impacts" mean effects which are caused by the action and occur at the same time and place.

~~(K)~~(M) "Dispersal corridor" means ~~a linear~~ an area that is used by organisms to move from one place of suitable habitat to another.

~~(L)~~(N) "Endangered species" means a native Ohio plant species listed or designated by the ~~Ohio~~Ohio department of natural resources as endangered or extirpated pursuant to section 1518.01 of the Revised Code, and animal species listed or designated as endangered by the ~~Ohio~~Ohio department of natural resources pursuant to section 1531.25 of the Revised Code; or any plant or animal species that is native to Ohio or that migrates or is otherwise reasonably likely to occur within the state which has been listed as endangered pursuant to section 4 of the Endangered Species Act;

(16 U.S.C.A. 1531 et seq., as amended).

~~(M)~~ "Enhancement" means activities conducted in existing wetlands to improve or repair existing or natural wetland functions and values of that wetland.

~~(O)~~ "Establishment (creation)" means the manipulation of the physical, chemical, or biological characteristics present to establish a wetland where one did not formerly exist at an upland site.

~~(N)~~(P) "Fen" means a carbon accumulating (peat, muck) wetland that is saturated, primarily by a discharge of free flowing ground water during most of the year. Fens are rarely inundated. Fens often have a sloped surface which prevents the accumulation of stagnant or ponded water. The water of fens is usually mineral rich and has a circumneutral pH (5.5-9.0). In calcareous fens, soil may be dominated by deposits of calcium carbonate rich sediments (marl). Characteristic indicator ~~vegetation~~ species may include, but are not limited to ~~Potentilla fruticosa, Solidago ohioensis, Lobelia kalmii, Cacalia plantaginea, Deschampsia caespitosa, Triglochin spp., Parnassia glauca, Gentianopsis spp., Rhynchospora spp., and some Eleocharis spp.~~Cacalia plantaginea, Carex flava, Carex sterilis, Carex stricta, Dasiphora fruticosa, Deschampsia caespitosa, Eleocharis rostellata, Eriophorum viridicarinatum, Gentianopsis spp., Lobelia kalmii, Oligoneuron ohioense, Parnassia glauca, Rhamnus alnifolia, Rhynchospora capillacea, Salix candida, Salix myricoides, Salix serissima, Tofieldia glutinosa, Triglochin maritimum, Triglochin palustre, and Zygadenus elegans var. glaucus.

~~(Q)~~ Field Manual for the Amphibian Index of Biotic Integrity for Wetlands (Ohio EPA, 2011) is available on Ohio EPA's website at: <http://epa.ohio.gov/dsw/401/ecology.aspx#149364495-reports>. This document may also be obtained by writing to: "Ohio EPA, Division of Surface Water, PO Box 1049, Columbus, Ohio 43216-1049."

~~(R)~~(R) "Forested wetland" means a wetland class characterized by woody vegetation that is ~~twenty feet tall or taller.~~that is dominated by tree species which are or will result in a closed canopy forest.

~~(S)~~(S) "Floodplain" means the relatively level land next to a stream or river channel that is periodically submerged by flood waters. It is composed of alluvium deposited by the present stream or river when it floods.

~~(T)~~(T) "Function" means the physical, chemical, and biological processes occurring in, or because of, the presence of a wetland that contribute to a larger ecological condition such as water quality improvement, flood control and/or biodiversity maintenance.

~~(R)~~(U) "Ground water discharge" means water flowing out of a ground water zone. In regards to wetlands, ground water discharge occurs when water flows from a ground water zone to a wetland.

~~(S)~~(V) "Ground water recharge" means water flow into a ground water zone. In regards to wetlands, ground water recharge occurs when water flows from a wetland to a ground water zone.

~~(T)~~(W) "Hydrologically isolated wetlands" means those wetlands which:

- (1) Have no surface water connection to a surface water of the state;
- (2) Are outside of, and not contiguous to, any one hundred-year "floodplain" as that term is defined in this rule; ~~and~~
- (3) Have no contiguous hydric soil between the wetland and any surface water of the state.

~~(U)~~(X) "Indirect impacts" means effects which are caused by the project and that occur farther removed in distance from the project, but are still reasonably foreseeable. Indirect impacts may include related effects on air and water and other natural systems, including ecosystems, and other adverse environmental impacts that may be a consequence of the project.

~~(V)~~(Y) "In-kind" means ~~compensatory mitigation of wetland losses by restoring or creating a forested wetland for a forested wetland and a non-forested wetland for a non-forested wetland~~ a wetland of a similar structural and functional type to the impacted wetland.

(Z) "In-lieu fee program" means a program that has been approved in accordance with 33 C.F.R. Part 332.8, involving the reestablishment (restoration), establishment (creation), rehabilitation (enhancement), or preservation of aquatic resources through funds paid to a governmental or non-profit natural resources management entity to satisfy compensatory mitigation requirements.

(AA) "Long term protection" means compensatory mitigation that is protected with a legal instrument such as an environmental covenant, conservation easement, or deed restriction. In the event a legal instrument is not a viable option based on land ownership or lease agreements where compensatory mitigation has occurred, the applicant must clearly demonstrate operational control to sustain and preserve the compensatory mitigation project after performance standards are met and monitoring requirements have been fulfilled.

~~(W)~~(BB) "Minimization" refers to a step in the alternatives analysis and means that unavoidable impacts are reduced to the maximum extent practicable.

~~(X)~~(CC) "Mitigation bank" means a site that has been approved in accordance with 33 C.F.R. Part 332.8, where ~~wetlands~~ aquatic resources have been ~~restored~~reestablished (restored), ~~created~~ established (created), ~~enhanced~~rehabilitated (enhanced) or, ~~in exceptional circumstances,~~ preserved expressly for the purpose of providing compensatory mitigation ~~generally in advance of authorizing~~ for authorized impacts.

~~(Y)~~ "Mitigation bank service area" means ~~the designated area where a mitigation bank can reasonably be expected to provide appropriate compensation for impacts to wetlands and other aquatic resources.~~

~~(Z)~~(DD) "Mitigation ratio" means the rate at which wetland units (e.g., acres) will be ~~restored~~reestablished (restored), ~~created~~established (created), ~~enhanced~~rehabilitated (enhanced) or preserved to provide for compensation of unavoidable wetland losses.

~~(AA)~~(EE) "Native species" means a species which, by scientific evidence, was present in Ohio just prior to European exploration and settlement.

~~(BB)~~(FF) "Non-native species" means a species which, by scientific evidence, was not present in Ohio just prior to European exploration and settlement.

~~(CC)~~(GG) "Nuisance organisms" means ~~organisms that are~~ primarily vegetative organisms, that generally are non-native and have opportunistic growth patterns; ~~and~~ that displace more diverse assemblages.

(HH) Ohio Rapid Assessment Method (ORAM) version 5.0 (Ohio EPA, February 1, 2001) is available on Ohio EPA's website at: <http://epa.ohio.gov/dsw/401/ecology.aspx#149364493-ohio-rapid-assessment-method-oram>. This document may also be obtained by writing to: "Ohio EPA, Division of Surface Water, PO Box 1049, Columbus, Ohio 43216-1049."

~~(DD)~~ "Off site mitigation" means ~~wetland restoration, creation, enhancement or preservation occurring farther than one mile from the project boundary but within the same watershed.~~

~~(EE)~~(II) "Old-growth forests" means forests characterized by, but not limited to, the following characteristics: overstory canopy trees of great age (exceeding at least fifty per cent of a projected maximum attainable age for a species); little or no evidence of human-caused understory disturbance during the past eighty to one

hundred years; an all-aged structure and multilayered canopies; aggregations of canopy trees interspersed with canopy gaps; and significant numbers of standing dead snags and downed logs.

~~(FF)~~ "On-site mitigation" means wetland restoration, creation, enhancement or preservation occurring within one mile of the project boundary but within the same watershed.

(JJ) "Permittee" means any person who has been issued a section 401 water quality certification or isolated wetland permit by the Ohio EPA.

~~(GG)~~(KK) "Practicable" means available and capable of being done after taking into consideration cost, existing technology and logistics in light of overall and basic project purposes. For the purposes of this definition:

(1) "Available" means an alternative which is obtainable for the purpose of the project;

(2) "Basic project purpose" means the generic function of the project; ~~and.~~

(3) "Overall project purpose" means the basic project purpose plus consideration of costs and technical and logistical feasibility.

~~(HH)~~(LL) "Preservation" means ~~protection of the removal of a threat to, or preventing the decline of~~ ecologically important ~~wetlands in perpetuity~~ aquatic resources through the implementation of appropriate legal mechanisms to prevent harm to the wetland. Preservation may include protection of adjacent upland areas as necessary to ensure protection of the wetland.

~~(H)~~(MM) "Public need" means an activity or project that provides important tangible and intangible gains to society, that satisfies the expressed or observed needs of the public where accrued benefits significantly outweigh reasonably foreseeable detriments.

~~(JJ)~~(NN) "~~Restoration~~"Reestablishment" (restoration) means the ~~re-establishment of a previously existing wetland at a site where it has ceased to exist.~~manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former or degraded aquatic resource.

(OO) "Rehabilitation (enhancement)" means the manipulation of the physical, chemical, or biological characteristics of existing wetlands to heighten, intensify, or improve existing or historic natural functions of a wetland.

(PP) "Service area" means the geographic area within which impacts can be mitigated at a specific mitigation bank or an in-lieu fee program, as designated in its instrument.

(OO) "Services" means the benefits that human populations receive from functions that occur in wetlands.

~~(KK)~~(RR) "Substrate" means solid material, such as soil, on or within which organisms can live.

~~(LL)~~(SS) "Threatened species" means: a native Ohio plant species listed or designated by the Ohio department of natural resources as threatened with extirpation pursuant to section 1518.01 of the Revised Code; or an animal species listed or designated as threatened with statewide extinction by the Ohio department of natural resources pursuant to section 1531.25 of the Revised Code; or a species that appears on the threatened species registry, as defined in rule 3745-1-05 of the Administrative Code; or any plant or animal species that is native to Ohio or that migrates or is otherwise reasonably likely to occur within the state and which has been listed as threatened pursuant to section 4 of the Endangered Species Act (16 U.S.C.A. 1531 et seq., as amended).

(TT) "Upland buffer" means land surrounding the jurisdictional edge of a wetland that consists of upland prairie, old field, shrub, or forest vegetation that is maintained in a natural state through passive or active management. This does not include lawns, mowed roadsides, fields where crops are grown or animals pastured, and other similar land uses.

(UU) Vegetation Index of Biotic Integrity for Wetlands version 1.5 (Ohio EPA, 2015) is available on Ohio EPA's website at: <http://epa.ohio.gov/dsw/401/ecology.aspx#149364495-reports>. This document may also be obtained by writing to: "Ohio EPA, Division of Surface Water, PO Box 1049, Columbus, Ohio 43216-1049."

~~(MM)~~(VV) "Vernal pools" means shallow, temporarily flooded, depressional forested or forest edge wetlands, that are typically dry for most of the summer and fall. These wetlands are generally inundated in the late winter and spring when they are subject to a burst of biological activity, including amphibian breeding. When flooded, vernal pools are often comprised of areas of open water that are not densely vegetated. They also tend to accumulate organic (woody) debris.

~~(NN)~~(WW) "Watershed" means a common surface drainage area corresponding to one from the list of thirty-seven adapted from the forty-four cataloging units as depicted on the hydrologic unit map of Ohio, U.S. geological survey, 1988, and as described in paragraph ~~(F)~~~~(2)~~(G) of rule 3745-1-54 of the Administrative Code or as otherwise shown on ~~map number 1 found in appendix 1 to~~ rule 3745-1-54 of the

Administrative Code. Watersheds are limited to those parts of the cataloging units that geographically lie within the borders of the state of Ohio.

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Five Year Review (FYR) Dates:

Certification

Date

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