

For Interested Party Review - February 2006 Draft

3745-1-50 Definitions.

In addition to the definitions in ~~rule~~ rules 3745-1-02 and 3745-32-01 of the Administrative Code ~~technical words used in rule 3745-1-05 of the Administrative Code and in rules 3745-1-50 to 3745-1-54~~ 3745-1-56 of the Administrative Code shall be defined as follows:

- (A) “Alternatives analysis” means a systematic review and evaluation of practicable alternatives including avoidance, minimization and/or compensatory mitigation ~~for impacts to a wetland.~~
- (B) “Applicant” means, for the purposes of rules 3745-1-50 to 3745-1-56 of the Administrative Code only, any person required to obtain a section 401 water quality certification from Ohio EPA.
- ~~(B)~~(C) “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)~~(D) “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)~~(E) “Biodiversity” means the number of community types, different species, and genetic variants of species found in a given area.
- (E) ~~“Bog” means a peat-accumulating wetland that has no significant inflows or outflows and supports acidophilic mosses, particularly Sphagnum spp.~~
- (F) “Compensatory mitigation” refers to the final step in the alternatives analysis and means restoration, creation, enhancement or, in exceptional circumstances, preservation of ~~wetlands~~ a wetland, including natural upland buffer areas around the wetland sufficient to ensure the success of the mitigation, expressly for the purpose of compensating for unavoidable adverse impacts ~~which that~~ 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~~ “Creation” includes wetland construction on non-hydric soils, wetland construction on non-hydric soils with hydric inclusions, and the reestablishment of hydrologically atypical wetlands (e.g., permanent impoundments, non-natural hydroperiods, and wetland type not found in that landscape naturally).
- (H) “Critical habitat” means:

- (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~~ U.S.C. 1531 et seq., as amended through July 1, 2005) 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 (16 U.S.C. 1531 et seq., as amended through July 1, 2005), upon a determination by the secretary of the department of the interior, that such areas are essential for the conservation of the species.
- (I) “Cumulative impacts” ~~mean~~ means the impact on the environment ~~which that~~ 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. Cumulative impacts include the effect of multiple previously approved impacts to a stream or wetland such that additional impacts, if approved, would result in a change in existing or designated uses or wetland category.
- (J) “Direct impacts” ~~mean~~ means effects which are caused by the action and occur at the same time and place.
- (K) “Dispersal corridor” means a linear area that is used by organisms to move from one place of suitable habitat to another.
- (L) “Endangered species” means a native Ohio plant species listed or designated by the Ohio department of natural resources as endangered pursuant to section 1518.01 of the Revised Code, and animal species listed or designated as endangered by the 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 and that~~ has been listed as endangered pursuant to section 4 of the Endangered Species Act; (~~16 U.S.C.A. U.S.C.~~ U.S.C. 1531 et seq., as amended through July 1, 2005).
- (M) “Enhancement” means activities conducted in existing wetlands to improve or repair existing or natural wetland functions and values of that wetland. Enhancement is achieved by removing causes of past or present degradation in order to improve the ecological quality of the wetland.
- (N) “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 of calcareous fens may include, but are not limited to *Potentilla fruticosa*, *Solidago ohioensis*, *Lobelia kalmii*, *Cacalia plantaginea*, *Deschampsia cespitosa*, *Triglochin* spp., *Parnassia glauca*, *Gentianopsis* spp., *Rhynchospora* spp., and some *Eleocharis* spp. Other fen species include *Carex stricta*, *Carex hystericina*, *Carex interior*, *Carex leptalea*, *Carex pellita*, *Carex prairea*, *Carex sterilis*, other *Carex* spp., *Solidago patula*, *Aster puniceus*, *Schoenoplectus acutus*, *Thelypteris palustris*, *Bromus ciliatus*, and *Campanula aparinoides*.

- (~~Θ~~) “Forested wetland” means a wetland class characterized by woody vegetation that is twenty feet tall or taller.
- (~~P~~)(O) “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.
- (~~Θ~~)(P) “Function” means natural processes occurring in, or because of, the presence of a wetland the wetland ranging from highly specific nutrient cycling processes to processes that maintain the overall ecological integrity of the wetland ecosystem. Function also includes processes that occur at larger scales of watersheds or ecological regions that contribute to a larger ecological condition of those watersheds or regions—such as water quality improvement, flood control and/or biodiversity maintenance. Examples of functions of a wetland include, but are not limited to, ground water exchange, nutrient removal and/or transformation, sediment and/or contaminant retention, water storage, sediment stabilization, shoreline stabilization, and maintenance of biodiversity.
- (~~R~~)(Q) “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~~)(R) “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.
- (S) “Hydrogeomorphic class” describes the landscape position of a wetland and its dominant hydrologic regime (hydroperiod and water budget of precipitation, evapotranspiration, overbank flooding, surface inflows and outflows, groundwater fluxes, Lake Erie seiches and cycles, etc.). Hydrogeomorphic classes include the following:
- (1) Depressions, which are wetlands that have a mostly vertical hydrologic pathway dominated by precipitation (including sheet flow and overland flow) and evapotranspiration during the growing season, and sometimes shallow ground water inputs and outputs;

- (2) Impoundments, which are wetlands created or modified by the impounding of water behind roads, railroad embankments, etc. or by the natural activity of beavers;
 - (3) Riverine wetlands, which are wetlands associated with rivers or streams where the predominant source of water is derived from the river or stream. Riverine wetlands include riverine mainstem depressions associated with third or fourth order streams and rivers that receive seasonal or intermittent overbank flooding, riverine headwater depressions associated with first or second order streams, and riverine channels (“wetland streams”) with perennial connections with third or fourth order streams;
 - (4) Slope wetlands, which are wetlands with a hydrology dominated by horizontal or occasionally vertical (mound fens) ground water discharge and include fens and forest seeps. Slope wetlands also include lacustrine fens located on the margins of natural lakes;
 - (5) Fringing wetlands, which are wetlands located around the perimeter of inland lakes and reservoirs;
 - (6) Coastal marshes, which are wetlands subject to Lake Erie water inputs and fluctuations and include diked marshes; and
 - (7) Bogs, which are peat-accumulating wetlands that have a high predominance of acidophilic mosses, particularly Sphagnum spp. with usually minor surface water inflows and outflows. Types of bogs include tamarack bogs, tamarack-hardwood bogs, leatherleaf bogs, sphagnum bogs, and tall shrub bogs.
- (T) “Hydrologically isolated wetlands” means those wetlands ~~which~~ that:
- (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) “Indirect impacts” means effects ~~which~~ that are caused by the project and that occur farther removed in distance from the project outside the jurisdictional limits of the wetland, but are still reasonably foreseeable to have an impact on the wetland. 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) “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~~ wetland of the same hydrogeomorphic and plant community class as defined in this

rule unless out-of-kind compensatory mitigation is specifically approved on a case by case basis.

(W) “Mature forests” means forests where more than fifty per cent of the forest canopy is dominated by large diameter-at-breast- height trees (generally forty-five centimeters (17.7 inches) or greater. In some instances the wetland itself may have few large trees but may be surrounded by a mature forest.

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

~~(X)~~(Y) “Mitigation bank” means a site where wetlands have been restored, created, enhanced or, in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation generally in advance of authorizing impacts.

~~(Y)~~(Z) “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.~~ is defined in section 6111.02 of the Revised Code.

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

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

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

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

~~(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)~~ “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.~~
- (FF) “Plant community” means the dominant or codominant plant communities occurring in a wetland. Wetlands characterized by particular types of plant communities include.
- (1) “Swamp forests” are wetlands dominated by tree species which are or will result in a closed canopy forest. Swamp forests can occur in every landscape position and can be variously referred to as bottomland swamp forests, vernal pools, wet woods, and pin oak flats. Some bog communities are also swamp forests.
 - (2) “Shrub swamps” are wetlands dominated by plant species that are shrubs, that result in a closed to open canopy of shrubs species (often less than six meters or twenty feet tall). Shrub swamps can occur in every landscape position and can be variously referred to as buttonbush swamps, alder swamps, vernal pools, or mixed shrub swamps. Some bog and fen communities can also be shrub dominated communities.
 - (3) “Marshes” are wetlands dominated by submersed, floating, or emergent herbaceous or graminoid vegetation, that may include some sedge or grass species but that are not dominated by sedges or grasses.
 - (4) “Wet meadows” are wetlands that are dominated by sedge (cyperaceae) or grass (poaceae) species and include most fens, wet prairies, lake plain sand prairies, prairie sedge meadows, reed canary grass meadows, and other sedge or grass dominated communities.
- (GG) “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~~ location within or outside the property or project boundary where the wetland is located or an alternative design configuration within the property or project boundary where the wetland is located, that 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) “Preservation” means protection of ecologically important wetlands in perpetuity 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.

- (II) ~~“Public need” consists of 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~~ all of the following:
- (1) Important tangible or intangible gains to the society of the state of Ohio (purely local gains in the area of the project are not societal gains, although societal gains may also be local gains);
 - (2) Gains that satisfy the expressed or observed needs of the public; and
 - (3) Benefits to society that significantly outweigh the reasonably foreseeable detriments of the activity to the environment including the degradation or destruction of a category 3 wetland.
- (JJ) ~~“Restoration” means the re-establishment of a previously existing wetland at a site where it has ceased to exist. The re-established wetland must be of an equivalent hydrogeomorphic class as the wetland that previously existed as determined by the predominance of hydric soils and other historical information as to previously existing wetland. Re-establishment of hydrologically atypical wetlands (e.g., permanent impoundments, non-natural hydroperiods, wetland types not found in that landscape naturally), or re-establishment of wetlands on non-hydric soils or non-hydric soils with hydric inclusions is defined as wetland “creation” in this rule.~~
- (KK) ~~“State isolated wetland permit” means a permit, issued pursuant to Chapter 6111. of the Revised Code, that authorizes the “discharge of dredged material” or the “discharge of fill material” into an isolated wetland.~~
- ~~(KK)~~(LL) ~~“Substrate” means solid material, such as soil, on or within which organisms can live.~~
- ~~(LL)~~(MM) ~~“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 that has been listed as threatened pursuant to section 4 of the Endangered Species Act (16 U.S.C.A. U.S.C. 1531 et seq., as amended through July 1, 2005).~~

- (NN) “Upland buffer” means land surrounding the jurisdictional edge of a wetland that consists of natural, upland grassland, shrub, or forest vegetation that is not maintained through mowing, application of herbicide or other means that would result in deleterious effects to either the upland buffer or the adjacent wetland.
- (OO) “Values” means the ecological services that wetlands provide to human society. Examples of wetland values include flood control, nutrient retention and transformation from polluted waters, recreation, and education.
- ~~(MM)~~(PP) “Vernal pools” means shallow, temporarily flooded, depression 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 shallow pools that are often seasonally inundated and are usually located within forests. Vernal pools are often sparsely vegetated in the herb layer and can have shrub or tree dominated canopies (swamp forests or shrub swamps). Vernal pools are important amphibian breeding habitats both locally and from a regional meta-population perspective.
- ~~(NN)~~~~(OO)~~ “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) of rule 3745-1-54 of the Administrative Code or as otherwise shown on map number 1 found in 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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Certification

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