(A) Applicability. Compensatory mitigation is the final step in the sequenced alternatives analysis review. Compensatory mitigation is required and will be considered only after a determination that unavoidable impacts have been minimized in accordance with paragraph (E) of rule 3745-1-54 of the Administrative Code. The goal of compensatory mitigation is the ecological replacement of the impacted wetland, including its functions and values. Approval of compensatory mitigation requires the following steps:

1. As part of the application process, the hydrogeomorphic (HGM) class or classes and dominant plant community or communities of the impacted wetland shall be specified. Identifying the type of wetland allows enumeration of a list of functions and ecological services provided by wetland;

2. Evaluation of the quality of the impacted wetland using wetland assessment methodologies acceptable to the director, including the use of wetland indices of biotic integrity;

3. Enumeration of the area of wetland to be impacted, both directly and indirectly;

4. Evaluation of any residual moderate to high functions or values, as those terms are defined in rule 3745-1-50 of the Administrative Code, that the wetland is providing despite moderate to severe degradation of its condition, using a checklist with narrative discussion or, if necessary, more detailed quantification of residual functions;

[Comment: summary steps 1 to 4. The HGM class and dominant plant community allow specification of functions to be lost. Condition assessment provides a measure of existing overall wetland ecological condition (functional performance is then equated with the level of condition: good condition = good functional performance; excellent condition = excellent functional performance; etc.). Evaluation of any residual functions or ecological services (values) provides safeguard against situations where moderate to severely degraded wetlands still have a single “good” function left.]

5. Replacement of impacted wetland at a minimum ratio of 2:1 for category 1 or 2 wetlands and a minimum ratio of 3:1 for category 3 wetlands with at least 1:1 replacement of impact acreage through restoration or creation. Replacement is in-kind replacement based on the dominant landscape position and plant community of the impacted wetland;

6. Mitigation wetland must be of equal or higher quality as impacted wetland as measured by quantitative ecological performance targets for mitigation.

[Comment: with at least 1:1 replacement of area impacted, mitigation of a wetland in same landscape position with same dominant plant community, measurement of performance based
on quantitative condition-based ecological performance targets, there is very strong assurance of areal and functional replacement since: there was “no net loss” of wetland acreage; a mitigation wetland of the same HGM class and dominant plant community was created with a similar list of functions and values to the impact wetland; and a mitigation wetland of equivalent “quality” was created (and therefore of equivalent functional performance).]

(B) Amount and kind of compensatory mitigation. The ratios of compensatory mitigation are 2:1 (two acres of mitigation for each acre of impact) for unavoidable impacts to category 1 and category 2 wetlands and 3:1 (three acres of mitigation for each acre of impact) for unavoidable impacts to category 3 wetlands, as follows:

(1) Wetland restoration or creation shall occur at a ratio of at least 1:1 (one acre of restored or created wetland for each acre of wetland that is impacted);

(2) Preservation of natural upland buffers, as specified in paragraph (F) of this rule, around the restored or created wetland may occur at a ratio of up to 1:1 (one acre of natural upland buffer for each acre of wetland that is impacted) for unavoidable impacts to category 1 and category 2 wetlands and up to 2:1 (two acres of natural upland buffer for each acre of wetland that is impacted) for unavoidable impacts to category 3 wetlands;

(3) Wetland enhancement or preservation as specified in paragraph (F) of this rule may occur at a ratio of up to 1:1 (one acre of enhancement or preservation for each acre of wetland that is impacted) for unavoidable impacts to category 1 and category 2 wetlands and up to 2:1 (two acres of enhancement or preservation for each acre of wetland that is impacted) for unavoidable impacts to category 3 wetlands;

(4) Compensatory mitigation for linear projects (e.g., highways) in wetlands may occur in the following order:

(a) In accordance with paragraphs (B)(1) to (B)(3) of this rule; or

(b) Wetland impacts associated with a linear project may be mitigated at a single mitigation location or wetland mitigation bank, acceptable to the director, within each watershed in which the impacts occur; or

(c) If no wetland mitigation bank acceptable to the director is located within the watershed in which the impact occurs, then mitigation may occur in another watershed impacted by the linear project, at a single mitigation location, or at a wetland mitigation bank, acceptable to the director; or

(d) If no wetland mitigation bank occurs within any of the watersheds connected with the linear project, then mitigation may occur within the watershed in which the largest impacts (in terms of area) occur.
Where compensatory mitigation is required to occur. A goal of compensatory mitigation is to locate mitigation sites in watersheds, regions, and landscape positions where they can replace the functions, as that term is defined in rule 3745-1-50 of the Administrative Code, of the impacted wetlands. Compensatory mitigation sites shall be located as follows:

(1) Category 1 wetlands. Compensatory mitigation for category 1 wetlands may be located anywhere within the boundaries of the U.S. army corps of engineers district in which the impacted wetlands are located (see map 2 in the appendix to this rule).

(2) Category 2 or category 3 wetlands. For category 2 and category 3 wetlands, compensatory mitigation sites shall be located as follows in descending order of preference:

(a) Within the 14-digit hydrologic unit code (HUC) watershed in which the impact wetland is located unless the applicant demonstrates the inability of mitigating with the 14-digit HUC watershed;

(b) Within the 8-digit HUC watershed in which the impact wetland is located (see map 1 in the appendix to this rule);

(c) Within a mitigation bank, acceptable to the director, if the wetland that is proposed to be impacted is within the mitigation service area for the mitigation bank, and the director determines on a project-by-project basis that it is appropriate to locate mitigation at the mitigation bank; or

(d) Outside the 8-digit HUC watershed if there is a significant ecological reason that the mitigation location should be located outside the 8-digit HUC watershed and the proposed mitigation will result in a substantially greater ecological benefit. Generally, if compensatory mitigation is approved to occur outside the watershed, it shall be located in a watershed that is adjacent to the watershed where the impact is proposed to occur, or has occurred.

(D) Performance of compensatory mitigation.

(1) Restoration or creation of wetlands as compensatory mitigation shall replace the impacted wetland with an equivalent or higher quality wetland.

(2) Compensatory mitigation shall be in-kind unless the applicant demonstrates, and the director specifically determines, that in-kind mitigation is not practicable or unless there is a compelling ecological reason that it should not be. Such reasons may include, but are not limited to, the following:

(a) The impacted wetland is common in the watershed where it is located and non-in-kind mitigation will restore an uncommon wetland type that was historically
present in the watershed;

(b) A watershed management or restoration plan or a total maximum daily load (TMDL) review has recommended the restoration of wetlands in the watershed that are non-in-kind; or

(c) Plans for the restoration or preservation of habitat for rare, threatened, or endangered plant or animal species have recommended the restoration of wetlands that are non-in-kind.

(3) Determining mitigation performance.

(a) The performance and success of compensatory mitigation shall be evaluated by quantitatively comparing the biological, physical, and chemical characteristics of the restored, created, enhanced, or preserved wetlands to the characteristics of natural wetlands of the same type using appropriate wetland assessment methods acceptable to the director, including wetland indices of biotic integrity.

(b) Where the compensatory mitigation involves the restoration, creation, or enhancement of specific wetland functions or values (e.g., creation of endangered species habitat or increasing flood storage in a watershed), performance and success shall be quantitatively evaluated using methods and measures appropriate to evaluating whether the specific function or value was created and to what extent.

[Comment: mitigation plans, design requirements, and monitoring requirements are found in rule 3745-32-04 of the Administrative Code.]

(E) Long-term management and protection of mitigation sites. The applicant must demonstrate that the compensatory mitigation site will be protected in perpetuity and that appropriate management measures are, or will be, in place to restrict harmful activities that may jeopardize the mitigation wetland.

(F) Types of possible compensatory mitigation.

(1) Restoration. Wetland restoration, as that term is defined in rule 3745-1-50 of the Administrative Code, is the preferred form of compensatory mitigation.

(2) Creation. The director may consider wetland creation, as that term is defined in rule 3745-1-50 of the Administrative Code, in lieu of wetland restoration.

(3) Upland buffer. Preservation of upland buffer, as that term is defined in rule 3745-1-50 of the Administrative Code, is a required component of acceptable compensatory mitigation.
(4) Enhancement. The director may consider wetland enhancement, as that term is defined in rule 3745-1-50 of the Administrative Code, as a component of acceptable compensatory mitigation. Wetland enhancement will be considered most favorably as a component of compensatory mitigation when it is located adjacent to a wetlands restoration project.

(5) Preservation. The director may consider wetland preservation, as that term is defined in rule 3745-1-50 of the Administrative Code, for mitigation if the applicant can demonstrate the following:

(a) The wetland to be preserved is a high quality category 2 wetland or a category 3 wetland that will be preserved in perpetuity, or the wetland to be preserved is pivotal in protecting a category 3 wetland and both wetlands will be preserved in perpetuity; and

(b) The wetland to be preserved for mitigation purposes shall be deeded to a responsible party; and

(c) Purchase and transfer of the deed for the wetland to be preserved for mitigation purposes shall occur prior to any filling of wetlands at the project site.

(6) The director may determine that restoration or creation need not be a component of compensatory mitigation based on significant ecological reasons and authorize preservation as the sole component of compensatory mitigation.
TO BE ENACTED

APPENDIX
Replaces: Part of 3745-1-54

Effective:

R.C. 119.032 rule review date: None

Certification

Date

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