Ohio Revised Code

Section 6111.313 Mitigation of impacts to ephemeral features.

Effective: July 21, 2022
Legislation: House Bill 175 - 134th General Assembly

(A) For the purposes of division (B)(1) of this section, the AMIT and VMIT shall be calculated as follows:

(1) First, calculate the area of the streamway (ASW). The ASW is the WSW multiplied by the LV.

(2) Next, calculate the AMIT as follows:

(a) For streams with a slope that is less than or equal to two per cent, the AMIT is equal to the ASW divided by two.

(b) For streams with a slope that is greater than two but not more than four per cent, the AMIT is equal to the ASW divided by five.

(c) For streams with a slope of greater than four per cent, the AMIT is equal to the ASW divided by eight.

(3) The VMIT is equal to the AMIT multiplied by one, assuming a one foot stream depth.

(4) Site-specific measurements, such as the streambed area, bankfull width, entrenchment ratio, or flood prone area, may be substituted for AMIT and VMIT calculations in instances where site geology or geomorphic conditions differ from the AMIT calculations specified in divisions (A)(1) to (3) of this section.

(B) Except as otherwise provided in section 6111.316 of the Revised Code, the director may require a person proposing to impact an ephemeral feature that is a water of the state to conduct mitigation in accordance with the following:

(1) If the proposal will have permanent impacts, the director may require the person to do any of the

following:

(a) Provide mitigation by constructing an equivalent area of channel at a one-to-one ratio using the required AMIT or site-specific measurements specified under division (A)(4) of this section for the ephemeral feature that is a water of the state being impacted to provide a geomorphically stable feature within the impacted eight-digit hydrologic unit watershed;

(b) Provide bioretention on the project site in accordance with the rainwater manual utilized by the environmental protection agency using the required AMIT or site-specific measurements specified under division (A)(4) of this section. Performance and monitoring of performance shall be no more than normally required for a bioretention structure.

(c) Provide increased volume and surface area to the WQV using the required VMIT or site-specific measurements specified under division (A)(4) of this section. The WQV shall be increased by the required VMIT without increasing the maximum WQV discharge. Drawdown times may be increased proportionally. The additional required surface area may be in the form of a wetland shelf as part of a wet extended detention basin sized using the rainwater and land development manual. Where no onsite stormwater detention is planned, surface water storage volume with slow discharge may be provided using the required volume of mitigation as the temporary storage volume. When mitigation will be conducted using storage practices, performance and monitoring of performance shall be no more than normally required for a particular storage structure.

(d) Provide equivalent area of channel at a one-to-one ratio using the required AMIT or site-specific measurements for streambed area calculations by purchasing credits at an approved wetland mitigation bank or in-lieu fee mitigation program for the ephemeral feature that is a water of the state being impacted within the impacted eight-digit hydrologic unit watershed. If there are no wetland mitigation bank credits or in-lieu fee mitigation credits within the mitigation bank service area that includes the impacted eight-digit hydrologic unit watershed, credits may be purchased from another provider in the state. When mitigation will occur at an approved wetland mitigation bank, in-lieu fee mitigation program, or mitigation paid to the department of natural resources, mitigation credits shall be acquired based on the acreage of streambed impacted and proof of acquisition shall be sent to the director of environmental protection before any impact may occur.

(e) Provide equivalent area of channel at a one-to-one ratio using the required AMIT or site-specific streambed measurements for area calculations by contributing funds to the department of natural resources for the purpose of stream improvement activities to address acid mine drainage or other water quality impacts. This mitigation may occur outside of the eight-digit hydrologic unit watershed where the impacts will occur.

(2) If the proposal will have temporary impacts, the director shall require the person to do the following:

(a) Restore any ephemeral feature that is a water of the state that is impacted upon completion of the temporary impact;

(b) Restore the flow regime to that of the pre-impact ephemeral flow regime or better;

(c) Restore the physical integrity of the ephemeral feature that is a water of the state to its pre-impact or better condition;

(d) Provide at least three high resolution color photographs taken at the restored area, including one facing upstream, one facing downstream, and a closeup that clearly depicts the substrate composition and size for each restored ephemeral feature that is a water of the state. Photographs shall accurately depict the quality of the ephemeral feature that is a water of the state and shall not include excessive cover that would prevent the observation of substrates, such as leaf litter, snow, or ice.

(e) Continue to conduct monitoring or implement additional measures to meet performance standards if the restoration areas are not meeting restoration performance criteria within two years following the completion of restoration activities.