

# NAIOP

COMMERCIAL REAL ESTATE  
DEVELOPMENT ASSOCIATION

**NAIOP OF OHIO**

Chairman Koehler, Vice-Chairman Creech, Ranking Member Brent and Members of the House Agriculture and Conservation Committee, thank you for the opportunity to provide interested party testimony regarding Representative Brett Hillyer's House Bill 175. My name is Bill Acton and I serve on the Board of Directors of NAIOP Ohio as well as their environmental committee.

NAIOP Ohio boasts over 400 members representing the commercial real estate industry across the state and advocates for the industry at the state level. Our primary pursuit is to assist the progression of economic development activity in Ohio, acting as an advocate of Ohioans and the development community to create jobs, viability, and a quality of life that retains and attracts talent to the state.

Ohio's regulation of ephemeral streams has led to a substantial expansion of previously unregulated features including ditches, erosion rills, swales, and "isolated streams", which do not connect to navigable waters of the US via an Ordinary High Water Mark (OHWM) as previously defined under Federal Regulatory Guidance Letters (RGL's). Furthermore, the extent and footprint of ephemeral streams have historically been verified by the US Army Corps of Engineers (USACE) for decades under specific and court tested metrics, including having an OHWM as defined under RGL 05-05. Current EPA staff are not trained to determine the extent of streams on site, nor is there a circulated and accepted legal methodology to determine ephemeral stream extents for the State of Ohio, leading to ambiguity, unpredictability, and in most cases, substantial expansion of historic extents of streams. There are also many examples where the USACE does make a determination that a feature is not an ephemeral stream but exhibits ephemeral flow and is not regulated by the USACE, and EPA disagrees with the USACE and forces the regulated community to mitigate for these features even though the USACE specifically stated they were not ephemeral streams. This has led to substantial unpredictability and has made it nearly impossible to plan for any type of land-use, including not only development, but infrastructure construction, farming, forestry management, and ecosystem enhancement.

It is our opinion that Ohio should follow federal guidelines for determining the extent of waters on a site and that any regulation of ephemeral streams by Ohio needs to follow appropriate rule making procedures and implement strict, written guidelines defining what is an ephemeral stream and what the limits of the extents are. This rulemaking should go further to clarify that other historically unregulated features such as waste treatment systems, prior converted cropland, farm ponds, ornamental ponds, man induced wetlands and multiple other features which have been unregulated in the past are excluded from regulation.

Chairman Koehler and members of the committee, thank you again for allowing me to testify and I'm happy to answer any questions at this time