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## **TITLE 312 NATURAL RESOURCES COMMISSION**

LSA Document #01-361(F)

### **DIGEST**

Amends rules governing historic preservation and archaeology by adding 312 IAC 22.5 to provide standards for the registration and management of cemeteries and burial grounds. Effective 30 days after filing with the secretary of state.

#### **312 IAC 22.5**

SECTION 1. 312 IAC 22.5 IS ADDED TO READ AS FOLLOWS:

#### **ARTICLE 22.5. CEMETERIES AND BURIAL GROUNDS; REGISTRATION AND MANAGEMENT**

##### **Rule 1. Definitions**

##### **312 IAC 22.5-1-1 Application of definitions**

**Authority:** IC 14-21-1-25; IC 14-21-1-31

**Affected:** IC 14-9-4-1; IC 14-21-1

**Sec. 1. The definitions contained in this rule apply throughout this article and are in addition to those set forth in 312 IAC 1.** *(Natural Resources Commission; 312 IAC 22.5-1-1; filed Jul 17, 2002, 3:40 p.m.: 25 IR 4074)*

##### **312 IAC 22.5-1-2 “Cemetery” defined**

**Authority:** IC 14-21-1-25; IC 14-21-1-31

**Affected:** IC 14-9-4-1; IC 14-21-1

**Sec. 2. “Cemetery” means ground in which human remains are buried, including the land associated with or incidental to the burial of human remains. The term includes a cemetery, Native American cemetery, graveyard, burial ground, or similarly described real property.** *(Natural Resources Commission; 312 IAC 22.5-1-2; filed Jul 17, 2002, 3:40 p.m.: 25 IR 4074)*

##### **312 IAC 22.5-1-3 “Development plan” defined**

**Authority:** IC 14-21-1-25; IC 14-21-1-31

**Affected:** IC 14-9-4-1; IC 14-21-1

**Sec. 3. “Development plan” means a plan for the erection, alteration, or repair of any structure.** *(Natural Resources Commission; 312 IAC 22.5-1-3; filed Jul 17, 2002, 3:40 p.m.: 25 IR 4075)*

##### **312 IAC 22.5-1-4 “Division” defined**

**Authority:** IC 14-21-1-25; IC 14-21-1-31

**Affected:** IC 14-9-4-1; IC 14-21-1

**Sec. 4. “Division” means the division of historic preservation and archaeology of the department.** *(Natural Resources Commission; 312 IAC 22.5-1-4; filed Jul 17, 2002, 3:40 p.m.: 25 IR 4075)*

##### **312 IAC 22.5-1-5 “Human remains” defined**

**Authority:** IC 14-21-1-25; IC 14-21-1-31

**Affected:** IC 14-9-4-1; IC 14-21-1

**Sec. 5. “Human remains” means any part of the body of a human being in any stage of decomposition or state of preservation. This article does not, however, apply to the human remains of individuals dying after December 31, 1939.** *(Natural Resources Commission; 312 IAC 22.5-1-5; filed Jul 17, 2002, 3:40 p.m.: 25 IR 4075)*

**312 IAC 22.5-1-6 “State” defined**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-8-2-265

**Sec. 6. “State” means the following:**

**(1) The Indiana state government.**

**(2) An agency, subdivision, an officer, a board, a bureau, a commission, a department, a division, or an instrumentality of the state.**

*(Natural Resources Commission; 312 IAC 22.5-1-6; filed Jul 17, 2002, 3:40 p.m.: 25 IR 4075)*

**Rule 2. Disturbance of Ground within 100 Feet of a Cemetery**

**312 IAC 22.5-2-1 Application of rule for development plan at burial grounds**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-9-4; IC 14-21-1

**Sec. 1. This rule provides standards for the submission, review, and implementation of a development plan within one hundred (100) feet of a cemetery.** *(Natural Resources Commission; 312 IAC 22.5-2-1; filed Jul 17, 2002, 3:40 p.m.: 25 IR 4075)*

**312 IAC 22.5-2-2 Requirement of a prior development plan**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 8-1-2-1; IC 8-1-13; IC 14-9-4; IC 14-21-1; IC 14-34

**Sec. 2. (a) Except as provided in subsection (b), a person must receive and comply with a development plan approved under this rule before disturbing the ground within one hundred (100) feet of a cemetery to erect, alter, or repair a structure.**

**(b) This rule does not apply to the following:**

**(1) A public utility (as defined by IC 8-1-2(a) [sic., IC 8-1-2-1(a)]).**

**(2) A corporation organized under IC 8-1-13.**

**(3) A municipally owned utility (as defined in IC 8-1-2-1(h)).**

**(4) A surface coal mining and reclamation operation permitted under IC 14-34.**

**(5) A government entity other than the state.**

*(Natural Resources Commission; 312 IAC 22.5-2-2; filed Jul 17, 2002, 3:40 p.m.: 25 IR 4075)*

**312 IAC 22.5-2-3 Application for approval of a development plan**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-9-4; IC 14-21-1

**Sec. 3. An application for approval of a development plan under this rule must be filed with the division and include the following:**

**(1) A signed cover letter from the applicant on letterhead with the following information:**

**(A) The identity of the person or persons who would conduct the project.**

**(B) The overall nature and timeframe for the project.**

**(C) The location of the project by section, township, range, county, and address.**

**(D) Any prior disturbance of the area.**

**(E) A statement of whether federal or state funds or licenses are involved in the project.**

**(2) Mapping to show the location of the cemetery in relation to the project that includes:**

- (A) Construction details for activities within one hundred (100) feet of the cemetery.
  - (B) References to nearby landmarks.
  - (C) Location of the cemetery and the project area on the appropriate U.S. Geological Survey 7.5' quadrangle map.
- (3) A description of the cemetery sufficient to evaluate the likely impact of the project, including the following:
- (A) Any name of the cemetery.
  - (B) The dates of use.
  - (C) Historical information and documentation.
  - (D) Precise boundaries that reference nearby landmarks. If documentation is not currently available to identify the cemetery boundaries, the applicant may be required to determine those boundaries through:
    - (i) Remote sensing.
    - (ii) Investigations by archaeologists.
    - (iii) Another scientific method approved by the division.
  - (E) The current physical condition of the cemetery.
- (4) A description of the grounds adjacent to and within one hundred (100) feet of the cemetery, including the following:
- (A) The nature, depth, and degree of previous disturbances, including those caused by construction, excavation, grading, or filling.
  - (B) A description of soils, by types, that are present at the site, including an explanation of how they would be disturbed, graded, modified, removed, or otherwise treated.
  - (C) A description of every structure.
  - (D) A description of the activities anticipated to erect, alter, or repair a structure.
  - (E) Areas that would contain new construction of the footprints of the proposed construction areas.
- (5) Clear recent photographs of the cemetery and the grounds adjacent to and within one hundred (100) feet of the cemetery.
- (6) If the application is not from the landowner, written permission from the owner of the cemetery and the owner of any area to be entered or disturbed during the project.

*(Natural Resources Commission; 312 IAC 22.5-2-3; filed Jul 17, 2002, 3:40 p.m.: 25 IR 4075)*

#### **312 IAC 22.5-2-4 Incomplete or inadequate applications and expiration**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-9-4; IC 14-21-1

**Sec. 4. (a)** The division shall inform the applicant of any aspect of an application believed by the division to be incomplete or inadequate under IC 14-21 or this article. An opportunity shall be provided to the applicant to correct deficiencies or inadequacies.

**(b)** Unless otherwise specified in the authorization, an authorization under this rule expires two (2) years after issuance by the division. *(Natural Resources Commission; 312 IAC 22.5-2-4; filed Jul 17, 2002, 3:40 p.m.: 25 IR 4076)*

#### **312 IAC 22.5-2-5 Completion of review and effective date of authorization**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 4-21.5; IC 14-9-4; IC 14-21-1

**Sec. 5. (a)** The division shall conclude its review of the development plan within sixty (60) days of the receipt of a completed application. Upon the conclusion of review, the division may approve, condition, or deny the application.

**(b)** The effective date and administrative review of an authorization under this rule are governed by IC 4-21.5 and 312 IAC 3-1. *(Natural Resources Commission; 312 IAC 22.5-2-5; filed Jul 17, 2002, 3:40 p.m.: 25 IR 4077)*

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**312 IAC 22.5-2-6 Conduct of activities and modifications**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-9-4; IC 14-21-1

**Sec. 6. (a) The applicant must conduct approved activities according to the terms and conditions of the authorization and this rule.**

**(b) The applicant must comply with other valid federal, state, or local laws and ordinances. Compliance with 312 IAC 21 and 312 IAC 22 is specifically made a condition of the authorization.**

**(c) The activities contemplated in an authorization may be modified only upon advance approval by the division. If written permission was required as a condition for approval of the authorization, the same person (or the successor in interest to the person) must also give written approval for the modification.**  
*(Natural Resources Commission; 312 IAC 22.5-2-6; filed Jul 17, 2002, 3:40 p.m.: 25 IR 4076)*

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