

Title 312 Natural Resources Commission

Proposed Permanent Rule

LSA Document #XX-XXX

DIGEST

Amends 312 IAC 5-9-2 to include a zone where motorized watercraft operation is prohibited on Geist Reservoir. Adds 312 IAC 5-12-5 which provides an individual may not operate a watercraft at a speed greater than idle speed on a public water when operating the watercraft at a distance not more than 200 feet from dredging equipment, and that doing so is a Class C infraction. Amends 312 IAC 10-5-9 regarding obtaining a permit exemption to remove creek rock from a nonnavigable waterway without notice to the department. Repeals 312 IAC 10-5-10. Adds 312 IAC 10-5-12 regarding obtaining a permit exemption to remove a tree from a floodway. Adds 312 IAC 10-5-13 regarding obtaining a permit exemption with notice to the department of natural resources (department) for streambank protection in a floodway. Effective 30 days after the proposed permanent rule is accepted for filing by the Publisher.

HISTORY

Notice of First Public Comment Period: *[date in regular type]*, Indiana Register (DIN: 20XX IR XXXX).

Notice of Second Public Comment Period: *[date]*, Indiana Register (DIN: 20XX IR XXXX). *[if applicable]*

Notice of First Public Hearing: *[date published]*, Indiana Register (DIN: 20XX IR XXXX).

Date of First Public Hearing: *[date]*.

Notice of Second Public Hearing: *[date published]*, Indiana Register (DIN: 20XX IR XXXX).*[if applicable]*

Date of Second Public Hearing: *[date]*.*[if applicable]*

SUMMARY/RESPONSE TO COMMENTS

[Agency name] requested public comment from *[date]*, through *[date]*, and during the public hearing on *[date of hearing or dates of hearings]*. **[Alt 1]:** *[Agency name]* received no comments in response to the Notice of First Public Comment Period. **[Alt 2]:** *[Agency name]* received comments from the following parties by the comment period deadline:*[summarizes the comments and response to comments]*.

PROPOSED PERMANENT RULE

SECTION 1. 312 IAC 5-9-2 IS AMENDED TO READ AS FOLLOWS:

312 IAC 5-9-2 Geist Reservoir

Authority: IC 14-15-7-3

Affected: IC 14-15

Sec. 2. (a) This section establishes restrictions on the operation of ~~boats in a watercraft~~ **on** Geist Reservoir in Hamilton County, Marion County, and Hancock County.

(b) ~~A person must~~ **An individual may** not operate a ~~boat~~ **watercraft** at greater than idle speed in any of the following locations:

(1) East of a line seven hundred (700) feet west and parallel to the Olio Road causeway.

(2) South of the Fall Creek Road bridge and causeway to a line one hundred (100) feet south and parallel to the western prolongation of the center line of 96th Street.

(3) In an area known as Devil's Elbow and more particularly described as east, south, and upstream from a line extended shoreline to shoreline beginning at ~~a the point described as~~ latitude 39E 54' 42.0021756" north and longitude 85E 58' 12.826398" west; extending east northeasterly to ~~a the point described as~~ latitude 39E 54' 43.20567" north and 85E 58' 5.5123356" west; and extending north northeasterly to ~~a the point described as~~ latitude 39E 54' 47.1218976" north and 85E 58' 2.3784852" west.

(4) In an area known as the Indianapolis Yacht Club Harbor and located east and southeast of a line within the southeast quarter of section 10 and part of the southwest quarter of section 11 in township 17 north, range 5 east. ~~being more particularly described as beginning at~~ A point ~~which lies~~ **that is** one hundred eighty (180) feet southeast from the east corner of the southeast abutment of the most westerly bridge over the reservoir, ~~which point lies~~ **that is** nineteen (19) feet northeast of the centerline of the pavement (assumed bearing of north fifty-four (54) degrees, ten (10) minutes west) of Fall Creek Road, ~~thence~~ across a bay of the reservoir north fifty-three (53) degrees, seventeen (17) minutes east one thousand one hundred eighty-six (1,186) feet, to the shoreline of the reservoir.

(5) In an area known as the Indianapolis Sailing Club Harbor, ~~within in~~ the southeast quarter of section 10, township 17 north, range 5 east, and ~~being more particularly described as~~ commencing at the southeast corner of section 10, ~~thence~~ west along the south line of the section ~~a distance of~~ three thousand five hundred (3,500) feet, ~~thence~~ north at right angles to the south section line ~~a distance of~~ three hundred eighty (380) feet to the point ~~of beginning of the description in this subdivision~~ (assumed bearing of north twenty-three (23) degrees, thirty-seven (37) minutes west) ~~thence a distance of~~ **in the southeast quarter of section 10, township 17 north, range 5 east** seven hundred forty-six and four-tenths (746.4) feet to the north end of a retaining wall along the shoreline of the reservoir, ~~thence~~ following the meanders of the shoreline of the reservoir northeasterly, southerly, and southwesterly to ~~the point of beginning.~~ **in the southeast quarter of section 10, township 17 north, range 5 east.**

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(6) In an area known as Mast Head Bay, ~~within in~~ the southeast quarter and part of the northeast quarter of section 9, township 17 north, range 5 east, and ~~more particularly described as~~ upstream and north of Fall Creek Road and east of Geist Road.

(7) In an area known as Cocktail Cove.

(8) North of 96th Street and west of Olio Road in Fall Creek Township, Hamilton County. The zone is the area east of an arc formed ~~commencing at the point~~ **beginning** where the idle zone described in subdivision (4) intersects the east shoreline, then extending northward and connecting with the chain of islands and including the embayments east of the chain of islands, to a point four thousand (4,000) feet from ~~the point of beginning.~~ **idle zone described in subdivision (4).**

(9) In an area known as Juice Box Cove and ~~more particularly described as an the~~ embayment east and southeasterly from a line extended shoreline to shoreline beginning at ~~a point described as~~ latitude 39° 56' 38.23" north and longitude 85° 55' 52.39" west; and extending southwesterly to ~~a point described as~~ latitude 39° 56' 37.33" north and longitude 85° 55' 53.61" west.

(c) ~~A person must~~ **An individual may** not operate a ~~boat~~ **watercraft** within a rectangular area within ~~the~~ **Geist** Reservoir three hundred (300) feet and parallel to the concrete crest of the dam spillway and extending one hundred (100) feet along the dam from the east and west abutments of the dam spillway. The overall dimensions of the zone ~~created by~~ **under** this subsection are three hundred (300) feet by seven hundred (700) feet.

(d) ~~No person shall~~ **An individual may not** anchor a ~~boat~~ **watercraft** or tie a ~~boat~~ **watercraft** to another ~~boat,~~ **watercraft**, except to tow a ~~boat,~~ **watercraft**, from one (1) point to another **watercraft** in a traveled portion of the reservoir ~~so as to do either of the following:~~

(1) Interfere with the safe passage of another ~~boat.~~ **watercraft.**

(2) Create a safety hazard to any ~~person.~~ **individual.**

(e) **An individual may not operate a motorized watercraft in the area known as the Geist Waterfront Park and beach cove at the closure line between the coordinates:**

(1) latitude 39.950009 and longitude -85.915834; and

(2) latitude 39.949934 and longitude -85.915334;

beginning fourteen (14) days before Memorial Day and ending October 1 of the same calendar year.

(Natural Resources Commission; 312 IAC 5-9-2; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2380, eff Jan 1, 2002; filed May 16, 2002, 10:03 a.m.: 25 IR 3044; readopted filed May 29, 2008, 1:53 p.m.: 20080625-IR-312080057RFA; errata filed Jun 2, 2009, 10:29 a.m.: 20090624-IR-312090386ACA; readopted filed Jul 17, 2014, 3:46 p.m.: 20140813-IR-312140067RFA; filed Mar 5, 2020, 1:51 p.m.: 20200401-IR-312190379FRA; readopted filed Sep 16, 2020, 8:15 a.m.: 20201014-IR-312200355RFA)

SECTION 2. 312 IAC 5-12-5 IS ADDED TO READ AS FOLLOWS:

312 IAC 5-12-5 Safe operation of a watercraft near a dredging operation

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 4-21.5-4; IC 14

Sec. 5. (a) An individual may not operate a watercraft at a speed greater idle speed on public waters (as defined by IC 14-8-2-226) when operating the watercraft at a distance not more than two hundred (200) feet from dredging equipment.

(b) An individual who violates this section commits a Class C infraction under IC 14-15-7-3.

SECTION 3. 312 IAC 10-5-9 IS AMENDED TO READ AS FOLLOWS:

312 IAC 10-5-9 Creek rock removal from a nonnavigable waterway; ~~general license permit exemption~~ without notice

Authority: IC 14-10-2-4; IC 14-28-1-5

Affected: IC 14-28-1

Sec. 9. (a) This section establishes a ~~general license without notice for the removal of permit exemption to remove~~ creek rock from a nonnavigable waterway that is subject to IC 14-28-1 **without providing notice to the department.** A person must:

(1) own; or

(2) ~~have~~ **obtain** written permission from a person who owns;

the parcel along a nonnavigable waterway where creek rock is removed ~~in order~~ to qualify **for a permit exemption without notice** under this section.

(b) ~~Without a written license under IC 14-28-1 and without notice to the department, a~~ A person may remove creek rock from the parcel **without a written license under IC 14-28-1 and without providing notice to the department,** if the person satisfies ~~each of~~ the following conditions:

(1) Not more than ~~twenty-five (25)~~ **fifty (50)** cubic yards of creek rock is removed ~~within one (1)~~ **in a** calendar year from the parcel.

(2) The creek rock is removed exclusively by: ~~the following methods:~~

(A) ~~Hand.~~ **hand;**

(B) ~~Hand tools.~~ **a hand tool; or**

(C) ~~Scoop-type excavating equipment.~~ **scoop-type excavating equipment.**

The use of a bulldozer or rock crusher does not qualify **as scoop-type excavating equipment** under this clause.

(3) **Except as otherwise provided in this subdivision,** the creek rock is **not** removed ~~between July 1 and March 31~~ **beginning April 1 and ending July 1.** ~~the following year.~~ **Except for slab rock,** this ~~restriction condition~~ does not apply to creek rock, ~~other than slab rock,~~ that is removed from a sand bar or a gravel bar and ~~was deposited during: any of the following:~~

(i) (A) a regulatory flood;

(ii) (B) a flood greater than a regulatory flood; or

(iii) (C) a flood for which the governor declares a disaster.

(4) **Except for excavating a bank,** the creek rock is:

(A) removed only from ~~a sand bars and or a gravel bars within the in a~~ **nonnavigable** waterway;

(B) **removed during the period of low flow; and**

(C) **removed at least one (1) foot above the normal water level.**

~~The excavation of waterway banks does not qualify under this subdivision.~~

(5) **Excavated creek rock is:**

(A) **removed from the nonnavigable waterway and floodway; and**

- (B) not placed along the streambank or used as streambank protection.
- (6) An access road is not constructed that will:
 - (A) destroy more than one-half (1/2) of an acre of trees in a floodway;
 - (B) traverse a wetland indicated on the national wetlands inventory map unless pads are used;
 - (C) raise the elevation of a floodplain or floodway; or
 - (D) cross a nonnavigable waterway
- (7) Access to the location where the creek rock is removed is exclusively from one (1) side of the nonnavigable waterway.
- (c) The authorization for an activity conducted under this section does not waive permit requirements of other federal, state, and local governments.
- (d) Failure to comply with the conditions under subsection (b)(1) through (b)(7) may result in a revocation of the permit exemption under subsection (a), a civil penalty, a commission charge, and any other sanction imposed by law for the violation of a permit issued under IC 14-28-1.
- (e) A nonnavigable waterway is governed by 312 IAC 6.

SECTION 4. 312 IAC 10-5-12 IS ADDED TO READ AS FOLLOWS:

312 IAC 10-5-12 Permit exemption to remove a tree from a floodway

Authority: IC 14-10-2-4; IC 14-28-1-5

Affected: IC 14-28-1; IC 14-29-1

Sec. 12 (a) This section establishes a permit exemption to remove a tree from a floodway by use of hand-operated equipment. A person must:

- (1) own; or
- (2) obtain written permission from a person who owns;

the parcel where a tree is to be removed to qualify for a permit exemption under this section.

(b) A person may not conduct the following activities under a permit exemption under subsection (a):

- (1) Remove a tree along a dam or levee regulated under IC 14-27-7, IC 14-27-7.5, or IC 14-27-7.3.
- (2) Except for an exposed root ball of a tree that fell from a natural disaster or storm, remove, or excavate a root ball of a tree by any method.
- (3) Use a material or fill to construct a temporary or permanent access road or stream crossing.
- (4) Excavate or stabilize a streambank.
- (5) Remove a tree from a known mitigation site. For information regarding mitigation sites, please contact the division of fish and wildlife.
- (6) Except for a tree that fell from a natural disaster or storm, cut a tree suitable for an Indiana bat or a Northern Long-eared bat roosting that has a diameter at least three (3) inches at a height of four and one half (4 ½) feet and:

- (A) is living or dead;
- (B) has loose hanging bark; or
- (C) has cracks, crevices, or cavities;

beginning April 1 and ending October 1.

- (7) Remove a tree that:

- (A) contains the nest of a bald eagle; or**
- (B) is not more than six hundred sixty (660) feet from the nest of a bald eagle; without a permit from the United States Fish and Wildlife Service.**
- (c) A person may conduct the following activities under a permit exemption under subsection (a):**
 - (1) Cut and remove a single, isolated tree that has fallen or washed into a river or stream channel without removing the root ball by excavation.**
 - (2) Cut a tree without removing the stump and root ball of the tree by excavation.**
 - (3) Cut and remove, or salvage, an uprooted tree from a natural disaster or storm, including the root ball of the tree, and fill the hole left by the uprooted tree to match the existing grade.**
 - (4) Cut a tree and grind the stump without removing the root ball by excavation, and fill the hole left by grinding the stump to match the existing grade.**
- (d) A person who conducts an activity under subsection (c) must satisfy the following conditions:**
 - (1) Remove all cut trees and debris from the floodway.**
 - (2) Perform an authorized activity under this section in a manner that minimizes:**
 - (A) erosion; and**
 - (B) depositing sediment into a stream.**
 - (3) Not later than fifteen (15) days after completing an activity under subsection (c) complete the following:**
 - (A) Revegetate a bare and disturbed area with a mixture of native grasses and legumes.**
 - (B) If necessary for erosion control and seed establishment, mulch a disturbed area with straw or wood fiber that is crimped or mixed with a tackifier or covered with a net-free or Leno-woven erosion blanket. The following turf-type grasses may be used in a mowed area:**
 - (i) Low-endophyte.**
 - (ii) Friendly endophyte.**
 - (iii) Endophyte free tall fescue.**
 - (C) Include a temporary seed mix of oats (*Avena sativa*) in the spring or cereal rye (*Secale cereal*) in the fall.**
 - (4) Conduct a construction activity in the waterway beginning April 1 and ending July 1 that does not exceed two (2) calendar days.**
- (e) A person who conducts an activity under this section shall comply with the conditions set forth under subsection (d). Failure to comply with the conditions set forth under subsection (d) may result in the revocation of the permit exemption under subsection (a), a civil penalty, a commission charge, and any other sanction imposed by law for the violation of a license under IC 14-28-1 and, if the waterway is a navigable waterway, the violation of a license under IC 14-29-1.**

SECTION 5. 312 IAC 10-5-13 IS ADDED TO READ AS FOLLOWS:

312 IAC 10-5-13 Permit exemption with notice to the department for streambank protection in a floodway

Authority: IC 14-10-2-4; IC 14-28-1-5

Affected: IC 14-28-1; IC 14-29-1

Sec. 13 (a) This section establishes a permit exemption with notice to the department to place streambank protection in a floodway.

(b) Except as provided in subsection (c), a person may place streambank protection in a floodway with a permit exemption under subsection (a) to reconstruct, repair, and control or prevent erosion of the streambank, using vegetative stabilization, bioengineered materials, glacial stone, riprap, or any combination of bank stabilization techniques that meet the following criteria:

- (1) The location of the streambank protection is in a rural area that lies outside:
 - (A) the corporate boundaries of a consolidated city or an incorporated city or town; and**
 - (B) the territorial authority for comprehensive planning established under IC 36-7-4-205(b).****
- (2) The total activity is not more than three hundred (300) feet.**

(c) A person shall obtain a written license from the department to place streambank protection in a salmonid stream designated under 312 IAC 6.2-1-2(13), or in a natural, scenic, or recreational river or stream designated under 312 IAC 7-2 prior to beginning placement of the streambank protection.

(d) A person who wishes to conduct streambank protection under this section must file a written notice in a form and manner prescribed by the department with the division of water. The notice must include the following information:

- (1) Identification of the waterway and a description of the parcel where the activity will occur.**
- (2) The name, address, e-mail and telephone number of the person or authorized agent performing the streambank protection under the permit exemption with notice.**
- (3) Documentation to demonstrate the person seeking the permit exemption under subsection (a) is the owner of the property where the activity will take place or obtained permission from the owner as the authorized agent.**
- (4) Current photos of the streambank where the activity will occur.**
- (5) A statement of the material to be used to protect the streambank and the total length of the streambank to be protected.**
- (6) A statement that the owner of the property where the activity will take place or the authorized agent performing streambank protect under the permit exemption under subsection (a) agrees to comply with the following conditions:
 - (A) Removing a tree and clearing brush are contained and minimized in the project area. Removing a tree may not result in excavating the root ball.**
 - (B) Construction activity in the waterway beginning April 1 and ending July 1 does not exceed two (2) calendar days.**
 - (C) All work conforms with the existing bank at the upstream and downstream limits of the area where the activity will occur and ties into stable areas upstream and downstream to prevent flanking.**
 - (D) Stone may be placed from the toe of the slope to the ordinary high water mark. Bioengineered or vegetative material may be used above the ordinary high water mark.**
 - (E) The slope of a streambank protected with riprap, glacial stone, or broken concrete is not more than 2H:1V.****

(F) The average diameter of riprap used to protect a streambank is not less than six (6) inches and must extend below the normal water level.

(G) Broken concrete may be used to protect a streambank if it is unpainted and free of soil, fine material, metal, bricks, blocks, asphalt, or other construction debris. Exposed rebar or other reinforcing material must be cut flush with the surface of the concrete and removed from the floodway. Concrete must not be contaminated with oil or other toxic substances. Broken concrete must be graded pieces not less than six (6) inches and not more than two (2) feet in any dimension.

(H) Riprap, glacial stone, or broken concrete must have a bedding layer of well graded aggregate or a geotextile to prevent piping soil underneath the stone protection underneath.

(I) A disturbed area outside the streambank protection area that is not used for agricultural production must be reseeded with a mixture of native grasses, forbs, and legumes.

(J) Best management practices must be used during and after the construction to minimize erosion and sedimentation.

(e) Not later than twenty (20) calendar days, excluding Saturdays, Sundays, and legal holidays, after receiving a notice under subsection (d), the department shall respond as follows:

(1) Approve the terms of the permit exemption.

(2) Provide additional conditions to approve the terms of the permit exemption.

(3) Require additional information regarding:

(A) the capacity of the floodway;

(B) the safety of life or property; or

(C) the effect on fish, wildlife, or botanical resources.

(4) Require the person to obtain a written license for an activity under IC 14-28-1, IC 14-29-1, or both.

If the department does not respond not later than twenty (20) days after receiving the notice under subsection (d), the permit exemption is approved.

(f) A permit exemption for streambank protection under this section expires not later than one hundred eighty (180) days after the person receives written approval of the terms of the permit exemption under subsection (e) from the department.

(g) A person that places streambank protection under a permit exemption under subsection (a) must comply with the following:

(1) The terms of the permit exemption approved by the department.

(2) Any additional conditions imposed on the person by the department under subsection (e) or IC 14-28-1-22.

Failure to comply with the conditions of this section may result in the revocation of the permit exemption under subsection (a), a civil penalty, a commission charge, and any other sanction imposed by law for the violation of a license issued under IC 14-28-1 or, if the waterway is a navigable waterway, the violation of a license issued under IC 14-29-1.

SECTION 6. 312 IAC 10-5-10 IS REPEALED.

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Notice of First Public Comment Period: [DIN]

Public Hearing Held: [date]

Notice of Second Public Comment Period: [DIN] [if applicable]

Public Hearing Held: [date] [if applicable]

Approved by Attorney General: [date]

Approved by Governor: [date]

Filed with Publisher: [date]

Documents Incorporated by Reference: [references received by publisher]

Small Business Regulatory Coordinator: [contact information]