

January 3, 2022

VIA EMAIL

Natural Resources Commission
Division of Hearings
100 North Senate Avenue, Room N103
Indianapolis, IN 46204-2200
nrcaopa@nrc.in.gov

**Re: Administrative Cause Number 21-WA-024
Petition for Special Boating Zone and Temporary Structure Standards**

Commission Members:

On June 24, 2021, the Clear Lake Association through the Clear Lake Association President and the Clear Lake Project Manager filed a petition for the creation of a special boating zone and temporary structure standards with the NRC. The petition seeks to waive 312 IAC 11-3-1 (b)(5) to allow a temporary pier or boat lift on Clear Lake in Steuben County, Indiana by a general license under IC 14-26-2 if the structure conforms with the following:

- 1) 312 IAC 11-3-1 (b)1 thru 312 IAC 11-3-1(b)(4), 312 IAC 11-3-1 (b)(7) and 312 IAC 11-3-1(b)(8).
- 2) Extends not more than:
 - a) One hundred fifty (150) feet from the shoreline or waterline and satisfies 312 IAC 11-3-1(b)(6) or
 - b) Three hundred (300) feet from the shoreline or waterline and does not extend over water that is continuously more than three (3) feet deep.
 - i) A person must not operate a boat in excess of idle speed within three hundred fifty (350) feet of the shoreline or waterline.
- 3) Proper distance required while operating a vessel or towing a person(s). To maintain proper distance when you are operating at greater than a "slow, no wake speed" the vessel or person(s) being towed must not be within:
 - 200 feet of shoreline (slow, no wake USGS markers to define special boating zones up to 350 feet from shore or 50 feet from marker),
 - 100 feet from a dock, raft, swimming area or person(s) in the water,
 - 50 feet from any marker buoy or USGS buoy other than a ski course marker,
 - 50 feet from any moored or anchored vessel.

The NRC accepted the petition and initiated the procedure under Information Bulletin #7. The Director of DNR assigned a Committee comprised of Lt. Kenton Turner and Lt. Erick Bolt, of the Division of Law Enforcement, Justin Paicely, of DNR Legal Counsel, Jim Heibenstreit and Jennifer Ware, Division of Water. The Committee members provide the following recommendation:

Background

The Clear Lake Association (CLA) requests a special boating zone and a waiver to 312 IAC 11-3-1(b)(5) if the structure conforms with certain conditions. CLA claims that the natural contour of the lakebed of Clear Lake is shallow in a number of places so as to not allow normal recreational and boating to occur within the limits imposed by 312 IAC 11-3-1(b)(5). CLA claims that there are many places where shallow shelves push docks out to 150 feet and beyond, which does not lend itself to shore dock buoy relationships protecting the shore, swimmer or boater. It further states that there are many lawful nonconforming docks as far out as 240 feet and others that truly require more than 150 feet of dock to reach navigable water. CLA states when a dock is greater than 150 feet, a buoy to help mark the structure and warn boaters is not allowed without a permit. CLA requests proper distances while operating a vessel at greater than “slow, no wake speed” 200 feet from shore, 100 feet from a dock, raft, swimming area or person in the water, 50 feet from any marker buoy other than a ski course marker and 50 feet from any moored or anchored vessel.

Legal Standards

IC 14-15-7-3 Adoption of rules; violations

Sec. 3. (a) The department may adopt rules under IC 4-22-2 to implement this article concerning the following:

(4) The safe operation of watercraft upon public water where unusual conditions or hazards exist, such as any of the following:

- (A) An obstruction in or along public water.
- (B) Watercraft traffic congestion.
- (C) A beach, boat launch, marina, dam, spillway, or other recreational facility on or adjacent to public water.

(6) The establishment of zones where the use of watercraft may be limited or prohibited for the following purposes:

- (A) Fish, wildlife, or botanical resource management.
- (B) The protection of users.

(b) In a rule adopted under subsection (a)(4) or (a)(6), the department may establish a zone where:

- (1) the operation of all or some types of watercraft is prohibited;
- (2) particular activities are restricted or prohibited; or

- (3) a limitation is placed on the speed at which a watercraft may be operated.
- (c) A person who violates this section commits a Class C infraction.

312 IAC 11-3-1 General licenses for qualified temporary piers and similar structures; dry hydrants; and glacial stone refaces

Sec. 1. (a) The placement and maintenance of a:

- (1) temporary structure;
- (2) dry hydrant; or
- (3) glacial stone reface;

is authorized without a written license issued by the department under IC 14-26-2 and this rule if the temporary structure, dry hydrant or glacial stone reface qualifies under this section.

(b) In order for a temporary structure to qualify, the structure must satisfy each of the following:

- (1) Be easily removable
- (2) Not infringe on the access of an adjacent landowner to the public freshwater lake
- (3) Not unduly restrict navigation
- (4) Not be unusually wide or long relative to similar structures within the vicinity on the same public freshwater lake.
- (5) Not extend more than one hundred fifty (150) feet from the shoreline or waterline
- (6) If a pier, not extend over water that is continuously more than six (6) feet deep to a distance of one hundred fifty (150) feet from the shoreline or water line.
- (7) Not be a marina.
- (8) Not be a group pier
- (9) Be placed by a riparian owner or with the written approval of a riparian owner

Analysis

The Committee provides the following analysis and supporting evidence from the Divisions of Law Enforcement and Division of Water.

- 1. Lakebed is shallow in a number of places so as to not allow normal recreational and boating to occur within the limits imposed by 312 IAC 11-3-1(b)(5)

Field measurements of water depth in relation to the length of piers were taken with the following findings

Residences located on Point Park Dr. (Chart A)

Residence Number	Length of Pier	Depth at End of Pier	Depth at 150'
428 Point Park Dr	80'	3'4"	N/A
430 Point Park Dr	170'	3'3"	3'3"
432 Point Park Dr	240'	7'7"	2'5"

434 Point Park Dr	242'	6'1"	2'
436 Point Park Dr	240'	2'8"	1'10"
440 Point Park Dr	238'	3'4"	1'7"
442 Point Park Dr	228'	2'9"	1'6"
444 Point Park Dr	230'	7'4"	1'9"
448 Point Park Dr	172'	3'6"	2'3"
450 Point Park Dr	170'	3'6"	3'
452A Point Park Dr	154'	5'6"	5'6"
452B Point Park Dr	154'	5'6"	5'6"

Residences located on Clear Lake Dr. (Chart B)

Residence Number	Length of Pier	Depth at End of Pier
540 Clear Lake Dr	135'	2'8"
542 Clear Lake Dr	135'	2'8"
546 Clear Lake Dr	132'	2'10"
556 Clear Lake Dr	150'	3'5"
574 Clear Lake Dr	150'	3'1"
578 Clear Lake Dr	156'	3'5"
586 Clear Lake Dr	171'	4'2"
588 Clear Lake Dr	156'	4'0"
590 Clear Lake Dr	159'	4'0"
598 Clear Lake Dr	150'	3'7"
624 Clear Lake Dr	174'	4'10"
686 Clear Lake Dr	168'	3'5"

The field measurements in Chart A show that there is a long shallow area that lies in front of the homes beginning in front of 430 Point Park Dr and including several homes east of that residence. This shallow area has water depths less than three (3) feet at a distance of one hundred fifty (150) feet from shore, and several piers extending out to a distance of two hundred thirty (230) feet or two hundred forty (240) feet.

The field measurements in Chart B show that several homeowners on Clear Lake Drive have kept their pier lengths short of the one hundred fifty (150) foot length allowed under the general license stipulated in 312 IAC 11-3-1(b)(5). The remaining piers at one hundred fifty (150) feet or slightly over have a water depth that is greater than three (3) feet. Note: Three (3) feet is a limiting water depth CLA has stipulated in their petition for piers extending beyond the length

allowed under the general license of 312 IAC 11-3-1(b)(5), which is one hundred fifty (150) feet (please see section 2(b) on page 1 of this document).

2. Shoreline, pier and buoy relationship is problematic for protection of shore, swimmer and boaters for piers 150 feet or longer and requires a permit for buoy placement.

CLA asserts that the shoreline, pier and buoy relationship is problematic for protection of the shore, swimmer and boaters. 312 IAC 11-3-1(b)(5) allows a maximum distance of one hundred fifty (150) feet for a pier under the general license for qualified temporary piers. 312 IAC 5-4-1(e) allows a navigational aid (buoy) to be placed up to one hundred fifty (150) feet from the shoreline or waterline without a permit. A permit would be required if placed beyond 150 feet. IC 14-15-3-17 states that a person may not operate a motorboat within two hundred (200) feet of the shoreline of a lake or channel of the lake at a speed greater than idle speed. A permit would be required to place a navigational aid (buoy) at two hundred (200) feet from shore to mark where the idle speed zone begins from shore (fifty (50) feet beyond the piers set at one hundred fifty (150) feet).

A search of the records in the Law Enforcement Division showed that there were zero (0) applications made for navigational aids (buoys) on Clear Lake between the years of 2011 thru 2021. In other words, no individual property owner or lake association member made an application to place a navigational aid (buoy) for Clear Lake. The permit is a free permit and with timely filing of the application the permit would authorize the navigational aid (buoy) to be placed from March 15 thru November 15.

There are permitted piers that were approved as lawful nonconforming, with the longest extending out to two hundred forty (240) feet. The end of this pier is forty (40) feet out into the high-speed boating portion of the lake. An application for a permit to place a navigational aide (buoy) marked with "Idle speed" placed at the end of the two hundred forty (240) foot pier or beyond would have to be denied since it is not an idle speed zone.

3. There are many lawful nonconforming docks as far out as 240 feet and others that truly require more than 150 feet of dock to reach navigable water.

A search of the records kept by the Divisions of Water and Law Enforcement found that there are seven (7) piers that are permitted as lawful nonconforming piers. These piers are all located in close proximately to one another on Point Park Drive. Here is a list of these piers:

Residence Number	Approved Length of Pier	Permit number or Cause number
432 Point Park Dr	240 feet	Administrative Cause number 03-082W
434 Point Park Dr	238 feet	Administrative Cause number 03-082W
436 Point Park Dr	240 feet	Administrative Cause number 03-082W

440 Point Park Dr	240 feet	Administrative Cause number 03-082W
444 Point Park Dr	195 feet	Administrative Cause number 03-082W
448 Point Park Dr	175 feet	Permit NU-46
456 Point Park Dr	175-184 feet	Records for pier length vary on this pier NU-53

There is a residence that does not have a lawful nonconforming permit, which is residence 442 Point Park Dr. It has a water depth of 2’-9” at two hundred twenty-eight (228) feet from shore.

4. CLA requests proper distances while operating a vessel that is greater than “slow, no wake speed” of 200 feet from shore, 100 feet from a dock, raft, swimming area or person in the water, 50 feet from any marker buoy other than a ski course marker and 50 feet from any moored or anchored vessel.

IC 14-15-3-17 states that a person may not operate a motorboat within two hundred (200) feet of the shoreline of a lake or channel of the lake at a speed greater than idle speed. The Indiana Code does not stipulate speeds or distances at which a motorboat can operate near objects such as docks, rafts, swimmers, marker buoys or anchored vessels (with the exception if they are located within two hundred (200) feet of shore or in a special boating zone).

There is always a balancing act between riparian rights, safety and the stewardship of the Public Trust Doctrine. The passage of this clause of proper distancing, with the exception of the two hundred (200) feet from shore, could result in the significant taking of water used for high-speed boating and recreational activities. For instance, should a property owner make application for a navigational aide (buoy) to mark idle speed to be placed at 200 feet from shore, if application is approved, it would now push the idle speed out to two hundred fifty (250) feet (50 feet beyond the buoy). Another example would be all the piers that are placed at one hundred fifty (150) feet allowed under the general license of 312 IAC 11-3-1(b)(5) would now extend the idle speed zone out to two hundred fifty (250) feet (100 feet beyond the pier).

Final point, the request is for “Slow, no wake speed” within 200 feet of shore, 100 feet from a dock, raft, swimming area, or person in the water, 50 feet from any marker buoy and 50 feet from a moored or anchored vessel. The passage of this clause as requested could result in a greater hazard for the boaters and swimmers. IC 14-15-3-17 sets the speed that a motorboat can operate at within two hundred (200) feet at “Idle Speed.” Idle speed is defined in IC 14-8-2-129 as the slowest possible speed, not exceeding five (5) miles per hour, that maintains steerage so that the wake or wash created by the watercraft is minimal. Idle speed allows for safe steering while creating the smallest wake and slowest possible speed. A “no wake” speed limit could create a hazardous situation because in order to comply with no wake you may sacrifice being able to steer/navigate safely. Some vessels, because of their size or design, would have to create some wake in order to be able to steer. Idle speed is commonly used as the speed restriction in the law for areas where there is high congestion such as in channels or within 200 feet of shore

where there are swimmers, piers, boat lifts, swim rafts etc. *See e.g.* 312 IAC 5-6-6; 312 IAC 5-6-6.5.

5. Safety issues

DNR's Division of Law Enforcement provided information going as far back as 2008. There were three (3) boating accidents and one (1) drowning on Clear Lake from 2008 until present. One boating accident was the result of an individual getting injured while being pulled behind a boat on a tube who fell off and struck a wake. The second boating accident was a boat capsizing, and the third accident was a boat sinking. The one drowning incident was an individual who was wake surfing and went under.

Recommendation

The Committee recommends that there is one area that would warrant a special boating zone and a rule for temporary pier structure standards in that zone. This is due to shallow water depths and the presence of permitted lawful nonconforming piers that extend out as far as two hundred forty (240) feet. These piers currently extend as much as forty (40) feet out into the high-speed boating zone. The recommendation is to make an idle speed zone in the special boating zone out to three hundred (300) feet and qualifying temporary pier structures may be placed out to two hundred fifty (250) feet in the special boating zone. This special boating zone would be located near 430 Point Park Drive and extend over to 456 Point Park Drive or close proximity to that address.

The Committee also recommends that CLA utilize the annual permitting process for placing navigational aides (buoys) to mark the two hundred (200) foot from shore idle speed zone for those areas where piers are placed out to one hundred fifty (150) feet under the general license for qualified temporary structures under 312 IAC 11-3-1(b)(5). The placement of these buoys could be applied for on one application by CLA in coordination with their members. As CLA stipulated in their petition they would be responsible for the purchasing, placing and maintaining of the navigational aides (buoys) at their own expense.

The Committee does not recommend the passage of CLA's request for proper distancing under analysis part 4. The Committee recommends that the current laws and rules in the Indiana Code and the Indiana Administrative code govern operation of watercrafts.

If the NRC chooses to adopt a rule, it should create a rule under 312 IAC 5-6 Specified Public Freshwater Lakes; Restrictions. A rule would be created at 312 IAC 5-6-3.5 Clear Lake; special boating zones and temporary structure standards.

Thank you,

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