

**BEFORE THE  
NATURAL RESOURCES COMMISSION  
OF THE  
STATE OF INDIANA**

**IN THE MATTER OF:**

<b>ADMINISTRATIVE RULES GOVERNING</b>	)	<b>Administrative Cause</b>
<b>WATERCRAFT OPERATION AND PERMIT</b>	)	<b>Number: 24-WA-011</b>
<b>EXEMPTIONS</b>	)	
	)	<b>LSA Document #24-265(F)</b>

**REPORT ON RULE PROCESSING, PUBLIC HEARING, AND HEARING  
OFFICER ANALYSES WITH RECOMMENDATIONS REGARDING FINAL ACTION**

**1. RULE PROCESSING**

For consideration as to final action is the proposed rule amending 312 IAC 5-9-2 regarding motorized watercraft operation on Geist Reservoir, adding 312 IAC 5-12-5 regarding watercraft operation near dredging equipment, amending 312 IAC 10-5-9 allowing permit exemptions to remove creek rock from nonnavigable waterways, and adding 312 IAC 10-5-12 to allow permit exemptions for removing a tree from a floodway, and added 312 IAC 10-5-13 allowing permit exemptions for streambank protection, and repealing 312 IAC 10-5-10.

The Natural Resources Commission (the “Commission”) gave preliminary adoption to the proposed amendments on July 16, 2024.

Whitney Wampler, Senior Attorney for the Department of Natural Resources (Department) submitted the proposed rule language and a regulatory analysis to the Indiana Office of Management and Budget (OMB) and Indiana State Budget Agency (SBA) for review and approval. In a letter dated July 2, 2024, Cristopher Johnston (OMB) and Joe Habig (SBA), authorized the Department to proceed with the proposed rule as follows:

Pursuant to the provision of IC 4-22-2-22.8, the Office of Management and Budget and State Budget Agency have reviewed the proposed rule that amends 312 IAC 5-9-2 and 312 IAC 10-5-9; repeals 312 IAC 10-5-10; adds 312 IAC 5-12-5, 312 IAC 10-5-1, and 312 IAC 10-5-13 (OMB #2024-41R) which you submitted on June 12, 2024. After reviewing

the proposed rule, the recommendation of OMB and SBA is that the rule changes be approved. Indiana Department of Natural Resources is authorized to commence the public comment period(s).

Furthermore, if you revise the proposed rule after this approval, you must resubmit the rule and obtain a new approval pursuant to IC 4-22-2-22.8(e).

The Commission received Authorization to Proceed from the Legislative Services Agency on July 23, 2024. The **Notice of First Comment Period** to adopt a rule was published in the Indiana Register at DIN: 20240807-IR-312240265FNA on August 7, 2024. The notice identified Jennifer Ware, as the “small business regulatory coordinator” for purposes of IC 4-22-2-28.1. The **Notice of Public Hearing** was published in the Indiana Register at DIN: 20240807-IR-312240265PHA on August 7, 2024.

The Commission posted the Notice of First Comment Period, Regulatory Analysis, and Notice of Public Hearing and other information required under IC 4-22-2-22.5 on the Commission’s rulemaking docket maintained on its website at <https://www.in.gov/nrc/rules/rulemaking-docket/>. The rulemaking docket was updated periodically as the rule adoption progressed.

## **2. PUBLIC HEARING AND COMMENT**

The public hearing was held on September 6, 2024 at Hamilton East Public Library-Fishers, 5 Municipal Drive, Fishers, Indiana 46038. The meeting was also live streamed via Teams through the Commission’s website at <http://www.in.gov/nrc/>, providing members of the public opportunity to appear in person, or through the Teams application via the NRC website to provide comments. No public comments were received during the meeting. One member of the public submitted written comments through the Commission’s online comment form.

The public comment period closed at 11:59 p.m. on September 6, 2024. The close of the public comment period was also posted on the Commission’s online rule docket at <https://www.in.gov/nrc/rules/rulemaking-docket/>. Copies of the written comments submitted through the Commission’s rulemaking docket and the Department’s submitted response to the public comment are provided for consideration as Exhibit A.

**3. HEARING OFFICER ANALYSES WITH RECOMMENDATIONS REGARDING FINAL ADOPTION**

Indiana Code 4-22-2-19.5 provides the following standards for rules:

- (a) To the extent possible, a rule adopted under this article or IC 13-14-9 shall comply with the following:
  - (1) Minimize the expenses to:
    - (A) regulated entities that are required to comply with the rule;
    - (B) persons who pay taxes or pay fees for government services affected by the rule; and
    - (C) consumers of products and services of regulated entities affected by the rule.
  - (2) Achieve the regulatory goal in the least restrictive manner.
  - (3) Avoid duplicating standards found in state or federal laws.
  - (4) Be written for ease of comprehension.
  - (5) Have practicable enforcement.
- (b) Subsection (a) does not apply to a rule that must be adopted in a certain form to comply with federal law.

The Commission has been granted authority to adopt rules with regard to activity in floodways under I.C. 14-10-2-1 and I.C. 14-28-1-5.

Indiana Code 4-28-1-39 provided the following standards for rules:

- Sec. 39. (a) Before July 1, 2023, the department shall adopt a license for the following activities in a floodway:
  - (1) Removal of trees.
  - (2) Channel maintenance.
  - (3) Bank reconstruction, repair, and stabilization.
- (b) This section expires July 1, 2024.

The proposed final rule meets the statutory requirements of I.C. 4-22-2-19.5. Amendments to 312 IAC 5-9-2 provide safety for the recreational use in a specified area of Geist reservoir. The rule was drafted to accomplish this goal in the least restrictive manner possible. The amendments to 312 IAC 5-12-5 ensure safe operation of watercraft around dredging equipment that may float on the water’s surface or be partially submerged.

Legislation passed in 2022 by the Indiana General Assembly required the Department to adopt licenses for certain construction activities in a floodway. 312 IAC 10-5-9, 312 IAC 10-5-10 and 312 IAC 10-5-12 were added to allow permit exemptions for certain activity

in the floodway and 312 IAC 10-5-10 was repealed because it is no longer needed. Adding permit exemptions for construction projects in a floodway that are viewed by the department as having minimal impact allow department staff to focus on larger scale construction projects and reduce overall permit processing time. The permit exemption also decreases regulatory burden on individuals desiring to conduct such activity on their private property.

Upon consideration of the rule and the public comments to the rule, the Hearing Officer recommends final adoption of the proposed final rule.

The proposed amendments are appropriate and are presented for final adoption and attached as Exhibit C.

Dated: October 21, 2024

*Chloe Perkins*

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*Chloe Perkins*  
Hearing Officer

# Natural Resources Commission Public

## Comment

8/27/2024 8:54:02 AM

### NRC Public Comment Form

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#### Your information

**Name:** James Peters

**Organization (if applicable):**

**City:** Noblesville

**County:** Hamilton

**State:** Indiana

**Email:** tpeters@wthr.com

**Confirm Email:** tpeters@wthr.com

#### Rule Comments

Please copy and paste the rule name from the docket web page.

**Rule Name:** Watercraft Operation and Permit Exemption Amendments

**Comments:** I have no problem with the changes you'd like to make at Geist.... however, why are we enforcing game regs, patrolling, and policing activities on Geist (and Morse, and Eagle Creek) when they are private property? IDNR cannot enforce game laws on neighborhood retention ponds, or a pond in my back yard... so why these water company properties? Oh I know all about the "agreement" that was made decades ago, but how is this allowable? If you are going to provide these services on these water company reservoirs, than why isn't there the same access via a IDNR public launch ramp? The launch fees that are charged by the private ramp company (Marina Limited Partnership) are insane. If my tax dollars are going towards IDNR's presence on the property, than I should have access just like I would at any other reservoir in Indiana that IDNR regulates.

**Perkins, Chloe E**

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**From:** Ware, Jennifer  
**Sent:** Tuesday, September 17, 2024 1:56 PM  
**To:** Perkins, Chloe E  
**Cc:** Bausman, David C  
**Subject:** FW: Public Comment on 24-WA-011

Chloe,

Please see below.

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**From:** Wuestefeld, Andrew <AJWuestefeld@dnr.IN.gov>  
**Sent:** Tuesday, September 17, 2024 12:30 PM  
**To:** Ware, Jennifer <JWare@dnr.IN.gov>; Bausman, David C <DBausman@dnr.IN.gov>  
**Subject:** RE: Public Comment on 24-WA-011

Name:James Peters  
Organization (if applicable):  
City:Noblesville  
County:Hamilton  
State:Indiana  
Email:tpeters@wthr.com  
Confirm Email:tpeters@wthr.com

**Rule Comments**

Please copy and paste the rule name from the docket web page.

Rule Name:Watercraft Operation and Permit Exemption Amendments

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Jennifer,

Below is my response to Mr. Peters. Please let me know if you need anything further regarding this.

Mr. Peters,

Regarding your comments, Geist, Morse, and Eagle Creek Reservoirs are public waters containing state owned fish and are waters of the state as defined by State law (Indiana Code "IC" definitions below). With that in mind, conservation officers patrol for and address violations pertaining to boating, fishing, and game regulations on such waters. Most private ponds and retention ponds don't contain state owned fish nor are

they public waters which means state fishing and boating laws don't apply so conservation officers don't have fishing or boating regulatory authority on those; yet, game laws still apply.

Division of Land Acquisition would be the place to start with acquiring property on Geist and Morse Reservoir.

**IC 14-8-2-226"Public waters"**

Sec. 226. "Public waters", for purposes of [IC 14-15](#), means every lake, river, stream, canal, ditch, and body of water that is:

- (1) subject to the jurisdiction of the state; or
- (2) owned or controlled by a public utility.

**IC 14-8-2-303"Water containing state owned fish"**

Sec. 303. "Water containing state owned fish", for purposes of [IC 14-22](#), means any water on public or private land that:

- (1) permits ingress by fish from waters of the state; or
- (2) has been stocked with state owned fish.

**IC 14-8-2-307"Water of the state"**

Sec. 307. "Water of the state", for purposes of [IC 14-22](#), means a lake, reservoir, marsh, waterway, or other water:

- (1) under public:
  - (A) ownership;
  - (B) jurisdiction; or
  - (C) lease; or
- (2) that has been used by the public with the acquiescence of any or all riparian owners.

Lt. Andy Wuestefeld  
Indiana Conservation Officer  
District 4 Commander  
765-649-1062 Office  
765-635-7260 Cell  
812-837-9536 (24 Hour Dispatch Center)  
[ajwuestefeld@dnr.IN.gov](mailto:ajwuestefeld@dnr.IN.gov)  
Website: [www.dnr.IN.gov](http://www.dnr.IN.gov)

Please let us know about the quality of our service by taking this brief [customer survey](#)

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**From:** Ware, Jennifer <[JWare@dnr.IN.gov](mailto:JWare@dnr.IN.gov)>

**Sent:** Tuesday, August 27, 2024 9:33 AM

**To:** Bausman, David C <[DBausman@dnr.IN.gov](mailto:DBausman@dnr.IN.gov)>; Wuestefeld, Andrew <[AJWuestefeld@dnr.IN.gov](mailto:AJWuestefeld@dnr.IN.gov)>

**Subject:** FW: Public Comment on 24-WA-011

Lt. Wuestefeld,

Please see attached a public comment submitted regarding the rule amendment for Watercraft Operation on Geist.

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**From:** Perkins, Chloe E <[ChPerkins@nrc.IN.gov](mailto:ChPerkins@nrc.IN.gov)>

**Sent:** Tuesday, August 27, 2024 9:21 AM

**To:** Ware, Jennifer <[JWare@dnr.IN.gov](mailto:JWare@dnr.IN.gov)>

**Subject:** Public Comment on 24-WA-011

Hey Jennifer,

Attached is the public comment received today regarding Watercraft Operation and Permit Exemptions.

Best,

*Chloe Perkins (Clo)*

Paralegal

Natural Resources Commission, Division of Hearings

Indiana Government Center North

100 North Senate Avenue, Room N103

Indianapolis, IN 46204

[ChPerkins@nrc.IN.gov](mailto:ChPerkins@nrc.IN.gov)

<https://www.in.gov/nrc/>



**PROPOSED 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~~ **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 centerline 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 39° E 54' 42.0021756" north and longitude 85° E 58' 12.826398" west; extending east northeasterly to ~~a the point described as~~ latitude 39° E 54' 43.20567" north and 85° E 58' 5.5123356" west; and extending north northeasterly to ~~a the point described as~~ latitude 39° E 54' 47.1218976" north and 85° E 58' 2.3784852" west.
- (4) In an area known as the Indianapolis Yacht Club Harbor and located east and southeast of a line ~~within~~ **in** 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~~ 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~~ **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.~~ **southeast quarter of section 10, township 17 north, range 5 east.**
- (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 on~~ **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, ~~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.~~ **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 14-8-2-226; IC 14-15-7-3**

**Sec. 5. (a) An individual may not operate a watercraft at greater than idle speed on public waters, as defined by IC 14-8-2-226, while 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.** (*Natural Resources Commission; 312 IAC 5-12-5*)

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

**312 IAC 10-5-9 Creek rock removal from nonnavigable waterway; 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 for removing creek rock from a nonnavigable waterway that is subject to IC 14-28-1 without notifying the department of natural resources (department). A person ~~must~~ shall:**

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

the parcel of ~~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 person may remove creek rock from the parcel **under subsection (a) without a written license under IC 14-28-1 and notifying 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) ~~by hand;~~

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

(C) **with** scoop-type excavating equipment.

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

(3) **Except as otherwise provided in this subdivision,** the creek rock is **not** removed ~~between July 1 and March 31 of the following year.~~ **beginning April 1 and ending July 1.** **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 gravel bar and was deposited during ~~any of the following:~~ **a:**

~~(i) a~~ (A) regulatory flood;

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

~~(iii) a~~ (C) 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 bar or gravel bars within the bar in a nonnavigable~~ **waterway; The excavation of waterway banks does not qualify under this subdivision.**

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

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

(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) acre of trees in a floodway;**

(B) **traverse a wetland indicated on the national wetlands inventory map, unless pads are used;**

(C) **raise a floodplain or floodway elevation; 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)~~ (e) A ~~navigable~~ **nonnavigable** waterway is governed by 312 IAC 6. *(Natural Resources Commission; 312 IAC 10-5-9; filed May 12, 2009, 11:27 a.m.: 20090610-IR-312080614FRA; readopted filed Sep 22, 2014, 12:34 p.m.: 20141022-IR-312140065RFA; readopted filed Sep 16, 2020, 8:17 a.m.: 20201014-IR-312200345RFA)*

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

**312 IAC 10-5-12 Permit exemption for removing a tree from a floodway**

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

Affected: IC 14-27-7; IC 14-27-7.3; IC 14-27-7.5; IC 14-28-1; IC 14-29-1

Sec. 12. (a) This section establishes a permit exemption for removing a tree from a floodway by using hand operated equipment. A person shall:

- (1) own; or
- (2) obtain written permission from a person that 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 14-27-7.3, or IC 14-27-7.5.
- (2) Except for the exposed root ball of a tree that fell from a natural disaster or storm, remove or excavate the 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 Indiana bat or northern long-eared bat roosting, that is at least three (3) inches in diameter and four and one-half (4 1/2) feet in height, 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 a bald eagle nest; or
- (B) is not more than six hundred sixty (660) feet from a bald eagle nest;

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 conducting an activity under subsection (c) shall satisfy the following conditions:

- (1) Remove all cut trees and debris from the floodway.
- (2) Perform an authorized activity under this section in a way 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 conducting 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. (*Natural Resources Commission; 312 IAC 10-5-12*)

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

**312 IAC 10-5-13 Streambank protection in floodway; permit exemption with notice**

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

**Affected: IC 14-28-1-22; IC 14-29-1; IC 36-7-4-205**

**Sec. 13. (a)** This section establishes a permit exemption with notice to the department of natural resources (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:

(1) vegetative stabilization;

(2) bioengineered materials;

(3) glacial stone;

(4) riprap; or

(5) any combination of bank stabilization techniques that meet the following criteria:

(A) The location of the streambank protection is in a rural area that lies outside the:

(i) corporate boundaries of a consolidated city, or an incorporated city or town; and

(ii) territorial authority for comprehensive planning established under IC 36-7-4-205(b).

(B) 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, before beginning placement of the streambank protection.

(d) A person that wishes to conduct streambank protection under this section shall 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, email, and telephone number of the person or authorized agent performing the streambank protection under the permit exemption with notice under subsection (a).

(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 the person was given 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 protection 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) The 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:**

**(i) soil;**

**(ii) fine material;**

**(iii) metal;**

**(iv) bricks;**

**(v) blocks;**

**(vi) asphalt; or**

**(vii) 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 permit exemption terms.**

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

**(3) Require additional information regarding the:**

**(A) floodway capacity;**

**(B) safety of life or property; or**

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

**(4) Require the person to obtain a written license for an activity under IC 14-28-1 or 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 permit exemption terms under subsection (e) from the department.**

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

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

**(2) 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. (*Natural Resources Commission; 312 IAC 10-5-13*)**

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