
TITLE 312 NATURAL RESOURCES COMMISSION

Notice of First Public Comment Period

LSA Document #24-265

WATERCRAFT OPERATION AND PERMIT EXEMPTION AMENDMENTS

PURPOSE OF NOTICE

The Natural Resources Commission (commission) is soliciting public comment on amending rules at [312 IAC 5-9-2](#) and [312 IAC 10-5-9](#); adding rules at [312 IAC 5-12-5](#), [312 IAC 10-5-12](#), and [312 IAC 10-5-13](#); and repealing rules at [312 IAC 10-5-10](#); concerning watercraft operation on Geist Reservoir and permit exemptions. The commission seeks comment on the affected citations listed and any other provisions of Title 312 that may be affected by this rulemaking.

ADDITIONAL DOCUMENTS

60 Day Requirement ([IC 4-22-2-19](#)): [20230906-IR-312230650ARA](#)

Regulatory Analysis: [20240807-IR-312240265RAA](#)

Notice of Public Hearing: [20240807-IR-312240265PHA](#)

CITATIONS AFFECTED: [312 IAC 5-9-2](#); [312 IAC 5-12-5](#); [312 IAC 10-5-9](#); [312 IAC 10-5-10](#); [312 IAC 10-5-12](#); [312 IAC 10-5-13](#)

AUTHORITY: [IC 14-10-2-4](#); [IC 14-11-2-1](#); [IC 14-15-7-3](#); [IC 14-28-1-5](#)

OVERVIEW

Basic Purpose and Background

The proposed rule adds a restriction to boating on Geist Reservoir in Hamilton County, Marion County, and Hancock County in an area known as Geist Waterfront Park and Beach, beginning fourteen (14) days before Memorial Day and ending October 1 of the same year. The restriction is to ensure the safety of persons recreating at Geist Waterfront Park and Beach. The proposed rule requires that watercraft within two hundred (200) feet of dredging equipment be operated at not greater than idle speed to ensure boater safety while operating a watercraft near dredging equipment located in the water.

The proposed rules establishes the following three (3) new permit exemptions for activities in the floodway: (1) Channel maintenance. (2) Removing creek rock from streams. (3) Streambank protection. The permit exemptions will simplify the process for the public by allowing parcel owners, and those acting with a parcel owner's permission, to conduct limited activities in the floodway without notifying the department of natural resources if the activities meet the requirements of the rule. The proposed rule repeals [312 IAC 10-5-10](#) regarding creek rock removal from a nonnavigable waterway.

For purposes of [IC 4-22-2-28.1](#), the Small Business Regulatory Coordinator for this rule is:

Jennifer Ware
Assistant Director
Division of Water
Department of Natural Resources
Indiana Government Center South
402 West Washington Street, Room W264
Indianapolis, IN 46204
(317) 234-1093
jware@dnr.in.gov

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-6](#) is:

Matthew Jaworowski
Small Business Ombudsman
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204
(317) 650-0126
majaworowski@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-6](#), specifically [IC 5-28-17-6\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a

party to a proceeding or as a mediator.

REQUEST FOR PUBLIC COMMENT

The commission is soliciting public comment on the proposed rule. Comments may be submitted in one of the following ways:

- (1) By the commission's rulemaking docket at <https://www.in.gov/nrc/rules/rulemaking-docket/>.
- (2) By mail or common carrier to the following address:
LSA Document #24-265 Watercraft Operation and Permit Exemption Amendments
Chloe Perkins
Hearing Officer, Natural Resources Commission
Indiana Government Center North
100 North Senate Avenue, Room N103
Indianapolis, IN 46204
(317) 232-0156
chperkins@nrc.in.gov
- (3) By email to chperkins@nrc.in.gov. PLEASE NOTE: Email comments will not be considered part of the official written comment period unless they are sent to the address indicated in this notice.
- (4) Attend scheduled public hearing.

COMMENT PERIOD DEADLINE

All comments must be postmarked or time stamped not later than September 6, 2024.

The rule, Regulatory Analysis, appendices referenced in the Regulatory Analysis, and materials incorporated by reference (if applicable) are on file at the Natural Resources Commission, Indiana Government Center North, 100 North Senate Avenue, Room N103, Indianapolis, Indiana and are available for public inspection. Copies of the rule, Regulatory Analysis, and appendices referenced in the Regulatory Analysis are available at the Natural Resources Commission office.

If the commission does not receive substantive comments during the public comment period or public hearing, the rule may be adopted with text that is the same as or does not substantially differ from the text of the proposed rule published in this notice.

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** 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~~ **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,~~ **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 14-8-2-226](#); [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.

Posted: 08/07/2024 by Legislative Services Agency
An [html](#) version of this document.