

Regulatory Analysis
LSA Document #24-265

I. Description of Rule**a. History and Background of the Rule**

[312 IAC 5-9-2](#) – The City of Fishers filed a rule change petition with the natural resources commission (commission) under [IC 14-15-7-3](#) to establish a prohibition on operating a watercraft in a specified location on Geist Reservoir to provide a safe environment and protect all patrons who access the Geist Waterfront Park & Beach for water and recreational activity. The department of natural resources (department) was tasked with reviewing the petition, researching the issue, and making recommendations regarding how to resolve the issue presented by the City of Fishers. The recommendations from the department regarding the requested rule change are as follows: There is a need for a boating restriction in the Geist Waterfront Park & Beach cove. Because the City of Fishers plans to operate a livery and wants to encourage nonmotorized watercraft operation in the cove, the department recommends that the restriction only be for motorized watercrafts.

In addition, the department understands the need to regulate and provide safe recreational activities within the closure area; however, it also must consider that this is a reservoir with public access and recreation and should balance the safety with providing accessibility to other recreational users when the park is not in operation. Also, navigation in the boating channel may not be impeded. When taking these factors into consideration, the department recommends the closure line be modified, and only closed from the date fourteen (14) days before Memorial Day to October 1 of the same calendar year.

[312 IAC 5-12-5](#) – The town of Cedar Lake plans to dredge a large portion of Cedar Lake in Lake County. Not more than five hundred fifty thousand (550,000) cubic yards of material could be removed from various sections of Cedar Lake. The dredged material will be pumped through a pipe to an offsite disposal area. The pipe may float on the water's surface or may be submerged just below the water's surface. It is anticipated that the dredging operation will continue through the end of 2025. An emergency rule was adopted on June 15, 2023 (LSA Document #23-502) to ensure safe operation of watercrafts around the dredging equipment but expired on October 1, 2023. After considering how to continue to enforce the safe operation of watercrafts on Cedar Lake through the remainder of the project, it was decided that a permanent rule with a more general approach that enforces safe operation of watercraft around all dredging operations on public waters was a better approach.

[312 IAC 10-5-9](#), [312 IAC 10-5-12](#), [312 IAC 10-5-13](#) – In 2022, a section of legislation was added to [IC 14-28-1](#) requiring the department to adopt licenses for certain construction activities in the floodway. Below is a copy of that section of legislation:

[IC 14-28-1-39](#) Licensure for activities in a floodway

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.

As added by P.L. 141-2022, SEC. 46.

Upon adoption of this legislation, the department formed a committee of staff from the division of water and the division of fish and wildlife that met regularly to discuss the issues and draft the necessary license rules. [312 IAC 10-5-10](#) is repealed.

b. Scope of the Rule

The proposed permanent rule changes establish: (1) a prohibition for motorized watercraft operation on Geist Reservoir at specified coordinates; and (2) necessary idle speed requirements on a public water near a dredging operation to ensure safe navigation, to minimize damage to watercrafts, and to ensure the safety of the public.

The scope of the proposed permanent rule changes includes three (3) new permit exemptions for activities in

the floodway including the removal of trees, channel maintenance, and streambank protection. Adopting the permit exemptions will simplify the process for the public by allowing them to conduct limited activities in the floodway that meet certain requirements without requiring the person to notify the department. The proposed permanent rule changes allow the public to conduct activities on their private property quickly without the need to go through the permit application review process.

c. Statement of Need

The City of Fishers has a need to regulate and provide safe recreational activities within the closure area; however, it also must consider that the area is a reservoir with public access and recreation and should balance the safety with providing accessibility to other recreational users when the park is not in operation. Also, navigation in the boating channel may not be impeded. The need for the proposed permanent rule changes is also to ensure the safety of the public and to establish proper watercraft speeds across public waters while a dredging operation is active and present in the water. The rule is necessary for law enforcement patrolling public waters to enforce the proper speed for safety.

The department must create and adopt license exemptions under [IC 14-28-1-39](#) that authorize certain activities on private property in the floodway. The department recognizes that certain construction activities typically have minimal impacts within limits. Therefore, the department outlined activities with specific criteria which would require minimal paperwork for both the public and the department.

d. Statutory Authority for the Proposed Rule

The commission has the statutory authority to adopt rules under [IC 14-10-2-4](#). The department has the statutory authority to adopt rules under [IC 14-11-2-1](#). Under [IC 14-28-1-5](#) the department has the statutory authority to adopt rules for flood control. [IC 14-28-1-39](#) also requires the department adopt rules regarding certain permit exemptions.

e. Fees, Fines, and Civil Penalties – There is no addition or increase of a fee, fine, or civil penalty. Adoption of the proposed permanent rules changes reduces the number of application fees the department will receive when a person applies for a permit for construction in the floodway.

II. Fiscal Impact Analysis

a. Anticipated Effective Date of the Rule

The anticipated effective date of the proposed permanent rule is thirty (30) days after the proposed permanent rule is accepted for filing by the publisher.

b. Estimated Fiscal Impact on State and Local Government

Adopting the proposed permanent rule changes is expected to have minimal impacts to the revenue of the department as well as local government. It is possible that there will be a minor reduction in revenue for the department for permit application fees with the adoption of the new permit exemptions. However, in most cases construction activities that fall under the new permit exemptions would have resulted in administrative and litigation expenses despite having minimal impact to the floodway.

III. Impacted Parties

The impacted parties would include any individual who operates a motorized watercraft on Geist Reservoir near the proposed coordinate, and any individual who operates a watercraft on a public water near a dredging operation. An impacted party for this rule would be the public. These general licenses are expected to simplify the process by allowing the public to conduct maintenance activities in the floodway that meet certain requirements. This rule allows the public to conduct activities on their private property quickly, without the need to go through the full permit application review process. The department is an impacted party. As more license exemptions are added for construction projects that are viewed by the department as having minimal impact, this allows staff to focus on larger scale construction projects and will reduce overall permit processing time.

IV. Changes in Proposed Rule

Administrative Rule	Proposed Permanent Rule Change
312 IAC 5-9-2	Amended to establish a zone where watercraft operation is prohibited on Geist Reservoir.
	Technical and conforming changes under the Administrative Rules Drafting Manual.

312 IAC 5-12-5	Adds speed requirement on a public water when operating a boat near a dredging operation.
	Technical and conforming changes under the Administrative Rules Drafting Manual.
312 IAC 10-5-9	Amended regarding a permit exemption for removing creek rock from a floodway.
	Technical and conforming changes under the Administrative Rules Drafting Manual.
312 IAC 10-5-10	Repealed.
312 IAC 10-5-12	Added regarding a permit exemption for removing a tree in a floodway.
312 IAC 10-5-13	Added regarding a permit exemption for streambank protection in a floodway.

V. Benefit Analysis

The benefit of the proposed permanent rule changes is to allow for better safety when operating a watercraft in specified areas on Geist Reservoir. Additionally, the benefit of the proposed permanent rule changes is to allow law enforcement to enforce proper watercraft speeds across public waters and ensure the safety of the public while a dredging operation is active and present in the water. Finally, a person who conducts certain activities on their private property quickly will benefit from not needing to go through the full permit application review process. In addition, the proposed permanent rule changes will save time for the department in processing applications. As permit exemptions are added for construction projects in a floodway that are viewed by the department as having minimal impact, this allows department staff to focus on larger scale construction projects and will reduce overall permit processing time.

VI. Cost Analysis

There is not add or increase a fee, fine, or civil penalty associated with the proposed permanent rule changes. Adopting the proposed permanent rule changes will reduce or eliminate fees paid by a person who is not required apply for a permit for construction in the floodway. The current application fee for the permit is two hundred dollars (\$200). The department may experience a slight increase in cost to promote this new permit exemptions through additional presentations at conferences or other outreach materials.

VII. Sources of Information

Sources of information for determining cost and benefits were obtained from statistics and other information provided by the division of water for the department.

VIII. Regulatory Analysis

As stated above there is no cost to customers associated with the proposed permanent rule changes. The purpose is to ensure safe navigation on a public water and the safety of the public. Adopting of the proposed permanent rule changes is to ensure this safety. There is no cost to the public. Adopting the proposed permanent rule changes will eliminate permit fees for those activities that fall under the proposed permit exemptions. The benefits of this rule are great for both the public as well as the department. The greatest benefit for the public is that the proposed permanent rule changes will decrease costs to the public and will allow the public to conduct activities on their private property quickly, without the need to go through the full permit application review process.

Notice of First Public Comment Period with Proposed Rule: [20240807-IR-312240265FNA](#)

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An [html](#) version of this document.