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TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #00-253(F)

DIGEST

Adds 312 IAC 10 to govern construction activities in flood plains (flood hazard areas). Provides coordination with standards applicable to navigable waterways. Repeals 310 IAC 6-1. Effective January 1, 2002.

310 IAC 6-1

312 IAC 10

SECTION 1. 312 IAC 10 IS ADDED TO READ AS FOLLOWS:

ARTICLE 10. FLOOD PLAIN MANAGEMENT

Rule 1. Application

312 IAC 10-1-1 Purpose

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-28

Sec. 1. This rule is prepared in response to the authorities and directives in IC 14-28-1, P.L.35-1993 (portions of which were subsequently codified at IC 14-28-2), and IC 14-28-3. (*Natural Resources Commission; 312 IAC 10-1-1; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3384, eff Jan 1, 2002*)

312 IAC 10-1-2 Scope

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 2. (a) This article establishes minimum standards for the delineation and regulation of flood plains to decrease existing flood damages, mitigate future flood damages, and promote the health, safety, and welfare of the people of Indiana.

(b) The article is written with an understanding of the legislative declaration that the loss of lives and property caused by floods and the damage resulting from floods is a matter of deep concern to Indiana affecting the life, health, and convenience of the people and the protection of property. Floodways should not be inhabited and should be kept free and clear of interference or obstructions that will cause any undue restriction of the capacity of the floodways. The water resources of Indiana that have been diminished should be accumulated, preserved, and protected to prevent any loss or waste beyond reasonable and necessary use.

(c) Except as provided in subsection (b), the flood plains subject to regulation are those along waterways having a drainage area of at least one (1) square mile.

(d) The exemption in subsection (b) does not apply to an activity that is subject to IC 14-27-7.

(e) A local ordinance incorporating flood plain management provisions adopted after July 1, 1974, and before January 1, 2000, must be no less effective than 310 IAC 6-1, before its repeal, and must be approved by the division before its effective date.

(f) A local ordinance incorporating flood plain management provisions adopted after December 31, 2001, must be no less

effective than this article and must be approved by the division before its effective date. *(Natural Resources Commission; 312 IAC 10-1-2; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3384, eff Jan 1, 2002)*

312 IAC 10-1-3 Rules supplemental to flood control law; local licenses

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-28-1; IC 14-28-3; IC 14-29-1

Sec. 3. This article assists with the implementation of IC 14-28-1, IC 14-28-3, and IC 14-29-1. Except as exempted in this article, a county or municipality must not authorize a structure, obstruction, deposit, or excavation within a floodway without the applicant first receiving a license from the department under IC 14-28-1. *(Natural Resources Commission; 312 IAC 10-1-3; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3384, eff Jan 1, 2002)*

Rule 2. Definitions

312 IAC 10-2-1 Definitions applicable to the regulation of floodways and flood plains

Authority: IC 14-10-2-4

Affected: IC 14-8; IC 14-28-1; IC 14-28-3

Sec. 1. The definitions in this rule apply throughout this article and are in addition to those set forth in IC 14-8, IC 14-28-1, and 312 IAC 1. *(Natural Resources Commission; 312 IAC 10-2-1; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3384, eff Jan 1, 2002)*

312 IAC 10-2-2 “Abode” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-28-1; IC 14-28-3

Sec. 2. “Abode” means a structure that is used or may be used primarily as a living quarters or residence and includes any of the following:

- (1) House.
- (2) Manufactured home.
- (3) Hotel or motel.
- (4) Hospital, nursing home, or dormitory.
- (5) Similar structure which provides permanent or temporary overnight lodging.

(Natural Resources Commission; 312 IAC 10-2-2; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3384, eff Jan 1, 2002)

312 IAC 10-2-3 “Adversely affect the efficiency of, or unduly restrict the capacity of, the floodway” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1-29; IC 14-28-3

Sec. 3. “Adversely affect the efficiency of, or unduly restrict the capacity of, the floodway” means an increase in the elevation of the regulatory flood of at least fifteen-hundredths (0.15) of a foot as determined by comparing the regulatory flood elevation under the project condition to that under the base condition. This definition does not, however, apply to any of the following:

- (1) A dam regulated under IC 14-27-7 and IC 14-28-1.
- (2) A flood control project authorized under IC 14-28-1-29.
- (3) An area for which a flood easement is secured and recorded with the county recorder.

(Natural Resources Commission; 312 IAC 10-2-3; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3385, eff Jan 1, 2002)

312 IAC 10-2-4 “Bank” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-28-1; IC 14-28-3

Sec. 4. “Bank” means the ground that borders or slopes upward from the bed of a waterway and that confines water to the channel during the normal course or flow. *(Natural Resources Commission; 312 IAC 10-2-4; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3385, eff Jan 1, 2002)*

312 IAC 10-2-5 “Base condition” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-28-1; IC 14-28-3

Sec. 5. “Base condition” means the condition of the flood plain on January 1, 1973, but without any unauthorized dam or levee. If an activity after December 31, 1972, lowered the regulatory flood profile, the flood plain under the lower profile is the base condition. *(Natural Resources Commission; 312 IAC 10-2-5; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3385, eff Jan 1, 2002)*

312 IAC 10-2-6 “Bed” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-28-1; IC 14-28-3

Sec. 6. “Bed” means the surface rock or soil underlying a waterway. *(Natural Resources Commission; 312 IAC 10-2-6; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3385, eff Jan 1, 2002)*

312 IAC 10-2-7 “Best management practices” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-28-1; IC 14-28-3

Sec. 7. “Best management practices” means those practices best suited to specific site conditions that will control soil erosion and the nonpoint source pollution associated with sediment run-off. The Indiana Handbook for Erosion Control in Developing Areas (October 1992) may be used as a reference in developing an erosion and sediment control plan that is consistent with best management practices. *(Natural Resources Commission; 312 IAC 10-2-7; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3385, eff Jan 1, 2002)*

312 IAC 10-2-8 “Bridge” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-28-1; IC 14-28-3

Sec. 8. “Bridge” means a structure placed over a waterway or other topographically depressed area that is designed to carry pedestrian, vehicular, or other traffic. The term includes a culvert or a ford. *(Natural Resources Commission; 312 IAC 10-2-8; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3385, eff Jan 1, 2002)*

312 IAC 10-2-9 “Building” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-28-1; IC 14-28-3

Sec. 9. “Building” means each of the following:

- (1) A walled and roofed permanent structure.**
- (2) A gas or liquid storage tank that is principally aboveground.**
- (3) An abode.**

(Natural Resources Commission; 312 IAC 10-2-9; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3385, eff Jan 1, 2002)

312 IAC 10-2-10 “Channel” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-28-1; IC 14-28-3

Sec. 10. “Channel” means both the natural and the artificial channel of a waterway. *(Natural Resources Commission; 312 IAC 10-2-10; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3385, eff Jan 1, 2002)*

312 IAC 10-2-11 “Closure mechanism” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-28-1; IC 14-28-3

Sec. 11. “Closure mechanism” means a manually or automatically operated device designed and placed to prevent reverse

flow through the outfall project during a regulatory flood. *(Natural Resources Commission; 312 IAC 10-2-11; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3385, eff Jan 1, 2002)*

312 IAC 10-2-12 “Closure system” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 12. “Closure system” means a device installed to prevent flow through a utility line in the event of a failure. *(Natural Resources Commission; 312 IAC 10-2-12; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3385, eff Jan 1, 2002)*

312 IAC 10-2-13 “Commission floodway” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1-28; IC 14-28-3

Sec. 13. “Commission floodway” means a floodway designated and established under IC 14-28-1-28 and 312 IAC 10-3-4. *(Natural Resources Commission; 312 IAC 10-2-13; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3385, eff Jan 1, 2002)*

312 IAC 10-2-14 “Conservancy district act” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3; IC 14-33

Sec. 14. “Conservancy district act” refers to IC 14-33. *(Natural Resources Commission; 312 IAC 10-2-14; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3386, eff Jan 1, 2002)*

312 IAC 10-2-15 “Consolidated material” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 15. “Consolidated material” means firm and coherent rock. *(Natural Resources Commission; 312 IAC 10-2-15; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3386, eff Jan 1, 2002)*

312 IAC 10-2-16 “County drainage code” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3; IC 36-9-27

Sec. 16. “County drainage code” refers to IC 36-9-27. *(Natural Resources Commission; 312 IAC 10-2-16; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3386, eff Jan 1, 2002)*

312 IAC 10-2-17 “Culvert” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 17. “Culvert” means a closed conduit for the passage of run-off through an embankment. *(Natural Resources Commission; 312 IAC 10-2-17; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3386, eff Jan 1, 2002)*

312 IAC 10-2-18 “Cumulative effects” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 18. “Cumulative effects” means the impact that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what person undertakes the other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time. Each of the following elements is considered when assessing the impact of cumulative effects within a floodway:

- (1) Adverse effects on the efficiency of, or undue restrictions to the capacity of, the floodway.**
- (2) Unreasonable hazards to the safety of life or property.**

(3) Unreasonable detrimental effects upon fish, wildlife, or botanical resources.

(Natural Resources Commission; 312 IAC 10-2-18; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3386, eff Jan 1, 2002)

312 IAC 10-2-19 “Division” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 19. “Division” means the division of water of the department. *(Natural Resources Commission; 312 IAC 10-2-19; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3386, eff Jan 1, 2002)*

312 IAC 10-2-20 “Drainage area” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 20. “Drainage area” means the total land area measured in a horizontal plane and enclosed by a topographic divide from which surface run-off from precipitation normally drains by gravity into a waterway above a specified location. The term includes an area that is ineffective due to karst topography, subsurface drains, or diversions. *(Natural Resources Commission; 312 IAC 10-2-20; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3386, eff Jan 1, 2002)*

312 IAC 10-2-21 “Effective waterway area” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 21. “Effective waterway area” means the unobstructed flow area (measured perpendicularly to flow) below the regulatory flood elevation. *(Natural Resources Commission; 312 IAC 10-2-21; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3386, eff Jan 1, 2002)*

312 IAC 10-2-22 “Flood control project” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1-29; IC 14-28-3

Sec. 22. “Flood control project” means a project approved or required to be approved under IC 14-28-1-29. *(Natural Resources Commission; 312 IAC 10-2-22; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3386, eff Jan 1, 2002)*

312 IAC 10-2-23 “Flood protection grade” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 23. “Flood protection grade” means the elevation two (2) feet above the regulatory flood measured according to:

(1) the elevation of the lowest floor of the building; or

(2) dry flood-proofing of a building other than an abode.

(Natural Resources Commission; 312 IAC 10-2-23; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3386, eff Jan 1, 2002)

312 IAC 10-2-24 “Fringe” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 24. “Fringe” means the portions of a flood plain lying outside the floodway. *(Natural Resources Commission; 312 IAC 10-2-24; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3386, eff Jan 1, 2002)*

312 IAC 10-2-25 “Local ordinance” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 25. “Local ordinance” means an ordinance that divides the area within the jurisdiction of a county or municipality

into zones or districts to regulate, within the zones or districts, any of the following:

- (1) The location, height, bulk, number of stories, and size of buildings or other structures.
- (2) The percentage of lot occupancy.
- (3) The requirement of open spaces.
- (4) The density and distribution of populations.
- (5) The uses of land and structures.

(Natural Resources Commission; 312 IAC 10-2-25; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3387, eff Jan 1, 2002)

312 IAC 10-2-26 “Logjam” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 26. “Logjam” means an accumulation of lodged trees, root wads, or other debris that impedes the ordinary flow of water through a waterway. The term does not include the development of sandbars, sedimentation, or accumulations of stone or gravel. Logjams are evidenced by a blockage that does any of the following:

- (1) Traverses the waterway.
- (2) Causes upstream ponding.
- (3) Results in significant bank erosion.

(Natural Resources Commission; 312 IAC 10-2-26; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3387, eff Jan 1, 2002)

312 IAC 10-2-27 “Low structure” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 27. “Low structure” means either the lowest point of a bridge superstructure or the apex of an arch or pipe. *(Natural Resources Commission; 312 IAC 10-2-27; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3387, eff Jan 1, 2002)*

312 IAC 10-2-28 “Lowest floor” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 28. “Lowest floor” means the lowest elevation described among the following:

- (1) The lowest floor of a building.
- (2) The basement floor.
- (3) The garage floor, if the garage is connected to the building.
- (4) The first floor of a building elevated on pilings or constructed on a crawl space.
- (5) The floor level of an enclosure below an elevated building where the walls of the enclosure provide some resistance to the flow of flood water, unless both of the following requirements are satisfied:
 - (A) The walls are designed to automatically equalize hydrostatic flood forces by allowing for the entry and exit of flood water.
 - (B) At least two (2) openings are designed and maintained for the entry and exit of flood water, and these openings provide a total of at least one (1) square inch for every square foot of enclosed floor area subject to flooding. The bottom of an opening can be no more than one (1) foot above grade. Doorways and windows do not qualify as openings under this clause.

(Natural Resources Commission; 312 IAC 10-2-28; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3387, eff Jan 1, 2002)

312 IAC 10-2-29 “Manufactured home” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 29. “Manufactured home” means a structure, transportable in one (1) or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to required utilities. The term is generally synonymous with mobile home but does not include a recreational vehicle. *(Natural Resources Commission; 312 IAC 10-2-29; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3387, eff Jan 1, 2002)*

312 IAC 10-2-30 “Outfall project” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-28-1; IC 14-28-3

Sec. 30. “Outfall project” a project for an outfall structure or an outfall swale. *(Natural Resources Commission; 312 IAC 10-2-30; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3387, eff Jan 1, 2002)*

312 IAC 10-2-31 “Outfall structure” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-28-1; IC 14-28-3

Sec. 31. “Outfall structure” means a closed conduit facility used for the transport and discharge of surface run-off or treated effluent to a waterway or swale. The facility includes all appurtenant channels, supply lines, energy dissipation, and erosion control systems. The term does not include a system where the delivery conduit is placed beneath the bed. *(Natural Resources Commission; 312 IAC 10-2-31; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3387, eff Jan 1, 2002)*

312 IAC 10-2-32 “Outfall swale” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-28-1; IC 14-28-3

Sec. 32. “Outfall swale” means an excavated depression in the surficial topography used for the transport and discharge of surface run-off or treated effluent to a waterway. The depression includes all appurtenant channels, swales, and energy dissipation or erosion control systems. *(Natural Resources Commission; 312 IAC 10-2-32; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3387, eff Jan 1, 2002)*

312 IAC 10-2-33 “Project condition” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 33. “Project condition” means the condition of a flood plain with existing structures, obstructions, deposits, excavations, and the project anticipated by the requested license. *(Natural Resources Commission; 312 IAC 10-2-33; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3388, eff Jan 1, 2002)*

312 IAC 10-2-34 “Recreational vehicle” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 34. “Recreational vehicle” means a vehicle that is:

(1) built on a chassis;

(2) no more than four hundred (400) square feet measured at the largest horizontal projections;

(3) designed to be self-propelled or permanently towed by a light duty truck; and

(4) designed primarily as temporary living quarters for recreational, camping, travel, or seasonal use rather than as a permanent dwelling.

(Natural Resources Commission; 312 IAC 10-2-34; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3388, eff Jan 1, 2002)

312 IAC 10-2-35 “Regulatory flood” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 35. “Regulatory flood” means a flood having a one percent (1%) probability of being equaled or exceeded in a year as calculated by a method and procedure that is approved by the commission. The regulatory flood is equivalent to the base flood or the 100-year frequency flood. *(Natural Resources Commission; 312 IAC 10-2-35; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3388, eff Jan 1, 2002)*

312 IAC 10-2-36 “Rural area for a construction or reconstruction project on a state or county highway bridge that crosses

a stream having an upstream drainage area of fifty (50) square miles or less” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3; IC 36-7-4-205

Sec. 36. “Rural area for a construction or reconstruction project on a state or county highway bridge that crosses a stream having an upstream drainage area of fifty (50) square miles or less” means an area where:

(1) the flood protection grade of each residential, commercial, or industrial building impacted by the project is higher than the regulatory flood elevation under the project condition; and

(2) the area 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).

(Natural Resources Commission; 312 IAC 10-2-36; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3388, eff Jan 1, 2002)

312 IAC 10-2-37 “Superstructure” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 37. “Superstructure” means the structural portion of a bridge on which the travelway is constructed, including all elements resting on an abutment or a pier. *(Natural Resources Commission; 312 IAC 10-2-37; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3388, eff Jan 1, 2002)*

312 IAC 10-2-38 “Unconsolidated material” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 38. “Unconsolidated material” means a sediment that is loosely arranged or stratified or whose particles are not cemented together. *(Natural Resources Commission; 312 IAC 10-2-38; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3388, eff Jan 1, 2002)*

312 IAC 10-2-39 “Unreasonable detrimental effects upon fish, wildlife, or botanical resources” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 39. “Unreasonable detrimental effects upon fish, wildlife, or botanical resources” means damage to fish, wildlife, or botanical resources that is found likely to occur by the director based upon the opinion of a professional qualified to assess the damage and:

(1) creates a condition where recovery of the affected resources is not likely to occur within an acceptable period; and

(2) cannot be mitigated through the implementation of a mitigation plan approved by the director.

(Natural Resources Commission; 312 IAC 10-2-39; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3388, eff Jan 1, 2002)

312 IAC 10-2-40 “Unreasonable hazard to the safety of life or property” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 40. “Unreasonable hazard to the safety of life or property” means a condition that is likely to:

(1) be caused by the design or construction of a project; and

(2) result during a regulatory flood in either:

(A) the loss of human life; or

(B) damage to public or private property to which the license applicant has neither ownership nor a flood easement.

(Natural Resources Commission; 312 IAC 10-2-40; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3388, eff Jan 1, 2002)

312 IAC 10-2-41 “Utility line” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 41. “Utility line” means the following:

- (1) A pipe or pipeline for the transportation of a gaseous, liquid, liquefiable, or slurry substance.
- (2) A cable line, wire, or fiber for the transmission of electricity, telephone, telegraph, radio, television, or similar energy or media.

(Natural Resources Commission; 312 IAC 10-2-41; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3389, eff Jan 1, 2002)

312 IAC 10-2-42 “Utility line crossing” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 42. “Utility line crossing” means the utility crosses the waterway in a straight line at an angle of between forty-five (45) degrees and one hundred thirty-five (135) degrees from the streambank and does not parallel the waterway for more than fifty (50) feet in the floodway before crossing unless the parallel portion of the line is contained within existing road right-of-way. *(Natural Resources Commission; 312 IAC 10-2-42; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3389, eff Jan 1, 2002)*

312 IAC 10-2-43 “Utility project area” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 43. “Utility project area” means the area within a floodway that is affected by the placement of a utility line. *(Natural Resources Commission; 312 IAC 10-2-43; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3389, eff Jan 1, 2002)*

312 IAC 10-2-44 “Wetland” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 44. “Wetland” means a transitional area between a terrestrial and deep water habitat (but not necessarily adjacent to a deep water habitat) where at most times the area is either covered by shallow water or the water table is at or near the surface and under normal circumstances any of the following conditions are met:

- (1) The area predominantly supports hydrophytes, at least periodically, or the substrate is predominantly undrained hydric soil, for example, peat or muck.
- (2) The substrate is not a soil but is instead saturated with water or covered by shallow water some time during the growing season, for example, marl beaches or sand bars.

(Natural Resources Commission; 312 IAC 10-2-44; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3389, eff Jan 1, 2002)

312 IAC 10-2-45 “Wetland restoration measure” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 45. “Wetland restoration measure” means a practice or combination of practices to restore a degraded or filled wetland. The conversion of an unaltered wetland to another aquatic use is not included within the definition. *(Natural Resources Commission; 312 IAC 10-2-45; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3389, eff Jan 1, 2002)*

Rule 3. Flood Plain Delineations and Management

312 IAC 10-3-1 Flood plains, floodways, and fringes; local ordinances

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-28-1; IC 14-28-3

Sec. 1. (a) A county or municipality that administers IC 14-__-3 [*sic.*] must adopt an ordinance to implement this rule for areas within:

- (1) the floodway and the fringe; or
- (2) for an area where the floodway and the fringe are not separately identified, the flood plain.

(b) For an area where only the flood plain is identified in the ordinance, an application for a local permit must be reviewed by the department to determine if a license is required under IC 14-28-1.

(c) The department may, upon its own initiative, or, upon petition from a local unit, determine and delineate on suitable maps, the boundaries of the flood plain, floodway, or fringe within the jurisdiction of the local unit. In cases of determination and delineation by others, those determinations and delineations will be subject to review and approval by the department.

(d) A flood plain, floodway, and fringe exist for each waterway even if an area is not delineated on a map. *(Natural Resources Commission; 312 IAC 10-3-1; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3389, eff Jan 1, 2002)*

312 IAC 10-3-2 Designation of flood plains, floodways, and fringes by the Federal Emergency Management Agency

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-28-1; IC 14-28-3

Sec. 2. Where a flood plain (or a floodway and fringe) is designated by the Federal Emergency Management Agency for a flood insurance study under 44 CFR 60.3, the flood plain (or floodway and fringe) also applies to this article. *(Natural Resources Commission; 312 IAC 10-3-2; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3389, eff Jan 1, 2002)*

312 IAC 10-3-3 Delineation of flood plains and floodways in the absence of a Federal Emergency Management Agency designation

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-28-1; IC 14-28-3

Sec. 3. (a) This section governs the delineation of a flood plain (or a floodway and fringe) by the department where section 2 of this rule does not apply. The delineation referenced in this section may be performed by:

- (1) the department; or
- (2) another person subject to review and approval by the department.

(b) The magnitude of the peak discharge of the regulatory flood of a waterway is established. Using this discharge, the regulatory flood profile is determined. The extent of a flood plain (or a floodway and fringe) is delineated using appropriate elevations from the regulatory flood profile and the best available maps.

(c) The peak discharge of the regulatory flood shall be established using standard engineering and statistical techniques acceptable to the commission.

(d) The profile for a regulatory flood is determined using standard engineering techniques acceptable to the commission. A determination shall start a sufficient distance downstream from the area of interest in order to ensure reasonable accuracy. A bridge is assumed to remain open and free of debris and ice unless local conditions indicate otherwise. Where possible, the profile for a regulatory flood is correlated with known high watermarks.

(e) The extent of a flood hazard area is delineated on the best available maps. Supplemental information from field surveys are used as needed to locate the boundaries of a flood plain.

(f) If there is a need to delineate flood plain and detailed engineering information is not available, a flood plain may be delineated on a temporary basis using other available information or methods acceptable to the commission. *(Natural Resources Commission; 312 IAC 10-3-3; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3390, eff Jan 1, 2002)*

312 IAC 10-3-4 Delineation of a commission floodway under IC 14-28-1-28

Authority: IC 14-28-1-5

Affected: IC 4-21.5-3-8; IC 5-3-1-6; IC 14-11-4; IC 14-28-1-28

Sec. 4. (a) This section establishes the criteria and procedures for seeking authorization for a commission floodway under IC 14-28-1-28.

(b) A commission floodway is an alternative to the processes used to designate a floodway under section 2 or 3 of this rule.

(c) A person seeking to use this section shall make an application for approval of a commission floodway on a departmental form delivered to the division. Before being deemed complete, the application shall establish the following:

(1) The boundary of the commission floodway must not exclude an area that would otherwise be designated as a floodway under IC 14-28-1 and this rule unless each of the following is satisfied:

(A) With respect to any fill or structures within the excluded area, one (1) of the following must be demonstrated:
(i) A license under 312 IAC 10-4 or a general license under 312 IAC 10-5 has been issued or will be issued contingent upon establishment of the commission floodway.

(ii) Placement was done prior to the effective date of the statute requiring that a permit be obtained.

(B) Fill raises all portions of the excluded area at least two (2) feet above the elevation of the regulatory flood.

(C) "As built" plans certified by a registered professional engineer demonstrate both of the following:

(i) Compliance with any licensing requirements under this article.

(ii) All portions of the excluded area are raised at least two (2) feet above the regulatory flood.

(2) Specifications to demonstrate areas within the commission floodway will be adequately protected to minimize the possibility of erosion.

(3) A description of the boundaries of the commission floodway certified by a surveyor.

(4) An emergency evacuation plan approved by the state emergency management agency with respect to any abode.

(5) Construction resulting from development of the commission floodway will not do any of the following:

(A) Adversely affect the efficiency of, or unduly restrict the capacity of, the floodway.

(B) Constitute an unreasonable hazard to the safety of life or property.

(C) Result in unreasonably detrimental effects upon fish, wildlife, or botanical resources.

(6) Notice of the proposed commission floodway served upon adjacent property owners as anticipated by IC 14-11-4 and 312 IAC 2-3.

(7) Notice of the proposed commission floodway published at least two (2) times, seven (7) days apart, as follows:

(A) In two (2) daily newspapers in Indianapolis as provided in IC 5-3-1-6.

(B) In newspapers in the counties where all or part of the commission floodway is to be established as provided in IC 5-3-1-6.

(d) After the department has completed its review and analysis of the application, the deputy director for the bureau of water and resource regulation shall issue an order granting, denying, or conditioning the authorization for a commission floodway. The department may require as a condition of the order that an easement or similar encumbrance be placed in the record of title for the area covered by the commission floodway to ensure compliance with its terms, including conditions that must be met before an abode may be placed on the site pursuant to subsection (c)(4). Copies of the order, together with a statement of how administrative review of the order may be sought from the commission, shall be served upon the following:

(1) Each person served by the applicant pursuant to subsection (c)(6).

(2) Any person who has requested to be notified of the application pursuant to IC 4-21.5-3-8.

(3) The board of county commissioners or other county executive in any county where the commission floodway is located.

(4) The Federal Emergency Management Agency.

(e) The authorization of a commission floodway shall be effective upon the latest of the following occurrences:

(1) If no request for administrative review is filed in a timely fashion, the latter of the following:

(A) Eighteen (18) days after the final service made under subsection (d)(1) through (d)(3).

(B) Seven (7) days after the final newspaper publication under subsection (d)(4).

(2) If a request for administrative review is filed in a timely fashion, upon completion of the adjudication.

(3) The recordation of an easement or similar encumbrance as described in subsection (d).

(4) Written approval by the Federal Emergency Management Agency.

(Natural Resources Commission; 312 IAC 10-3-4; filed Jul 5, 2001, 9:12 a.m.; 24 IR 3390, eff Jan 1, 2002)

312 IAC 10-3-5 Flood plain land uses

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-28-1-20; IC 14-28-3; IC 25-4-1; IC 25-31-4

Sec. 5. A building with a floor area greater than four hundred (400) square feet must not be constructed in a flood plain unless the building satisfies the following requirements:

(1) The building is protected to the flood protection grade by either of the following methods:

(A) The lowest level of the building is at or higher than the flood protection grade.

(B) For a building other than an abode, the building and its utility and sanitary facilities are watertight with walls

substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. The design and construction of the building must be certified by a professional engineer registered under IC 25-31-1, or an architect registered under IC 25-4-1, as being adequate to withstand the flood depths, pressures, velocities, impact, and uplift forces associated with a regulatory flood.

(2) The building does not otherwise violate this article or IC 14-28-1-20(1).

(Natural Resources Commission; 312 IAC 10-3-5; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3391, eff Jan 1, 2002)

312 IAC 10-3-6 Local approval of activities within a floodway

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-28-1; IC 14-28-3

Sec. 6. (a) A county or municipality shall not authorize a structure, obstruction, deposit, or excavation in a floodway until a license is issued by the department under IC 14-28-1.

(b) A county or municipality may place terms and conditions on a local license issued for a site in a floodway. The terms and conditions must not be less restrictive than those required by the department under this article.

(c) A license from the department under IC 14-18-1 [*sic.*, IC 14-28-1] and 312 IAC 10-4 is not required for a site within a fringe.

(d) Where a floodway is not separately delineated, a county or municipality shall refer a license application for work in a flood plain to the department for advice and recommendations. *(Natural Resources Commission; 312 IAC 10-3-6; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3391, eff Jan 1, 2002)*

312 IAC 10-3-7 Temporary licenses for recreational vehicles

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-28-1; IC 14-28-3

Sec. 7. Notwithstanding section 6(a) of this rule, a local ordinance may authorize a license for the placement of a recreational vehicle in the floodway or the fringe if the recreational vehicle is required to be both of the following:

(1) On the site for fewer than one hundred eighty (180) consecutive days.

(2) Fully licensed and ready for use on a public highway.

(Natural Resources Commission; 312 IAC 10-3-7; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3391, eff Jan 1, 2002)

312 IAC 10-3-8 Nonconforming uses in the flood plain

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-28-1; IC 14-28-3

Sec. 8. (a) A local ordinance incorporating flood plain management provisions adopted after July 1, 1974, shall provide for a use within a flood plain that does not conform with this rule.

(b) A person must not construct an addition to a building in a floodway if the addition, in combination with all other additions to the building that have been constructed since the building was originally built, would increase the market value of the building to an amount more than fifty percent (50%) greater than either of the following:

(1) The market value of the building if no additions have been constructed since the building was originally built.

(2) The approximate value of the building would have (in the form in which it was originally built) if at least one (1) addition has already been constructed.

(c) A building that is damaged by flood, fire, explosion, act of God, or the public enemy may be restored to its original dimensions and condition, if the cost of the repairs is less than fifty percent (50%) of the market value of the building before the damage occurred. A building damaged in excess of fifty percent (50%) of its market value is governed by section 5 of this rule.

(d) For purposes of this section, the market value of an abode does not include the value of the land on which the building is built.

(e) Ordinary maintenance and repairs to a building are exempted from the evaluations and calculations described in this section. *(Natural Resources Commission; 312 IAC 10-3-8; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3391, eff Jan 1, 2002)*

Rule 4. Floodway Licensing

312 IAC 10-4-1 License requirement for construction in a floodway

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-28-1; IC 14-28-3

Sec. 1. (a) Except as otherwise provided in IC 14-28-1 or this article, a license from the department is required to erect, make, use, maintain, suffer, or permit a structure, obstruction, deposit, or excavation in or on a floodway.

(b) Notwithstanding subsection (a), a person must not erect an abode in a floodway, except as authorized under IC 14-28-1-24, IC 14-28-1-25, and IC 14-28-1-26.5. *(Natural Resources Commission; 312 IAC 10-4-1; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3392, eff Jan 1, 2002)*

312 IAC 10-4-2 Categorical floodway licensing exemptions

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-28-1; IC 14-28-3

Sec. 2. Development and maintenance of the following activities are exempted from IC 14-28-1 and this article unless the activities involve the placement of a structure, obstruction, deposit, or excavation:

- (1) Crops.
- (2) Pastures.
- (3) Forests.
- (4) Park and recreational uses.

(Natural Resources Commission; 312 IAC 10-4-2; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3392, eff Jan 1, 2002)

312 IAC 10-4-3 Additions to lawful abodes in the floodway

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-28-1; IC 14-28-3; IC 25-4-1; IC 25-31-1

Sec. 3. (a) A person must not erect, use, or maintain in or on any floodway a permanent structure for use as an abode, except for an abode constructed before January 1, 1973. For purposes of this section, “constructed” means completed for use as an abode.

(b) A person may make an addition to an abode constructed before January 1, 1973, if the addition would not increase the market value of the abode, excluding the value of the land, by more than fifty percent (50%) of:

- (1) the market value of the abode if no addition was made since the abode was initially constructed; or
- (2) the approximate market value the abode would have in the form in which it was originally constructed if the abode has at least one (1) prior addition.

(c) Where the application is made under subsection (b), the application must be accompanied by the following documentation:

(1) An appraisal by an appraiser who has an acceptable designation as follows, conforming with the requirements for appraisal reports, which establishes the value of the abode or place of residence before and after the proposed addition, excluding the value of the land:

(A) Acceptable designations of appraisers are any of the following:

- (i) Member of the American Institute of Real Estate Appraisers (MAI).
- (ii) Residential member of the American Institute of Real Estate Appraisers (RM).
- (iii) Senior real estate analyst of the Society of Real Estate Appraisers (SREA).
- (iv) Senior residential appraiser of the Society of Real Estate Appraisers (SRA).
- (v) Senior real property appraiser of the Society of Real Estate Appraiser (SRPA).
- (vi) Senior member of the American Society of Appraisers (ASA).
- (vii) Accredited rural appraiser of the American Society of Farm Managers and Rural Appraisers (ARA).

(viii) Accredited appraiser of the Manufactured Housing Appraiser Society.

(B) Requirements for appraisal reports are the following:

(i) Identification of the property to include the location, legal description, and owner or occupant.

(ii) Neighborhood analysis, including land use, price range, and age of structures in the area, changing conditions, and all relevant information pertaining to value of structures in the area.

(iii) Description of the site, including the dimensions, site area, zoning classification, and compliance of present structure, highest and best use, real estate taxes, assessments utilities, description of site improvements, and easements.

(iv) Description of structural improvements, interior and exterior, considering depreciation, general market conditions, and additional features.

(v) Cost approach to value of present structure and proposed addition, with computative data based on an appraisal guideline in common usage among appraisers.

(vi) Market or sales comparison analysis, including adequate descriptions of three (3) recent comparable sales having the same highest and best use as the subject, weighted and analyzed in relation to the subject property, with adjustments not exceeding thirty percent (30%).

(vii) Reconciliation, including a summary:

(AA) of pertinent data of particular approaches and the appraiser's final conclusion, which conclusion cannot be based on an average; and

(BB) explaining strengths and weaknesses of each approach.

(viii) Certification by the appraiser that:

(AA) the property was personally inspected;

(BB) facts and data are true and correct;

(CC) the appraised value represents the appraiser's best judgment;

(DD) the appraiser has no interest in the property; and

(EE) an opinion of the estimated fair market value of the property, excluding the value of the land, established under subsection (b) and at the completion of the proposed addition.

(ix) Percentage of increase in value that the proposed addition will make in the property, excluding the value of the land.

(x) Photographs of the property and comparable sales.

(xi) Verification by appraiser as to when the original structure was built and, if there have been additions made to the original structure, the date of these additions (appraiser must give source of this information and copies of the source material).

(xii) Designation of appraiser.

(2) Construction plans and specifications must:

(A) consider the effects of buoyance, dynamic, and erosive factors;

(B) be constructed with materials resistant to flood damage;

(C) be constructed by methods and practices that minimize flood damage; and

(D) be certified by a:

(i) professional engineer registered under IC 25-31-1; or

(ii) an architect registered under IC 25-4-1.

(3) Additions shall be designated and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads associated with the regulatory flood.

(d) Certification by a professional engineer registered under IC 25-31-1 or an architect registered under IC 25-4-1, that the proposed addition was built to the design criteria in subsection (c)(3), shall be submitted to the department, division of water, prior to the occupancy of the addition.

(e) A structure not used as an abode on January 1, 1973, does not qualify for a license under IC 14-28-1 and this article.
(Natural Resources Commission; 312 IAC 10-4-3; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3392, eff Jan 1, 2002)

312 IAC 10-4-4 Flood easements

Authority: IC 14-10-2-4; IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-28-1-29

Sec. 4. If a license application includes the creation of a flood easement, the applicant must demonstrate to the satisfaction of the department the project:

(1) will not constitute an unreasonable hazard to the safety of life or property;

- (2) is not unreasonably detrimental to fish, wildlife, or botanical resources; and
- (3) is either:
 - (A) a dam;
 - (B) a flood control project under IC 14-18-1-29; or
 - (C) a public works project.

(Natural Resources Commission: 312 IAC 10-4-4; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3393, eff Jan 1, 2002)

Rule 5. General Licenses and Specific Exemptions from Floodway Licensing

312 IAC 10-5-1 Wetland restoration measures

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

Affected: IC 4-21.5; IC 14-28-1; IC 14-29-1-8

Sec. 1. (a) This section governs the placement of a wetland restoration measure in or on a floodway.

(b) Except as provided in this section, a license is required under IC 14-28-1, IC 14-29-1, and 312 IAC 10-3 to place a wetland restoration measure in or on a floodway.

(c) The placement of a wetland restoration measure is exempted from IC 14-28-1, IC 14-29-1, and 312 IAC 10-3 if the person placing the wetland restoration measure does or establishes the following:

(1) Provide written notification sufficient for the department to determine if the proposed activity conforms with this subsection. The department shall, within ten (10) days (excluding Saturdays, Sundays, and legal holidays) of the receipt of the notice, raise any objection to the placement of the restoration measure as proposed. If the department raises no objection, the proposed activity is deemed qualified for the exemption. If an objection is raised, the person shall do one (1) of the following:

(A) Modify the activity to satisfy the concerns raised in the objection and provide the department with another notification under this subdivision.

(B) File a permit application under subsection (b) for the placement of the wetland restoration measure.

(C) Seek administrative review of the objection under IC 4-21.5 and 312 IAC 3-1.

(D) Withdraw the notification and abandon the project.

(2) The design, construction, and maintenance of the measure will not, considering its individual and cumulative effects, do any of the following:

(A) Adversely affect the efficiency of, or unduly restrict the capacity of, the floodway.

(B) Constitute an unreasonable hazard to the safety of life or property.

(C) Result in unreasonable detrimental effects upon fish, wildlife, or botanical resources.

(D) For a navigable waterway, be contrary to IC 14-29-1-8(c) or 312 IAC 6.

(3) The measure will be constructed under the direction of, or coordinated with, the United States Fish and Wildlife Service, the United States Natural Resources Conservation Service, or the department.

(4) The measure does not obstruct more than five percent (5%) of the cross section of the flood plain during a regulatory flood.

(5) The measure will not remove more than one (1) acre of forest.

(6) Following the completion of construction, disturbed areas will be reclaimed and revegetated. Disturbed areas will be mulched with straw, wood fiber, or other suitable material. To prevent erosion until revegetated species are established, mulch shall be anchored by crimping, tackifiers, or netting or erosion control blankets shall be applied. To the extent practicable, revegetation must restore species native to the site. If revegetation with native species is not practicable, revegetation shall be performed by planting a mixture of:

(A) red clover;

(B) orchard grass;

(C) perennial rye grass;

(D) brome grass; or

(E) another species;

approved by the department as being suitable to site and climate conditions.

(7) Any excavation that blocks a drain tile does not permanently alter the natural ground elevation.

(8) The streamward toe of a constructed berm or levee is at least one hundred (100) feet landward from the top of the bank of the waterway.

(9) The construction of a berm or levee is limited to one (1) side of the waterway and where there is no other berm or levee within two thousand (2,000) feet on the same waterway.

(10) The elevation of a berm or levee is no more than two (2) feet higher than the natural ground surface measured at the lowest point along the berm or levee.

(Natural Resources Commission; 312 IAC 10-5-1; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3393, eff Jan 1, 2002)

312 IAC 10-5-2 General licensing for utility line crossings

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

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

Sec. 2. Except as provided in sections 3 and 4 of this rule, a license is required under IC 14-28-1, IC 14-29-1, and 312 IAC 10-4 to place a utility line in or on a floodway where:

(1) the drainage area of a river or stream is at least one (1) square mile at the downstream end of the line's floodway segment; or

(2) a dam or levee regulated under IC 14-27-7 is affected.

(Natural Resources Commission; 312 IAC 10-5-2; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3394, eff Jan 1, 2002)

312 IAC 10-5-3 Exemptions from licensing requirements for aerial electric, telephone, or cable television lines

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

Affected: IC 14-28-1; IC 14-29-6

Sec. 3. The placement of an aerial electric, telephone, or cable television line is exempted from the licensing requirements of IC 14-28-1, IC 14-29-1, and 312 IAC 10-4 if:

(1) the activity does not disturb the bed of the waterway beneath the line;

(2) the activity conforms with the minimum clearance requirements of section 4(c)(9) of this rule;

(3) the support mechanisms are located at least seventy-five (75) feet from the top of the bank; and

(4) the utility line crossing is not within the floodway of a natural river, scenic river, or recreational river designated under 312 IAC 7-2.

(Natural Resources Commission; 312 IAC 10-5-3; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3394, eff Jan 1, 2002)

312 IAC 10-5-4 Exemption from licensing requirements for qualified utility line crossings

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

Affected: IC 13-11-2-260; IC 14-27-7; IC 14-28-1-29; IC 14-33; IC 36-9-27

Sec. 4. (a) This section establishes an exemption for the placement of a qualified utility line crossing in a floodway.

(b) This section does not authorize the placement of a qualified utility line crossing in the following locations:

(1) Within a river or stream listed in the Indiana Register at 16 IR 1677 in the Outstanding Rivers List for Indiana.

(2) Within a salmonid stream designated under 327 IAC 2-1-6(c)(1).

(3) Below the ordinary high watermark of a navigable waterway listed in the Indiana Register at 20 IR 2920 (1997) of the Roster of Indiana Waterways Declared Navigable or Nonnavigable, unless the utility line is placed beneath the bed of waterway under subsection (c)(8).

(4) Where the project requires an individual permit from the United States Army Corps of Engineers under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act.

(c) A person who wishes to place a utility line crossing under this section must conform to the following conditions:

(1) Tree removal and brush clearing shall be contained and minimized within the utility line crossing area. No more than one (1) acre of trees shall be removed within the floodway.

(2) Construction activities within the waterway from April 1 through June 30 shall not exceed a total of two (2) calendar days.

(3) Best management practices shall be used during and after construction to minimize erosion and sedimentation.

(4) Following the completion of construction, disturbed areas shall be reclaimed and revegetated. Disturbed areas shall be mulched with straw, wood fiber, biodegradable erosion blanket, or other suitable material. To prevent erosion until revegetated species are established, loose mulch shall be anchored by crimping, tackifiers, or netting. To the extent practicable, revegetation must restore species native to the site. If revegetation with native species is not practicable,

revegetation shall be performed by the planting of a mixture of red clover, orchard grass, timothy, perennial rye grass, or another species that is approved by the department as being suitable to site and climate conditions. In no case shall tall fescue be used to revegetate disturbed areas.

(5) Disturbed areas with slopes of three to one (3:1) or steeper, or areas where run-off is conveyed through a channel or swale, shall be stabilized with erosion control blankets or suitable structural armament.

(6) No pesticide will be used on the banks.

(7) If a utility line transports a substance that may cause "water pollution" as defined in IC 13-11-2-260, the utility line will be equipped with an emergency closure system.

(8) If a utility line is placed beneath the bed of a river or stream, the following conditions are met:

(A) Cover of at least three (3) feet measured perpendicularly to the utility line is provided between the utility line and the banks.

(B) If the placement of a utility line is not subject to regulation under IC 14-28-1-29, IC 14-33, or IC 36-9-27, cover is provided as follows:

(i) At least three (3) feet, measured perpendicularly to the utility line, between the lowest point of the bed and the top of the utility line or its encasement, whichever is higher, if the bed is composed of unconsolidated materials.

(ii) At least one (1) foot, measured perpendicularly to the line, between the lowest point of the bed and the top of the utility line or its encasement, which is higher, if the bed is composed of consolidated materials.

(C) If the placement of the utility line is subject to regulation under IC 14-28-1-29, IC 14-33, or IC 36-9-27, cover is provided as follows:

(i) At least three (3) feet, measured perpendicularly to the utility line, between the design bed and the top of the line or its encasement, whichever is higher, if the bed is composed of unconsolidated materials.

(ii) At least one (1) foot, measured perpendicularly to the line, between the design bed and the top of the line or its encasement, whichever is higher, if the bed is composed of consolidated materials.

(D) Negative buoyancy compensation is provided where the utility line has a nominal diameter of at least eight (8) inches and transports a substance having a specific gravity of less than one (1).

(9) If a utility line is placed above the bed of a river or stream, the following conditions are met:

(A) Except as provided in clauses (B) and (C), minimum clearance is provided from the lowest point of the utility line (determined at the temperature, load, wind, length of span, and type of supports that produce the greatest sag) calculated as the higher of the following:

(i) Twelve and one-half (12½) feet above the ordinary high watermark.

(ii) Three (3) feet above the regulatory flood elevation.

(B) If the river or stream is a navigable waterway that is subject to IC 14-28-1, the utility line that crosses over the waterway must be placed to provide the greater of the following:

(i) The minimum clearance required under clause (A).

(ii) The minimum clearance required for the largest watercraft that is capable of using the waterway. The utility must consult in advance with the department to determine the minimum clearance for watercraft at the crossing.

(C) If a utility line is attached to or contained in the embankment of an existing bridge or culvert, no portion of the utility line or its support mechanism may project below the low structure elevation or otherwise reduce the effective waterway area.

(10) A utility line placed in a dam or levee regulated under IC 14-27-7 does not qualify for an exemption under this subsection.

(d) A person who elects to act under this section must comply with the general conditions under subsection (c). Failure to comply with these terms and conditions may result in the revocation of the general authorization, a civil penalty, a commission charge, and any other sanction provided by law for the violation of a permit issued under IC 14-28-1, and, if the waterway is navigable, the violation of a license issued under IC 14-29-1. (*Natural Resources Commission; 312 IAC 10-5-4; filed Jul 5, 2001, 9:12 a.m.; 24 IR 3394, eff Jan 1, 2002*)

312 IAC 10-5-5 Nonexempt utility line placement; waivers

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

Affected: IC 14-28-1-29; IC 14-29-1; IC 14-33; IC 25-31-1; IC 36-9-27

Sec. 5. The placement of a utility line that is not exempt under section 4 of this rule requires a license under IC 14-28-1, IC 14-29-1, and 312 IAC 10-4 and is subject to the following:

(1) Except as provided in subdivisions (2) and (3), a license application must be filed with the department to demonstrate

the construction activities within the utility project area conform with section 4(c)(1) through 4(c)(9) of this rule.

(A) A technical justification that clearly establishes a need for the waiver.

(B) An economic analysis of the cost required to provide the minimum cover and the savings that would be realized if the minimum cover is waived.

(C) An assessment that establishes that there will not be an unreasonable hazard to the safety of life or property or an unreasonably detrimental effect upon fish, wildlife, or botanical resources if the utility line would fail as a result of the waiver.

(D) If the placement of the line is beneath the bed of a waterway and is subject to regulation as a flood control project, under the conservancy district act, or under the drainage code, documentation the county or municipality that has maintenance authority over the waterway has also waived the cover requirements. This documentation must:

(i) be on the letterhead of the county or municipality;

(ii) contain a copy of the statute or ordinance under which the county or municipality has regulatory authority over the waterway;

(iii) contain a statement that clearly waives the minimum cover requirements; and

(iv) contain a statement that the waiver will not impede future maintenance or reconstruction projects on the waterway.

(3) The department may waive the minimum clearance requirements set forth in section 4(c)(9) of this rule if this subdivision is satisfied. The following information must be provided by the applicant:

(A) A technical justification that establishes the need for the waiver.

(B) An economic analysis of the cost required to provide the minimum clearance and the savings realized if waived.

(C) An assessment that establishes that there will not be an unreasonable hazard to the safety of life or property or an unreasonably detrimental effect upon fish, wildlife, or botanical resources if the utility line fails as a result of the waiver.

(D) Documentation of the regulatory flood elevation that includes either of the following:

(i) A photocopy of the latest flood insurance study profile with the site and low point of the line clearly indicated.

(ii) Computations by a certified professional engineer licensed under IC 25-31-1.

(Natural Resources Commission; 312 IAC 10-5-5; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3396, eff Jan 1, 2002)

312 IAC 10-5-6 General authorization for the removal of logjams from a waterway

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

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

Sec. 6. (a) This section establishes a general authorization for the removal of logjams from a waterway for the purpose of providing maintenance to help control flooding.

(b) This section does not authorize an obstruction removal activity in the following areas:

(1) Within one-half ($\frac{1}{2}$) mile of any of the following:

(A) A species listed in the Indiana Register at 15 IR 1312 in the Roster of Indiana Animals and Plants Which Are Extirpated, Endangered, Threatened, or Rare.

(B) A known mussel resource.

(C) An outstanding natural area, as contained on the registry of natural areas maintained in the natural heritage data center of the department.

(2) Within a river or stream listed in the Indiana Register at 16 IR 1677 in the Outstanding Rivers List for Indiana.

(c) A person who wishes to implement a project for obstruction removal under this general authorization shall file a written notice, upon a department form, with the division of fish and wildlife, including the following information:

(1) A description of the river or stream where obstruction removal would occur, including the terminal points, access routes, and disposal sites of the project referenced to readily discernible landmarks, for example, a bridge or a dam. The project shall be designated with access routes to the obstruction on:

(A) a United States Geological Survey topographic map;

(B) a national wetlands inventory map; or

(C) another map determined by the department to satisfy the purposes of this section.

(2) The name, address, and telephone number of the person who is seeking the general authorization. If all or some of the activities will be performed on behalf of the person by an independent contractor, the name, address, and telephone number of the independent contractor shall also be provided.

(3) The person is the owner of the river or stream (or the sole riparian owner along a navigable river or stream), or another basis by which the person demonstrates permission to enter upon the project site and to perform logjam removal.

Permission must be demonstrated for an access route and for a site where logs or other debris will be secured following removal from the waterway. The person must also show participation or agreement by other interested persons in the following circumstances:

(A) With respect to a regulated drain, by the drainage board.

(B) With respect to a mutual drain, by all the beneficiaries to the drain.

(C) By the governing body of any county, municipality, or conservancy district in which the project is located.

(4) Photographs, video tapes, or other graphic documentation that demonstrate the following conditions exist on the waterway:

(A) Accumulations of logs, root wads, and other debris that occasionally or frequently span the waterway and may be interlocked.

(B) Large amounts of fine sediments have not covered nor become lodged in the obstruction.

(C) Accumulations are extensive enough to cause bank erosion and upstream ponding damages.

(5) A statement by the person, including the following terms and agreements:

(A) Obstructions will be removed through the use of hand-operated equipment, such as axes, chain saws, and portable winches.

(B) Any site will be identified within the project for which the use of hand-operated equipment is determined to be impracticable. If a site is identified under this subdivision, the statement must include what equipment would be used and that the equipment will not be equipped for excavation. Examples of equipment that may be suitable include the following:

(i) A small tractor.

(ii) A backhoe equipped with a hydraulic thumb.

(iii) A bulldozer with its blade up.

(iv) A log skidder.

(C) Free logs or affixed logs that are crossways in the channel will be cut, relocated, and removed from the flood plain unless the logs are piled and secured by cables in an area not threatened by the flow of water. Logs will be removed and secured with a minimum damage to vegetation and placed outside any wetlands.

(D) Isolated or single logs that are embedded, lodged, or rooted in the channel and do not span the channel or cause flow problems will not be removed unless:

(i) associated with or in close proximity to larger obstructions; or

(ii) posing a hazard to navigation.

(E) A severely damaged, leaning, or other damaged tree that is in immediate danger of falling into the waterway may be cut and removed, but only if the tree is associated with or in close proximity to an obstruction. The root system and stump of the tree will be left in place.

(F) No access road will be constructed that will do any of the following:

(i) Destroy more than one (1) acre of trees within a floodway.

(ii) Traverse a wetland indicated on the national wetlands inventory map unless pads are used.

(iii) Raise the elevation of the flood plain.

(iv) Cross a waterway.

(G) Work shall be conducted exclusively from one (1) side of a river or stream.

(d) Within ten (10) days (excluding Saturdays, Sundays, and legal holidays) after the receipt of a written notice under subsection (c), the department shall provide a written response that does one (1) of the following:

(1) Approves the terms of the notice.

(2) Provides additional conditions to the approval.

(3) Requires additional information.

(4) Requires the person to obtain a permit for the activity under IC 14-28-1 or IC 14-29-1, or both.

(e) If the department does not respond in a timely fashion under subsection (d), the written notice is deemed approved.

(f) A copy of the written notice provided under subsection (c) and any additional conditions provided by the department under subsection (d) must be posted by the person in a conspicuous location at the site of the project.

(g) A person who elects to act under this general authorization must comply with the terms of the written notice provided under subsection (c) and with any additional conditions provided by the department under subsection (d). Failure to comply with these terms and conditions may result in the revocation of the general authorization, a civil penalty, a commission

charge, and any other sanction provided by law for the violation of a permit issued under IC 14-28-1, or, if the waterway is navigable, the violation of a license issued under IC 14-29-1. (*Natural Resources Commission; 312 IAC 10-5-6; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3396, eff Jan 1, 2002*)

312 IAC 10-5-7 Exemption from licensing requirements for qualified logjam and sandbar removals from beneath bridges

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

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

Sec. 7. A person is exempted from the licensing requirements under IC 14-28-1, IC 14-29-1, 312 IAC 10-4, and 312 IAC 6 for the removal of logjams and sandbars beneath or adjacent to a bridge where:

(1) equipment is operated from the bridge or the bank within the right-of-way, with no equipment placed in the river or stream;

(2) an access corridor for the placement of equipment extends no more than fifty (50) feet beyond the right-of-way; and

(3) the logjam or sandbar to be removed is located partially or exclusively within the right-of-way.

(*Natural Resources Commission; 312 IAC 10-5-7; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3397, eff Jan 1, 2002*)

312 IAC 10-5-8 Exemption from licensing requirements for qualified outfall projects

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

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

Sec. 8. (a) This section establishes an exemption for the placement of a qualified outfall project in a floodway.

(b) This section does not authorize the placement of an outfall project:

(1) within a river or stream listed in the Indiana Register at 16 IR 1677 in the Outstanding Rivers List for Indiana;

(2) within a salmonid stream designated under 327 IAC 2-1-6(c)(1);

(3) below the ordinary high watermark of a navigable waterway listed in the Indiana Register at 15 IR 2385 in the Roster of Indiana Waterways Declared Navigable; or

(4) where the project requires an individual permit from the United States Army Corps of Engineers under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act.

(c) A person who wishes to place an outfall project under this section must conform to the following conditions:

(1) Tree removal and brush clearing shall be contained and minimized within the outfall project area. No more than one (1) acre of trees shall be removed within the floodway.

(2) Construction activities within the waterway from April 1 through June 30 shall not exceed a total of two (2) calendar days.

(3) Best management practices shall be used during and after construction to minimize erosion and sedimentation.

(4) Following the completion of construction, disturbed areas shall be reclaimed and revegetated. Disturbed areas shall be mulched with straw, wood fiber, biodegradable erosion blanket, or other suitable material. To prevent erosion until revegetated species are established, loose mulch shall be anchored by crimping, tackifiers, or netting. To the extent practicable, revegetation must restore species native to the site. If revegetation with native species is not practicable, revegetation shall be performed by the planting of a mixture of red clover, orchard grass, timothy, perennial rye grass, or another species that is approved by the department as being suitable to site and climate conditions. In no case shall tall fescue be used to revegetate disturbed areas.

(5) Disturbed areas with slopes of three to one (3:1) or steeper, or areas where run-off is conveyed through a channel or swale, shall be stabilized with erosion control blankets or suitable structural armament.

(6) Areas in the vicinity of concentrated discharge points shall be protected with structural armament to the normal water level of the waterway. Any riprap must have an average minimum diameter of six (6) inches and extend below the normal water level.

(7) The size of the outfall project shall not exceed any of the following dimensions:

(A) Ten (10) square feet in cross sectional flow area as determined by the summation of cross sectional area of conduits within the outfall project area for an outfall structure.

(B) Five (5) feet deep as determined by the difference in elevation between the lowest bank elevation and the bottom of the swale for an outfall structure.

(C) An area of disturbance thirty (30) feet wide.

(8) Adequate cover shall be provided to ensure the structural integrity of the outfall conduit and to allow suitable vegetative

growth.

(9) Within the project area, the postconstruction ground surface elevation shall be less than six (6) inches above the preconstruction elevation.

(10) The outlet structure shall:

(A) be supported by a headwall, slopewall, or anchored end section; and

(B) conform to the bank of the waterway.

(11) If flow passing through the outfall project in a reverse direction would induce flood damages during a regulatory flood, the outfall project shall be equipped with a closure mechanism.

(12) Construction debris and material not used as backfill shall be removed from the floodway.

(d) A person who elects to act under this section must comply with the general conditions under subsection (c). Failure to comply with these terms and conditions may result in the revocation of the general authorization, a civil penalty, a commission charge, and any other sanction provided by law for the violation of a permit issued under IC 14-28-1, and, if the waterway is navigable, the violation of a license issued under IC 14-29-1. (*Natural Resources Commission 312 IAC 10-5-8; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3398, eff Jan 1, 2002*)

SECTION 2. 310 IAC 6-1 IS REPEALED.

SECTION 3. SECTIONS 1 through 2 of this document take effect January 1, 2002.

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