

November 30, 2020

# Division of Water Legislative / Program Updates

INASFM 2023



David Knipe  
Director, Division of Water

## Outline for today's presentation

- SEA 242
- SEA 412
- HEA 1639
- HB 1556
- General License update
- ESC restructuring
- Outreach Activities
- FEMA updates (LOMR's / No Rise)

## Data Options for Local Floodplain Permitting

- Applicants may elect to use:
  - **Best available floodplain maps** provided by DNR
  - **An Engineering Study** provided by the applicant – reviewed and approved by the local floodplain administrator
- A local floodplain administrator shall not issue a permit that results in a violation of the communities' obligations (local ordinance) to the **National Flood Insurance Program**.

## Floodplain Administrator Training Requirements

- SEA 242 requires **completion of training by July 1, 2025**, to serve as floodplain administrator of a county or municipality
- As of September, DNR has notified every floodplain manager via email and letter of this new requirement and included information about the following options -

## Training options for floodplain administrators

- The Certified Floodplain Manager Program as offered by ASFPM
- FEMA Training Courses
  - Managing Floodplain Development thru NFIP
  - NFIP 101: Introduction to Floodplain Management a FEMA course hosted by ASFPM
- DNR, Division of Water Training Courses
  - State specific course for existing administrators or new administrator training
    - Covers basics of floodplain management incorporating state regulations & standards into all modules
    - Offered annually with an option for in-person or virtual attendance

## Request for Review of DNR Floodplain Mapping Data

- **A review of DNR mapping data** may be requested by a person with ownership, leasehold, or security interest in a property.
- DNR will complete the **review and data analysis in 120 days** at no cost to the requestor.
- If DNR is unable to complete the review in 120 days, the requestor (if they have a pending permit application) may elect to use DNR's best available data or submit an engineering study.
- DNR has received its first request for review, and we are currently working through that study with the landowner. We anticipate being able to meet the requirements at this time.

## Community outreach

- DNR is attending AIM, AOC, & INAFPM conferences
- DNR is working closely alongside communities to develop a schedule for public outreach meetings as required by SEA 242.

## Real Estate Disclosure (SEA 242)

If the owner has personal knowledge of the fact that all or a portion of the real estate is located within a community's floodplain boundaries, as indicated in a Federal Emergency Management Agency Flood Insurance Rate Map, a disclosure by the owner of that fact.



## Local Floodplain Administrator obligations (SEA 242 + SEA 412)

- A person who applies to a local floodplain administrator for a permit authorizing a structure or construction activity in or near a floodplain may elect that:
  - the best available data as provided by the department; or
  - an engineering study provided by the applicant that is reviewed and approved according to the unit's ordinance for flood hazard areas;

will be used by the local floodplain administrator when reviewing the person's permit application.

- A local floodplain administrator shall not issue a permit authorizing a structure or construction activity in or near a floodplain if the permit's authorization will result in a unit violating its obligations to the National Flood Insurance Program.

## HEA 1639

- Allows for the creation of “Watershed Development Commissions”
- Can be formed for flood damage reduction, drainage, storm water management, recreation or water infrastructure needs.
- Must be approved by the NRC – criteria set forth in statute
- Board consists of county surveyor, other county representative, city/town representative (each 2nd class city or largest city / town), DNR director or designee
- Board has taxing authority within the watershed, maximum rates set in statute
- Existing Basin Commissions (St. Joe, Maumee, Upper Wabash) can convert to this structure (but are not mandated to)

## HB 1556 (did not pass)

- Would have established a new permitting program for the use of 10M gallons of groundwater per day
- Would have required the Department to do a feasibility study before issuing the permit

## SEA 412

- Allows for the Department to file an affidavit with the county recorder that a dam is in violation of IC 14-27-7.5
- Riparian rights disputes along public freshwater lakes are removed from the Natural Resources Commission
- Applicants for approvals under IC 14-28-1 must document their ownership of the site where work will be performed, or provide an affidavit from the owner providing authorization
- Formalized the amendment process for IC 14-28-1
- Formalized joint applications under IC 14-28-1

## SEA 412

- The commission shall hold a meeting at least once every five (5) years with officials of counties and municipalities to do the following:
  - Promote cooperation among the counties and municipalities participating in the National Flood Insurance Program managed by the Federal Emergency Management Agency.
  - Provide technical and data assistance to officials of counties and municipalities.
  - Conduct training for and provide communication and outreach to officials of counties and municipalities.
- Officials of a county or municipality may voluntarily request to meet with the commission

## SEA 412 – State owned properties

- a person must obtain a permit under this section to erect, make, use, or maintain a structure, obstruction, deposit, or excavation in any place in a floodplain that is:
  - (1) state owned property; or
  - (2) state managed property.
- To obtain a permit, a person described in subsection (a) must file with the director a verified written application for a permit. The application must include plans and specifications for the structure, obstruction, deposit, or excavation.
- A separate permit is not required under this section for an activity for which a permit has been granted under IC 14-28-1.
- CFR 59 through 60 is the criteria for determining whether an activity is approvable
- The lowest floor of any structure is at least two (2) feet above the one hundred (100) year frequency flood elevation.

## Floodplain Permitting

- The Flood Control Act, IC-14-28-1, requires approval for all construction activities within the floodway of streams
  - Update regarding state owned and managed properties within the floodplain extends need for authorization to work in the fringe
- Authorization will need to be received to perform construction within all 1% annual chance mapped floodplains on state owned and managed properties



State of Indiana  
Department of Natural Resources



### CERTIFICATE OF APPROVAL

Application #: FW-31976-0

This Certificate of Approval is a Permit for Construction under the authority of the Indiana Flood Control Act, IC 14-28-1 with 312 IAC 10 and IC 14-29-1 with 312 IAC 6 as administered by the Department of Natural Resources.

Approval Issued To: INDOT, Taylor Davis, 100 North Senate Avenue N758-ES, Indianapolis, IN 46204

Approval Issued By: Grant A. Eyster Mail Date: 6/26/2023

Grant Eyster, Division of Water

Permit Effective Date: 07/14/2023

Permit Expiration Date: 06/26/2028

Pursuant to IC 4-21.5-3-5(f), this Permit becomes Effective eighteen (18) days from the Mail Date to provide a stay period for a Petition for Administrative Review with the Indiana Natural Resources Commission, Division of Hearings. Initiating construction authorized in this Permit prior to the Permit Effective Date constitutes a violation. This Permit is only valid until the Permit Expiration Date. This Permit may be renewed one (1) time if a written request is received at the DNR, Division of Water, prior to the Permit Expiration Date.

#### PROJECT INFORMATION:

Waterbody: Crooked Creek

County: Porter

Project Description Narrative: This project (INDOT Des. No. 2000811) consists of the preventive maintenance of the existing reinforced concrete slab bridge carrying the roadway over the stream channel. The project includes a rigid concrete bridge deck overlay, reinforced concrete approach slab and full depth HMA replacement, patching of deteriorated concrete for areas with spalling on the deck underside, installation of concrete drainage turnouts, and cleaning and painting of exposed steel piles. Total temporary impacts below the base flood elevation (BFE) will be 85 linear feet of stream impacts, 0.20 acre, and 72 cubic yards (CYS) due to the placement of a temporary cofferdam and construction access. Temporary impacts due to the temporary cofferdam below the BFE will be 72 linear feet of stream impacts, 0.03 acre, and 72 CYS. The temporary impacts will be in place approximately 1-4 months. There are no permanent impacts below the BFE. The maintenance of traffic will be a full closure with a signed detour. The proposed profile of the roadway will be increased by 1.5' along the project limits and transition with a wedge and level to match the existing road profile. No tree removal will be required for this project. Area impacts to early successional habitat are 0.07 acre.

Project Location: At the State Road 8 stream crossing near Kouts

#### PERMIT CONDITIONS:

This Certificate of Approval is valid only if the construction project is in compliance with all Conditions in this Permit.

## Submittal Information

- If it is determined work will be taking place in the flood fringe only, please submit detailed information regarding the project under this process
  - If work is taking place in both the floodway and the fringe, all work will be covered under the Flood Control Act permit
- Information required for a review of floodplain construction projects:
  - Property owner and requestor contact information
  - Clear narrative summary of project activities
  - Project location narrative and map/s
  - Disturbed area drawing and all relevant plan drawings demonstrating existing and proposed conditions
  - Photos of the project site
- Generally, the same type of project-specific information required for a formal Construction in a Floodway permit would be needed for the floodplain fringe review
  - Additional details and plans may be required for the modification or construction of structures within the floodplain versus general construction activities
- If there is question of whether authorization is needed depending on a unique location or situation, please feel free to submit information and Division of Water can help provide a determination



## Review Process

- Construction within the floodway brings together the full permit review process under the Flood Control Act
  - Division of Water determines impact to cross-sectional flow area
  - Division of Fish and Wildlife Environmental Unit Assesses impacts to fish, wildlife, and botanical resources
  - Division of Nature Preserves maintains Heritage Database and comments as required depending on location and impact of project
  - Division of Outdoor Recreation comments in instances when projects impact Outdoor Rec sites
  - Division of Law Enforcement assesses impacts to navigation and boater safety
  
- Construction only in the fringe will be reviewed solely under the Code of Federal Regulations criteria
  - No assessment of impacts to flow area or Division of Fish & Wildlife or other Division review
  - Construction activities will be described and tracked but the only detailed review will involve the construction or modification of structures which need to meet FEMA guidelines

## General License Update

- General licenses authorize landowners to do work without a permit from the department as long as they meet the conditions specified
- DOW has been working to finalize three new general licenses for proposed work under the Flood Control Act including –
  - Stream Bank Protection
  - Tree Removal
  - Channel Maintenance – Creek Rock Removal
- Slated for preliminary adoption before the Natural Resource Commission in November

## General License – Streambank Protection

- A general license to place streambank protection in the floodway.
- To qualify the proposed work must be located in a rural area and the total work must be less than 300’.
- Various conditions that must be met including prior notification to division
  - DOW has 20 days to respond to notification
  - The license expires 180 days after landowner receives written approval from department

## General License – Tree removal

- A general license to remove a tree from the floodway with the use of hand-operated equipment.
- To qualify a person must own or obtain written permission from the person who owns the land where the tree is being removed.

A person may:

- Cut and remove a single tree that has fallen into a waterway without removing the root ball
- Cut a tree, without removing the stump and root ball by excavation
- Cut and remove, or salvage an uprooted tree from a natural disaster including the root ball of the tree, and fill the hole left by the uprooted tree
- Cut a tree and grind the stump, without removing the root ball by excavation, and fill the hole left if necessary

## General License – Channel Maintenance/Creek Rock Removal

- Currently the department has two creek rock removal general licenses for work in a nonnavigable stream.
  - A general license without notice to the department which allows for the removal of up to 25 cubic yards of creek rock.
  - A general license with notice to the department which allows for the removal of up to 50 cubic yards of creek rock.
- The current proposed change is to **increase** the allowed amounts for the general license without notice **to 50 cubic yards** and eliminate the general license with notice.

## ESC reconfiguration

ESC has been focused on process improvements over the last year to improve the time for responding to requests.

- An independent consultant is hired to do capacity analyses and help identify bottleneck issues in the various processes ESC is responsible for.
- There has been an increase in hiring this year. The ESC team now has ten hydraulic engineers.
- ESC has been assigned a new project manager position and have recently hired staff for this position. The project manager handles all administrative work and keeps track of all the mapping and modeling requests that come in.
- As a Cooperating Technical Partner with FEMA and with CTP grants, ESC is partnered with Polis Center, IUPUI, to continuously identify, delineate and update flood hazard areas for all the counties in the State. The flood risk review meetings, CCO and open houses are coordinated with their help.
- Additionally, ESC has recently assumed responsibility for reviewing Letter of Map Revision (LOMR) requests on behalf of FEMA.
- ESC is currently being restructured into two major groups. One group would be tasked to perform job duties related to CTP and LOMR Reviews. The other group would mainly be responsible for review of permit modeling and BAFL update requests, as directed by SEA242. We are in the process of hiring a second supervisor to lead the state group, they should be on board by the end of September.

## No Rise / FEMA requirements

- DNR, through the flood control act, still regulates to a 0.14 cumulative surcharge. Projects within a FEMA floodway should be required, by local floodplain ordinances, to also meet a “No Rise” certification or obtain a CLOMR before and LOMR after the project is complete. DNR is attempting to make applicants aware of this requirement during the permit process to help reduce the need to redesign projects or prepare modeling after a permit is issued.
- Projects located in floodways that FEMA has mapped on the Flood Insurance Rate Maps will need this additional analysis. If it can be demonstrated that the project does not create a rise to the base flood elevation a No Rise Certification will need to be signed by a licensed engineer and submitted to the community to obtain local permits.
- Projects located in floodways that FEMA has mapped on the Flood Insurance Rate Maps will need this additional analysis. If it cannot be demonstrated that the project does not create a rise to the base flood elevation a Conditional Letter of Map Revision (CLOMR) will need to be obtained before a local permit can be issued.
- Non modeling worksheets have been updated to reflect these changes. Some projects may not be able to be evaluated through the change in effective area worksheet that previously could. We encourage you to contact DNR to discuss these cases before submitting permits.
- As of now Bridge Replacement in Kind and Ineffective Area Analysis are still viewed by FEMA as qualifying for “No Adverse Impact”.