

NATURAL RESOURCES COMMISSION

Information Bulletin #14

(First Amendment: March 1, 2002)

SUBJECT: Standards for the Development of a Commission Floodway Pursuant to IC 14-28-1-28

Background

The Flood Control Act (IC 14-28-1) governs construction activities in a floodway as those activities may impact the capacity of the floodway, public safety, and fish, wildlife or botanical resources. There are two ways a floodway may be delineated. First, a floodway may be designated using technical criteria designed to predict the areas inundated and carrying flood waters during a 100-year frequency storm. Second, a floodway may be defined for a specific geographic area through designation as a "commission floodway."

The division of water has long used engineering principles for identification of the first type of floodway. Methodologies such as HEC 2 computer modeling have been approved by the commission and used with general professional and public acceptance.

The statutory authority for determining a "commission floodway" is flexible. As stated in IC 14-28-1-28:

- (a) The commission may by order:
 - (1) establish a floodway as a commission floodway; and
 - (2) alter, change, or revoke and terminate the commission floodway.
- (b) In the order establishing the commission floodway, the commission shall fix the following:
 - (1) The floodway's length at any practical distance.
 - (2) The floodway's width or the landslide limits so as to include parts of the flood plains adjoining the channel that, with the channel, are reasonably required to efficiently carry and discharge the flood waters or flood flow of the river or stream.
- (c) Notwithstanding any other provision of law, an order establishing a commission floodway is not in force until notice has been given as follows:
 - (1) In writing to the county executive in the county affected.
 - (2) By publication at least two (2) times, seven (7) days apart, as follows: (A) In two (2) daily newspapers in the city of Indianapolis as provided in IC 5-3-1-6. (B) In newspapers in the counties where all or part of the commission floodway is established as provided in IC 5-3-1-6.

Nonrule Policy Documents

(d) All of the area within a commission floodway is the floodway for all purposes of this chapter. A few procedural and jurisdictional background items are provided. An "order" to establish a "commission floodway" is defined as a "license" because it is "an approval... or similar form of authorization that may be issued to a person by... the commission... under Indiana law." As such, the director or a designate initially issues an order for a commission floodway, subject to the commission authority for administrative review. IC 14-11-3-1 and IC 14-10-2-3. The authority to establish policy by permanent rule rests with the commission. IC 14-10-2-4(c) and IC 14-28-1-5. The director may adopt emergency or temporary rules in this context pursuant to IC 14-10-2-4(d).

Interim Guidelines

During its regular monthly meeting of June 20, 1996, the commission adopted criteria for commission floodways. The commission did so after determining the criteria were needed because of a growing desire to apply this statutory mechanism. On the other hand, there was a social need to approve the establishment of commission floodways only where they would not violate the spirit and intent of the Flood Control Act. Criteria were developed to facilitate the use of a statutory procedure and to assure implementation of the procedure would conform with statutory requirements for public safety and environmental protection. The standards were approved as guidelines, and made effective August 1, 1996, but with the expressed understanding they might later be considered for rule adoption. These guidelines were published in the August 1, 1996 Indiana Register at page 3240 as Information Bulletin #14.

Permanent Rules and First Amendment to Information Bulletin

The natural resources commission recently adopted 312 IAC 10-3-4 to address the delineation of commission floodways. Also to be noted is the term "commission floodway" is defined by 312 IAC 10-2-13. Effective January 1, 2002, the rule sections supersede the 1996 guidelines. As a consequence of the new rules, the commission on January 22, 2002 approved the First Amendment to Information Bulletin #14. This First Amendment is effective March 1, 2002.
