

NATURAL RESOURCES COMMISSION

Fort Benjamin Harrison - The Garrison
6002 North Post Road, Indianapolis, Indiana

Minutes of March 18, 2008

MEMBERS PRESENT

Bryan Poynter, Chair
Jane Ann Stautz, Vice Chair
Robert Carter, Jr., Secretary
Mark Ahearn
Brandon Seitz
Doug Grant
Robert Wright
Thomas Easterly
Lawrence Klein
Damian Schmelz

NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas
Sandra Jensen
Jennifer Kane

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Ron McAhron	Executive Office
Ryan Hoff	Executive Office
John Davis	Executive Office
Philip Marshall	Entomology and Plant Pathology
Glen Salmon	Fish and Wildlife
Linnea Petercheff	Fish and Wildlife
Tom Flatt	Fish and Wildlife
Mitch Marcus	Fish and Wildlife
Bruce Plowman	Fish and Wildlife
Amanda Ricketts	Human Resources
Cheryl Hampton	Human Resources
Felix Hensley	Law Enforcement
John Bacone	Nature Preserves
Steve Morris	Outdoor Recreation
Katherine Gould	Museum and Historic Sites
Traci Cromwell	Museum and Historic Sites
Dan Bortner	State Parks and Recreation
Jim Hebenstreit	Water
Terri Price	Water
Traci Powell	Water

GUESTS PRESENT

Mark Ennes	Traci Cromwell	Jack Corpuz
David Swart	Jonathan Bryant	Richard Thompson
Lyn Crighton	Chris Hemphill	Ann Sterling
Tim Rose	Dick Mercier	
Lynn Deans	Tim Julien	

Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 10:15 a.m., EDT, on March 18, 2008 at The Garrison, Fort Benjamin Harrison, 6002 North Post Road, Indianapolis, Indiana. With the presence of ten members, the Chair observed a quorum.

The Chair expressed thanks to Sandra Jensen, Stephen Lucas and Jennifer Kane for the conservancy district training and their contributions to the Natural Resources Commission. “It’s something that we deal with regularly. It’s a complicated subject at times.”

Thomas Easterly moved to approve the minutes of January 22, 2008. Doug Grant seconded the motion. Upon a voice vote, the motion carried.

Reports of the Director and Deputies Director, and Natural Resources Advisory Council

The Chair said Director Rob Carter and John Davis, Deputy Director, were required to attend an important meeting and would arrive later.

Ron McAhron, Deputy Director, Bureau of Resource Regulation, reported that Ryan Hoff, Legislative Liaison, would provide a recap of the 2008 legislative session.

The Chair reported that Patrick Early, Chair of the Natural Resources Advisory Council was not present.

In absence of the Advisory Council Chair, Patrick Early, Chairman Poynter asked Stephen Lucas, Director of the Commission’s Division of Hearings, to provide a report on Early’s behalf.

Lucas reported the Advisory Council discussed its legal status, particularly as the Advisory Council receives new statutory responsibilities for public freshwater lakes and contracts for water withdrawals from lakes funded by the state. He said the Advisory Council had an extensive discussion of “creek rock” extractions from non-navigable waters, and would revisit the same issue during the April meeting, in anticipation of probable recommendations to the Commission for the preliminary adoption of new rules. The Chair reflected, “Again, the Advisory Council does great work in continuing to move items through the system. We appreciate that.”

The Chair recognized Brandon Seitz, proxy for Brian Blackford. “Thank you for being here on short notice.”

The Chair commemorated recently deceased Commission Member Richard Mangus. “Dick Mangus was certainly appreciated on this Commission. Many have had a chance to work with him. He was tireless in his efforts over the years.” The Chair asked Dick Mercier to share his thoughts on Mangus and his legacy for conservation, wildlife, and natural resources.

Dick Mercier, Indiana Sportsmen’s Roundtable, said he worked with Dick Mangus for approximately 20 years. “He was a State Representative from Lakeville, Indiana. He could be a gruff old fellow—you never knew exactly how he was going to take what you might say to him. But, whenever you did say anything to him, he certainly gave it an awful lot of thought, and eventually came up with an answer for you. We’re going to miss Dick Mangus here on the Commission, as we have missed him in the Indiana General Assembly. He was dedicated to our citizens and to conservation.”

Chairman Poynter added, “Thank you for those nice words on behalf of the many who worked with him over the years. I don’t think you could have said it any better. You were never quite sure what was going to come out of Dick’s mouth, but he was a well respected Legislator and certainly a valued member of the Commission, and we’ll definitely miss his service here.”

The Chair announced that Advisory Council member, Phil French, would be the new permanent appointee replacement for Richard Mangus. The Chair said French was unable to attend today’s meeting, but would be present for the May Commission meeting.

Bryan Poynter also announced the reappointment of Vice Chair Jane Ann Stautz as the Chair of the Administrative Orders and Procedures Act Committee (the “AOPA Committee”). “I wanted to just hover for a second and thank the AOPA Committee for the work they do under the leadership of Jane, and for all she does. Thank you to all who serve and give their time. It is a tremendous time commitment with very serious issues to address.”

The Chair pointed out that “several people” requested hard copies of the conservancy district slide presentation. “I would like to get those posted. I like that outline format. If they could go to the website, along with last month’s rules check list—if those could be posted somewhere.” The Chair asked what educational topic would be discussed at the May meeting. Steve Lucas said slip rates on lakes managed by the DNR were scheduled for consideration next.

Poynter said, “There is a great exhibit at the Indiana State Museum as a collaborative effort with the Division of Fish and Wildlife, kind of a self-started, self-generated exhibit.” Director Robert Carter provided background.

The Director reflected that the “*Footprints: Balancing Nature’s Diversity*” display “far exceeded expectations. It started out as an idea about 15 months ago, and it just seemed like constituents came out of the woodwork and supported this from start to finish.” He said the best way to understand the display was “to just go up and take a look at it. It’s awesome. It’s hard to believe.” He said there has been discussion with regard to the exhibit becoming a “traveling display.” He noted that several constituent groups attended the opening for the exhibit. “It really showcases the fish and wildlife’s efforts.”

Director Carter added that the property-managing Divisions are “gearing up for the spring season. It was a pretty successful hunting year. We got a lot of land acquisition deals that are in the works that we’re trying to close. So, we’ve got a lot going on.”

John Davis, Deputy Director for the Bureau of Lands, Recreation and Cultural Resources, provided Commission members with a Rocky Mountain Elk Foundation DVD that considers habitat preservation. “It’s very entertaining.” Davis informed there would be a “walleye trip” to Brookville Lake in March or early April. “You get to watch the crew haul the walleye out and help fertilize about 35 million eggs.” Davis asked any Commission member who was interested in attending to inform Glen Salmon or himself.

Chairman Poynter reflected, “If you have the time to go to Brookville, it is well worth the effort.” The walleye process is “really fascinating and a testimony to the creativity of the Division of Fish and Wildlife. It’s a very worthwhile trip over there to watch them do this.”

Amanda Ricketts, Director of Human Resources, reported that all state employees and special state appointees must complete on-line ethics training. The training is required every two years. She said the Inspector General’s Office has designated a four-week time frame of April 7th through May 7th in which to complete the training. Ricketts estimated the training session would require 20 to 30 minutes to complete through the People Soft Human Resources system. “There are some very specific instructions and some trouble shooting scenarios which will help you navigate through the system.” She said a “special state appointee” is a statutory term referring to any state board member. Ricketts said she would be available to provide assistance.

Chairman Poynter asked whether the ethics training was mandatory for Commission proxies. John Davis responded the Commission’s proxies are state employees and would be required to complete the ethics training. Mark Ahearn added, “A lot of it is simply common sense and intuitive. Not only are we required, but it’s well worth doing.”

May 2008 Commission Meeting and Field Trips

Chairman Poynter announced the next Commission meeting would be May 21 at McCormicks Creek State Park, with a tour of Goose Pond and discussion of reclamation issues in conjunction with a coal mine tour. The Chair asked Steve Lucas for further comments regarding the May meeting. Lucas responded that a follow-up email regarding

the May meeting would be sent to the Commission members, including how to obtain room reservations at the Canyon Inn.

DNR, EXECUTIVE OFFICE

Update on Indiana General Assembly

Ryan Hoff, Legislative Director, provided a report on bills of significance to the Natural Resources Commission and the Department of Natural Resources. “It has been a fast-paced legislative session,” with an emphasis on property tax reforms. “Given the fast pace, we did extremely well to get as many pieces of legislation through as we did.”

- House Bill 1001, the property tax reform bill, eliminated the state property tax levee for the State Forestry Fund. He said that “funding to complete the biennium was appropriated, but is no longer a dedicated source of funding for forestry.”
- House Bill 1046 established an apprentice hunter license for all forms of hunting. Hoff said the license would allow potential hunters to determine a level of interest in hunting before “taking a required hunter’s education course. For years there has been a slow decline in the number of hunters in the field due the lack of replenishing hunters from youth ranks. This program will allow apprentice hunters who have not taken the ten hour hunter’s education course, to hunt with a mentor who is a licensed hunter over the age of 18. There is a life-time maximum of three apprentice licenses so that hunter education requirements will still promote the safety goals for those who continue to hunt following the three apprentice licenses.”
- Senate Bill 200 addresses a number of topics of interest to IDEM but also includes provisions to continue the viability of required continuing education for register mediators. He said, “Mediation is an important tool for adjudications for a number of agencies, including the Commission. In addition, there are two programs where the Commission has a statutory mandate for mediation availability. These are to address complaints against timber buyers and disputes among riparian owners on public freshwater lakes.”
- Senate Bill 134 would authorize a party to seek the consolidation of an adjudication before NRC Hearings Division, with an adjudication before the Office of Environmental Adjudication, where water quality or water quantity are at issue. Consolidated adjudications would not go before the Commission’s AOPA Committee.
- Senate Bill 45 authorizes Indiana to participate in the Great Lakes Compact. Upon passage of this Compact by the eight states bordering the Great Lakes, and ratification of Congress, the Compact would establish a regional framework for sharing in conservation of water resources of the

Great Lakes. The Compact would establish a framework for managing large scale water diversions out of the Great Lakes basin.

- Senate Bill 41 was a product of the Lake Management Work Group. The bill defines “acquiescence” and “lake” for purposes of the Lakes Preservation Act. “This bill also establishes evidence that indicates the ‘acquiescence’ of a riparian owner to allow the public use of a lake. It requires the Department of Natural Resources to prepare a list of ‘public freshwater lakes’” which are subject to the Lakes Preservation Act.
- Senate Bill 104 aligns State statutes with Federal statutes regarding the reconstruction of houses in a floodway. Allows for substantially damaged homes to be rebuilt in a floodway, if the homes are elevated two feet above the 100 year flood elevation.
- Senate Bill 1120 eliminates the use of phosphorus in household dishwashing detergents after June 30, 2010. Representatives of industry supported the bill with its deferred effective date, because they said by 2010 the use of phosphorus in dishwashing detergents would be phased out.
- Senate Bill 1121 was pursued by the DNR and contains several important provisions. The bill changes the membership of the Board of Trustees for the Division of State Museums and Historic Sites. The Hungarian partridge is removed from the list of game birds that may be hunted after obtaining a game bird habitat restoration stamp. Rifles are authorized with certain yearly deer hunting licenses. The condition is removed that a fall turkey hunting season must be established before a license to take an extra turkey is issued. The DNR is authorized to issue a duplicate license to any person who has lost a license. Formerly, only Indiana residents could obtain a duplicate license. The DNR is authorized to contract with the Museum Foundation or a similar organization interested in promoting the Indiana State Museum. The Sportsmen’s Benevolence Account is established, within the Division of Fish and Wildlife’s revolving fund, to encourage citizen participation in feeding the State’s hungry through donations of lawfully hunted wild game. Doing so helps manage deer populations and helps restock food shelters.
- Senate Bill 176 establishes the Courthouse Preservation Advisory Commission. This new commission would provide assistance for courthouse related projects. The Courthouse Preservation Fund is also established.

Hoff offered additional insight regarding Indiana’s approval of the Great Lakes Compact. “I will say that this legislation was remarkably well-received by the Indiana Legislature, in a large part due the unusual coalition created among businesses, utility, environmental, and governmental interests. Many of the audience here today had a large hand in getting this bill through. It was through a lot of their hard work on the front end, in getting this coalition created, that Senate Bill 45 was approved.”

The Chair added, “It’s my understanding, also, that while Indiana did it pretty smoothly and efficiently with this good coalition, that some of the neighboring states don’t have the same coalition. The Great Lakes Compact is certainly not a done deal by any stretch of the imagination.”

Hoff responded, “Absolutely right. We were, I think, the first state to pass both the Compact and the corresponding implementation language. From my point of view, that’s a big reason of why we were able to create the coalition. All the parties knew beforehand, not only what the Compact was, but how it was going to be implemented in our State.”

Dick Mercier also addressed the Commission regarding legislation. He said there was a proposed amendment to the Indiana Constitution that the Indiana Sportsmen’s Roundtable has worked on for several years. “The proposed amendment would guarantee the right to hunt, fish, and pursue game in the State of Indiana. It was very heavily passed by the Legislature a couple of years ago, and we needed a second approval,” but were unable to get a hearing in the House of Representatives this session after being passed by the Indiana Senate in 2007 and 2008. “We haven’t given up. We’re going to go at it again next session, and we’ll keep at it until we do get it approved.”

Consideration and Identification of Any Topic Appropriate for Referral to the Advisory Council

No new topics were presented for referral to the Advisory Council.

DIVISION OF FISH AND WILDLIFE

Consideration of Citizen Petition to Establish Lake Tippecanoe-Lake James Ecozone Rule and Consideration of Rule Amendments (Two Alternatives); Administrative Cause No. 07-175D

Tom Flatt, Aquatic Habitat Coordinator with the Division of Fish and Wildlife, presented this item. He stated the petition was before the Commission at the January meeting and brought back with revisions requested by the Commission. The revisions to the rule include adding the GPS coordinates and the “sunset” provision. Flatt said the modified proposal also included a second alternative for the Commission’s consideration.

Flatt recapped that all the zones are in the same area. He said the first zone is a 200 foot idle zone on the Lake James side of the Ball Wetlands. The second zone is the idle zone between Lake Tippecanoe and Lakes James. The third zone is a 500 foot trolling motor zone only on the Tippecanoe side of the Ball Wetlands. The first alternative reflects the petitioner’s request, but the Division of Fish and Wildlife was also offering a second alternative.

The second alternative rule proposal reflects the petitioner's request, except for the following.

- 1) That the north side of restricted zone on Lake Tippecanoe side of Ball Wetlands be changed from no motorized boats to trolling motors only.
- 2) That the Department not be obligated to an emergent restoration project as a measure of success for the ecozone if the resources are not available to carry out such a project.

Flatt said the petition stated concerns about water quality, and increases of noxious weeds and algae, as the primary reasons for the establishment of restricted boating zones. While establishment of the ecozones indirectly helps address noxious weeds, algae and water quality problems, the zones by themselves may not have a noticeable impact. He said the primary purposes for establishing the boating restricted zones are as follows:

- 1) To protect the Ball Wetlands vegetation from further decline.
- 2) To address public safety issues in the boating channel between the lakes and in shallow water.
- 3) To make boating restricted zones enforceable by clearly marking them so that law enforcement and boaters do not have to guess about the location of the legal shoreline.
- 4) To create the opportunity for restoration of both emergent and submerged native aquatic plants, particularly in The Flats area, either naturally or by restoration projects.

Flatt stated it "appeared most of the commenters accepted the concept of affording the Ball Wetlands the same environmental protections that the current 200 foot idle shoreline zone provides along the shorelines for the rest of the lake." They understood significant high speed boating impacts on aquatic vegetation and lake sediments occur in water less than five feet deep. Flatt said the commenters also seemed to understand high speed boating has vegetation and sediment impacts in water between five and ten feet deep, but the proposed rule is inconsistent in the depth of water protected on the Lake Tippecanoe side of the Ball Wetlands. "This is also the area that boaters want to continue to be able to use."

Flatt urged that "although the petition proposed rule has merit, a second alternative rule is being presented to the Commission for consideration that is consistent in protecting water less than five feet deep in Lake Tippecanoe." The alternative proposed rule proposes to protect an area out to 500 feet in the "between the lakes area" and generally follows the five foot depth contour line to 200 feet at the south end of the zone. Flatt said it is staff's opinion that the alternative proposal would address resource protection and boater safety issues, while substantially reducing the amount of the Flats area restricted to high-speed boating.

John Davis asked Flatt if staff recommended the second alternative rule. He replied, "Well, I guess we're offering both alternatives since our recommendation was the first

alternative during the first Commission meeting. After the discussion, we're offering a second alternative that we think will work also."

Commission Member, Thomas Easterly, asked, "On the south side, do we have the floating mat of vegetation that we talked about last time that we're trying to protect?" Flatt said that "the large peninsula is all a floating mat bog." Easterly continued, "So, with the second alternative, we're getting high-speed boats a lot closer to that floating mat, which was our original problem." Flatt replied, "Towards the Grassy Creek area to the south end of that area, yes."

Flatt said that the second alternative would make "the whole ecozone comply with two principles." (1) It would extend the same environmental protection of the 200 foot zone that applies to the rest of the lake, to the perceived shoreline. (2) It would protect water levels five feet or less. "That's the two principles that seem to be fairly understood by all the proponents and the opponents to this rule."

Commission Member, Doug Grant, asked if the 200-foot zones were strictly idle zone. Flatt answered in the affirmative. Grant asked if the "sunset" provision applied to both alternatives. Flatt replied, "Correct".

Commission Member, Larry Klein, asked Flatt for clarification regarding the "sunset" provision. Flatt said the proponents prefer the "sunset" provision so the Department would document and validate that "the ecozone is accomplishing its intended purpose". Klein asked whether during the five-year period there would be empirical data collection taken to verify the success of the ecozone. Flatt said, "That's one of the things we'll have to be working on, yes."

Mark Ennis, Vice President of Lake Tippecanoe Property Owner's Association (LTPO), addressed the Commission. Ennis said he was not present at the January Commission meeting due to inclement weather. "Judging by the minutes, my prepared remarks were properly presented by David Swart, President of LTPO." Ennis said that after reviewing the updated analysis, "staff has done a wonderful job of presenting all the aspects of the proposed ecozone. The statement of the main ecological reason for the ecozone being to protect the Ball Wetlands from further decline is a powerful statement. I would hope the opponents of the proposed ecozone will realize that LTPO's intent is to improve the water quality in our public freshwater lakes, while allowing the public to enjoy them in a safe and prudent manner." He added, "LTPO continues to focus on all available avenues to improve water quality on lakes. LTPO believes our lakes will be enhanced for future generations."

Ennis said that LTPO is "grateful" for being the beneficiary of a 2008 Lake and River Enhancement Aquatic Management grant that will help monitor aquatic and emergent vegetation of proposed ecozone areas. "Perhaps that will answer one of the questions somebody brought about how are we going to take a look at whether this is succeeding or not." He said he was "reluctant" to support Alternative 2. My "personal boating experience" suggests that Alternative 1 is more appropriate for boats exiting Grassy

Creek. “By instituting this alternative, greater resource protection will be provided. Reductions of ecozone areas are easier to accomplish than expansion, if necessary, in the future.” Ennis thanked the Commission for allowing him to “participate in the process that will benefit our public freshwater lakes today and in the future, while providing an environment that is safe, as well as enhanced.”

Vice Chair Jane Ann Stautz asked Ennis for further explanation as to why Alternative 1 would provide more ease for exiting Grassy Creek.

Ennis responded that because Grassy Creek was a smaller body of water, “a boat has to be well beyond 200 feet to avoid disturbance of sediment from the prop. I know there are contour zones on the map, but it’s quite possible that maybe that isn’t as updated as it could be. I would prefer us to have a larger area. If we find that’s not necessary, I think it’s always easier to reduce the area than it is to expand it at a future date.”

Vice Chair Stautz said, “Help me with the depth of water when you put the prop down. I mean, coming through and without stirring up sediment; what would you say is the appropriate depth then? Because, it’s generally five feet coming out of there.”

Ennis reiterated that from his “personal experience” it was necessary to go “well beyond 200 feet” from the exit point, before the boat prop would not disturb sediment. “That’s with a smaller 16-foot boat, with the prop up. That’s about as far as it can go.”

David Swart, President of Lake Tippecanoe Property Owner’s Association, addressed the Commission. He said he supported Alternative 1. “We need as much area on an ecozone of 500 feet to do as much filtering of sediment as we possibly can. It has also been my experience, being an avid boater on Lake Tippecanoe, that having a zone at 200 feet, the skiers will be within 60 to 70 feet of that 200-foot line, skiing out to the buoyed area. We will have a difficult time, if not impossible time potentially, of re-establishing any type of vegetation or establishing core vegetation in that particular area.”

Lyn Crighton, a resident of Lake Tippecanoe, addressed the Commission. She said she was representing herself as an individual who “enjoys these lakes immensely” and hoped that her children and grandchildren would also enjoy the same or improved water quality on the lakes. She said the “wetlands” are among the few remaining natural areas left on Lake Tippecanoe and James Lake. The Lake and River Enhancement grant will fund surveys for the vegetation and provide the empirical data collection for the ecozone area. She said Alternative 2 would be more palpable for the opponents, but she agreed the expansion of an ecozone would be “much more difficult” than a reduction of the ecozone.

The Chair asked Crighton if she preferred Alternative 1. Crighton responded that Alternative 1 would provide better protection for the wetland area. “Even though, in terms of the public hearings that will take place, I think Alternative 2 might be easier to get through, I don’t think it’s the best for our natural resource protection.”

The Chair asked Steve Lucas to outline the Commission's options. Lucas responded the Commission has three different options. The Commission could (1) give preliminary adoption to Alternative 1; (2) give preliminary adoption to Alternative 2; or, (3) decline to give preliminary adoption. "If you give preliminary adoption, either with Alternative 1 or Alternative 2, our office will conduct the hearing process and come back to the Commission subsequent to the completion of the hearing process."

Vice Chair Stautz asked Lucas if there were preliminary adoption of either Alternative 1 or Alternative 2, and as a result of the hearing process, the Commission determined it wished to reduce or to increase the ecozone distance, would that be an unacceptable "material" change?

Lucas replied that "ultimately the answer would rest with the Attorney General's Office. I think that you could make a plausible argument that the modification either way would be a logical outgrowth. The Attorney General might not agree."

John Davis asked Lucas, "Does it help the analysis to have had this discussion today during what might be preliminary adoption?" Lucas replied, "I'm not sure."

Mark Ahearn added, "I would suggest to Steve's point regarding the three options, this body should do the one it most wants, and see what happens after that." Lucas agreed, "The Commission makes policy. That's what it does."

Commission Member, Doug Grant asked if the primary objection to the ecozone was that it would reduce the area available for boating and water skiing.

Ennis replied, "I would say that to be the case. We have some individuals that believe it is their lake to use as they see fit. However, I think that staff has pointed out that these are public freshwater lakes, and there is no right for individuals to do so."

Vice Chair Stautz asked Flatt to explain why "200 feet on one side and 500 feet on the other."

Flatt reflected that on the Tippecanoe side (500 foot zone) the water is shallower. The aerial photographs reveal "substantial erosion" of vegetation of the Tippecanoe side of the Ball Wetlands. "That's where we have the greatest likelihood of more continued damage but also have the greatest likelihood of being able to restore the vegetation."

Commission Member, Damian Schmelz moved to adopt Tom Flatt's recommendation.

Lucas said there needed to be clarification whether Flatt's recommendation was Alternative 1 or Alternative 2.

Schmelz asked Flatt if his recommendation was to adopt Alternative 2.

Flatt replied, “I guess I can speak personally. We received a lot of correspondence. Some of the people, who were here last time and spoke, are not here this time to express their opposition to the zone. Lynn is correct there that I believe the pathway would be much easier with the second alternative. Yes, I think we are giving up some ecological protection, but it’s hard to quantify what that will be. The fact we have a ‘sunset’ provision in there, also works both ways. It allows us to measure that and increase the zone five years from now. I think we can more easily establish this, because I think it just takes away a lot of the opposition to the rule by going with the second alternative.”

Chairman Poynter explained that the Commission would preliminarily adopt Alternative 1 or Alternative 2. “Not to put words in your mouth, but I think the motion on the table is to preliminarily adopt this report with Alternative 2.”

Commission member Larry Klein summarized what he understood to be the challenges from the remonstrators: “Why 500 feet? Why not 300? Why 200? Why not 350? And you were identifying lake contours—bottom profile that was being utilized as a reasonable set-back. If that line is changed or if it changes as it follows the wetland, maybe rather than imposing a hard, ‘it’s got to be 250’, if it could follow a contour line that is agreeably situated, it would resolve the arbitrariness of 500 feet versus 300 feet, particularly coming out of Grassy Creek. You just had somebody suggest that coming out of Grassy Creek is probably not that deep for quite a while. So, maybe a bottom profile would be better. I don’t know if it’s technically better, but protecting off of profiles that exist out there as opposed to arbitrary lines drawn on a piece of paper, may be beneficial to everybody.”

Grant stated that he wasn’t sure the bottom creates a regular profile “as smooth as you’d like it to be.”

Klein said, “But, out of the entrance of Grassy Creek it would. And, that’s the complaint.”

Grant suggested the 5-foot contour was important, and he urged the “research of down thrust of five or six feet is not appropriate and not protective for the way boats are running today. Particular in the last five or six years, where they’re all into weight boarding and putting 800-pound collars around the back of the boats. You can see line after line in these lakes that were not there five or six years ago. So, I hate to see us get caught up with something magic about five feet.”

Ahearn reflected, “Aren’t we to a certain extent, speculating on a marginal benefit between the difference of the 200-foot and 500-foot part, which is why, I assume, why we built in the ‘sunset’ provision? It really keeps the pressure and the burden on everybody to analyze and make some kind of determination five years hence. There are some things we simply aren’t going to learn today.”

The Chair commented, “Right.” He then stated there was a motion to preliminary adopt Alternative 2, and asked if there was a second motion.

Vice Chair Stautz seconded the motion to preliminarily adopt Alternative 2 of the proposed rule amendments to establish the Tippecanoe Lake-James Lake ecozone.

Grant asked if the only way to “get to” Alternative 1 was to vote Alternative 2 down.

Lucas responded, “That’s the simplest way.”

Ahearn added, “Or you could amend it.”

Lucas continued, “Yes, you could amend it.”

The Chair then called for a vote by a show of hands. Five persons voted in favor of the motion applying Alternative 2.

Lucas reflected, “That’s not enough to pass. Seven votes are needed.”

Grant moved to preliminary adopt the proposed rule amendments to establish the Tippecanoe Lake–James Lake ecozone, applying Alternative 1. Larry Klein seconded the motion.

Chairman Poynter again called for a vote by a show of hands. The Chair observed eight affirmative votes and declared the motion passed.

Mark Ennis asked for clarification with regard to the public hearing process.

Stephen Lucas responded that the rule draft, along with the fiscal analysis, would be sent to the Office of Management and Budget (OMB). A public hearing would be set in Kosciusko County approximately a month or a month-and-a-half after receiving OMB approval.

The Chair thanked everyone for the comments, opinions and representation on this item. “We appreciate it very much.”

DIVISION OF NATURE PRESERVES

Consideration of the Dedication of Mayme Hinton Glade Nature Preserve, Harrison County

John Bacone, Director of the Division of Nature Preserves, presented this item. He said the Mayme Hinton Glade Nature Preserve was given to The Nature Conservancy by the family of the late Brent and Julia Martin. He said the tract contains high quality limestone glades which are natural forest openings found in southern Indiana. “It is full of rare species.”

Bacone recommend the dedication of the Mayme Hinton Glade Nature Preserve.

Damian Schmelz moved to approve the dedication of the Mayme Hinton Glade Nature Preserve in Harrison County. Mark Ahearn seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF INDIANA STATE MUSEUM AND HISTORIC SITES

Traci Cromwell, Cultural Collections Manager for Indiana State Museums and Historic Sites, presented this item. She said most of the artifacts on the list are from the New Harmony Historic Site. The site is being recoded, and “many of the pieces in the collection either do not fit the current interpretation are in poor condition and not needed at other historic sites.”

Doug Grant asked if there was “a different procedure for any items considered very valuable.” Cromwell responded curators place a value on all the items before sending them to “special sale”. If an item is marked as a “high-dollar” item, it is sent through auction “in a different manner.”

Grant asked for the definition of “no provenance”. Cromwell responded “no provenance” means an item has no documented history. “Many of the museum artifacts have to possess Indiana history so they can be used to interpret the history of Indiana through our exhibits or programs.”

Doug Grant moved to approve the deaccession of items from the collections of the Indiana State Museum as recommended by the Indiana State Museum and Historic Sites and by the Board of Trustees. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF ENTOMOLOGY AND PLANT PATHOLOGY

Information Item: Invasive Species Task Force update

Philip T. Marshall, Director of the Division of Entomology and Plant Pathology, presented this item. He reported that following the recommendations of the Natural Resources Study Committee, the 2007 Indiana General Assembly created the Invasive Species Task Force. The purpose of the Task Force is to report on invasive species in Indiana, describing their economic and environmental impacts, and providing recommendations for prevention, early detection, and management to the Natural Resources Study Committee. Marshall said the Task Force is to report by June 30, 2008.

NRC, DIVISION OF HEARINGS

Consideration of Report of Public Hearing and Consideration for Final Adoption of “Marina” Definitions on Public Waters; LSA #07-646(F); Administrative Cause No. 07-076W

Steve Lucas, Hearing Officer, presented this item. He said the recommended final adoption “would pull back a little bit” what is covered by the definition of “marina” for a public freshwater lake, navigable water, or a DNR reservoir. Lucas said, “As you have seen from the report, this subject has a long painful history within the Commission and the AOPA Committee.”

Vice Chair Jane Ann Stautz moved to approve the final adoption of “marina” definitions on public waters. Mark Ahearn seconded the motion. Upon a voice vote, the motion carried.

The Chair thanked everyone for all their hard work regarding this item.

Consideration of Report of Public Hearing and Comments, and Recommendation for Final Adoption of Amendments to Fish and Wildlife Rules (312 IAC 9) Governing Furbearing Mammals; LSA #07-659(F); Administrative Cause No. 07-164W

Sandra Jensen, Hearing Officer, presented this item. Jensen said the rule amendments would add a hunting season and extends the trapping season for striped skunks and eliminates possession restrictions contained within species specific rules in favor of placing the same possession restrictions into one added rule for clarity purposes. The amendments would clarify lawful methods of taking wild animals and requirements associated with nuisance wild animal control permits. Jensen stated the Commission granted preliminary adoption to this package on September 18, 2007. Since that time, the Division of Hearings has fulfilled all the statutory rule adoption processes and held a public hearing on February 26, 2008.

Jensen said that following the considerations of all the public comments, the Department has offered its concurrence with revisions offered by public comments. The first revision is to 312 IAC 9-3-18(b) and (e) with the same revisions to 312 IAC 9-10-11(g). She said the revisions are not “intended to make any substantive changes of any significant nature” but are included for clarity. She said the other “significant revision” is 312 IAC 9-10-11(h) which would allow a person twelve hours to remove an animal from a trap once the animal is discovered. The original language required the animal be removed on the same day. There was concern that if the animal were found in a trap in the evening hours, there might not be an opportunity to remove the animal on the same day before midnight. The idea was that twelve hours, in some cases, might be shorter than the 24-hour period originally allowed, and the revision improves the ability to comply.

Jensen said there were comments regarding provisions, which restrict trappers to holding furs for 20 days, because they can deny trappers favorable market conditions. “In this

particular context, it wasn't the time period that was being modified; it was simply being removed from those species for specific rules and placed into the one individual rule. Changing that timeframe in the context of this rule package might well be beyond the scope of the rule as originally proposed."

Jensen then offered the report of public hearing and comments, with the revised language, for consideration as to final adoption.

Chris Hemphill, President for the Indiana Chapter of Nuisance Wildlife Controllers and Operators, addressed the Commission. "I do want the Commission to know that we have a few things we still feel that we need to work out with some rule changes, mostly just clarifications. As a whole, I think we're pretty confident on what has been submitted."

Tim Rose, State Organizer for Fur Takers of America, also addressed the Commission. He said his organization "positively approves of the extension of the skunk season to coincide with the coyote season." He added, "We are also in support of the new proposed language proposed regarding trap size. We think it will be the language for many many years to come." Lastly, he referenced 312 IAC 9-3-14.5 regarding possession of hides. He said his organization not opposed to the current rule, "but we are saying that we would like to start talks with the DNR on possession of hides, in a fashion that would help the trapper and the DNR monitor successfully."

The Chair asked Rose, "So, you would like to do that in a subsequent rule package?" Rose replied, "Right." The Chair said, "It's my understanding that there's been quite a bit of collaboration in working together with the Department with Linnea and others on this whole thing to come to some resolution. I appreciate everybody working together on that."

Larry Klein questioned how long fur-buyers were allowed to hold furs. "The trapper can hold it 20 days after season, but do you have to be licensed as a licensed fur-buyer?" Rose responded a licensed fur-buyer can hold fur all year long. "Fur buyers have to purchase the \$75 license, as well as report the number of hides they possess."

Linnea Petercheff confirmed that hides can be possessed year round with a fur buyer license, as long as the license holder submits reports in a timely manner.

Klein said, "So a trapper could buy a fur buyer's license and hold the hides all year round." Petercheff replied, "That's correct."

Robert Wright moved to approve for final adoption amendments to the fish and wildlife rules governing furbearing mammals as recommended by the hearing officer. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

Consideration of Report of Public Hearing and Comments, and Recommendation for Final Adoption of Amendments to Miscellaneous Fish and Wildlife rules and dog training grounds; LSA #07-735(F); Administrative Cause No. 07-172D

Sandra Jensen, Hearing Officer, also presented this item. She said this “miscellaneous package of fish and wildlife rules” involved amendments to allow the trapping of European wall lizards at the Falls of the Ohio State Park by qualified individuals and to extend the validity of a turtle possession permit from one to three years. The amendments would also remove the bald eagle from the endangered species list and address requirements for the possession and sale of mute swans. “Those matters did not receive any public comments.” Jensen said that the amendments associated with dog training ground permits did receive comments.

Jensen said many of the comments related to the dog training ground permit rule were beyond the scope of the proposed amendments. Two items received public comments that were not beyond the scope of the proposed rule.

Jensen said one item related to the prohibition on the possession of birds longer than five days. The comments resulted in a slight revision to the published rule language to clarify no new restriction results from the proposed amendments. “What it is, basically, is to correlate this rule with a statute that already prohibits the possession of those birds any longer than five days, unless the person obtains a game-breeder’s license.” She said the DNR was trying to highlight the existing statutory restriction.

Jensen said the other item involved the proposed elimination of any commercial activity on a dog training ground. “I think the purpose of that originally was to avoid the use of the dog training ground under the permit as a shooting preserve, which requires a different type of permit altogether.” She said that the Department has offered a revision that would allow for the commercial training of dogs, but still prohibits and makes clear the prohibition on the use of the dog training ground as a shooting preserve.

Jensen recommended the final adoption of amendments to miscellaneous fish and wildlife rules and dog training grounds, as revised and indicated in her report.

Damian Schmelz moved to approval final adoption of amendments to miscellaneous fish and wildlife rules and dog training grounds, as revised by and described in the hearing officer report. Thomas Easterly seconded the motion. Upon a voice vote, the motion carried.

Consideration of Report of Public Hearing and Consideration for Final Adoption of Removal of Internal Sunset Provision of Lake Manitou “Prairie” Special Watercraft Rule; LSA Document #07-822(F); Administrative Cause No. 07-173D

Stephen Lucas, Hearing Officer, presented this item. He said the proposal needed to be discussed in two layers.

The “first layer of discussion” is that the rule has progressed at a pace where it can now only be approved if both the Attorney General and the Governor grant approvals in markedly shorter periods than authorized by statute. The DNR would have request special assistance, and the Attorney General and the Governor would both have to accommodate the requests. He said he had received unofficial comments from staff within the Division of Fish and Wildlife which suggested the DNR was unlikely to request special assistance for a rule having such localized consequence.

He said the second layer is that he held a public hearing in Rochester attended by eight local citizens, including Mayor Smiley of Rochester. While the citizens were generally supportive of the proposal, they pressed questions and concerns as set forth in the hearing officer report. One of the prominent concerns was with whether the DNR would make efforts to revegetate the Prairie wetland as local citizens believe was originally committed. The second was whether the configuration of the special boating zone would pose dangerous traffic congestion along one edge of the zone, particularly when the public access at Lake Manitou is reopened following the completion of herbicide applications directed to a Hydrilla infestation.

Mark Ahearn asked Lucas if final adoption with quick turn around would give the Attorney General’s Office and Governor’s Office “essentially twelve days.” Lucas replied, “Basically, that’s right.” Ahearn commented that if the rule was not adopted would the section of law “simply expire.” Lucas replied, “Correct.” Ahearn asked, “There are temporary rules that would govern?” Lucas replied, “The Director has previously adopted temporary watercraft rules.”

Doug Grant moved to withdraw, from consideration for final adoption, the proposal to remove the internal “sunset” provision in the Lake Manitou “Prairie” special watercraft rule. Mark Ahearn seconded the motion. Upon a voice vote, the motion carried.

Consideration of Report of Public Hearing, Analysis, and Recommendation for Final Adoption of Rule Amendment to 312 IAC 18-3-12, Governing Standards for Control of the Larger Pine Sheet Beetle, adding Switzerland County to the Quarantine Area; LSA Document #07-595(F); Administrative Cause No. 07-193F

Jennifer Kane, Hearing Officer, presented this item. She explained that the pine shoot beetle rule amendment would remove Switzerland County from the exempted county list and be added to the quarantine area. Kane recommended final adoption of rule amendment adding Switzerland County to the quarantine area.

Damian Schmelz moved to approve the final adoption of amendment to 312 IAC 18-3-12, governing standards for control of the larger pine shoot beetle, adding Switzerland County to the quarantine area. Thomas Easterly seconded the motion. Upon a voice vote, the motion carried.

Consideration of Amendments to Nonrule Policy Document for Conservancy Districts to Address Contiguity and Other Matters; Administrative Cause No. 08-033W

Steve Lucas, Director of the NRC's Division of Hearings, presented this item. He said the amendments proposed to the nonrule policy document for conservancy districts were being presented in tandem with the education presentation by Sandra Jensen that opened the meeting.

Lucas indicated the most notable amendments are directed to the "contiguous" requirement of IC 14-33-3-1. This issue is addressed in the existing nonrule policy document but has long been a source of uncertainty in the review process for proposed conservancy districts. In *Crist v. South-West Lake Maxinkuckee Conservancy District* decided last year by the Court of Appeals of Indiana, the Commission's practice has been effectively upheld. In addition, the Court provided helpful new language which would be incorporated into the nonrule policy document. As added to Part IIB, to help assure contiguousness, the commission would "seek to prevent the formation of a conservancy district which is comprised of unrelated, unconnected parcels of land. Property to be included in the district must properly be related to a purpose for which the district is being established in both general nature and proximity."

Lucas said a second amendment derived from the *Crist* decision was centered on the role of the Commission when considering a petition to form or to dissolve a conservancy district during a regular monthly meeting. The decision refers to this stage as one of two agency hearings, the other hearing being the one conducted by the NRC's hearing officer in the community where the district would be or is located. Based upon the reference, language is proposed to be added to the nonrule policy document as follows:

During the public meeting, the commission may also receive additional information. If newly-discovered information is offered that could not reasonably have been offered before preparation of the recommended report, and the newly-discovered information significantly refutes any of the findings in the technical review, the commission may remand the matter to the hearing officer for further proceedings.

He said the hope was to invest the Court's contribution, but to minimize the likelihood participants in the hearing process would be blind-sided by a last-stage surprise.

Lucas said the other amendments were mostly technical and intended to apply lessons learned from the use of the nonrule policy document and its predecessors during the past twelve years. One worthy of comment is that a greater comfort level has been secured for the application, or more often the non-application, of IC 4-21.5 (sometimes called the "Administrative Orders and Procedures Act" or "AOPA") to the Commission's functions under the Conservancy District Act. With this comfort level, aspects of AOPA have been deemphasized.

Jonathan Bryant, an attorney with Sommer & Barnard, addressed the Commission on behalf of the Association of Indiana Conservancy Districts. He said the Association had concerns with the proposed amendment, based upon the *Crist* case, pertaining to new issues presented to the Commission during its meeting and not previously addressed in the hearing conducted in the county of a proposed district. The Association was concerned that “maybe a couple of well-funded remonstrators could indefinitely extend the period of the Commission’s consideration.” Bryant said that after hearing Sandra Jensen’s presentation, comments from Commission members, and the recommendations by Steve Lucas, he believed the Association’s concerns were adequately addressed. The Commission would consider remand only where there was newly-discovered information that could not reasonably have been offered previously, and the newly-discovered information would significantly refute a recommended finding by the hearing officer. Bryant said he thought the Commission probably had the legal discretion to order a remand in these limited circumstances.

Thomas Easterly moved to approve the amendments to the nonrule policy document for conservancy districts to address contiguity and other matters. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

ADJOURNMENT

The meeting was adjourned at approximately 11:55 p.m., EST.

NEXT MEETING DATE

The next meeting of the Natural Resources Commission is scheduled for May 21, 2008 at 2:00 p.m., EDT (1:00 p.m., CDT) Canyon Inn, McCormick’s Creek State Park, Spencer, Indiana.