

NATURAL RESOURCES COMMISSION

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

Minutes of September 16, 2008

MEMBERS PRESENT

Bryan Poynter, Chair
Jane Ann Stautz, Vice Chair
Robert Carter, Jr., Secretary
Mark Ahearn
Phil French
Brian Blackford
Robert Wright
Thomas Easterly
Damian Schmelz

NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas
Sandra Jensen
Jennifer Kane

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Ron McAhron	Executive Office
Chris Smith	Executive Office
Phil Marshall	Entomology and Plant Pathology
Megan Abraham	Entomology and Plant Pathology
Linnea Petercheff	Fish and Wildlife
Tom Flatt	Fish and Wildlife
Bill James	Fish and Wildlife
Robert Ackerson	Fish and Wildlife
Wayne Bivans	Fish and Wildlife
Mark Reiter	Fish and Wildlife
Cheryl Hampton	Human Resources
Jeff Bird	Human Resources
Kimberly Hiser-Weaver	Human Resources
Felix Hensley	Law Enforcement
David Windsor	Law Enforcement
John Bacone	Nature Preserves
Kathleen McLary	Museum and Historic Sites
Katherine Gould	Museum and Historic Sites
Jim Hebenstreit	Water
Ken Smith	Water
Traci Powell	Water
James Roach	State Parks and Reservoirs
John Bergman	State Parks and Reservoirs

Gary Miller	State Parks and Reservoirs
Steve Lemen	State Parks and Reservoirs
Nick Heinzelman	Land Acquisition
Bourke Patton	Natural Resources Foundation

GUESTS PRESENT

Jeff Duher	Edward Kopecky	Kent Reineking
Gary Ramage	Dick Mercier	Kevin Murphy
John Goss	Paul Wood	Grover Sefton
Dean Farr		

Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 10:00 a.m., EDT, on September 16, 2008 at The Garrison, Fort Harrison State Park, 6002 North Post Road, Indianapolis, Indiana. With the presence of nine members, the Chair observed a quorum.

Jane Stautz moved to approve the minutes of July 15, 2008. Robert Wright seconded the motion. Upon a voice vote, the motion carried.

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

Director, Robert Carter, Jr., gave his report. He announced that Chris Smith has replaced Ryan Hoff as the Department's Legislative Liaison. "We expect a lot out of Chris. It's a tough job and fast paced." Smith said, "I'm excited to jump right on in." The Director said Smith has dealt with constituent service for the past couple years and recently worked for the Division of Law Enforcement. "He's been a pretty busy young man. He's got some challenges ahead and he's going to try to meet with as many legislators as he can."

The Director said the Department is dealing with the aftermath of the recent floods resulting from Hurricane Ike, which "hit the state of Indiana pretty hard not only in our parks. We had one fatality in Versailles State Park where a tree fell on a person." He said "a lot" of trees were down in the parks and power outages occurred across portions of the state. "We had saw crews from Division of Forestry all over the place, but mainly in Jefferson and Lake Counties." He said the Conservation Officers have "stepped up" and are providing relief efforts. "All Divisions are very busy right now."

The Director said preparations are being made for the next biennial budget. "Like many other units of government we have a lot of challenges with revenue shortfalls." The Chair said, "Everybody is doing the best they can, and I'm sure that [Director Carter] will show great leadership through that."

The Director noted that he recently met with the Indiana Court of Appeals, Chief Judge John Baker. The Director said Chief Judge Baker was "very complimentary" of the Commission's Administrative Law Judges. The Director relayed Chief Judge Baker's

comments, saying “Steve Lucas is one of the best [administrative law judge] he has ever seen.” The Chair “seconded” Chief Judge Baker’s compliments and extended compliments to Administrative Law Judge Jensen and the rest of the Division of Hearings staff “that do a great job. We rely on them.”

The Chair said that John Davis, Deputy Director for the Bureau of Lands, Recreation and Cultural Resources, was not present due to family obligations.

Ron McAhrn, Deputy Director, Bureau of Resource Regulation gave his report. He said the Division of Water is involved with the Hurricane Ike flood event “taking measurements of high water marks.” McAhrn said that Department staff had an opportunity to be involved with IDEM in a seminar addressing carbon sequestration.

The Chair noted that Patrick Early, Chair of the Advisory Council, was not present. The Chair said several agenda items considered by the Council were on today’s agenda.

The Chair complimented the Department on the “fantastic” Indiana State Fair. “I know that’s the work of dozens and dozens of volunteers and Department staff. I was out there four or five different times and the [Department] pavilion was full. There was a very diverse amount of activities going on. Good work.”

CHAIR AND VICE CHAIR

Report of the Fish & Wildlife Rules Steering Committee

The Chair introduced this item. He said that this past summer a Fish and Wildlife Rules Steering Committee was formed to review the rules and regulations governing fish and wildlife. He thanked committee members Patrick Early, Phil French, John Davis, John Goss, Col. Mike Crider, and Sandra Jensen for their time. The Chair then introduced Sandra Jensen and asked her to present the Committee’s report.

Sandra Jensen, Administrative Law Judge for the Commission’s Division of Hearings, explained that the Steering Committee’s objective was to “set up a blueprint on how [the rule review project] should go forward.” She said the Steering Committee is conducting a “comprehensive review and enhancement” of fish and wildlife rules, and has recommended the project be divided into four stages. “A primary focus is to make certain that all throughout the process is that public involvement is facilitated”.

Jensen said the first stage, which was initiated in August with the initial publication of Notice of Intent to Readopt a Rule, is the re Adoption of the rules (312 IAC 9) without amendments to the existing language. The second stage is the proposal of non-substantive clarification or “cleanup” amendments intended to “correct errors that exist and improve clarity by reformatting existing language and making language changes where necessary.” Jensen explained that this stage is “expected to improve

enforceability” for the Division of Law Enforcement as well as “enhance the public’s ability to understand and basically make these rules more readable.”

Jensen said stage two will occur in three separate rule proposals, with proposals submitted to the Commission for preliminary adoption in January, March, and May 2009. She said it is intended that these rule proposals would make “very few” substantive amendments. “There may be some very minimal substantive amendments that will have very minimal impact” that will be highlighted for public awareness.

Jensen explained that stage three would involve consideration of substantive amendments and would allow “extensive” public input. “The public has very good ideas about enhancing hunting opportunities or improving processes relative to licenses” and the Steering Committee “wants to tap that”. Jensen said this stage will begin with an internet-based suggestion form to be available for a period of four months that is hoped to be available in October and accessible from the Web pages of Division of Fish and Wildlife and the Commission. She said the comments and suggestions will be sorted and evaluated on their merit by a workgroup with participation of the Natural Resources Advisory Council, the Division of Fish and Wildlife and the Division of Law Enforcement. “The Advisory Council would then offer its report to the Commission along with a recommendation for further action on those suggestions deemed meritorious.” Jensen noted that portions of stage three will occur concurrently with stage two’s amendment packages, but that substantive amendments would not be presented to the Commission until early 2010.

Jensen said the fourth stage of the project is a “space holder. The idea is we may receive suggestions that would require statutory amendments.”

Jane Stautz complimented the Steering Committee for its work and “strategy and approach to not only ensure that there are ongoing regulations in place, but then also the participation of the public.” She asked whether there were plans for “bench marking” what other states’ equivalent natural resources agencies relating to hunting and fishing regulations, recommendations or trends occurring in the Midwest and nationally. Jensen said there has been communication with other states, but “not necessarily along that line.” She said “probably” during stage three evaluations of suggestions the Advisory Council and the Department “might very well” consider other states’ regulations.

Phil French, Commission member, said that Col. Mike Crider is “actually trying to sort some sort of commonality. The first step—Are we re-creating the wheel? Secondly, are there any trends? [Crider’s] last report at our last meeting was [Indiana] was actually ahead.” The Chair said, “It’s safe to say that there are a lot of eyes around the country on us...This is big.” He said the strategy set by the Steering Committee is one that “I believe will put Indiana as a leader in this type of a process” and will provide for “unprecedented” public input.

DNR, EXECUTIVE OFFICE

Consideration and identification of any topic appropriate for referral to the Natural Resources Advisory Council

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

INDIANA HERITAGE TRUST

Information Item: Indiana Heritage Trust and Foundation

This Chair reported this item tabled.

PERSONNEL ACTION

Consideration of personnel interview for the position of Historic Curator at Gene Stratton Porter State Historic Site, Rome City, Indiana

Kathleen McLary, Executive Vice President of Division of Museum and Historic Sites, presented this item. She recommended David Fox for the position of Historic Curator at Gene Stratton Porter Historic Site. McLary said Fox is a graduate of Ball State University, a native Hoosier, has been with the division for five years in the performing arts and education section, coordinator for visitors and programs. She said he is a naturalist and a photographer, and “if you know anything about Gene Stratton Porter, that’s right up her line.” She concluded, “We are very pleased that we have someone within the division that we can recommend for this position.”

David Fox said that he has had a “lifelong love of nature and has a Fine Arts Photography Degree. It just seemed like a match made in Heaven.” The Chair said, “Your resume is quite impressive. It’s always nice to take one ‘home grown’ if you will.”

Thomas Easterly moved to approve David Fox for the position of Historic Curator at Gene Stratton Porter State Historic Site. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of personnel interview for the position of Assistant Property Manager at Mixsawbah State Fish Hatchery, Walkerton, Indiana

Bill James, Chief of Fishery for Division of Fish and Wildlife, presented this item. He recommended Robert Ackerson for the position of Assistant Property Manager at Mixsawbah State Fish Hatchery. James said the division received 15 applications for this position. “We couldn’t ask for a better candidate.” He said Ackerson is “not new to our

program. He has spent 13 years working for DNR as a hatchery laborer and a hatchery biologist at the Bodine State Fish Hatchery.”

James said fish hatchery is a “specialized field. There are not a lot of qualified candidates to draw from, and we are just very pleased to present for your consideration, Rob Ackerson.” The Chair said, “We wish you well in a very long career.”

Rob Ackerson said that the Mixsawbah State Fish Hatchery is located on the Kingsbury Fish and Wildlife Area and four different strains (three different species) of fish are raised—Chinook salmon, Coho salmon, and two strains of the steelhead trout.”

Mark Ahearn moved to approve Robert Ackerson for the position of Assistant Property Manager at Mixsawbah State Fish Hatchery. Phil French seconded the motion. Upon a voice vote, the motion carried.

INDIANA STATE MUSEUM AND HISTORIC SITES

Consideration of deaccession of items from the collections of the Indiana State Museum

Katherine Gould, Assistant Curator, Museum and Historic Sites and Chair of the Collections Committee, presented this item. She said the Collections Review Committee has approved the deaccession of the artifacts listed. “As an active collecting institution it is necessary at times to permanently remove objects from our collection that are found to be inappropriate.” She said that each object and its associated record have been “thoroughly” researched by the curator before being proposed for deaccession.

Robert Wright 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. Thomas Easterly seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF NATURE PRESERVES

Consideration of the dedication of Dunes Prairie Nature Preserve, Porter County

John Bacone, Director of the Division of Nature Preserves, presented this item. He said the proposed nature preserve is located at the “extreme” western edge of Dunes State Park, which some of the Commission members visited in July’s field trip. “This is a little jewel of a property, because it contains a full array of the natural community types that are found at the Dunes going from the open dune and marram grass dune at the north end on down to the swamp forest in the back.” Bacone said the “very high quality” prairie remnant is the primary feature of the preserve.

Easterly asked, “So is it right by Dune Acres?” Bacone said it is located near Ogden Dunes.

The Chair said on the morning following the July Commission meeting, “we saw a lot of the work, and [John Bacone was] nice enough to give us a tour that day of some of the clearing that has taken place. It’s a neat property.”

Damian Schmelz moved to approve the dedication of Dunes Prairie Nature Preserve, Porter County. Jane Stautz seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF WATER

Consideration of recommendation for preliminary adoption of proposed new rules for prospecting in waterways; Administrative Cause No. 08-105W

The Chair reported this item deferred.

Consideration of proposal for preliminary adoption of new and amended rules to address group piers, riparian zones, and related matters in public freshwater lakes; Administrative Cause No. 08-065W

James Hebenstreit, Assistant Director of the Division of Water, presented this item. He said the rule proposal addresses group piers, riparian zones and other matters on public freshwater lakes. “Back in April, we had a draft rule that dealt with piers on both public freshwater lakes and navigable waterways.” He said the Advisory Council “split” the proposal, and the portion pertaining to navigable waters was subsequently considered within Administrative Cause No. 08-009L.

The portion of the amendments addressing public freshwater lakes was forwarded to the Lakes Management Work Group (the “LMWG”) for further review. Hebenstreit said the LMWG commented on some of the proposed changes, but there are “still other issues under discussion” by the LMWG that will probably come later to the Commission “with additional rules related to piers.”

Hebenstreit said this proposed rule is “our first effort to deal with group piers” in terms of particular substantive standards. With rule amendments effective in 2005, the Commission removed group piers from those temporary piers which qualified for a general license. The result is that a “group pier” is now required to complete full licensure review before placement. Since 2005, “we have struggled to come up with some written standards for how [group pier permits] are reviewed.” The rule proposal is based on the experiences from the last two years in dealing with group piers. “Most of the criteria that are contained in the rule are reflective of the kinds of issues that we’ve seen raised by opponents and proponents of [group] piers.”

Hebenstreit said the proposed amendments would require that the DNR in reviewing license applications to consider the boundaries of a landowner's "riparian zone, which means in many cases we are going to look at the location of the pier relative to the extension of people's property lines." He said the rule reflects the Department would rely on Information Bulletin #56 adopted by the Commission last year.

Hebenstreit said an amendment is also proposed to the definition of "group pier" to add a broader definition of a "club". This amendment would be set forth in 312 IAC 11-2-11.5(9).

Hebenstreit said the addition of 312 IAC 11-4-8 is the "guts" of the rule proposal. This section would list the evaluation criteria for a group pier application. Included are criteria for a mandatory set back of five feet from the extension of the property line, which "we don't currently have," and, additionally, there would be "an indication that we prefer a ten foot setback." Hebenstreit said a restriction is proposed that a group pier could only cover or extend across one-half of the total frontage of the property. He then recommended that preliminary adoption be given to the proposed rule amendments as presented.

Mark Ahearn requested clarification regarding 312 IAC 11-4-8(c)(5). "We are saying that the applicant must demonstrate the license doesn't interfere in the interest of a neighboring landowner. Is the word 'interest' in any way qualified? Is this inviting controversy or litigation or something that ends up in front of the judges? Are we looking for the word 'reasonable'?"

Hebenstreit said, "By their very nature, group piers have a whole package of controversy with them."

Steve Lucas asked, "Would it be helpful to say 'interfere with the *legal* interests'? 'Legal' interest is what I think we were looking for."

Ahearn replied, "I'm not offering a comment. I just don't want it to be an invitation."

Stautz added, "I think 'legal' would be helpful, because otherwise it could apply to a general view or general aesthetics."

Phil French asked about the demographics of group piers, the number of group piers, and the number of slips. "Is that another issue?"

Lucas responded that existing facilities "are already okay under a lawful nonconforming use or what some people might say is 'grandfathered'. There are a whole lot of those out there, but if the owners of group piers modify them then they would come" under this proposed rule. Lucas said that when new rules are written, they are typically "just prospective. So, what's already out there, [the proposed rules] don't directly address."

French asked whether the issue of group piers and the concerns of “funneling” would be addressed. Hebenstreit said that the LMWG has discussed this issue. “Essentially you have people raising the issue of are we exceeding the carrying capacity of a lake.” He explained that the Department, as an entity, opens public access sites on all public freshwater lakes so they’re available to everybody, is a leader in funneling because we started it.” French then asked, “So, we are going to deal with that at a different point? We defined ‘group piers’, but we are going to move along on with densities and all that at a different time?” Hebenstreit answered in the affirmative.

Ahearn asked whether, by the language in the amendments proposed in 312 IAC 11-4-8(d)(1)(B), “we are saying that the Department would be empowered to deny a license application greater than ten feet and less than 20 feet. The language ‘preferred’ is kind of a precatory language concept. Preferred by whom? It is not really language of mandate. It’s not language that grants power.”

Lucas commented, “I think that’s a fair question.” He suggested the structure of the rule language could be modified to address the concern.

Hebenstreit responded, “As I reflected earlier, a lot of this is almost a codification of things that have gone through adjudication, including things that have gone through the AOPA Committee. There were a couple of cases where the conservation officers essentially testified to this kind of language.”

Lucas agreed that the language “doesn’t say it’s a mandate.... Ultimately, it would be up to interpretation. It’s going to be an interpretation by an [administrative law judge], by the AOPA Committee, or by a court.” For the range “between having the full 20 feet of width, as opposed to ten feet of width, you’d be looking to the advice of professionals in the field. I’d think you’d be looking primarily to the advice of...Conservation Officers” regarding safety concerns.

Mark Ahearn noted that he wanted to “make sure” the proposed rule would give the Department the authority that “we think it purports to give.”

Jane Stautz added, “Along those lines, should we have it read ‘a minimum’ instead of ‘preferred’? Would there be any circumstances where we would want less than that?”

Ahearn said, “I think what this means is the minimum is ten. That’s the ‘required’. The Department is entitled to exercise its discretion up to 20 feet.”

French said, “I think the Department leaves itself under a lot of cost and legal research to determine what is the difference between ten and 20.” He added, “Why not just set the number and let someone file a petition to change it.”

Ahearn said the proposed rule contemplates the Department can exercise its discretion between ten feet and 20 feet. As written, the language “doesn’t look like a real grant of authority.”

Lucas said the proposed rule could be restructured in an effort to implement the recommendations by Ahearn and Stautz. He thought these changes would be ones of rule tenor and not intent. "I'd share the restructured wording with them and anyone else on the Commission who wanted, if this approach is acceptable."

The Chair said, "It is." He then called for a motion.

Stautz asked for clarification as to whether the motion would include the suggested amendments. The Chair answered in the affirmative.

Mark Ahearn moved to give preliminary adoption of amendments to rules to address group piers, riparian zones, and related matters on public freshwater lakes with recommended change to 312 IAC 11-4-8(d)(1)(B) to require at least five feet of clearance on both sides of a riparian line, as well as to allow the Department, in its discretion, to require as much as ten feet. In addition, restrictions on impacts to neighboring riparian owners would be limited to their "legal" interests. Phil French seconded the motion. Upon a voice vote, the motion carried.

Consideration for preliminary adoption of amendments to address piers, marinas, lawful nonconforming uses and related matters in navigable waters; Administrative Cause No. 08-009L

James Hebenstreit also presented this item and explained that the proposed rules would govern structures on navigable waterways. He said the proposal addresses concerns that the Division of State Parks and Reservoirs had with the original draft "about how the [proposal] might affect the authority of both State Parks and the Corps to regulate piers. I think now we have worked that out." Hebenstreit said the proposal is the first attempt at drafting rules for piers on navigable waterways. He said the Advisory Council had requested that rules be drafted to "mirror" the public freshwater lakes rules addressing the same subject matter "as much as possible".

Hebenstreit said that 312 IAC 6-1-5 creates a mechanism to establish a lawful nonconforming use to address existing piers that would not conform to the proposed rules. The proposal would allow persons to modify or maintain lawful nonconforming structures and would give the Department authority to "order the removal of a lawful nonconforming use if [the structure] is determined to be a nuisance". A similar provision already exists for public freshwater lakes.

Hebenstreit said the other amendments would mirror "to some extent" the existing rules addressing structures in public freshwater lakes, and they would incorporate concepts though not the exact language of licensure for "group piers" at 312 IAC 6-2-3.7. 312 IAC 6-4-5 would establish a general permit for a pier which is neither more than 100 feet long nor more than one-quarter the width of the navigable waterway. "That's probably an item that will get a lot of testimony, because it was kind of a starting point. We are

not sure what kind of piers we might really have out there on all the navigable waterways.”

Hebenstreit explained that 312 IAC 6-4-5(d) addresses piers placed along or within the ordinary high water mark of listed reservoirs and “makes clear” that the rule proposal applies as well as any other regulations of the Corps or other Department divisions might have on the reservoir.

Stautz said, “I think the same suggestions would apply for this rule as well, as far as a ‘legal interest’ amendment with regard to DNR’s discretion or authority” as approved in the previous agenda item. Ahearn asked for clarification regarding lawful nonconforming uses. “Do we understand that the rule is saying that the structure is (a) a nuisance, and then (b) pose a significant adverse affect to navigability enjoyment, enjoyment of life and property, and public trust? Is it a two-part test before the Director may remove a lawful nonconforming use?” Hebenstreit said, “As I read that, I think that it meant any one of those.” Stautz said, “Yes.”

Ahearn asked, “Can this be read to say that every structure that extends 100 feet is a nuisance?” Hebenstreit answered, “I think it’s safe to say that there are a lot of navigable streams that aren’t 100 feet wide. So, if somebody has a pier that extends across three-quarters of the stream we probably have a hazard of some sort. I think that is what we are trying to catch.” Ahearn said, “I guess I read it as a two-part test. If it is a nuisance, that accomplishes one of the other things. We are saying if it’s 100 feet, by rule, we are declaring that it has a significant adverse affect on navigability.” Lucas noted that this same issue came up regarding structures on public freshwater lakes before the AOPA Committee and gave an example. “If a structure was 110 feet long, then it would be incumbent upon the Department to order removal...and demonstrate that being more than 100 feet long posed, in fact, some nuisance.” Ahearn asked, “So, it is two-prong test?” Lucas answered that was how the AOPA Committee had previously applied the concept.

Mark Ahearn moved to approve for preliminary adoption amendments to address piers, marinas, lawful nonconforming uses and related matters in navigable waters. The motion was with amendments to 312 IAC 6-4-4(b)(6) to reflect the “legal” interests of a neighboring landowner and with amendment to 312 IAC 6-4-4(c)(1)(B) similar to those required by the Commission for public freshwater lakes. Jane Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of recommendation for preliminary adoption of new rules (312 IAC 27) to assist with implementation of the Flood Control Revolving Fund; Administrative Cause No. 08-064A

Ken Smith, Assistant Director of the Division of Water, presented this item. He explained that the rule proposal would assist with implementation of the Flood Control Revolving Fund. The Fund was created by statute in the 1950s, and the statute was significantly amended this year. Smith said the Fund was created to “encourage local

initiatives” to solve local water resource and flooding problems by providing the use of government low-interest loans not to exceed \$300,000 or ten year terms through low 3% interest rates. The Division of Water “has pretty much” coordinated the technical side for review of loan applications, with the State Board of Finance and the Auditor’s Office addressing the “financial side”. With the 2008 statutory amendments, the Department would “handle both the technical and administrative functions”.

Smith said that the proposed rules resulted from discussions with the financial people necessitating adoption of administrative standards for the loan program. In proposed 312 IAC 27-1-2(b), the Commission would delegate its authority to the Director to take action to implement the program. He said the second part of the rule includes definitions, and the third part is “really how we execute and run the Fund.” Smith said 312 IAC 27-3-4 contains priority ratings for applications submitted to the Department. “Basically, it’s on a first-come-first-served basis. But if this fund were to get low on money, there needs to be a priority system to look at applications. We are talking about applications related to emergency situations first, and then repairing existing facilities, and then new construction.” The priority rating would exclude those loan applications requesting funds “basically just as a repayment tool to re-finance existing much higher interest rate loans that communities may already have in place.” The priority rating would, however, be applied to applications received from communities that had acquired, within the last several months, existing higher rate loans to deal with emergency situations. The rule proposal would direct the Department to present the Commission and the Advisory Council with an annual report summarizing the program activities.

Stautz asked whether the State Budget Agency would audit the fund program. “Will the Department have any accountability for auditing of the allocation of the funds?” Smith answered that the “whole process of review was going to be done financially through the Department.” McAhron said, “We will have to go back to the [Office of Management and Budget] with the financial information.”

The Chair asked, “When this proposal moves through the normal rule adoption channel, would that take affect immediately—this program and the transfer to the Department?” Smith responded that the amended statute transferred the program to the Department, and the transfer is already “in place”.

McAhron added that the statutory amendments became effective in March 2008. He said a temporary rule may need to be adopted to “bridge the gap” until the proposed rule becomes effective. McAhron said the revolving loan fund has “lain largely dormant, and I think that is very unfortunate. Now that it’s in a place where we can ‘talk it up’ I think we are going to see more action.”

In response to a question by Phil French, Smith said there are no pending loan applications before the Department. “There are six loans currently in place that are being paid off.” He said since the creation of the fund in the 1950s, the Department has processed 148 loan applications. French asked, “What is the current debt out there with the six loans and how much is in the revolving fund?” Smith said the current loan fund

balance is approximately \$1.6 million with outstanding loans totaling approximately \$640,000 at 3% interest.

The Chair asked, “Is there a general rule of thumb for the average size of these loans, or is that discretion left to the administration by the Department?” Smith responded that the statute established a loan cap of \$300,000. He said the most recent loans of \$100,000 and \$250,000 were given to two conservancy districts to fund dam maintenance.

French asked whether the two conservancy districts also sought Federal funds. “Every dam that we have doesn’t necessarily have federal oversight?” McAhron responded that “very few” dams have Federal oversight, but the state Flood Control Revolving Fund is “more for private entities” to complete maintenance of dams to be consistent with state regulations. Easterly commented, “We have substantial unmet maintenance on these dams around the state, and we saw that during the floods this spring.”

Thomas Easterly moved to give preliminary adoption to 312 IAC 27 to assist with implementation of the Flood Control Revolving Fund. Jane Stautz seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF STATE PARKS AND RESERVOIRS

Consideration of petition by Salt Creek Services, Inc. to amend 312 IAC 8-4-4 governing the maximum number of mooring slips for boats at the group boat dock at Hooks Point, Lake Monroe, and the recommendations by the DNR Committee in response to the petition; Administrative Cause No. 07-214P

Steve Lemen of the Division of State Parks and Reservoirs introduced this item. He said he served as Chair of an informal DNR committee which was appointed by Director Rob Carter to review the petitioner’s request. Other members of the committee were Major Felix Hensley of the Division of Law Enforcement and James Hebenstreit of the Division of Water.

Lemen reported the committee “looked at the petitioner’s request and found that it had more than just one item of interest. There were really three different requests on behalf of the users of Hooks Point (K-17) at Lake Monroe: (1) Protection of the group boat dock from damages caused by waves and ice. “To remedy that, they have requested a breakwater of some sort which includes a wave attenuator on the end dock to take some of the force of the lake.” (2) Provision for a local boat ramp which is easily accessible to Hooks Point. He said there is a ramp on the east side of the lake at Crooked Creek, but siltation in the area makes it “basically unusable for many of our pleasure craft.” Lemen reflected that an effective ramp would benefit not only Hooks Point but also many users from Brown County. (3) Increasing the number of boat moorings from 40 to 55. The sale of these slips would help fund improvements to the Hooks Point group boat dock and would also increase property values.

Lemen said the committee concluded that if the petition were granted, the DNR “would be inundated by realtors, developers, and others around the lake that want to put in slips and enhance the values of their properties. We’re very fortunate at Lake Monroe to have much of the ground that borders the lake in the public sector. It just happens on certain parts of it. This question has come up in the past, and it always has been denied.” He said with the experience of Lake Monroe and similar reservoirs, the U.S. Army Corps determined with subsequent similar projects such as Salamonie Lake and Patoka Lake to retain all the shoreline in the public domain. “The Corps routinely comes back in instances like this and makes statements that they’d like to limit private use around the lake.”

Lemen expressed his appreciation to Edward Kopecky, President of the Board of Salt Creek Services, Inc. which manages the group boat dock, for his courtesy and cooperation. “He is very good to work with at Lake Monroe. When I mentioned chairing this committee to DNR’s Lake Monroe Management, and I asked how the cooperation over the years, it did hold Salt Creek Services and Mr. Kopecky as being one of their better partners on the lake.” In closing, he recognized James Roach, Property Manager for Lake Monroe.

Edward Kopecky, President of Salt Creek Services, addressed the Commission on behalf of the petitioner. He thanked the Commission for the opportunity to speak and said, “I have a passion for Lake Monroe as do the rest of the property owners in our neighborhood.” He said he first became familiar with the lake while collecting data for a Masters Degree in Ecology at Indiana University. He purchased property along the lake 20 years later, and “I’m now in my twelfth year on the Board of Directors of Salt Creek Services and my eighth year as President.”

Kopecky said property owners regularly have asked him why not all are able to own slips. Property owners with slips repeatedly ask how they can protect their property “from storms like [Hurricane] Ike. I got calls the other night from people on the docks during the storm, and it was not a pretty thing. A lot of boats got bashed up, and four of them lost their moorings. It smashed holes in other boats.”

Kopecky said the petitioner had a “two-prong request. We need a breakwater and we need boat slips.” He said the DNR projected a “reasonableness toward our request is what it comes down to. In reading their report, I basically came to the conclusion that there are two reasons that they’re denying it. One is that we’re taking away public space from the general public for boating, swimming, bathing, fishing, and other recreational purposes.” The second reason is “because there has been a precedent set previously in a different case somewhere else” on Lake Monroe. He responded that the additional 15 slips “would take up about 4,000 square feet of water and dock space on the lake. You’ve got a 10,750 acre lake. When you do the math, you end up with a .0009% decrease in the surface of the lake.” Kopecky said Hooks Point was on the east end of the lake where there was “very little boat traffic.” He said the boat launch was so inconvenient as to currently be infeasible. “The only way to get a boat on this part of the lake is with a boat dock.” He said the decision by the administrative law judge was for

the opposite end of the lake which is a “completely different” situation. “I don’t want you guys denying our petition just because someone else said ‘no’ in the past.” He said he believed the fear was if the Salt Creek petition were granted, the Commission and the DNR would be inundated with requests from around the lake. “It’s easiest to just say ‘no’ now, and then you don’t have to worry about it later. I have trouble buying that one.”

Kopecky suggested alternatives to the petition. “If we can get the Army Corps to build us a breakwater, and the DNR to build us a boat ramp a mile-and-a-half away”, we would be satisfied. Another point was that Hooks Point has slips which are not being used, “but the current rulings don’t allow a current owner that’s not using his slips to let somebody else use it for the summer or the season. If we could get full utilization, then probably everybody would be pretty darned happy with 40 slips.”

Chairman Poynter asked, “Are those internal rules for the Association?”

Kopecky responded, “I believe they’re not.”

The Chair then said he had a second person who asked to speak on behalf of the petitioner and called upon Gary Ramage.

Ramage said he would defer his speaking time to Edward Kopecky “because I believe he’s covering all the bases.”

The Chairman then asked Kopecky why there are spaces which were not being used.

Kopecky responded, “Because people who, say, have owned down there for 20 years, several of them are elderly. Their families or part of them are not there anymore.” They may not wish to operate a boat but do wish to retain ownership of their slip because a property with a slip is worth much more than a property without.

Commission Member, Phil French, asked if the slip restrictions were in the Association bylaws.

Kopecky responded they were not.

French asked Steve Lucas if his staff could review the legal basis for the restriction on transfer of usage of the boat slips.

Lucas responded that the issue could be reviewed, but it would be within the jurisdiction of DNR’s legal staff. He deferred to Adam Warnke, Deputy Director, to speak for the Office of Legal Council.

Adam Warnke said he was uncertain of the legal restrictions on the use of the slips, but he or his staff could research the question.

The Chair said he believed the Commission needed additional information to act effectively regarding the petition. He asked for the DNR and Salt Creek Services to continue working together, with Salt Creek Services to provide the agency with documentation on what the right to place slips was based. “Furthermore, I need to understand if there are two more items left out there, regarding the breakwater and the ramp, what are our options?”

Commission Member, Mark Ahearn, said, “I want to be sure we’re not giving to Adam what is an impossible challenge. I think we should be asking him whether there is a statutory or a regulatory reason why all the slips cannot be used. I want to be sure we’re not necessarily asking him to examine all the documents.... We don’t expect [Warnke] to look up the documents that make up the property rights” of the citizens in Hooks Point.

Vice Chair, Jane Stautz, said identifying the property rights of members within the Association should be the responsibility of the Association.

Adam Warnke asked Kopecky to coordinate through Steve Lemen or to communicate directly with Warnke.

Phil French asked if part of the inquiry would be into the feasibility of constructing a new boat ramp. Director Carter responded that “right now, we just don’t have the money” and reflected he did not believe a new boat ramp was a feasible option. The Chair said he understood there were “moving parts”, and aspects of the petition might not be possible. “It might just be a definitive ‘absolutely not’, but I’d still like” to have more information before the Commission makes a decision.

Thomas Easterly moved to table this item until the basis for restrictions on slip usage and other pertinent matters could be clarified. Phil French seconded the motion. On a voice vote, the motion carried.

DIVISION OF LAW ENFORCEMENT

Consideration of citizen petition from Grover Sefton to amend watercraft zones on Laughery Creek in Dearborn County and Ohio County and the recommendations by the DNR Committee in response to the petition; Administrative Cause No. 07-216L

Maj. Felix Hensley from the Division of Law Enforcement presented this item. He explained that Grover Sefton from Aurora, Indiana filed a citizen petition for rule change with the Commission’s Division of Hearings to address “hazardous” conditions within Laughery Creek. Hensley explained that 312 IAC 5-7-10 established two idle zones on Laughery Creek with the first zone starting at the confluence with the Ohio River ending upstream at Old State Road 56 Overpass. “Located in that area is a manmade embayment where a marina is currently located.” He said a “short distance” upstream a second idle zone exists, which also “takes in” a second marina, Holiday Hills Marina. Hensley said that Sefton lives between the two existing idle zones.

Hensley explained that Sefton's complaint was "there is no speed limit" between the idle zones and "there is a lot of traffic coming off the Ohio River." Hensley said Sefton, in preparing his petition, did an "absolutely great job. [Sefton] spent most of the summer documenting things to support" his petition to include the area between the two idle zones creating one idle zone. Hensley said, "There was a lot of erosion and dock damage that the landowners within that short section were incurring because of the high volume" of watercraft operating in the area.

Hensley said he observed the area from land and from the water in order to compare the conditions between the two idle zones with the rest of the stream to see if there was "excessive erosion. What we found was there was." He said the landowners between the two idle zones are "suffering a tremendous amount of loss of land due to erosion because of the wave action caused by the high speeds." Hensley said he met with other landowners in the area and persons at the marinas. "Pretty much everyone was having the same type of problems."

Hensley said the committee established to review Sefton's petition concluded that the petition to create one idle zone was "very reasonable". He said the committee recommends amending 312 IAC 5-7-10 to "simply close the area between the two existing idle zones to create one idle zone." He said, however, the proposed amendment would not change the area of the two existing idle zones, but "simply include the area in between where [Sefton] is a landowner to prevent some of that loss of land due to erosion."

Grover Sefton said he lived in Ohio County and owns three acres, 300 feet of which border Laughery Creek. He said he petitioned for rule change "out of concern with two motives in mind." Sefton said public safety was a concern. "Someone is going to be killed. That creek is not big enough, wide enough, deep enough for the type of recreational boat traffic that is on it right now." He observed that the waves "rolling in on the bank where I am and other people is undercut so severely". Sefton noted that there are stumps and debris in the area causing a safety hazard for skiers and boaters. Sefton said his second concern is the high rate of speed of watercraft through the area. He said the wakes "rolling in are two, three feet high due to just the sheer power and volume of some of these high-powered speed boats."

The Chair said, "I hope this resolution is a good one for you" and "I hope [the rule amendment] resolves the issue." Hensley commented that "Mr. Sefton will definitely see a change" in the conditions with the creation of one idle zone.

Robert Wright moved to give preliminary adoption to amendments to 312 IAC 5-7-10 to establish a revised idle zone on Laughery Creek in Dearborn County and Ohio County. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF FISH AND WILDLIFE

Consideration of petition from Charles V. DiGiovanna to change the Atterbury Shooting Range fees and of the recommendation of the Department of Natural Resources in response to the petition; Administrative Cause Number 08-037D

Steve Lucas introduced this matter. He clarified that a letter referenced in the materials as being dated June 30 was probably sent about July 24, 2008. He said that Dr. DiGiovanna asked him to advise the Commission he was out-of-state and unfortunately unable to attend the meeting. But he wished for the members to consider the matters contained in the petition, with particular reference to the July 24 supplemental letter. Lucas then deferred to Wayne Bivans who served as the chair for this DNR review of a citizen petition.

Wayne Bivans, Wildlife Chief for the Division of Fish and Wildlife, said he was joined in review of the petition by Captain David Windsor of the Division of Law Enforcement. He said the petition contained several items pertaining to management of the year-old shooting range at Atterbury Fish and Wildlife Area.

He said management of the shooting range was based upon “a user pay philosophy.” He said the agency selected a concessionaire with “full responsibility” for managing the facility. “This contract is good through December of 2010,” and any review of facility utilization needed to be considered in the context of the existing contract.

Bivans said he and Capt. Windsor had communications with Dr. DiGiovanna by mail, email and through a meeting. He said DiGiovanna was cordial during the discussions. The substance of DiGiovanna’s petition was set forth in the Commission materials, and his original petition was supplemented by the July letter that Lucas referenced.

Bivans said he did not believe the agency could mandate changes in how the facility was managed by the concessionaire, but that several suggestions could be offered for his consideration. Within this limitation, he recommended the Commission direct the DNR, in consultation with the concessionaire, to:

- (1) Review the policy on organized group usage and possibly offer reduced fees to those groups. Consider the creation of promotional and informational material pertaining to those opportunities, and, if created, to display the material to the public.
- (2) Review the minimum time requirements and consider allowing a minimum one-hour time limit instead of two hours.
- (3) Review the feasibility of creating a non-resident fee.

Bivans suggested, that apart from discussions with the concessionaire, he recommended the Commission direct the DNR to develop a nonrule policy by which the Commission

would exercise oversight for the development of range fees and to provide guidance to concessionaires in setting those fees.

Bivans then introduced Mark Reiter of the Division of Fish and Wildlife who works directly with the concessionaire on a regular basis.

Director Carter asked whether the Division of Fish and Wildlife had an opportunity to discuss with the concessionaire the petition and the committee's recommendations.

Reiter responded that he had done so. Currently, the concessionaire does reduce fees for groups such as the Boy Scouts but "not for me and four of my buddies who come down." He said he was unsure "of what the petitioner was looking for." He said the two-hour minimum was developed based on Division of Fish and Wildlife experience with usage at other shooting ranges. He said there had not been discussions of a non-resident fee.

Thomas Easterly suggested management decisions should be left to the concessionaire. The operator of the business was in a better position to decide what was appropriate than was the agency.

The Chair reflected that the concessionaire performed a valuable service for the public and the agency. He said adjustments could make sense in a future contract, and it was a good idea to begin discussions now on how improvements could be made. He said there was a "delicate balance" between having a good product for our citizens at a state facility while maintaining a fair profit for the concessionaire.

Jane Stautz moved to direct the DNR's Division of Fish and Wildlife to continue its dialogue with the concessionaire for the following purposes:

- (1) Review the policy on organized group usage and clarify circumstances for reduced fees to those groups. Consider the creation of promotional and informational material pertaining to those opportunities and display the material to the public.
- (2) Review the minimum time requirements and consider allowing a minimum one-hour time limit instead of two hours.
- (3) Review the advisability of creating a non-resident fee.

In addition, the DNR should be directed, with consideration given to seeking input from the Advisory Council, to develop a nonrule policy document by which the Commission would help develop formula for approving concepts for range fees and to provide guidance to concessionaires in setting those fees. The nonrule policy document should be presented and approved by the Commission in time for usage with the next contractual cycle at the shooting range at Atterbury Fish and Wildlife Area. Mark Ahearn seconded the motion. On a voice vote, the motion carried with Robert Wright opposed.

Consideration of request for preliminary adoption of amendments to 312 IAC 9-2-3 that govern the sale of parts of wild turkeys and amendments to 312 IAC 9-3-11 that govern the taking of wild turkeys; Administrative Cause No. 08-122D

Linnea Petercheff with the Division of Fish and Wildlife presented this item. She said the rule proposal amends rules governing sale of parts of wild animals to allow individuals, including licensed taxidermists, to sell the heads, feet, skin of wild turkeys. Petercheff said the Association of Indiana Taxidermists “approached” the Department requesting the rule amendment “so that taxidermists could sell [turkey] heads to use for specimens that they are mounting for customers.”

Petercheff said the amendments to rules governing the hunting of wild turkeys, which were proposed upon recommendation of the Department’s turkey biologist, would open turkey hunting in the spring season statewide. The amendments would also prohibit the possession of a dog, domesticated animal, live decoy, recorded call, and other items listed in 312 IAC 9-4-11(g) in the field while hunting wild turkeys. Petercheff explained that the existing rule “specifically prohibits” the use but not possession of items listed in subsection (g) while hunting wild turkeys. “Conservation officers are finding people in the field that are in possession of a recorded call, but unless the officer actually sees them using the call they are unable to make a case.” Additional amendments clarify licensing and tagging requirements. Petercheff recommended preliminary adoption of rule amendments as presented.

Robert Wright moved to give preliminary adoption to rule amendments to 312 IAC 9-2-3 that govern the sale of parts of wild turkeys and amendments to 312 IAC 9-3-11 that govern the taking of wild turkeys. Phil French seconded the motion. Upon a voice vote, the motion carried.

Consideration of request for preliminary adoption of new rule 312 IAC 6-6-5.5 governing special watercraft zone on Lake Manitou in Fulton County in an area commonly known as “the Prairie”; Administrative Cause Number 08-066D

Tom Flatt from the Division of Fish and Wildlife presented this item. He explained that Lake Manitou is located south of Rochester in Fulton County. Flatt said an ecozone was established in this same area known as the “prairie” in 2005, but the rule contained a sunset provision of April 30, 2008. He said an attempt to amend the rule in 2007 prior to expiration was not successful due to statutory time constraints.

Flatt said a public meeting was held on May 29, 2008 to address concerns voiced during the 2007 rule adoption process. He said, “The meeting participants were satisfied and their concerns were addressed and they strongly supported” the proposed ecozone. Flatt said that in June 2008 the Director signed a temporary rule re-establishing the ecozone. He recommended preliminary adoption of the rule amendment to establish an ecozone in the area known as the “prairie”.

Stautz asked whether the public concerns voiced in 2007 regarding the placement of buoys marking the ecozone were addressed in this instant rule proposal. Flatt said one concern was that a buoy was placed in “unnecessarily” deep water. “The buoys pretty much circumvent the ecozone, and there is not a lot of leeway to position them any differently unless you get right up into the shallow water.” He said, however, the concern seems to have been satisfied.

Mark Ahearn moved to give preliminary adoption of amendments to 312 IAC 6-6-5.5 governing special watercraft zone on Lake Manitou in Fulton County in an area commonly known as “the Prairie”. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

NRC, DIVISION OF HEARINGS

Consideration of report of hearing officer, including findings and proposal to the Natural Resources Commission as to its recommendations to the U.S. Army Corps of Engineers in the matter of petition for rate increase by Kent’s Harbor; Administrative Cause Number 08-078P

Sandra Jensen, Hearing Officer, presented this item. She explained that Kent Reineking filed a petition to increase slip rates at Kent’s Harbor, which is a resort and marina operated on Brookville Lake. Jensen said the petition was filed in accordance with Commission’s Information Bulletin #20, which provides guidance for the review of petitions for rate increase at facilities that are operated under a lease from the Department.

Jensen said that the petition requested rate increases for all of the sizes of marina slips as well as the lodging rates at Sagamore Resort located on site. “The proposal does include a request for increase of rates for 24-foot and 28-foot slips on the I-Dock, which are interim rates that were approved by the Department.” She said the proposed rate increases are identified in the Hearing Officer’s Report as Exhibit B.

Jensen said a public hearing was conducted on July 9, 2008. As required by Information Bulletin #20, the Department’s Division of State Parks and Reservoirs reviewed and compared the proposed rate increases to other comparable marinas. She said the Department recommends that the rate increases, as proposed by Reineking, be approved. “After considering the entire record consisting of the petition, supporting documentation, and all the public comments, it is my determination that the rates sought by Mr. Reineking, on behalf of Kent’s Harbor, should be recommended for approval to the U.S. Army Corps of Engineers.”

Thomas Easterly moved to approve the report of hearing officer, including findings and proposal as its recommendations to the U.S. Army Corps of Engineers in the matter of petition for rate increase by Kent’s Harbor. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

Consideration of report of hearing officer, including findings and proposal to the Natural Resources Commission as to its recommendations to the U.S. Army Corps of Engineers in the matter of petition for rate increase by Patoka Lake Marina, Inc; Administrative Cause Number 07-158P

Sandra Jensen also presented this item. She explained that Stephen Bartels, Managing Owner of Patoka Lake Marina, filed a petition to increase all existing marina slip rates and establish a rate for slips of sizes 20 feet by 40 feet and 24 feet by 60 feet, which have not yet been constructed. “[Bartels] is attempting to avoid the whole issue of having to go back to the Department for an interim rate. He would just like to get these established on the front end.” Jensen said the proposed 2009 rates are identified as Exhibit A in the Hearing Officer’s report.

Jensen said the public hearing was held on July 9, 2008. The Department, through its Division of State Parks and Reservoirs, has compared the proposed rates and has “determined the proposed rates should be approved”. She concluded, “After reviewing the entire record as well as the Department’s analysis, I confer with [the Department’s] conclusion”. She then recommended that the Commission recommend to the U.S. Army Corps that “these rates as requested” be approved.

Damian Schmelz moved to approve the report of hearing officer, including findings and proposal as its recommendations to the U.S. Army Corps of Engineers in the matter of petition for rate increase by Patoka Lake Marina, Inc. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of report of hearing officer, including findings and proposal to the Natural Resources Commission as to its recommendations to the U.S. Army Corps of Engineers in the matter of petition for rate increase by Fourwinds Resort & Marina; Administrative Cause Number 08-079P

Sandra Jensen also presented this item. She explained that the Fourwinds Resort & Marina petition differs slightly from the two previous agenda items. She explained that Fourwinds, which is operated on Monroe Lake, Bloomington, requested a rate increase last year; however, she noted there was a “clarity problem” with the petition. Jensen said the instant petition “only relates to certain sizes of slips, and those are 30-foot covered slips, 36-foot covered slips, 42-foot uncovered slips, 48-foot covered slips, 54-foot covered slips, 72-foot covered slips, and 76-foot uncovered slips.” She explained that these slips had interim rates established by the Department. “The Commission had never approved rates for these slip sizes. The last time the Commission approved rates for Fourwinds was back in 2002. She said the Commission’s recommendation filed with the Corps last year recommended a percentage increase “over and above” the 2002 rates, which did not include slips of these sizes. Because these slips were operating under an interim rate, which did not become readily apparent to me” during last year’s petition review “these slips continued to be operated under an interim rate”.

Jensen said that “ultimately what has occurred since that time, once the billing went out for the 2008 boating season, it became readily apparent what was happening.” Through discussion with Gary Miller from the Division of State Parks and Reservoirs and Fourwinds Marina representatives, “it was determined that Fourwinds be encouraged to come back this year and get these rates established.” She explained that Fourwinds is currently requesting an approval of the interim rates plus a 5% increase that was approved last year for other slips within the marina.

Jensen said that, because of the “confusion” with last year’s petition for slip rate increase, Fourwinds “went ahead and charged its slip holders holding slips of these affected sizes at the increased rate despite the fact that [the rates] had not actually been approved by the Commission.” She added, “I’m not recommending that the 2008 rate be allowed to be charged at that increased rate. I think that rate should, in fact, be back at the interim rate originally approved by the Department, but I am recommending that the Commission recommend to the Corps for the 2009 boating season that the 5% increase rate be approved.” Jensen pointed out that Exhibit B in the Hearing Officer’s Report includes not only the affected slips, but all the slips “so that we have one complete record of all of the increased fees.”

Jensen recommended that the “2008 billed rate be at the original interim rate set by the Department and for 2009 the 5% increase take effect with respect to the slips identified as being involved with this petition. To the extent that slip holders had, in fact, already paid the increase rate for 2008, which we understand that some of them have, that they either be given a refund or a credit.”

Thomas Easterly commented that this petition “seems different and there is a lot of dissatisfaction with the condition of the property and the services. “Is there anything we can do so that people get their money’s worth when they pay?” Jensen said that previously there was a sale proposal of Fourwinds to another operator. “The [new] operator was intending to purchase the property and had requested Fourwinds not to open the hotel because [the new operator] wanted to make renovations to the property and open it for the July 4th weekend.” Jensen said that “with the financial crisis that has hit everywhere [the new operator’s] financing fell through at the last minute. As a result of that, the hotel was closed for a long period of time.” She noted that the current Fourwinds management is making attempts to open the facilities. “As I understand it, the property sale is no longer pending.”

Gary Miller, Assistant Director for the Division of State Parks and Reservoirs, said, “It has been a difficult year at Lake Monroe and at Fourwinds at best.” He said the current owner, Traina Enterprises, had plans to remodel the hotel. “At some point in time, the remodel was not going to happen, but [Traina] decided to close the hotel during low occupancy period. This is the first time that’s ever happened down there.” Miller said the Department was concerned about the closure at the time, but then a pending sale came forward, with sale closing as early as April 2007. “There were a number of closing dates, and part of the reason is DNR would not authorize or agree to the sale because the documentation from the proposed new owner was not forthcoming in a fashion that was

satisfactory to the Department.” Miller said there was a second potential buyer, but Miller said he was notified yesterday that this buyer “had fallen through and [Fourwinds] is officially off the market.” He said that the Traina is “back into active management” of Fourwinds.

Miller said that the Department is continuing discussions with Traina, and Traina has indicated it will seek refinancing to complete the “extensive remodeling that’s needed down there.” He said “it hasn’t been the easiest year” and indicated he understood the boater concerns.

Jane Ann Stautz moved to approve report of hearing officer, including findings and proposal as its recommendations to the U.S. Army Corps of Engineers in the matter of petition for rate increase by Fourwinds Resort & Marina. Thomas Easterly seconded the motion. Upon a voice vote, the motion carried.

Consideration of report of public, including findings and proposal to the Natural Resources Commission as to its recommendations to the U.S. Army Corps of Engineers in the matter of petition for rate increase by Hoosier Hills Marina, Inc.; Administrative Cause Number 08-080P

Sandra Jensen also presented this item. She said Jeff Dukes, managing operator of Hoosier Hills Marina, filed petition to increase most of the slip rates at the marina. She said the rate increases being proposed are identified on Exhibit A of the Hearing Officer’s Report.

Jensen said the public hearing was conducted on July 9, 2008. She said that Gary Miller provided comparable facilities analysis and determined that the proposed rates were “appropriate.” Jensen said, “After reviewing the entirety of the record, as well as the comparable rates that were considered by the Department, I agree with [the Department’s] recommendation and propose that the Commission recommend to the U.S. Army Corps of Engineers that these rates be approved.”

Robert Wright moved to approve the report of public, including findings and proposal to as its recommendations to the U.S. Army Corps of Engineers in the matter of petition for rate increase by Hoosier Hills Marina, Inc. Thomas Easterly seconded the motion. Upon a voice vote, the motion carried.

Consideration of report of public hearing and consideration for final adoption of amendments to 312 IAC 1-1-12, “Lake” definitions; LSA #08-286(F); Administrative Cause No. 08-047A

Steve Lucas, Hearing Officer, presented this item. He said for consideration was final adoption of amendments to the Commission’s rule definition for “lake”. The rule adoption is mostly a housekeeping measure, motivated by SEA 41 (P.L.6-2008 as

codified at IC 14-26-2-1.5), which established a five-acre minimum size in order for a lake to be a “public freshwater lake” and subject to the Lakes Preservation Act. The same legislation directs the agency to develop a nonrule policy document to list Indiana’s public freshwater lakes. He said the amendments to 312 IAC 1-1-12 also seek to underline distinctions in how the term “lake” is used in contexts other than the Lakes Preservation Act, including the identification of “small lakes” which are potentially available for high-speed boating. There were no public comments. He said Jim Hebenstreit of the Division of Water was available to answer questions.

Mark Ahearn moved to give final adoption to the definition of “lake” in 312 IAC 1-1-12 as published for preliminary adoption. Robert Carter, Jr. seconded the motion. Upon a voice vote, the motion carried.

Consideration of report of public hearing, and consideration for final adoption of 312 IAC 6.3 governing water withdrawal contracts from state reservoirs; LSA Document #08-131(F); Administrative Cause Number 07-100W

Steve Lucas, Hearing Officer, presented this item. He said for consideration as to final adoption was a new rule article (312 IAC 6.3) to help administer the contracting process for water withdrawals from reservoirs funded, in whole or in part, by the State of Indiana. The rules were precipitated by P.L.231-2007 and would make permanent, with a few mostly technical changes, a temporary rule currently helping to administer the 2007 legislation. 312 IAC 6.3 would memorialize and refine an informal process long used by the DNR’s Division of Water to evaluate contract requests for water withdrawals.

Lucas said no one appeared for the public hearing, but Jack Wittman, Ph.D., wrote to urge shifting the trigger mechanism for determining the existence or severity of a drought from the Palmer Hydrologic Drought Index (PHDI), as given preliminary adoption, to the Standardized Precipitation Index (SPI). Wittman is an Indiana licensed professional geologist and a member of the General Assembly’s Water Shortage Task Force. Lucas said he requested the Division of Water to review Wittman’s comments and offer any recommendations. The Division did so and recommended those comments be approved and modifications made consistently with them. The Division offered draft amendments to incorporate the changes, and, with technical adjustments, those are incorporated in Exhibit “A” which is presented for final adoption. Lucas said his perspective was that the changes were a logical outgrowth of the hearing process and appropriate for inclusion, but the final decision concerning qualification as a logical outgrowth rests with the Indiana Attorney General.

Damian Schmelz moved to give final adoption to 312 IAC 6.3, including substitution of the SPI for the PHDI as set forth in Exhibit “A”. Thomas Easterly seconded the motion. On a voice vote, the motion carried.

Consideration of report of public hearing, analysis, and consideration for final adoption of amendments to 312 IAC 18-3-18, which governs standards for control of the emerald ash borer, by adding area to the quarantine; LSA Document #08-413(F); Administrative Cause No. 06-014E

Jennifer Kane, Hearing Officer, presented this item. She said for consideration is a proposed amendment to 312 IAC 18-3-18, which governs standards for the control of the emerald ash borer by adding area that has been found to be infested with EAB to Indiana's intrastate quarantine.

Kane said the Division of Entomology and Plant Pathology provided fiscal and economic analyses. The division concluded that the approximate total economic impact to small businesses in the proposed quarantined area is \$250,320.00. The total economic impact to the state government amounts to \$75,852.00. With an estimated annual benefit lost to emerald ash borer of \$1,636,170 due to loss of street tree and sawmill processed ash, the rule is estimated to achieve a 5:1 benefit/cost ratio.

Kane noted that the public hearing was convened as scheduled on August 18, 2008. she said that no member of the public appeared for the public hearing and no comments have been received throughout the rule amendment process.

Kane said that on November 21, 2006, the federal government, through USDA's Animal and Plant Health Inspection expanded the EAB quarantine to include the entire state of Indiana. "This federal quarantine prohibits the movement of ash tree materials and hardwood firewood out of the state of Indiana (interstate movement) without federal certification. She said the federal quarantine does not change Indiana's proposed quarantine intrastate expansion, which would prohibit the movement of ash tree materials and hardwood firewood out of the areas listed in 312 ICA 18-3-18(c) without a certificate of inspection for the emerald ash borer. Within this context, Kane said the proposed rule amendment published in the Indiana REGISTER, and as presented, is ready for consideration as to final adoption.

Jane Stautz moved to give final adoption of amendments to 312 IAC 18-3-18 governing standards for control of the emerald ash borer to add area to the quarantine. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

Consideration of recommendation for final action on readoption of rule 312 IAC 18, entomology and plant pathology; LSA Document #08-76(F) Administrative Cause No. 08-005E

Jennifer Kane also presented this item. She indicated that this agenda item, the readoption of 312 IAC 18, and the next agenda item, readoption of 312 IAC 22.5, are similar as to process. She noted that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date.

Kane explained that Article 18 provides standards for entomology and plant pathology to establish quarantine of infested areas and regulating nursery stock. Article 22.5 (Cemeteries and Burial Grounds; Registration and Management) provides standards for disturbance of ground within 100 feet of a cemetery. Kane said the Director of Division of Hearings gave preliminary adoption to each of the two articles. “No public comments were received concerning the proposed re-adoption of Article 18 or Article 22.5.” She said amendments are not proposed to either article and the articles would be re-adopted in their present form.

Kane said that fiscal analyses were performed regarding both articles. “Not re-adopting Article 18, as it currently exists in its entirety, essentially losing quarantine standards and regulation of pests and pathogens, would have a great economic impact to the industry and to Indiana.” She said Article 22.5 does not impose any requirements or costs on small businesses other than mailing costs.

It is recommended re-adoption be given to 312 IAC 18 [Agenda Item 24], and 312 IAC 22.5 [Agenda Item 25] in their entirety without amendment.

Damian Schmelz moved to re-adopt 312 IAC 18 governing standards for entomology and plant pathology. Mark Ahearn seconded the motion. Upon a voice vote, the motion carried.

Consideration of recommendation for final action on re-adoption of rule 312 IAC 22.5, cemeteries and burial grounds, registration and management; LSA Document #08-534(F) Administrative Cause No. 08-112H

[See discussion in previous item.]

Damian Schmelz moved to re-adopt 312 IAC 22.5 governing standards for cemeteries and burial grounds, registration and management. Mark Ahearn seconded the motion. Upon a voice vote, the motion carried.

ADJOURNMENT

The meeting was adjourned at approximately 12:34 p.m., EDT.