

NATURAL RESOURCES COMMISSION
Roosevelt Room, Fort Harrison State Park Inn
5830 North Post Road, Indianapolis (Lawrence), Indiana

Minutes of May 19, 2010 Meeting

MEMBERS PRESENT

Bryan Poynter, Chair
Jane Ann Stautz, Vice Chair
Robert Carter, Jr., Secretary
Patrick Early
Mark Ahearn
Thomas Easterly
Brian Blackford
Larry Klein
Phil French

NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas
Debra Michaels
Jennifer Kane

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

John Davis	Executive Office
Ron McAhron	Executive Office
Chris Smith	Executive Office
Shelley Reeves	Executive Office
Jon Vanator	Executive Office
Cheryl Hampton	Executive Office
Mark Reiter	Fish and Wildlife
Linnea Petercheff	Fish and Wildlife
Bill Beam	Fish and Wildlife
Bill James	Fish and Wildlife
Doug Green	Fish and Wildlife
Mitch Marcus	Fish and Wildlife
Scotty Wilson	Law Enforcement
Dale Brier	Outdoor Recreation
Carman Jackson	Outdoor Recreation
Lee Casebere	Nature Preserves
Phil Bloom	Communications
Bruce Stevens	Reclamation
Kathleen McLay	Indiana State Museums & Historic Sites
Laura Minzes	Indiana State Museums & Historic Sites

Bruce Beesley Indiana State Museums & Historic Sites
Terri Price Water
Kenneth Smith Water

GUESTS PRESENT

Jennifer Cunningham	Jan Turner	Susan Davis
Don Gorney	Mike Phelps	Kristen Heitman
Diana Shaffer	Stephen Snyder	Prescilla Herochik
Judith Cieslak	Roger Kottlowski	Walter Penrod
Mary Jenet Elder Penrod	Bette Elder	Bill Myers
Ce Ann Lambert	Bill Herring	Carl Kelle
April Kieser	Holly Minton	Kent Kieger
Steve Short	Eric Simpson	Greg Yazel
Bill Linkel	Kerry Newcomb	Cynthia Myers
Norton Newcomb	Jeanie Rumble	Carolyn Hobson
Joshua Bishop	Kathy Clark	Alan Hux
Phil Hess	Tom Milligan	Mike Lodato
Jamie Haimmer	Tim Julien	Eric Jones
Jack Corpuz	John Goss	Anne Sterling
Casey Pheiffer	Tom Sams	Susan Nash
John Nash	Kathy Hershey	Nancy Stimson
Tim Julien	Patti Reynolds	Kathryn Elder Kaiser

Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 10:10 a.m., EST, on March 16, 2010, at the State Park Inn, Fort Harrison State Park, 5830 North Post Road, Indianapolis, Indiana. With the presence of nine members, the Chair observed a quorum.

Jane Ann Stautz moved to approve the minutes of the Commission’s March 17, 2010 meeting. Thomas Easterly seconded the motion. Upon a voice vote, the motion carried.

Reports of the Director, Deputies Director, and Advisory Council

Director Robert Carter, Jr. provided his report. He referenced the successful advancement of a land exchange between the DNR’s Division of Fish and Wildlife and the Indiana National Guard. The DNR provided the National Guard with 1,300 acres at Atterbury Fish and Wildlife Area in exchange for property near Putnamville. The latter is “a beautiful natural area of 2,000 acres and has a stream called Deer Creek running through it. It’s an area we’re going to dedicate sometime this summer. We’re pretty happy with the way that’s turned out. The Director noted that Mark Reiter and Phil Bloom were both instrumental in seeing the process through. Director Carter then offered an opportunity for the Commission members to tour the property.

Chairman Bryan Poynter thanked everyone for “all their hard work” and said “I know that’s going to be a wonderful addition to our state system.”

John Davis, Deputy Director of the Bureau of Lands and Cultural Resources, provided his report. He thanked everyone who attended the dedication for Father Damian Schmelz at Donaldson Woods. He said Father Damian “led a hike of students” down the trail and “reminded them” that he had been tracking Donaldson Woods for 50 years.

Chairman Poynter shared, “The Father Damian dedication was one that I was so glad the Commission saw through because we had promised we would honor him in a way fitting, and we had a nice public ceremony, but then followed it up with more of a permanent honoring of his work there. I really can honestly say he was very humbled and very appreciative of those that made that happen. I know there were a lot of folks within Nature Preserves as well as State Parks and Reservoirs that worked very hard. So, I think it deserves public accolade for the work that they did.”

Ron McAhrn, Deputy Director, Bureau of Resource Regulation, provided his report. “We were up last year at Pokagon and saw some work where INDOT and DNR had partnered. That has taken off and gone into areas that we really didn’t expect. Significant archeological work performed at Pokagon would “hopefully be something that we can interpret and add to the park experience.” A memorandum agreement to create approximately 2,300 acres of wetland and enhance approximately 17,000 feet of stream, as mitigation obligations INDOT had for a project [at the park] is in its final stages. McAhrn said IDEM, INDOT, and DNR had “cooperated to enhance the [Patoka] park at a time when in-house funds were not available. It has been a very rewarding experience and hopefully it’s a place for us for some future work.”

The Chair asked Chris Smith, Administrative Assistant and Legislative Liaison for the DNR’s Executive Office, if he was reporting on the 2010 Legislation. Smith replied, “It’s a full schedule. I’d be happy to today, but I know there’s a lot going on.” The 2010 Legislation report will be provided at a subsequent Commission meeting.

Patrick Early, Chair of the Advisory Council, reported the Advisory Council met last month and “placed quite a few items on today’s agenda.”

CHAIR AND VICE CHAIR

Update on Commission and Committee activities

Vice Chair, Jane Ann Stautz, reported the AOPA Committee met in March and would meet “today” after the Commission adjourns.

The Chair reported that Agenda Item 9 was withdrawn from “today’s” agenda and was re-published on-line. “As a charge to Division of Fish and Wildlife and the Division of Law Enforcement, and in response to several concerned citizens, we reviewed this situation and determined it would be more prudent to withdraw this [agenda item] and do it correctly than to merely support expedience. Sometimes the two are not mutually aligned.”

The Chair said, “As a result [of withdrawal of Agenda Item 9], Advisory Council Chairman Early and I, in a joint initiative, are going to form a ‘task force’. I’m not a big fan of creating a task force unless there’s a specific reason. In this case, there is a legitimate reason. I alerted the Department and several of the key constituent groups on April 9 that the Natural Resources Commission and the Advisory Council would assemble this working coyote task force. I call it a working group because our job is to investigate, to study, and to educate ourselves. The purpose and the scope of this will create what we hope to be an open and candid dialogue where the operators will assist on attending at least three of these field trials, preferably at three different locations.”

The Chair continued, “We have had several conversations with one of the known operators, [including today], about when those dates are for these field trials. We’re going to try to create some integrity by looking and giving them the opportunity to show us what these operations actually do. We want to know, frankly, because we don’t know who is there, how they are conducted, how are these animals being trained, what type of amenities exist for the animals, and most importantly, what happens to the coyotes and foxes in these enclosures. That’s the purpose and the scope. Chairman Poynter informed that the ‘task force’ would include members of the Division of Fish and Wildlife, and Division of Law Enforcement. “It should be assumed that this ‘task force’ may be inviting legislators and perhaps other constituents..., so we can bring this issue to a resolution that everyone can be happy with. I want it clearly stated that the Natural Resources Commission values nothing more than absolutely best practices that can be employed, and we’re going to do this with the highest integrity so that all those on both sides of this issue can feel comfortable that the work that comes out of this is in the best interest of ultimately both sides.” The Chair said the task force would also include three representatives from the Natural Resources Commission, and three members of the Advisory Council. “As of this time, that’s Chairman Early and myself, AmyMarie Travis as the Vice-Chair of the [Advisory Council], Jane Ann Stautz, as our Vice-Chair of [the Commission], David Lupke as a member of the [Advisory Council], and I’ve asked Doug Grant of [the Commission] to be representative of the group.”

The Chair concluded stating that the agenda item “will not die—we are moving this forward.” Chairman Poynter shared that he “had conversations even as of this morning” to solidify dates within a reasonable time period so that members of the Commission could plan appropriately.

ADVISORY COUNCIL

Consideration of proposed Standard Operating Procedure to assist with implementing the statutory directive that the Natural Resources Commission and the Department of Natural Resources seek repayment of costs expended regarding the reviews of conservancy districts; Administrative cause No. 10-028W

Ron McAhron, Deputy Director, Bureau of Resource Regulation, reported on this item. He stated that this item was a “follow-up” on the process of documenting charges incurred by the DNR and NRC during a conservancy district formation review process. “I think the costs that are laid out are fairly straight forward. We tried to be very conservative” limiting the costs “strictly” to the conservancy district issues. McAhron said that the staff review time on the

“need part” was “fairly consistent. We used an hourly staff rate of approximately \$30 dollars and \$50 per hour for management review.” For “a simple conservancy district process, staff time and travel expenses, based on DOA’s prescribed mileage rate and per diem ranged at \$1,500 and \$2,100 for a ‘more complex one’.” He explained that the “more complicated ones” for [the Division of Hearings] run up expenses due to more substantial hearing preparation and recordation. “Using hourly rates and the same travel and per diem rates, we ended up with \$3,500 versus \$6 thousand.” He then noted that expenses for a simple conservancy district formation review would average \$2,000 to \$2,200 and on a “very complicated one”, approximately \$5,600. “Somewhere in that range is where we expect all of these to fall—the vast majority being toward the lower end. Again, this is something we’ve never done in the past, notwithstanding the fact that it’s been in the statute for some time, but we feel like, within the statute, we’re obligated. We’ve tried to lay this out simple and straight forward.” McAhron concluded, “This is not going to be a money-maker for us. It’s also capped, perhaps artificially, at 30% of the engineering costs that the conservancy district would send back to us. So, we wanted something as simple and straight forward as possible.”

Alan Hux, an attorney, and Board Member of the Indiana Conservancy District Association (the “ICDA”) addressed the Commission. He indicated he had attended the January 2010 Commission meeting “speaking against this matter.” Hux acknowledged the statutory provision regarding collection of expenses but added, “Since 1954, I’m unaware of any time that the Commission or Department of Natural Resources has made any charges. He explained that \$5,600 or \$6,000 to small conservancy districts would be a “burden” on the freeholders, and then said, “Really, all that you’re doing at this point is passing an indirect tax.” Hux informed that the [ICDA] prepared a bill amendment, for consideration by Legislature during the last session, to delete the statutory language requiring cost recovery. “We had a meeting in Representative Bischoff’s and Cheatham’s office, which Mr. Davis attended, and at that time we were going to go forward with deleting that portion from the statute, but it was represented to us that this would not go forward at the Commission level until such time that they had a chance to have meetings and to discuss what these rates were. But for the fact that I was just here on another matter, we’ve not been contacted.” Hux requested that the Commission table this matter “so that we can have, as represented with the legislators, a meeting to try to discuss this matter and see where we might go.”

John Davis responded, “I think what we did was agree that we were going to, in fact, do what we’ve done, which is run the cost and figure out what the numbers were. I think that’s what we’ve done now, right, Ron?”

McAhron replied, “Yes, we went through this same presentation at the Advisory Council last month. I don’t know what else we can do with the numbers other than what we’ve done. If we travel for two purposes, we would sub-divide the cost between the two. This is not something that is a big money-maker for us, but it’s a statutory duty that we feel like we have to discharge.”

Hux added, “I understand it may not be a big money-maker, but \$5,600” for a conservancy district of twelve freeholders “is a lot, and they’ve got a dam that needs to be constructed.”

McAhron responded, “As I tried to point out, our review costs are essentially steady; around \$1,500.” The higher end costs come with the controversial formations where [Division of Hearings] spends a significant amount of time. The higher costs would not be anticipated in the review of small noncontroversial districts.”

Hux thanked the Commission for their time, and concluded, “I just believe that I needed to represent the Association and all conservancy districts’ concerns.”

The Chair reiterated that the cost reimbursement is statutory requirement.

Mark Ahearn moved to approve the proposed Standard Operating Procedure regarding the repayment of costs expending in the reviews of conservancy districts. Tom Easterly seconded the motion. Upon a voice vote, the motion carried.

DNR, EXECUTIVE OFFICE

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

The Chair asked whether there were any items for referral to the Advisory Council. No new topics were presented for referral to the Advisory Council.

INDIANA STATE MUSEUM AND HISTORIC SITES

Consideration and evaluation of the Ernie Pyle State Historic Site for deaccession

Chairman Poynter noted there were several comments cards received for persons wishing to speak on this item. He said due to time constraints, the public comments would be limited to no more than 15 minutes. The Chair then invited Kathy McLary to speak.

Kathleen McLary, representing the Indiana State Museum and Historic Sites [ISMHS], addressed the Commission. “We bring you today one more step in the technical deaccession of the Ernie Pyle State Historic Site. We began the research in early 2004, looking at all the historic sites and deciding all of them still need to be in the system, and are there other ways that perhaps we can distribute the information and educate the public. Ernie Pyle was one of those that did come to the surface. As we reduce the staff, trying to reduce the resources going into the historic site, it did not affect the attendance, but the attendance did not go up.” In December 2009, the ISMHS began the process of closing historic site and moving information to the Museum for more exposure to the public. McLary said more than 80,000 people have been exposed to the history of Ernie Pyle and his “importance to the world” since opening the new exhibit at the Museum. “Again, very different numbers than what we were seeing in the Dana location. We feel that reason to bring it to the ISMHS, is perhaps justified with those numbers.”

Norton Newcomb, representing the Friends of the Ernie Pyle State Historic Site, addressed the Commission. He distributed a three-ring binder with Ernie Pyle information for each Commission members. “At the beginning of the site, which I believe was in 1973, Martha Helt

was one of the original Friends, and I think the question came up back in 1973, about his birth place.” Helt sought witnesses and provided the letters she had received to Newcomb. “That’s pretty much in my research all that I could find that indicted any birth place. I didn’t find anything except in that same letter where the witness said that the ‘little house’ wasn’t his birth place.” Newcomb said after being notified of the closure of the historic site, the Friends of Ernie Pyle sought an appeal process with the State. “To my knowledge” the appeal is still ongoing. “So, I’d like to ask this Commission to, at the very least, post-pone this. We’ve retained a lawyer, Scott Craig, because none of us know how to run a business.”

Phillip Hess, another member of Friends of Ernie Pyle, addressed the Commission. “I’ve been a Friend of Ernie Pyle since about 1990, since we went through a fund-raising process to build World War II goods. As Mr. Newton said, our appeal is currently at the Governor’s office, so we are moving forward as fast as possible.” He said the operating costs for the Dana museum were \$48,000 in 2009. Of that among, \$10,000 was for utilities and \$4,000 for the one employee. “We were open two days a week, 308 hours, about 1/6 of the average operation of the other historic sites in the ISMHS. There is no outside management. They were cut early in the process.” He said one of the functions of the outside manager had been to improve the attendance, arrange bus tours, groups, and community outreach. “We had no one for that.” Hess said the receipts in addition to donations total approximately \$8,000 for 2009, bringing the net cost to operate the Ernie Pyle site for a year to \$6,000. The Department’s budget for historic sites, according to the 2009 financial statement, was \$3.2 million. “So, the portion of Ernie Pyle’s loss was less than 2% of the operating budget for the historic sites.” The Indiana State Museum quotes \$50,000 as costs, and these are mostly capital costs—“to repair the roof, repairs to the porch, all of which are items that would be typical of any home. We don’t anticipate any additional capital costs.” He referenced a gift from an estate within the last five years, which was between \$30,000 and \$50,000. “So, even the capital costs have been mitigated by at least 60%. No budget action would even be required, only allocations.”

Hess said, “The reason we are appealing was for the State and community as well as our own. We honestly believe that Ernie Pyle is important to the Indiana state history and culture. For you who don’t have much background on Ernie Pyle, the notebook that you’re looking at was presented to the Governor’s committee meeting.... The site is unique within the historic site system. Ernie Pyle is the only representative of the 20th century. In his time, he was important. He always spoke about Indiana and represented the State very well. Dr. Gantz when the site was dedicated in 1998 said it was the best exhibit in the historic site system. We feel that it’s a betrayal of trust to close the museum. The American Legion gave over \$100,000 at the onset as well as the Lily endowment. The Elder sisters, who donated the house, flew at least 2,000 miles to be in attendance today. The Scripps Howard Foundation in mid 1990s was a primary benefactor for the WWII exhibits. They gave \$250,000 to the site, which was their largest single gift ever.... It seems wrong to us that [the Ernie Pyle Historic Site] would only last a half generation. The assets were all presented entirely intact and complete to the State with no cost.”

Hess concluded by saying he hoped the Pyle exhibit would stay in Dana. “I certainly can’t say that we’re going to have 70,000 people ever come to Dana in probably five years, but the people who come, come on purpose, and the experience they get is rich and rewarding. Half the people leave in tears. It is a unique site that’s well presented. The State shouldn’t operate museums for

a profit. We honestly believe that the State owes a depth of honor to Ernie Pyle and an obligation of gratitude to the people who made it possible.”

Tom Milligan, a farmer who lives near Dana, next addressed the Commission. He said in one of his books, Pyle writes of his first date, which was with Milligan’s great aunt. Milligan referenced a 2006 fire that destroyed much of downtown Dana. “That’s not the only fire that we’ve had, and that’s not the only thing that has help destroy some of the things in Dana. Every time that we come up against trying to rebuild some of these things, they say ‘well, you can’t build there. You don’t have sanitary sewers in your town.’” But Milligan said “the town leaders have undertaken a \$6 million project of installing a sewer system in Dana. Almost \$1 million of that is coming in direct grant money from the State of Indiana. The rest of it is coming in grant money and loan money from the USDA through rural development. The cornerstone for the redevelopment is the Ernie Pyle State Historic Site. It just seems rather foolish for the State on one hand to be putting a million dollars to the redevelopment of a small community, and, on the other hand, the crumbs off your table is all it would take to keep the state historic site alive and be the cornerstone of that redevelopment of a small community. I really think we are turning the corner in our community. I’m also a member of the Newport Chemical Depot Reuse Authority. That is what we have penned out hopes on to do something.”

Milligan added, “I was with the Governor last fall when he announced 500 new jobs coming to the Depot. It’s taken longer than what we had thought, but I think we’re having a job fair for the Parsons Mason Hanger Employees to redevelop the army base, which is right on the edge of Dana.” He continued, “Look at what a beautiful thing this is. One of the challenges that we face in bringing employment and investment to our community is the quality of our community and the pull of support for the historic site, for the Ernie Pyle site. The timing is just not right. I would just ask, at least, that you delay this to see it through what the Town of Dana, what we’re doing at Newport, what we’re doing within our communities can rebuild this community and use the Ernie Pyle State Historic Site as a cornerstone for some of that development.”

Joannie Rumble, a Dana resident, addressed the Commission. “Naturally, I’m interested in what takes place with the Ernie Pyle site. I’ve been a tour guide there for many years, and I would like to address a question—if you have been to the Ernie Pyle site and have viewed the memorabilia and the artifacts there? Each of you perhaps had a family member that is a past or present WWII veteran and [are] aware of his writings. He brought that home describing to the fullest what our boys were doing for our country. I want to continue the generations that we have coming before us in the future—my children, my grandchildren, and yours—in learning about Ernie Pyle.”

The Chair thanked everyone who came to speak on the Ernie Pyle issue. “I know this has been going on for a long time—this conversation about the future of Ernie Pyle’s home.”

The Vice Chair, Jane Ann Stautz, asked if there were contracts, bequests, or guidelines to the bequests, with regard to contributions made to the Ernie Pyle Historic Site.

Kathleen McLary replied, “No, there were not.” The grantors she consulted were “sad, but then they understand with today’s economy and today’s reality, things move on.”

The Chair reflected, “There is no disrespect” for “the integrity of what Ernie Pyle has meant to the State of Indiana and certainly the fact that Indiana wants to keep these items here in the State of Indiana. But are you happy with process that you have been given to this point? Have you been offered to take the site?”

Norton Newcomb replied, “I think I kind of addressed that. We’ve been in contact with the local board. It’s not that we’re disinterested. It’s that we’re clueless on how to run a museum. Until we get through that process, it seems a little fast. I’m not dissatisfied, but I’m ignorant.”

The Chair said the Advisory Council reviewed the issue during its April meeting. “I know Pat Early and his group had a look at this. What we’ve been asked to consider and do today should not eliminate future conversations that could take place about the continued operation and where that home may end up with the Ernie Pyle exhibit and his memorabilia, as I understand it.”

Stautz asked about the status of exhibits. “Are they still there? Have some of them been transferred to the Indiana State Museum?”

McLary replied that artifacts remain at the Ernie Pyle Historic Site. “It is normal procedure to rotate artifacts, and we agree with the process. If we do find an organization, whether the Friends or another organization, which would take on the organization, we would continue to work with them to keep rotating the artifacts, conservation-wise, to keep them intact.”

Klein asked, “Are the numbers being represented here correct and accurate? Are we talking \$8,000 net or \$6,000 net?”

McLary replied, “That includes the gift shop proceeds.”

Klein continued, “I certainly don’t want to dismiss some other options that may come out of additional dialog,” particularly considering the relatively modest savings that would result.

The Chair commented, “Well said.”

Pat Early asked how long it would be before the DNR ceased managing the site if the Commission approved the deaccession today.

John Davis responded, “Right now, the doors are locked and have been since December 31st. We have to have this deaccession to either liquidate the property or to convey it to Vermillion County, the Town of Dana, the Friends of Ernie Pyle, or any other arrangement we would make to keep the site open, but not under state operation. We need to have deaccession happen. There’s no hurry on deaccession. Deaccession doesn’t change anything right now today. We’re in a mode where we’re going through the process.” He added that he has had conversations with the Newport Chemical Depot Reuse Authority.

Early sought clarification regarding addressing the future of the property, and asked, “We have to go through the deaccession process is that correct?”

Davis replied, "It's not totally correct. We have been in discussion with some people, but I think they would say that their focus has been on changing our minds about the State running it, rather than pursuing a cooperative agreement, where they run it, or somebody else runs it, or we turn it over to them. I think they have felt like they wanted to try and do this first process. So, we've been talking to them about 'Yes, why don't you take it? Why don't you run it?' In fact, DNR even agreed to let the name 'Ernie Pyle State Historic Site' remain the same."

Early continued, "We're not trying to profit from this site in any way shape or form? We're more than willing to turn the site over to the local community or the Friends, or whatever. To us, this is strictly that the site really doesn't draw many visitors, and even though it's not a big budgetary amount, this is one of these things where we have to look at the cost-benefit of anything we do. We're saying we get significant visitation in the State Museum and the artifacts are available to see, but we're only drawing between 1,000 and 1,500 people at the Dana site, and that's why this is all under consideration."

Davis answered, "That's exactly right. This is the last of what I would term a 'tier of properties' that included Pigeon Roost, which we surplused to Scott County and the Wilbur Wright Memorial in Henry County, which we transferred to a Friends group. Your analysis is correct."

Klein reflected, "I've heard two things here that kind of bang around in my head. First, is that we're moving too fast. Secondly, they're not ready for it. It didn't mean they were opposed, but they're not ready for it. The guy said they're 'clueless' as to how to run it. So, those two things are similar in nature and character. Deaccession sounds somewhat final to me. I don't know."

The Chair observed, "As the Commission, we have the responsibility to look at this type of issue. It has been a long process. There has been a formal process followed.... This does not end a conversation—whether they may be ready today. It's my understanding that Dana doesn't want any financial responsibility for this, is that true?"

Hess replied, "Yes, sir. That's true. They have no finances at all."

The Chair said, "Okay, so my point is, that doesn't end a conversation. What we're saying is at the end of the day, this is an important issue for Dana and for the citizens and those that work there. No one is disregarding the fact that this is an important issue. Please be clear on that. It has gone through a formal process that dates back to at least 2007. There have been meetings at the highest levels. The issue that John Davis brought up is that the process will continue to be evolving.... It ends up on our agenda not by accident. It ends up on our agenda as a result of a series of other things. They have met...with the Director of the Department. They have met with the Governor's office. They have met with the Natural Resources Advisory Council, all of whom have worked with them to offer alternatives. I believe those alternatives aren't going away.... The Museum has offered to work with you..., and there has been a collaborative cooperative effort. This process is a finalization of a step in the game, but it does not mean the Ernie Pyle site goes away and is sold next Monday at an auction. I think every intention is to keep this site some place by some caretaker whenever they're ready. I would assume that the State Museum would work with them as long as those conversations go. The question at hand is whether the State of Indiana keeps this. Through that formalized process, even from reading

from the minutes from the Advisory Council on April 14, it does not make sense. There has been resistance from the Town or from the Friends Group to take this as offered, but that might change in the future. I wouldn't know how to run a museum either, but it's important to them, and I think the willingness on both sides to continue to work together is the important part here."

Mark Ahearn said he found "Mr. Newcomb's testimony somewhat compelling in the sense of 'We're not quite ready to catch the ball.' The local folks that are supporters recognize... that if something doesn't change, the clock is running against the property in Dana staying in the same position that it is. If the worse that happens is we don't get hit with capital costs, and defer a decision, we're out \$8,000."

Ahearn continued, "There's sort of a rule in politics that says, 'when you're explaining, you're losing.' I don't know that there's any good way for a Commission member to explain this other than through lengthy continued discussion, but to the world it looks like the State of Indiana is decoupling itself from Ernie Pyle. I'm not sure that's necessarily the position that we want to take on behalf of the rest of the State of Indiana. We're the State of Indiana's special body created by statute that does this. I don't have any particular good warm fuzzy feel about taking that action now. "

The Chair reflected, "Nicely done."

Phil French said, "However we would work it out, the fact of the matter is it doesn't matter whether its \$6,000 of Ernie Pyle, or its \$6,000 of inefficient light bulbs, or its toilet paper for the State. We can't choose. That's what we're here to do. That's what the State is here to do. We can create flexibility, and however it works, we move forward to a deaccession plan but give them a little bit of a sunset time. However it works out, they've got to understand that we're for them. However it works out. I agree it's compelling. You weren't ready to catch the ball, but you've got to be ready to catch the ball. I don't agree with just moving this forward. I think we've got an obligation to move forward but also create a little flexibility."

Ahearn stated, "I agree with you, Phil. I'm not challenging your thinking. But Tom Brokaw didn't write a story about light bulbs. He wrote about the 'greatest generation'. There's something historically significant to this. I think the concept is 'You've got to get ready to catch the ball', and 'When might you be ready?' For what it is, I'd be of a mind frame that we ought to bleed some more time into this decision."

French replied, "I agree whole-heartedly."

Early said, "If we table it, we're going to end up in the same place a year from now or three months from now. They're not ready to take it. In any form of a motion, I have no problem adding a time-frame to it, but I think that the motion would be something along the lines of 'we are going to deaccess this property, you have twelve months to determine whether or not you can go ahead and take the property over,' or whatever a reasonable time-frame is so that we don't end up having another deaccession vote. We're just putting a time-frame on the vote that we're taking."

The Chair asked McLary, “Does it create a problem for the State Museum to do something along those lines?”

McLary replied, “No, it does not.”

Stautz asked whether the “State has agreed to pay utilities for period of time?”

McLary answered, “Through this calendar year.”

Ahearn said, “Let’s move the decision out further. Everybody knows what the stakes are.”

Klein moved to table the deaccession vote and to first discuss what the policy is.

Ahearn asked, “If I could offer an amendment to table it until May of 2011.”

Klein consented to Ahearn’s amendment.

The Chair said, “There’s a motion on the table that has been amended for consideration that this agenda item be tabled until the May meeting of 2011.

Davis reflected, “I think there are a few things that we’re overlooking. One is that we’re closed right now so we’re paying utilities we’ve committed until the end of the year. To go until May 2011 is going to create a holding pattern.”

The Vice Chair said, “If the utilities are paid through the end of the year that would give time to work through the options with the various groups, again based on the fact that there is the budget consideration of the utilities.”

The Chair asked Stautz, “You’re suggesting a deferral would be until our November meeting?”

Stautz confirmed, “Yes.”

The Chair recognized Phillip Hess.

Hess stated, “The process that we were asking to be considered was not solely deaccession but also reopen. We honestly believe that the DNR and the state historic site fit where they should be. They deserve to be where they were.” He asked the Commission to hear from two gentlemen who drove from Columbus, Ohio—one from the Howard Scripps Foundation and the other from the American Legion. “The fact is that if we’re not able to stay within the State Historic Site system, disposition is something we’ll face when we have to. We really believe that we deserve to be open as a part of the Indiana State Historic Site system. That’s the petition that we have pursued to the Governor’s office, and we’re waiting for his decision.”

Ahearn reflected, “Now, we’re having a different discussion, a philosophical discussion. Does it stay in or does it go out? I don’t think it changes my thinking.... I don’t know if I’m ready to vote it off the State system yet.”

The Chair continued, "There is a motion to table this issue until the Commission meeting of May 2011. Is there a second? The Chair hears no second to that motion. Does someone offer a different motion for consideration?"

Stautz moved to defer deaccessioning action until the November 2010 meeting to allow additional time for the State and represented parties of interest to explore their options.

Early requested clarification, and asked, "But not to reopen [the Ernie Pyle State Historic Site]?"

Stautz said her motion did not include reopening the property.

The Chair said, "The motion I hear is that this issue is tabled until the November 2011 meeting with no action being taken until then."

Stautz replied, "Yes, except for ongoing dialogue and discussion as to what the options might be."

The Chair then asked for any discussion to Vice Chair Stautz's motion.

French seconded the motion.

The Chair called the question. Upon a voice vote, the motion carried. Klein abstained.

The Chair recognized Mike Harden.

Harden said, "I just wanted to make the point that from July 8 to July 11 in Bloomington, there will probably be 150 to 180 members of the National Society of Newspaper Columnists for their annual convention here in Indiana. Our patron saint is Ernie. He was the greatest columnist the nation produced during the 20th Century. He was most important at one of its most arduous and strenuous times. What I want time to do is to seek recruits among the Midwestern columnists who would be willing to volunteer."

Harden continued, "I thank you for giving us the time to explore the option with Indiana University, Ernie's alma mater, of creating an internship that would send down to Dana so that they would know what the Hoosier State gave American Journalism and be able to interpret that for however many people come there. Those are two things that I hope will make you feel a little better about the decision you made, that options are being explored."

Steve Short then addressed the Commission. "I'm not just representing the American Legion today. I'm here on behalf of the Veterans of Foreign Wars, the Amvets, and the Disabled American Veterans for Indiana. We are solidly against closing the Dana facility and against it leaving the offices of the Indiana Historic Site program." He said 250,000 veterans and their families "were also solidly against closing the facility. Ernie wasn't technically a veteran, but he gave his life for his country. We, as veterans, recognize that; and we think it would be a travesty to lose that site."

The Chair thanked Short for his services. “We appreciate that.”

DIVISION OF OUTDOOR RECREATION

Consideration of preliminary adoption of amendments to 312 IAC 8, which governs the use of DNR properties, to address public use of Redbird State Recreation Area and Interlake State Recreation Area and to make technical changes, including restructuring of definitions; Administrative Cause No. 09-025T

Steve Lucas, Director of Division of Hearings, introduced this item. “This proposal for preliminary adoption is in some measure from the Division of Outdoor Recreation and in some measure from the DNR’s informal Property Use Committee.... “For the first time, standards would be set, by rule, for use of the Redbird State Riding area and for the Interlake State Recreation Area.” He added that technical amendments were also included “so we can manage the large number of definitions that now have application to DNR properties.”

Patrick Early moved to preliminary adopt amendments to 312 IAC 8 as recommended. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF RECLAMATION

Consideration of preliminary adoption of amendments to 312 IAC 25 governing surface mining and reclamation; Administrative Cause No. 08-067R

Bruce Stevens, Director of Division of Reclamation, presented this item. He said amendments were offered for preliminary adoption to the surface coal mining and reclamation rules, “much of it required” by the Division of Reclamation’s Federal Oversight Authority in the Department of Interior’s Office of Surface Mining. The Office of Surface Mining recently changed numerous federal regulation requirements concerning ownership and control and related rules, and has notified the States with primacy programs of the need to upgrade their programs to be as effective as the federal counterpart regulations. The changes include provisions pertaining to reviewing permit eligibility, application information, operator and permittee information, and other ownership and control provisions. He said the amendments also change other regulations to assure sites are inspected as are their federal counterparts.

Larry Klein moved to give preliminary adoption to amendments to 312 IAC 25 as recommended. Mark Ahearn seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF FISH AND WILDLIFE

Consideration of approval of a new nonrule policy document (Information Bulletin #62) governing prospecting to provide guidelines to prospectors, DNR employees, and riparian owners; Administrative cause No. 09-171A

Ron McAhron, Deputy Director, Bureau of Resource Regulation, presented this item. He said the proposed nonrule policy document was the culmination of a rule package and additional guidance put together to provide guidance to prospectors operating in Indiana streams. The document was discussed at the Advisory Council meeting, and there was a change to the document since the meeting. “We had inadvertently created a perception of a property right on nonnavigable streams. On nonnavigable streams in Indiana, someone owns the bottom—one side of the stream or the other, or maybe it meets in the middle. In trying to address interests on navigable streams, we had created a term called ‘an affected riparian owner’ to help our conservation officers and the prospectors identify where folks should be and shouldn’t be on navigable streams. That’s really not applicable to nonnavigable stream.”

McAhron continued, “This has been an interesting process going back to some court actions, then to field trips by DNR professionals and members of the Advisory Council and Commission, to try to get an understanding of what these folks are doing in the streams. We’ve come to the conclusion that we have a decent package to put some framework on, and as we used to say in the business, ‘to run it and watch it awhile and see how things work’. He then recommended the adoption of the nonrule policy document.

Mike Phelps spoke on behalf of approximately 200 Northern Indiana prospectors. He thanked the Commission members for their time and effort on the proposed nonrule policy document. “For the matter of accuracy, it was May 21, 2008 when we started this. It’s been an interesting process, and we’ve worked with some real good people.” He said he signed up to speak before the Commission in case there were any questions or any verification was needed. “Having received this revised copy, the only concerns that we had was what Ron outlined concerning navigable and nonnavigable permission—how to get the permission from the landowners. I think this really satisfies the things that we were concerned about, and we would support adoption.”

Carl Kelly with the Southern Indiana Gold Prospectors also addressed the Commission. He said the amended copy of the nonrule policy document, currently recommended for approval “completely answers our questions. We just really appreciate your efforts. The DNR was well represented at the Gold Show this past weekend, and we appreciate your support there. We’re very interested in this proposal.”

Patrick Early moved to approve the nonrule policy governing prospecting to provide guidelines to prospectors, DNR employees, and riparian owners. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Comprehensive Fish and Wildlife Enhancement Project: Response to suggested substantive amendments; Administrative Cause No. 08-061D

Linnea Petercheff, Staff Specialist with the Division of Fish and Wildlife, presented this item. She said that the document was a response to several items that the Commission and the Natural Resources Advisory Council requested through the Comprehensive Fish and Wildlife Rule Enhancement Project. The following were suggested substantive amendments recommended for future rule adoption in July 2010:

1. Display of hunter orange on ground blinds
2. Comprehensive Deer Hunting License that addresses all weapons and all bag limits
3. Allow crossbows to be used during the archery seasons by senior hunters age 65 and older

The following were suggested substantive amendments recommended for additional review by the DNR's Division of Fish and Wildlife:

1. Request to consider allowing the hunting of coyotes year-round on all public and private land.
Petercheff stated that the DNR was not in support of a year-round coyote hunting season.
2. Consider limiting depredation permits to the taking of antlerless deer only.
Petercheff explained that the DNR is in favor of continuing to allow the deer to be taken when needed under special deer damage control permits.
3. Request to explore moving the waterfowl season dates for Indiana's southern zones to later in the year
4. Review of all deer hunting seasons and bag limits and consideration of implementation of an earn-a-buck program.
The DNR's proposals will be in the deer amendment package for preliminary adoption in July.
5. Consider allowing the use of crossbows during firearms season.
This item will be in the deer rule amendments package for preliminary adoption in July.

Petercheff noted that staff is available to answer any questions. She added that these items did not require action by the Commission at this time.

The Chair said, "Linnea, I appreciate you keeping the Commission up to date, moving this project along, and thanks, also, to Mark Reiter and the Division."

Consideration for preliminary adoption of amendments to 312 IAC 9-3-14.5 governing furbearing mammals; Administrative Cause No. 10-074D

The Chair reminded the Commission that this item had been removed from the agenda. Ce Ann Lambert had asked to address the Commission.

Lambert said, "We've been talking about this since 2007 when Michael Crider took part in a raid on the southern pens in the southeastern part of the United States and found out what was actually happening in the pens to Indiana coyotes that were being sold to the running pens." Lambert said she decided to petition to prohibit enclosed running pens in Indiana. Lambert also said she had been submitting information to the Commission since the later part of 2008. "I want to know what you need that I haven't sent you to make a decision on this." Lambert then asked

the Commission if Colonel Crider could be part of the task force “since he has actually seen with his own eyes what happens to these animals.”

Bryan Poynter told Lambert that Colonel Mike Crider would be part of the task force reviewing the running pens. “I hope I was clear that the members of this Commission and the Advisory Council are going to act as a task force, but I thought I made it very clear that the Division of Law Enforcement and the Division of Fish and Wildlife will be involved in this, so rest assured. You’ve done a marvelous job. This is a complicated issue and it does have a lot of issues that are tangential to it. The task force will address this and this will get moved forward. So, I thank you for your work.”

Lambert added, “I kept the petition as simple as possible. I only included coyote and foxes in it. I didn’t want to step on coon hunters. I didn’t want to step on the beaglers and their rabbits.”

The Chair responded, “We appreciate that. You’ve done a good job, and the task force will move this forward. Thanks for coming. We appreciate it.”

Consideration for preliminary adoption of amendments to 312 IAC 9-10-9 that govern wild animal rehabilitation permits; Administrative Cause No. 10-015D

Linnea Petercheff, Staff Specialist with the Division of Fish and Wildlife, presented this item to amend the wild animal rehabilitation permit rule language. She said in 2009, the DNR formed an advisory group that consisted of four licensed rehabilitators, a veterinarian with the Board of Animal Health [BOAH], a DNR wildlife biologist, a conservation officer, a nuisance wild animal control operator, and her. The DNR also gathered input from other rehabilitators.

Petercheff said wild animal rehabilitation permits allow qualified individuals to take in wild animals (including mammals, birds, reptiles, and amphibians) to care for them until returned to the wild. Many of the animals are orphaned young, but other animals may be sick or injured adults. While wild animal rehabilitators have good intentions, the DNR has had to take legal action on permit holders within the past few years. In addition to violations, rehabilitators may inadvertently spread disease or parasites to other wild animals when rehabilitated animals are released.

Petercheff outlined proposed new requirements for becoming a licensed rehabilitator, including a testing requirement. An exemption would apply to those who have had a rehabilitation permit for ten years or more and have taken in at least twelve animals each year. Housing requirements would be clarified to minimize human contact and the likelihood of spreading disease among domesticated and wild animals. There currently are no requirements for the release of wild animals taken in by licensed rehabilitators. Animals from multiple counties can be housed together and released anywhere in the state. “For example, a deer that is taken in for rehabilitation in Wayne County could be released in another county, which could be close by, or it may not be close by.” Clarifications would be made regarding the public display of animals undergoing rehabilitation. The United States Fish and Wildlife Service (USFWS) does not allow the public display of migratory birds that are undergoing rehabilitation. The purpose of rehabilitation is for release to the wild. Birds, mammals and other species undergoing

rehabilitation could experience additional stress by being exposed to the public and become habituated to humans, which could affect their recovery and ability to survive on their own in the wild. “They’re not meant to be kept as pets” and displayed to the public. The DNR has also proposed changes to the possession of non-releasable animals and clarified the disposition of dead animals. Currently, some rehabilitators are requesting to keep non-releasable wild animals that were taken in for rehabilitation as pets, so the language is necessary to allow only those animals to be kept for educational purposes or as foster parents.

Petercheff explained that while individuals have offered different approaches to deal with the rehabilitation of species such as raccoons and deer, the advisory group agreed to restrict the rehabilitation of raccoons, skunks, foxes, coyotes, and deer. The group agreed the DNR should decide how many could be released at a site and could make other restrictions on rehabilitations. Rules currently require nuisance wild animal control operators, resident landowners, and tenants to release wild animals that they capture in the county where captured or to euthanize the animal by a method approved by the DNR. Taking in wild animals from multiple counties, and then releasing them together in another county, increases the opportunity for the spread of diseases and parasites. With the exception of a few species of birds, the DNR would require the release of wild animals in the counties where the animals were obtained, unless the origin is unknown.

Petercheff said there have been concerns regarding the timeframe in which animals must be released and locations where the animals should be released. The Commission approved the 180-day timeframe several years ago for wild animals taken in by rehabilitators. The USFWS and other states have similar timeframes for possession of certain species.

Petercheff said licensed rehabilitators released over 800 raccoons in 2008 and 2007, and almost 1,000 raccoons were taken in by rehabilitators in 2009. Two-thirds were returned to the wild. She said that very few coyotes and skunks are taken in for rehabilitation (four in 2009 and five in 2008). The common species for rehabilitation are squirrels, rabbits, deer, and fox.

Petercheff concluded, saying the majority of the proposed changes were made by an advisory group that included a diverse membership. The majority of the changes were by consensus of the group, including the restrictions on the release sites. She said the DNR believes the changes are needed for healthier populations and reduced predation on species that are in peril. “The DNR’s statutory authority is to protect wild animal populations. These changes are needed to ensure that wild animals are being housed and cared for properly, and are not affecting the welfare of wild animal populations around the State.”

Jane Ann Stautz complimented the staff and their efforts and for the inclusion of the background materials. “That was very constructive. Thank you.”

The Chair reflected, “Very good example of working with the different constituent groups, and I appreciate that.” He said several persons wished to speak. He asked if someone wanted to speak representing a particular group.

Kathy Hershey with the Utopia Wildlife Rehabilitators addressed the Commission. She said she was a wildlife biologist and a rehabilitator. “This is about best practices. I was on the advisory

committee, along with the other people mentioned. She noted that Indiana has been somewhat lax in establishing best practices explaining that most states now have educational and test requirements as well as apprenticeships and different levels of rehabilitators. She explained that it is generally conceded that rehabilitation is not important to conservation. But, what is important for rehabilitators is that we are recognizing trends in disease and in animal populations. We're the people who are going to see it first. It's very important, because of the urbanization of these species, that we understand exactly what's going. Animals are getting diseases that they never got before because they're all living in people's back yards, eating at feeders. Hershey explained the importance that the wildlife rehabilitator be more educated and have much more information because it's not only a matter of animal health, it's a matter of human health and public health, and also to help the rehabilitators and their families and their pets. We think we've done a pretty good job of putting this together.

Patti Reynolds, President of Return to the Wild (the "RTTW"), addressed the Commission. RTTW rehabilitates injured and orphaned birds of prey. Reynolds noted she is also on the Board of Indiana Wildlife Rehabilitators and Educators Network ("IWREN"), which was formed by rehabilitators who recognized the need for further education. IWREN funds and sponsors workshops to "help reduce the cost of continuing education for rehabbers." I think it's really important for us to establish a level of professionalism in this State with regard to wildlife rehabilitation. She explained that the animals are taken in with the primary purpose of rehabilitation and release, and noted that surrounding States have far stricter requirements than the ones in this rule proposal, including educational requirements. She explained her understanding that the proposed educational requirements were specifically objected to, and expressed that that animal handling and animal care is important. This is not something to be taken lightly—not a hobby. It should be a profession, and... there should be guidelines for best practices to take care of the animals and get them back out where they belong. In terms of continuing education, if you were going in for heart surgery, would you want your heart surgery done the way it was done in 1969 or the way it's done in 2010? That's the difference in the development of techniques and the further education of surgeons and technicians, and this is a profession. We should act as professionals and continue our education."

Priscilla Herochik addressed the Commission. She thanked Linnea Petercheff for all the changes made from the first drafts that "made these rules something that I can now substantially accept." There are a few concerns I have about the county requirement. I'm in Lake County where there aren't very many rehabilitators. Herochik noted that more rehabilitators are needed that noted that her concern against these rules at the very beginning was that they might tend to chill people from coming into rehabilitation. She explained that recent correspondence with Petercheff has reassured her somewhat that the testing requirements will be getting some provision as to what the testing questions will be derived from, that the continuing education requirements will be something throughout the State where different people can go. One thing Herochik noted that she would really like to do is actively recruit more rehabilitators. Rehabilitators are really a win-win for everybody she explained. We're free. We provide all of our things that we need to use, and we really do a benefit to the citizens of Indiana.... I have 15 raccoon babies right now that I'm taking care of myself in Raccoon Woods. If we're not there, and number 16 comes in, and we can't handle it, eventually they're going to take care of that baby themselves, even though they don't know how. What happens is once the animal is too big for them to handle, they're

going to say ‘oh, it’s a raccoon; I’ll just take it out in the woods’ and [the raccoon] is not going to survive, or [the raccoon is] going to be in a neighborhood ... acclimated to humans and... become beggars”.

Ce Ann Lambert addressed the Commission. “I support the DNR in releasing in the county of origin, especially for coyotes and foxes, which is what I know about.” Lambert noted that coyotes are territorial and if released in unfamiliar territory, it is likely they will fall victim to a fatal territorial fight with coyotes that already inhabit the territory. Coyotes may have puppies to return to and provide for if found between the months of March and November. Coyotes usually mate for life, so if released in county of origin, Lambert noted that they can reunite with family members, which would give the animals a better chance of survival. Lambert also explained that release in the county of origin will promote a stable coyote population in their own territory as well as maintain a healthy balance in that eco-system. According to Lambert, coyotes have highly complex behaviors and special needs when it comes to their rescue, rehab and/or release. As predators and scavengers, it is important to observe and respect these needs to successfully rehab them with safety to the animals and the surrounding human habitat.”

Lambert said female foxes rely on each other for support in raising litters of kits. If one fox is found and released elsewhere, the female left in original territory is left with trying to support two litters and ending in the probable starvation of the other female’s kits. “While foxes tend to mate for life, the male is usually only around during breeding seasons, which is why the relationship between females is so important to raising kits. I also want to say that over the last year and a half, I’ve visited a rehabber. What I saw was deplorable. I saw wild animals that were being raised in abusive conditions. I don’t think some of these rules go far enough, and I think the Department should have an inspector that inspects the rehabbers. I don’t think it should be left to the [Conservation Officers] who have other things to do.”

The Chair observed, “It looks like we’re making progress, and I guess you’re for this, correct?”

Lambert replied, “Yes, I am for this, I just don’t think it goes far enough.”

The Chair thanked Lambert for her comments.

Judith Cieslak next addressed the Commission. “I’m not myself a rehabber. I’m a great admirer of people who do this work. I also represent quite a few more than 500 supporters and Friends of the Marine Ridge Wildlife Rehab Center in Northwest Indiana located in Valparaiso.” I, too, want to applaud the committee who put together these new regulations for rehabbers and especially the attention they paid to the input from rehabbers who have some quibbles with some of the issues dealt with. Cieslak offered a suggestion that the committee reconsider the rule’s requirement that deer must be released no later than 180 days after the rehabber has begun the rehabbing process. She explained that the rule is arbitrary, failing to consider that the 180 days could put an inexperienced deer out during hunting season, which not only be unfair to the deer but would also put the rehabber in danger because they would also be providing the supportive care usually required in the transition of the animal to the wild during the hunting season and any accident that might occur in that connection. Cieslak noted her opinion that the possibility that extensions of this time may be granted when warranted is not completely satisfactory. She

expressed that the rehabber would be the most reliable judge of the particular circumstances under which the animal is released. In the same connection, Cieslak stated that she has always been dismayed that no avenue exists for appeal of the decision of the administrator who may make these judgments. There's no appeal process, there is only one person to whom the rehabbers to refer these questions. It may be efficient to do it this way but I don't know that it is fair or reasonable."

The Chair asked Cieslak if she made her suggestions known to the committee.

Cieslak replied, "I did not, but I will."

The Chair thanked Cieslak for traveling "a long way to the meeting".

Susan Davis, representing Wild Care in Monroe County, Bloomington, Indiana, addressed the Commission. "We are a rehabilitation center that was formed in 2001 and since that time we have taken in over 10,000 animals—that's mammals, birds, and reptiles. Roughly 45% each year is going to be birds and 45% mammals, and maybe 10% reptiles." Davis stated that her group agrees with much of what Kathy and Patti said and they like a lot of things about this draft. However, Davis expressed deep concern about is this "very arbitrary, you must release your mammals in the county of origin." Davis gave a couple examples of the kind of thing they run into. She explained that they have five coyote pups right now. Three of them are from Jackson County so we have to have a release site in Jackson where we're not familiar, and even though all five were are raised together, they're going to be split up. Davis explained that with raccoons they try to create family clans of six to eight. So, for example we're supposed to have a cage from Monroe County, Owen County, Brown County, and Lawrence County. So instead of having raccoons from different counties together in one cage Davis said, "I'm supposed to say, well, it's too bad because we've only got one from Monroe County. I have one from Brown County. Let's see, I have three or four Owen County. They'll just have to sit in cages by themselves and cry." Furthermore, Davis noted that the studies from the Humane Society say that they won't survive if they are released alone. They need to be released as a group.

Jane Stautz asked if allowing release to adjacent counties would solve those challenges.

Susan Davis replied, "They would for the raccoons, although we do occasionally have businessmen that drive down from Carmel and Fishers with a raccoon cub, with their family in tow, and they want to come to the releases. There's a lot of interest out there in helping wildlife, but look at the example of that if you only get a few foxes. You want to raise them with other foxes, so they know they are a fox, and they aren't binding to you."

Stautz asked the DNR whether releasing mammals to an adjacent county was discussed.

Petercheff answered, "I've gotten countless comments from rehabbers about wanting to release in other locations besides the county where taken. It's a difficult decision, when you take into account the disease aspect and parasites that can be transferred, when other permit holders aren't allowed to do that. And, you take into account the carrying capacity of properties where these

animals are leased.... I think we want to further review this matter and review all the comments as they come in.”

Herochik asked, “Is there anything that the DNR and Division of Fish and Wildlife can do to help people become rehabilitators so we wouldn’t have this crunch in different counties. I think it would be a lot easier to release in the county of origin, if everyone could find a rehabber in each county?”

The Chair responded, “It’s a very good question. I don’t know that it’s our position today to either advocate for or against that, but at the end of the day, I think this is a work in progress. What I’ve heard today and on behalf of all those who have asked to speak is that we’re making great strides. This is a step in the right direction.” The Chair said he would entertain a motion from the Commission.

Patrick Early moved to preliminary adopt amendments to 312 IAC 9-10-9 that govern wild animal rehabilitation permits as recommended. Phil French second the motion. Upon a voice vote, the motion carried.

The Chair thanked everyone for their attendance on this item. “I know that it’s been a long time in coming.”

Consideration for preliminary adoption of amendments to 312 IAC 9 governing the use of cast nets and live gizzard shad, threadfin shad, and alewife as bait; Administrative Cause No. 10-075D

Linnea Petercheff also presented this item and said Bill James, Chief of Fisheries in the Division of Fish and Wildlife, was present to answer questions. The DNR is proposing changes to allow the use of live gizzard shad and threadfin shad as bait on eight bodies of water in Indiana where these species are known to exist. As part of the Fish and Wildlife Rules Enhancement Project in 2009, many anglers commented on the use live gizzard shad for bait at locations other than Brookville Lake to fish for striped bass and hybrid striped bass.

Petercheff said the DNR proposes that live gizzard shad or threadfin shad may be collected and used on named waters, but not transported away from those waters. Any unused shad must be killed. Similar language is proposed for live alewives used as bait on Lake Michigan. Live gizzard shad or threadfin shad collected at other water bodies would need to be killed upon capture and could not be possessed live. Restricting shad use to the named waters and prohibiting transportation would not only prevent unintended shad introductions but would also reduce the risk of bringing unwanted species into the named waters.

Petercheff said currently, legal cast nets can be used under a sport-fishing license if they have a diameter of no more than ten feet, except on the Ohio River where the maximum is nine feet. Mesh size regulations are the same (maximum of 3/4 inch stretch mesh) for both the Ohio River and inland waters. In response to angler requests, the DNR proposes that the maximum cast net diameter be increased to 20 feet for both the Ohio River and the rest of the state. Mesh size would remain at 3/4 inch stretch mesh for normal minnow and crayfish collection. The DNR is

also proposing that cast nets used at the eight named live shad water bodies have a maximum mesh size of two inches stretch mesh to allow more practical use in collecting live gizzard shad, threadfin shad, or alewives which school in open water.

Petercheff concluded and said that the DNR believes the proposed changes would balance angler needs while still providing adequate protection of fisheries resources in Indiana.

Greg Yazel of the Indiana Stripped Bass Association addressed the Commission. “This has been five or six years in the coming for us to get to this point; and I’m just here to thank everybody.” He asked, “What’s next? Where does it go from here?”

Petercheff responded that if the Commission gives preliminary adoption, the public comment process would begin and a public hearing would be scheduled. “We would not anticipate having that for four or five months from now, and then we would come back to the Commission for final adoption. The process is expected to take another eight to ten months.”

Eric Simpson of the Indiana Sportsman Round Table spoke next. “I have questions. This sounds reasonable, but we would like to take this to our membership, discuss it before we get some consensus. I’m sure that will generate a lot more questions. The disposal of the shad is an issue. How do we do that? We’re increasing the net size I think to 20 feet, is that correct? Is there any food chain impact in netting these shad?”

The Chair responded, “I think you know as a member of the Sportsmen Roundtable that the process we’re asked to entertain today is preliminary adoption. There will be a public hearing, and I’m sure those matters will be addressed with Linnea and others” as the proposal moves forward.

Phil French moved to approve the preliminary adoption of amendments to 312 IAC 9 governing the use of cast nets and live gizzard shad, threadfin shad, and alewife as bait. Larry Klein seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF NATURE PRESERVES

Consideration of the dedication of the Dr. Sherman A. Minton, Jr. Nature Preserve, Floyd County

Lee Casebere, Assistant Director of the Division of Nature Preserves, presented this item. “It’s truly an honor and privilege for me to introduce this item today.” He said the Division of Nature Preserves and the Division of Fish and Wildlife recommended dedication of the Dr. Sherman A. Minton, Jr. Nature Preserve in Floyd County.

Casebere reported the dedication would help preserve a portion of the Knob Stone Escarpment, “a very rugged terrain in the New Albany area where the underlying bedrock consists of siltstones and shales. The communities largely consist of chestnut oak, which is fairly restricted in Indiana. There are also areas which are more open which support black jack Oak and Virginia Pine. Some of these are probably very old trees that looked like they’ve struggled to survive.

They're often only 20 feet high and very gnarled and show evidence of living in a harsh place." He said the property has mesic ravines containing tulip, sugar maple, and cherry. Animal species include the worm-eating warbler, cerulean warbler, and hooded warbler that are state endangered. Rare plants such as Deam's beardtongue and Harvey's buttercup are present.

Casebere said the nature preserve would be named in honor of Dr. Sherman A. Minton, Jr., a noted authority, who wrote The Reptiles and Amphibians of Indiana. Minton was also a medical doctor. "I have to give the guy credit for being extremely clever because he somehow managed to get himself involved with a lot of medical related situations" which allowed him to travel around the world and be involved with herpetology. Dr. Minton spent approximately four years in Pakistan establishing a microbiology lab." Dr. Minton and his wife, Madge, also authored Venomous Reptiles. The Reptiles and Amphibians of Indiana (2nd Edition) was published in 2001. Casebere said Minton died in 1999 before the book's publication. Dr. Minton was also writing another book, Love, Life and Reptiles, before his death. "A lot of friends and colleagues took the book forward," and had it published. Casebere said that Dr. Minton and his wife Madge had three daughters, "and we're privileged to have in the audience today, April and Holly."

Jack Corpuz from Indianapolis then spoke. "It was reported in the Indianapolis *Star* that this property was currently a Fish and Wildlife Area and that hunting and hiking had been going on at this particular property and that it would continue to be hunted and hiked. Is that correct?"

Casebere replied, "That is correct. It's actually a jointly-owned property. The acquisition was from monies from the Division of Nature Preserves and the Division of Fish and Wildlife. It's a property that we've been acquiring for going on 20 years, and we finally got to the point where we decided it needed to be dedicated as a nature preserve."

Corpuz added, "That being the case, I fully support this particular action."

Michael J. Lodato from Evansville addressed the Commission. "Over the last couple of decades, I've come to appreciate the work of the DNR's Division of Nature Preserves and have come to develop a relationship with several people in the Department. I admire very much the dedication, hard work, and scientific and technical knowledge in the establishment, maintenance, and management of the State's system with nature preserves. They are truly the jewels of Indiana's natural heritage. I have visited many of these preserves and particularly this property that's under consideration."

Lodato said, as a naturalist with a particular interest in herpetology, "I first crossed paths with Sherman Minton about 40 years ago. He was a real inspiration to me and had a profound influence in my life for a period of 30-some years, and that continues today. I always felt like we spoke the same language, shared a passionate curiosity and interest in amphibians and reptiles. And we worked some interesting projects together; visited each other's homes over the years; and spent some really good times in the field over those decades. Lodato said he and Minton spoke often, and Minton "described early experiences in the steep ridges and valleys of the Southern Knob Stone Escarpment of Clark, Floyd, and Harrison Counties. [Minton] grew up in Floyd County, and I know he visited this region frequently as he could, even throughout the adult years of his life. Minton was passionate about the preservation and conservation of natural landscapes and natural diversity, particularly where amphibians and reptiles were concerned."

Lodato concluded, “As for the Knobstone escarpment of the Floyd County area, Lee Casebere often said that there was ‘something special’ about the area. Taking all this together, I cannot think of a more fitting tribute than to name and to dedicate this preserve in honor of Sherman Minton, Jr., and I urge you to do so.”

The Chair reflected, “Those are certainly personal words, and thanks to you and [the Minton] family for being here. It’s nice to have a little bit of personality behind the naming of these types of properties. We appreciate your words.”

Jane Stautz moved to approve dedication of the Dr. Sherman A. Minton, Jr. Nature Preserve, Floyd County. Phil French seconded the motion. Upon a voice vote, the motion carried.

PERSONNEL ACTIONS

Consideration of Douglas Green as Assistant Property Manager of Willow Slough State Recreation Area, Morocco, Indiana

Bill Bean, North Region Public Lands Supervisor for the Division of Fish and Wildlife, presented this item. “It’s my pleasure to introduce Doug Green.” He said Green “was born and raised in Valparaiso. His family then moved to Arkansas, and he graduated from the University of Arkansas. Doug is married to a lovely lady from Newton County, and they have a baby daughter named, Gracie.” Excellent candidates were interviewed, “but Doug rose to the top. It’s my pleasure to recommend to you Douglas Green for the Assistant Manager of Willow Slough.”

The Chair said, “It’s our pleasure to have you return, Doug. I know you’ve spent time at the property.”

Green said, “It’s an honor to be able to be a part of the Slough. We have a great workforce with lots of experience, and I’m privileged to learn a lot from them. I’m really happy about being a part of the DNR and making it a career.”

Larry Klein moved to approve the appointment of Douglas Green as Assistant Property Manager at Willow Slough State Recreation Area. Mark Ahearn seconded the motion. Upon a voice vote, the motion carried.

NRC, DIVISION OF HEARINGS

Consideration of recommended report of the Natural Resources Commission with respect to the Petition for Maxinkuckee Lake Conservancy District (Marshall County); Administrative Cause No. 09-167C

Steve Lucas, Hearing Officer, introduced this item. He said for consideration was the Hearing Officers’ report for recommended findings to the Marshall Circuit Court on the formation of the proposed Maxinkuckee Village Conservancy District. A two-day hearing was conducted in Culver to consider the proposal. On February 3, expert testimony was received, and on the following day, interested citizens offered perspectives. At “one quick count” on February 3,

approximately 60 persons were present, and the following day, a similar count indicated the presence of 70 persons. Agency comments were invited and received, and in addition to summaries of testimonies and statements, written comments were received from citizens. The attorneys briefed legal issues. The hearing process was lively and thorough. He thanked Jennifer Kane, who served with him as a hearing officer, for her extraordinary efforts in organizing and incorporating materials in the report.

Lucas said the petitioner for the proposed district is Aker Properties, LLC. The petitioner was represented at the public hearings, and in the conferences leading up to the public hearings, by Fred Jones, a Plymouth attorney. Remonstrators, the Lake Maxinkuckee Environmental Council and William and Jean Welch, were represented by Syracuse attorney, Stephen Snyder, and Indianapolis attorney, Brian Welch, respectively. Lucas said Fred Jones was not present for the Commission meeting, but Steve Snyder and Brian Welch were.

Lucas said it was important for the Commission to direct its participation to the statutory directive. The Maxinkuckee Village Conservancy District was proposed for a single purpose: the collection, treatment, and disposal of sewage and other liquids. As applicable to this purpose, the responsibility of the Commission is to make technical findings under IC 14-33-2-17 on five issues as to whether:

- (1) The proposed district appears to be necessary;
- (2) The proposed district holds promise of economic and engineering feasibility;
- (3) The public health would be served immediately or prospectively by providing sewage disposal;
- (4) The proposed district proposes to cover and serve a proper area. Included in this finding is whether, under IC 14-33-3-1, each part of the district is contiguous to another part;
- (5) The proposed district could be established and operated in a manner compatible with established:
 - (A) Conservancy districts;
 - (B) Flood control projects;
 - (C) Reservoirs;
 - (D) Lakes;
 - (E) Dams;
 - (F) Levees; and
 - (G) Other waste water management or water supply projects.

Lucas reflected that the prerogative for forming or declining to form the proposed district rested exclusively with Judge Palmer of the Marshall Circuit Court. The process is not one of agency regulation or licensure and is limited to making technical findings on the five referenced issues—and these findings would be viewed in subsequent judicial actions as *prima facie* evidence.

Lucas said a function of the report is to summarize and organize comments received from the petitioner, the remonstrators, agencies, and citizens. These were substantial and resulted in a 100-page report, but the hearing officers' recommendations do not begin until page 82. He said he would try and keep his comments brief in order to maximize the attorneys' opportunities to present their clients' perspectives. He also referenced green sheets at the Commission table,

which made technical corrections to the hearing officers' portion of the report and said these had previously been shared with the three attorneys. Lucas then offered a few highlights regarding the five technical findings.

With respect to whether the proposed district appears to be necessary, the hearing officers indicated on page 90 of the report that if Maxinkuckee Village is to be developed by the petitioner, a system is needed for the collection, treatment, and disposal of sewage and other liquid wastes. A proliferation of entities on Lake Maxinkuckee providing these services is not a necessity. Without a complete and rigorous exploration of opportunities provided by the East Shore Corporation, by the Town of Culver, and perhaps most clearly by the South-West Lake Maxinkuckee Conservancy District, the proposed Maxinkuckee Village Conservancy District has not been shown to be necessary.

With respect to whether the proposed district holds promise of economic and engineering feasibility, the hearing officers found the economic viability of the Planned Unit Development, anticipated by the district, may have met the threshold requirement of feasibility. The proposed wastewater treatment system seemed to be technically sound, but was found not to satisfy feasibility because there was no redundancy in the event of a system failure at peak operating times. The potential for adverse consequences from a system failure were magnified by the location of the district at the mouth of Kline Ditch, the largest tributary to Lake Maxinkuckee.

With respect to whether the public health would be served immediately or prospectively, the hearing officers found a properly functioning cluster system for wastewater collection and treatment could prospectively serve the public health.

Lucas said with respect to whether the proposed district proposed to cover and serve a proper area, the hearing officers observed not all portions of the district would appear to be served by its stated purpose. Because the area to be served was not destined for subdivision, areas would not be represented on the district board, or the petitioner had not otherwise illuminated reasons for boundaries derived from the Conservancy District Act, the proposed district was not shown to cover and serve a proper area.

With respect to whether the proposed district could be established and operated in a manner compatible with other districts described in the statute, the hearing officers found the petitioner had not provided sufficient evidence to demonstrate the proposed district could be operated in a manner compatible with the protection of the Kline Wetland and the management of Lake Maxinkuckee.

Lucas said the hearing process was challenging. He thanked all three attorneys for the professional way they developed the legal issues and for their presentations of evidence at hearing. The hearings "could have gotten out of control", but owing in "very large measure to the professionalism of counsel, we successfully worked our way through it."

Steve Snyder spoke as attorney for the Lake Maxinkuckee Environmental Council. "I appreciate the opportunity to spend a little time with the Commission." Snyder said, first of all, he wanted

to “comment on the job that was performed by Steve Lucas and Jennifer Kane in conducting two days of hearings that were complicated on the first day and emotional on the second day.”

Snyder reflected there were items he believed were crucial. Although the hearing officers focused upon the statutory factors, “there were other facts that are ancillary” but need to be understood. “There is a proposal to establish on a vacant tract of land a condominium project.” The Culver Zoning Ordinance prohibits multi-family uses “unless there is a municipal sanitary sewerage system available.” Approval by the Culver Plan Commission is essential to the project. “If that weren’t a requirement, I don’t think we’d be here.”

Snyder urged that because a municipal sewerage system is a necessity for a condominium project does not make a conservancy district necessary. “There is one user in the area..., and that’s a marina with a restaurant.” The marina has a septic system, and the septic system “is working fine. It’s not needed to replace an existing failing septic system. It’s only needed to allow the construction of additional off-lake residential users. The fact is that there are three other treatment facilities in the area, and to our knowledge, none of them were contacted by the petitioner as to whether they have ability to treat” the waste from the proposed condominiums. Instead, the petitioner would use an oversize septic system with no redundancy. “The project is in an area that has significant wetlands within the development, and the fields that were proposed to be constructed (eleven of them) occupy essentially all of the available space. If there were to be a failure of one field or two fields, there is no way in which those fields could be reconstructed on the site to continue operation of the system.”

Snyder added, “There is also the fact that this project is immediately adjacent to the Kline Wetlands. One of the factors, here, is what effect will it have on existing water management projects, which the Kline Wetlands is. There was a very significant amount of money invested in the rehabilitation of the Kline Wetlands back in the ‘80s to enhance the water quality of Lake Maxinkuckee, and it succeeded, probably beyond virtually everyone’s belief that it could succeed. The State participated. The DNR designed a portion of the system. JF New designed a portion of the system, and it’s working very well.” A failure of the wastewater treatment system proposed by the petitioner could damage not only the Kline Wetlands but also the entirety of Lake Maxinkuckee.

Snyder complimented the Department of Natural Resources for identifying challenges with the untested system proposed for the district. Reviewing the literature of the manufacturer of the system, the DNR discovered there are limitations on the kinds of “wastes that can be treated because it is aerobic rather than anaerobic.” For examples, you cannot pour typical household cleaners or residential grease down the drain. “We’re looking at 50 single-family condominium units. I cannot be convinced, in the price-range of \$350,000 to \$500,000 that the users of those units are going to disregard having their garbage disposals.”

Regarding serving the public health, Snyder asked whether a conservancy district should be formed using questionable technology to prospectively serve the public health. The district was not currently needed.

Snyder reflected that the developer identified two areas within the proposed district where there are no immediate plans for usage. One of those areas “has direct lake access,” but the developer does not know what it will do. “As a result, there wouldn’t be any representatives for those districts on the board because there wouldn’t be any population.”

Snyder asked, “Is it compatible with the lake or other water management projects? This is where the Lake Maxinkuckee Environmental Council, which I represent, became very concerned. After all the efforts to rehabilitate the Kline Wetlands, to filter out sedimentation and agricultural run-off that was coming from the Kline Ditch, through those wetlands, they don’t want that jeopardized at all. The water quality and the water clarity have been enhanced significantly since that wetland was rehabilitated. There were several experts from JF New who said the wetlands are functioning fine now, but if there is any degradation, they may not continue to function.” The petitioner has not adequately addressed sedimentation from surface run-off attributable to the proposed condominiums.

Snyder stated, “Finally, it’s a condominium project. There is a statutory provision at the end of the five elements that Steve Lucas described which says, if it’s all owned by one person, and this property is, then there has to be evidence to allow you to create the district that this is going to be subdivided, and, ultimately, conveyed in some subdivided fashion to purchasers. Well, it’s a condominium. Condominiums don’t get subdivided. In fact, there is always only one owner to a condominium project, and that owner is jointly all the owners of the individual units. For a condominium, the units are boxes in the air. You don’t own the land that is not a part of the unit. It is merely jointly held real estate...that a bunch of individual people use. The boundaries on a condominium unit are technically the unfinished floors, ceilings, and walls of that unit.” The property is never “subdivided” as the term is defined by the Culver Plan Commission.

Snyder concluded by saying there are five elements which must be established by a petitioner for a conservancy district. The hearing officers found that the petitioner had failed in its burden of proof with respect to four of the five elements. “And the fifth one, necessity, is questionable.” Snyder reflected, “We agree, completely, with the proposed recommendations of the hearing officers and would ask the Commission to adopt them verbatim, knowing that that will be then presented to Judge Palmer in the Marshall Circuit Court at the time he conducts his final hearing.”

Chairman Poynter addressed Steve Snyder, “Thank you, very much. That was a very, very good summary for what I know is a complicated situation.”

Brian Welch spoke as the attorney for his parents, Jean Welch and William Welch, who are property owners along the east shore of Lake Maxinkuckee. He said Steve Lucas complimented counsel for the way they conducted themselves at hearing. “I’d like to return serve. I’m sure you all have heard it before, but you’ve got a terrific administrative law judge who knows how to run a hearing. We got through two days of a lot of detail and a lot of emotion.... The report that is before you is a very well done and detailed explanation of what went on.”

Welch reflected upon the inability of the petitioner to satisfy the five elements required for the formation of a conservancy district. As Steve Lucas said in the written report, “assessing

economic viability of project like this is always a dicey proposition. I would suggest to you that the petitioner did not satisfy its establishing economic viability. Steve gives the petitioner the benefit of the doubt and supposes that it might be viable, but I think the facts are that probably it is not. In the location where this proposed conservancy district is, sitting up on a hill leading down directly to the wetlands that Steve Snyder talked about, and leading directly to the lake, in my view the lack of economic viability of this proposed development is critical. If this thing is to function at all, and I suspect that it can't, it has to be running at top speed."

Welch said he urged on behalf of his parents, consistently with what was previously requested by Steve Snyder, that the Commission adopt the recommendations of the hearing officers "in their entirety" and send them "on to the Marshall Circuit Court for its consideration. Thank you."

Kathy Clark, Director of the Lake Maxinkuckee Environmental Council, noted that the Kline Wetland is an "80-acre DNR wetland." She said locally the property was viewed with respect and simply called "The Kline".

Thomas Easterly, Commission Member, stated: "I read this thing. It looks like we're mixing a local land-use dispute with some other things, which challenges actually the credibility of state permitting actions. That bothers me. There certainly are parts which say maybe this isn't the right district to have, but to challenge the Department of Health's permitting actions—and I called them up to talk with them about it—they have no concerns that the system won't work, although it implies in here there are concerns that the system won't work. The reason that they put in the condition that there is a conservancy district—and they honestly don't care if it's a conservancy district or a homeowners' association, that's inartful wording—is that they want somebody responsible for the operation here that has resources. I'm concerned about the other part saying that 'well, we don't know, and there's testimony about that, that the rules are adequate....' I guess I'm concerned that the DNR is making findings, or, that the Commission actually that I'm on, is making findings about other state rules and permitting actions in a document without evidence. I mean there is no testimony from the Health Department, except that nobody challenged the permit, which is the appropriate way. If you think the permit is wrong, you challenge the permit when it's issued. That's the final agency action not through an ancillary process. So, it might very well be, and it does look like it, that this shouldn't be a conservancy district because it doesn't meet many of the requirements. I'm really concerned about that policy implication."

Steve Lucas stated, "I think I have to respond to that. This is about [determining five statutory elements requisite to] the formation of a conservancy district. It's not about a permit. It's not about the Indiana State Department of Health's permit, except [that agency did make approval of its permit] contingent upon forming or not forming a conservancy district. That is the reason its decision is relevant, and that is the reason that it's included. This report does not seek to set aside and does not seek to question the permit or [the ISDH] permitting authority. But the other side is that having a permit is not adequate to establish the elements for establishing a conservancy district."

Easterly continued, "All those things I see in the report. It's hard to separate out in all those 100 pages."

Chairman Poynter reflected, “I think we’ve had an opportunity with the summary from counsel, and Steve [Lucas’] input, and we welcome the comment from you, Tom, as IDEM Commissioner. Is there a motion?”

Mark Ahearn moved to approve the recommendations of the hearing officers, including technical amendments, as the Commission’s report to the Marshall Circuit Court regarding the creation under IC 14-33-2-17 of the proposed Maxinkuckee Village Conservancy District. Patrick Early seconded the motion. On a voice vote, the motion carried. Thomas Easterly abstained.

Consideration of recommended report of the Natural Resources Commission with respect to the Petition for Northwest Lake Conservancy District (Johnson County); Administrative Cause No. 09-207C

Steve Lucas presented this item on behalf of Jennifer Kane, Hearing Officer. For consideration are her recommendations to the Commission for findings to the Johnson Superior Court on the formation of the proposed Northwest Lake Conservancy District. The purposes for proposed district are (1) developing forests, wildlife areas, parks, and recreational facilities in connection with beneficial water management; and (2) operation, maintenance and improvement of works of improvement, for water-based recreational purposes or other work of improvement. As was applicable to the proposed Maxinkuckee Village Conservancy District, the Commission would make findings on five issues. The issues are generally similar except for issue (3). Here the standard for issue (3) is whether the proposed district seems to offer benefits in excess of costs and damages. In this instance, the evidence solidly supported affirmative findings on all five issues.

Alan Hux, attorney for the Petitioners, expressed support for the hearing officer’s report.

Patrick Early moved to approve the recommendations of the hearing officer with respect to the petition to form the proposed Northwest Lake Conservancy District. Mark Ahearn seconded the motion. Upon a voice vote, the motion carried.

Consideration of report of public hearing and comments, and recommendation of final adoption of amendments to 312 IAC 9, governing fish, reptiles, and permits (3rd Technical Rule Package); LSA Document #09-616(F); Administrative Cause No. 09-058D

Steve Lucas presented this item on behalf of Sandra Jensen, Hearing Officer. The primary purpose of the amendments is to reorder language for improved clarity, simplicity, and continuity. For the most part, the amendments were “technical in nature” and did not generate controversy. He offered the amendments and revisions for consideration as to final adoption as set forth by the Hearing Officer in her report.

Thomas Easterly recommended final adoption of amendments to 312 IAC 9 as revised governing fish, reptiles, and permits as set forth in the written materials. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of final action on readoption of rules governing off-road vehicles and snowmobiles (312 IAC 6.5); LSA Document #10-51(F); Administrative Cause No. 10-001T

Steve Lucas, Hearing Officer, presented this item. He said 312 IAC 6.5 was recommended for recodification in its current form. The proposal was expected to be noncontroversial, and no public comments were received during the review process. Lucas added that the Division of Outdoor Recreation was currently working on substantive amendments which might be offered to the Commission for consideration as to preliminary adoption within the next few months.

Thomas Easterly moved to approve final adoption on the readoption of 312 IAC 6.5 without changes. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of final action on readoption of rules governing grant programs (312 IAC 26); LSA Document #10-161(F); Administrative Cause No. 10-006T

Steve Lucas, Hearing Officer, presented this item. He said 312 IAC 26 was recommended for recodification in its current form. The proposal was expected to be noncontroversial, and no public comments were received during the review process. He said the Division of Outdoor Recreation might offer substantive changes for preliminary adoption within the next year, but those were not being pursued with the recodification.

Thomas Easterly moved to approve final action on readoption of 312 IAC 26 without modifications. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of final action on readoption of rules governing research, collection, quotas, and sales of plants (312 IAC 19); LSA Document #10-60(F); Administrative Cause No. 10-005N

Steve Lucas presented this item on behalf of the Hearing Officer, Jennifer Kane. He said 312 IAC 19 was recommended for recodification in its current form. The proposal was expected to be noncontroversial, and no public comments were received during the review process.

Thomas Easterly moved to approve final adoption on the readoption of 312 IAC 19 without changes. Jane Stautz seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF LAND ACQUISITION

Information Item: Acquisition of 2,050 Acres in Putnamville Indiana for a new Fish and Wildlife Area in exchange for 1,035 acres of land at Atterbury Fish and Wildlife Area for the expansion of Camp Atterbury Joint Maneuver Training Facility

Nick Heinzelman, Director of Division of Land Acquisition, briefly referenced this item. He said the subject was addressed by Director Rob Carter earlier in the meeting, “Unless there are any questions, I think we can check this one off.”

The Chair agreed. No questions were offered by members of the Commission.

Information Item: Exchange of an Easement over Deep Lake at Greene Sullivan State Forest to allow water withdrawal for the Bear Run Mine in exchange for 40 acres of highly desirable in-holdings

Nick Heinzelman presented this item for information and the receipt of any comments from Commission members. “Generally we do not bring property issues to the Commission, but this one is a little bit unusual. Under consideration is a property trade with Peabody Coal Company at Greene Sullivan State Forest.” He said the DNR owns one-half of Deep Lake with Peabody Coal owning the other half. Under a pending agreement, Peabody would withdraw water from Deep Lake for operation of the Bear Run Mine. During coal mining operations, Deep Lake would be closed for public safety. In exchange, Peabody Coal would deed 38 acres on the east side of the lake. “Once the project is complete, Peabody Coal would also deed to the DNR an additional 23 acres on the west side of the forest.”

ADJOURNMENT

The Chair thanked everyone for their patience. “It was a long agenda. There were a lot of things happening today. I would also counsel that in our July meeting we will have an equally substantive meeting that will likely draw quite a bit of interest.” The meeting was adjourned at approximately 12:49 p.m., EDT.