

NATURAL RESOURCES COMMISSION
Meeting Minutes of November 17, 2015

COMMISSION MEMBERS PRESENT

Bryan Poynter, Chair
Jane Ann Stautz, Vice Chair
Cameron Clark, Secretary
Carol Comer
Patrick Early
Phil French
Doug Grant
R. T. Green
Jennifer Jansen
Ali Meyer
Donald Ruch
Robert Wright

NRC, DIVISION OF HEARING STAFF PRESENT

Sandra Jensen
Dawn Wilson
Jennifer Kane

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Chris Smith	Executive Office
John Davis	Executive Office
Joe Hoage	Executive Office
Sam Hyer	Executive Office
Steve Hunter	Law Enforcement
Dan Bortner	State Parks and Reservoirs
John Bacone	Nature Preserves
Phil Bloom	Communications
Carl Wodrich	Land Acquisition
Terri Price	Water

GUESTS PRESENT

Alan Hux
Jeff Thomson

Bryan Poynter called to order the regular meeting of the Natural Resources Commission at 10:02 a.m., EST, on November 17, 2015 at the Fort Harrison State Park, Garrison, 6002 North Post Road, Ball Room, Indianapolis. With the presence of 12 members, the Chair observed a quorum. The Chair asked for a motion for the approval of the Commission's September 15, 2015 minutes.

Vice Chair Jane Ann Stautz moved to approve the minutes for the meeting held on September 15, 2015, as presented. Carol Comer seconded the motion. Upon a voice vote, the motion carried.

REPORTS OF THE DNR DIRECTOR, DEPUTIES DIRECTOR, AND ADVISORY COUNCIL CHAIR

DNR Director Cameron Clark provided his report. He said the Hoosier Outdoor Experience was held in September at Fort Harrison State Park and noted the event was successful even with the first day's heavy rainfall. "Once the weather cleared out, the rest of the weekend was very nice." He noted this year's event was not one of the highest attended, but said attendance may have been attributable to the weather.

The Director said the 2016 Legislative Session will begin in January, but noted Organization Day is being held today. He said the DNR has a number of statutory amendments proposed for the session, but in light of the 2014 Indiana Court of Appeals opinion, the DNR will be "watching very closely regarding any changes to the 'high-fenced' hunting." The Director noted that IC 14-22-1-1 provides management authority over wildlife; however, the Court of Appeals decision "stripped that authority to the bone. So we are hoping to take a stab at re-establishing our ability to manage wildlife by certain language changes in IC 14-22-1-1." He said there are sponsoring legislators who "will be carrying that forward and we hope that the rest of the Legislators...re-establish the Department's authority."

The Chair noted that leaders of many conservation groups penned an article that was published a couple weeks ago in the *Indianapolis Star*. He said the article is "high-profile...that obviously will have impact to the DNR."

John Davis, Deputy Director of the Bureau of Lands and Cultural Resources, noted that Commission members received copies of correspondence from David Dabertine, representing United Citizens Association, Inc. (UCAI). Davis said Carl Wodrich, with the Department's, Division of Land Acquisition, administers grants through the Natural Resources Damage Program in association with IDEM and the US Fish and Wildlife, Bloomington Office. "We've done a lot of work in the Grand Calumet River." He noted that Wodrich also works with other conservation groups, cities, and local governmental units administering grants for projects in Northwest Indiana. "The letters represent probably not a great communication from us about what we we're going to do. I think we viewed it as pretty disturbed area with high needs. The idea that we would use funds saved from another project is good government." Davis noted there are many parcels of ground in Northwest Indiana that need attention, but are not getting it. Davis said the Department's letter of explanation forwarded from the Director answers questions. "I don't think we are going to go have a public meeting, but we will be better, at least, at communicating with these folks about what we are going to do in the future. We will add the

two groups to our notification list.” He said the Department would remain in communication with Gabertine and the UCAI.

The Director agreed with Davis and noted that there are many disturbed areas located in the Northwest Indiana that could use some attention. He said the Department has worked on a number of areas, but what conducted at the site in question “is really no different, in terms of process and treatment, than a lot of the areas up there. The letter might seem as though we somehow did things differently on this project, but that’s not really the case.” The Director stated that Wodrich does an “excellent job on these projects. He manages the stakeholders and helps manage the stewardship of the funds that are involved. I think Wodrich has attempted to talk to Gabertine, but unfortunately, Wodrich has been unable to break through. I think everybody needs to know that Gabertine’s letters seem often inflammatory, but this project is not that unique in its condition and treatment. If that letter suggests otherwise, it has been misleading.”

Chris Smith, Deputy Director of the Bureau of Water Resource and Regulation, announced that Marcia Petty, Assistant Director of the Division of Reclamation, retired this past month. He said Jack McGriffin has filled the position and will be managing the Division’s Indianapolis office, which provides support for the Jasonville Field Office staff. Smith congratulated both Petty and Griffin. He also announced that Bourke Patton, Executive Director of the Natural Resources Foundation, will be leaving the Department’s employ at the end of the month. Smith said a search for a new Executive Director is ongoing.

The Chair thanked Bourke Patton for his work and dedication. “On behalf of the Commission, thank you for what you did and for all of the great work that went into so many great events that were available to the people of the State. You did a great job.”

Patrick Early, Chair of the Advisory Council, reported that the Advisory Council has not met since April 2015.

CHAIR AND VICE CHAIR

Updates on Commission and AOPA Committee

The Chair announced that long-time Commission member Fr. Damian Schmelz was recently awarded the Sagamore of the Wabash. He noted that Fr. Schmelz served on this Commission for 33 years, and “truly left landmark legacy in his work as a biologist and especially with Nature Trusts. Fr. Schmelz established work that is left for many to enjoy.”

John Davis noted that he attended the award ceremony for Fr. Schmelz. “Fr. Damian...had a memory for everything and spoke a few words. There were people from his parish that he served for 15 years.

The Chair said Fr. Schmelz was instrumental in organizing the state park deer reduction program. “We certainly owe him a debt of gratitude and I think the State did well by recognizing [Fr. Schmelz] with the Sagamore.”

The Chair introduced Jennifer Jansen, the proxy for the Commissioner of the Indiana Department of Transportation (INDOT). He noted that Jansen also serves on the Commission's AOPA Committee.

Jennifer Jansen stated that she is the Managing Attorney for the Legal Section of INDOT.

The Chair also welcomed and introduced Ali Meyer, Project Manager and proxy for the Director of Tourism.

Vice Chair Jane Ann Stautz reported that the Commission's AOPA Committee met this morning to hear arguments regarding a riparian rights dispute. "As we are looking forward, we'll be working with the Division of Hearings to pursue a continuing legal education session on pier and riparian rights."

The Vice Chair also noted that the AOPA Committee approved amendments to the Commission's Information Bulletin #1, which provides guidelines regarding indexing of agency decisions, agreed orders, and the process for obtaining transcripts and transcript fees. "It was time for an update and amendment."

The Chair thanked the AOPA Committee members, Jane Ann Stautz, Jennifer Jansen, and R. T. Green, for their efforts and dedication.

Consideration of 2016 meeting dates (Indianapolis):

The following dates are proposed for the 2016 meeting of the Natural Resources Commission: January 19, March 15, May 17, July 19, September 20, and November 15.

The Chair noted that he has had conversation with the Department's Executive Office and with the Division of Hearings staff regarding making it a priority to travel outside of Indianapolis for at least two of the Commission's 2016 meeting. "We have so many things we are going to hear about shortly...in terms of the Bicentennial, that I do feel there's many benefits that come from this Commission being present in other parts of the state. I realize the sacrifice that it takes for the Executive Office and Commission members, but there is a lot of benefit that comes with our interaction that we sometimes miss by showing up, having a meeting, and going away." He said the Department is working on a couple of locations that might be appropriate for summer meetings in conjunction with Bicentennial events. The Chair suggested McCormick's Creek, as Indiana's first state park, may serve as an appropriate meeting site for a summer meeting.

The Chair invited Commission members to provide additional ideas regarding meeting sites.

The Vice Chair stated that she would support scheduling a Commission meeting in conjunction with a Bicentennial celebration activity. She noted the Commission has not recently visited the Falls of the Ohio State Park or Charlestown State Park.

The Chair said Commission members will be informed of the meeting dates as soon as possible in order for members to plan accordingly. “I do appreciate the priority that everyone makes to attend these Commission meetings.”

DNR, EXECUTIVE OFFICE

Information Item: Indiana State Parks Centennial and Indiana Bicentennial Celebrations

John Davis presented this item. He suggested that Commission members keep handy the Division of State Parks handout, which provides a list of select activities scheduled for celebration of Indiana’s Bicentennial. He noted that the list was not comprehensive regarding all planned events. Davis said the National Association of State Park Directors Annual Conference (NASPD) is scheduled to be held at French Lick Springs Hotel September 6 through 9, 2016. He noted that the event is too large to be held at any of the Department’s inns. The event will be attended by persons across the Nation during State Park’s Centennial, Indiana’s Bicentennial, and the Centennial of the National Park System. Davis noted that the handout also provides a list of websites for additional information. Davis said that the Department will coordinate with the Commission regarding scheduling meetings around a Centennial/Bicentennial celebration event.

Davis announced that the annual Hoosier Outdoor Experience will be postponed and possibly held in 2017 due to the Centennial and Bicentennial celebrations in 2016.

The Chair commented, “I’m glad you mentioned the [NASPD] meeting. I know that [Dan Bortner]...sits on that Board of Directors. And, through his leadership, I’m sure he was very influential in bringing that to the state, which will put a lot of eyes and shine the light on a great organization.” He also thanked John Davis for his leadership.

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

No items were identified for referral to the Advisory Council.

DNR, DIVISION OF NATURE PRESERVES

Consideration of the dedication of the Wapi-nipi Nature Preserve in Wayne County

John Bacone, Division of Nature Preserves, presented this item. He noted that the proposed Wapi-nipi Nature Preserve was acquired with funds from the Bicentennial Nature Trust and is also a part of the Bicentennial Conservation Area that Governor Pence announced last October. The proposed nature preserve is one of a series of nature preserves along the Whitewater River, just west of Richmond, that are dedicated nature preserves owned and managed by the Whitewater Valley Land Trust.

Bacone said the tract is west-facing forested bluff above the Whitewater River. He noted that Dr. Ruch conducted botanical studies and published the vascular flora and vegetational

communities of the nature preserve in the *Proceedings* of the Indiana Academy of Science. “Actually, thanks to [Dr. Ruch], I am making a slight correction to the agenda item.” Bacone clarified that the agenda item incorrectly states that the proposed nature preserve includes an “oak-hickory forest,” but actually includes a “mixed deciduous forest”.

Bacone explained that the name of the proposed nature preserve, “Wapi-nipi,” is the Miami Indian word for “Whitewater River.” He noted that the White River is “Wapi-hini.” Bacone said the proposed nature preserve includes a high quality forest community and a small seep community. He then recommended the dedication of the proposed Wapi-nipi Nature Preserve.

Donald Ruch commented that the flora study included only the 45 acres located on the sloped woods coming down to the Whitewater River, not the farmland, row crop fields. He said that 378 species of plants (taxa) were found in those 45 acres, with 282 of those species being native plants. “The way we judge the quality of the site is to calculate the ‘floristic quality index’ (FQI). The FQI for this site, for the native plants, was 58.4.” He explained a FQI of 45 or higher, means that the area is considered to be a “nature quality” property. “So this is definitely nature quality property. It is one of the best [properties] that the Whitewater Valley Land Trust has...; this is a very good property and it is worthy of being a nature preserve.”

Donald Ruch moved to approve the dedication of the Wapi-nipi Nature Preserve. Doug Grant seconded the motion. Upon a voice vote, the motion carried.

Consideration of the dedication of the Moraine Addition Nature Preserve in Porter County

John Bacone also presented this item. He noted that the Moraine Nature Preserve was dedicated over 25 years ago. Since that dedication, the Department has acquired approximately 405.65 acres, which are included in this proposed addition. Bacone noted that the proposed addition includes old-growth forest, some high quality fens, and a number of sedge meadow natural communities. Portions of the proposed nature preserve addition were acquired through donations, “bargain sale,” or purchased at fair market value with assistance from a variety of sources, such as grants from the Lake Michigan Coastal Program and the Bicentennial Nature Trust.

Bacone noted that the Moraine Nature Preserve is a “great example of typical morainal landscape...very rolling and dissected, and includes prairies, wetlands, kettle glades, ponds, forests” all formed by the southern edge of the Lake Michigan Lobe of Wisconsinan glatiations. “It’s really an excellent example of a chunk of the original Indiana.” Bacone recommended the dedication of the Moraine Addition as a nature preserve.

Donald Ruch moved to approve the dedication of the Moraine Addition Nature Preserve. R. T. Green seconded the motion. Upon a voice vote, the motion carried.

DNR, STATE PARKS AND RESERVOIRS

Consideration of preliminary adoption of rule amendment to 312 IAC 8-2-8 regarding use of motorized carts on DNR property; Administrative Cause No. 15-092P

Dan Bortner, Director of the Division of State Parks and Reservoirs, presented this item. He noted that the proposed rule amendment is not a new concept, but there is a contingent of users who would like to utilize golf carts property-wide. He explained that in most instances the RV campers tow a car. “If they tow a car, they can’t also tow a golf cart. So it creates a little bit of a dilemma and we understand that.” Bortner stated that private campgrounds allow golf carts throughout the property. Bortner stated that the Department has safety concerns regarding the use of golf carts property-wide. He explained that private campgrounds are usually flat; however, Department properties have rolling terrain. “When you get [golf carts] out on the road inside the parks the very thing that makes these places beautiful and unique becomes a safety hazard.” He then deferred to Sandra Jensen, Director of the Commission’s Division of Hearings.

Sandra Jensen explained that the proposed rule was initiated through a citizen petition for rule change. In review of the petition, it was realized that a statutory amendment was necessary prior to considering a rule amendment. IC 14-19-1-1 was amended and effective July 1, 2015. The proposed amendments to 312 IAC 8-2-8 would make the rule consistent with the Americans With Disabilities Act (ADA) in terms of the use of mobility carts on various Department properties. Jensen noted the rule restrictions are consistent with ADA in allowing motorized carts within the campgrounds, but not property-wide. She also noted that the proposed language shown in bold font is almost verbatim from the ADA. “It’s a little unusual, as far as language goes, but...we thought that made the rule very consistent.”

The Chair asked whether petitioner understood the proposed amendment.

Jensen stated that the petitioner was notified of the recommendation and of the consideration by this Commission today; however, the petitioner had not made any additional contact.

Carol Comer moved to give preliminary adoption of amendments to 312 IAC 8-2-8 regarding use of motorized carts on DNR property. R. T. Green seconded the motion. Upon a voice vote, the motion carried.

Consideration of approval of 2016 fee change proposal for the Falls of the Ohio State Park

Dan Bortner also presented this item. Bortner expressed hope that Commission members would be able to visit the property. “The area we want to take you to is Charlestown State Park, to Rose Island, and then go back over...to the Falls of the Ohio State Park, both very unique properties.” He noted that Charlestown State Park is located on the Ohio River and Rose Island “for all practical purposes was the playground for the rich and famous back in the early part of the last century until the flood of 1937 removed everything from the island.” Bortner noted that the building foundations remain on the property; however, the property was not accessible until recently due to the installation of an historic bridge. Interpretive panels have been installed on the property, which include original photographs of the island.

Bortner noted that the Falls of the Ohio State Park is closed due to the extensive renovation, but will reopen in the near future. “If you’ve been there before, you won’t recognize it when you go back. He explained that the Falls of the Ohio Foundation completed the renovation project by

raising private funds and with some state funding. He noted the project fundraising began in late 2007. “It’s been a very long process” to complete the \$6 million renovation project. Bortner stated that the interpretive center at the Falls of the Ohio is “second to none with the story it has to tell about the distinct periods in history.”

Bortner explained that the existing fees were set in 2006. He noted that the Department has investigated the amenities offered and fees charged by other facilities nearby. “We want to offer value for what we are presenting.” He noted that the property is very intensive from an interpretation standpoint and “interpreters cost money. I have three full-time interpreters there, but most properties have one.” Bortner explained that the proposed fee range would allow the Department to increase fees in the future, but within the approved range. Bortner said the Falls of the Ohio State Park offers as much value as other local and regional facilities. He proposed and recommended the following fees for said the 2016 for Falls of the Ohio State Park:

Indiana State Parks - Falls of the Ohio State Park - 2016 Fee Proposal				
2016 Fee Increase Proposal - Falls of the Ohio State Park				
Fee Description	Current Fee (Last Increase 2006)	Proposed Fee	Proposed Fee Range	Effective Date
Adult - Museum Entrance	\$5.00	\$9.00	\$9.00 - \$20.00	1/1/2016
Child - Museum Entrance*	\$2.00	\$7.00	\$7.00 - \$18.00	1/1/2016
Less Than Five Years Old	\$0.00	\$0.00	\$0.00	1/1/2016
School Group - Per Student**	\$2.00	\$7.00	\$7.00 - \$15.00	1/1/2016
Interpretive Program Fee	\$2.00	\$2.00	\$2.00 - \$15.00	1/1/2016
Parking	\$2.00	\$2.00	\$2.00 - \$15.00	1/1/2016
*(Child age 5 - 11) - (Adults 12 and older)				
**School group pricing includes two (2) interpretive programs. Each additional interpretive program is \$2.00 per/student				

Bortner noted that there are approximately 700,000 visitors annually with a third entering the interpretive center. He explained that the Falls of the Ohio does not have an entrance gate so visitors can enter the fossil bed and historic areas without paying the fee; however, there is a \$2 “honor system” parking fee. He noted that the Department is reviewing potential gate locations, and if a gate is installed a gate fee would be presented for consideration by this Commission.

John Davis said the Falls of the Ohio State Park is linear following the Ohio River so there are separate entrances to the park. He noted that there is a trail that goes through the property, so “having a gate there is a little problematic.”

The Chair asked whether the Department had data regarding the number of students that visit annually. Bortner indicated he did not have the number of visiting students today, but noted that student visitation keeps the property busy. He said the interpretive center exhibits are “state-of-the-art, very hands-on. It will be interesting to see. We snuck a few school groups in just as a test market and they’re pleased.”

The Chair asked for further clarification regarding the interpretive programs that are provided for the \$2 school group-per student fee. Bortner explained that it depends on what the teacher is seeking but, generally, the students watch a film and tour the interpretive center following a film. The second interpretive program would be a tour of the fossil beds, with one interpreter at the

fossil beds and another section of the park, such as at the Clark cabin. “By utilizing two [interpreters], we can leave the other behind to guide the next group.

Phil French moved to approve the 2016 fee change proposal for the Falls of the Ohio State Park, as presented. R. T. Green seconded the motion. Upon a voice vote, the motion carried.

NRC, DIVISION OF HEARINGS

Consideration of Hearing Officer’s Report regarding the Petition for the Establishment of the Upper Wildwood Shores Conservancy District (Morgan Circuit Court Cause Number 55C01-1505-MI-839); Administrative Cause No. 15-096C

Jennifer Kane, Hearing Officer, presented this item. She said that on July 14, 2015, the Morgan Circuit Court referred the petition for the Establishment of the Upper Wildwood Shores Conservancy District. The Conservancy District, pursuant to IC 14-33-1-1, is proposed to be established for the purposes of: (1) developing forests, wildlife areas, parks, and recreational facilities if feasible in connection with beneficial water management; and (2) operation, maintenance, and improvement of works of improvement including, but not limited to Upper Wildwood Lake and dam and spillway. Kane explained that the Indiana General Assembly, through the Indiana Conservancy District Act (IC 14-33), tasked the Commission to gather comment from interested persons, and to seek technical assistance from other governmental units regarding the proposed conservancy district. The Indiana Department of Environmental Management and the Department submitted comments.

Kane explained that the Commission does not decide whether to form a conservancy district. That authority rests with the Morgan Circuit Court for this proposed conservancy district. The Commission, in essence, acts as a friend to the Court compiling comment and technical information in order to determine and report to the Morgan Circuit Court whether the proposed district for the two purposes meet certain statutory conditions. Kane said the statutory conditions to be met are whether: (1) the proposed district appears to be necessary; (2) the proposed district holds promise of economic and engineering feasibility; (3) the proposed district seems to offer benefits in excess of costs and damages; (4) the proposed district proposes to cover and serve a proper area; (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) drains; (F) levees; and (G) other water management or water supply projects.

Kane stated that a public hearing was held on September 8, 2015, but due to a publication error an additional hearing was held on October 6, 2015 with both hearings held in Martinsville. She said the impetus for the Petition is the repair of and future maintenance of the Upper Wildwood Shores Lake Dam. She also noted there are 53 freeholders within the proposed conservancy district. Kane said the Department most recently inspected the dam in 2014, and currently rates the dam as a high hazard dam. In 2005, the Upper Wildwood Lot Owner’s Association (the “Association”) contracted with Banning Engineering to review and inspect the dam. Kane noted that the dam was overtopped in 2003 and 2008; however, there have been no incidents of dam failure. She said the proposed conservancy district, if established, would obtain ownership of the

Upper Wildwood Lake, dam, spillways, and common area, ownership or leasehold interest in the dam, and ownership of the dam spillways in order to complete the remaining repairs and continued management of the structures.

Kane said the Association has been working to resolve the deficiencies of dam since 2005, and property owners are aware that breaching of the dam and loss of property values may result if the dam is not repaired and brought into compliance with regulatory standards. With the loss of the dam, the decrease in property values was estimated to be \$5 million. The estimated cost to bring the dam into regulatory compliance and to rectify the progressive deterioration is approximately \$527,537. She stated that it is proposed that each of the 53 freeholds within the proposed district would be assessed approximately \$9,600 to cover the remaining estimated dam improvement costs; however the assessed amount would be decreased for those freeholders owning off-lake homes. Currently, the Association dues are \$500 (for lakefront households) and \$300 (for non-lakefront households).

Kane explained that the Commission is currently authorized to provide analyses prescribed by IC 14-33-2-17, but the statutory structure does not anticipate the Commission will approve or decline the petition to establish the conservancy district or even approve or decline a purpose for which the conservancy district is to be established. The Indiana General Assembly has (IC 14-33-2-26 and IC 14-33-2-27) placed this authority squarely and exclusively with the Morgan Circuit Court. The creation of a conservancy district does not remove any obligation by the conservancy district to acquire any license or permit required by law. Statutorily, the Commission it is required to make a determination (IC 14-33-2-17) and report to the Morgan Circuit Court whether the proposed district, for the each stated purpose, meets the statutory conditions.

Kane stated that for the two purposes of the proposed conservancy district positive findings are recommended for all statutory conditions. She noted that there are several conservancy districts that have been established in Indiana for similar purposes as the proposed in the Upper Wildwood Shores Conservancy District—Wildwood Dam, Move Over Lake, Jet-to Lake, Lake DeTurk, Northwest Lake, and North Lake, among others. She said the previously established conservancy districts have successfully repaired and maintain their respective dams. “The conservancy district is a proven method to correct dam deficiencies.” Kane then recommended the Commission approve the findings and recommendation as the Commission’s report to the Morgan Circuit Court.

Jennifer Jansen moved to approve the Hearing Officer’s Report for furtherance to the Morgan Circuit Court regarding the Petition for the Establishment of the Upper Wildwood Shores Conservancy District. Donald Ruch seconded the motion. Upon a voice vote, the motion carried.

Consideration of recommendation for final action on readoption of 312 IAC 6 governing license or permit activity on navigable water; LSA #15-295(F)

Dawn Wilson, Hearing Officer, presented this item. She explained that 312 IAC 6, governing licensing activity relative to navigable waters, is set to expire on January 1, 2016. Wilson said

the Director of the Commission's Division of Hearings preliminarily approved readoption of the article on February 10, 2015. Jim Hebenstreit, Assistant Director, DNR Division of Water was appointed as the Small Business Regulatory Coordinator. Wilson said the initial Notice of Intent to Readopt 312 IAC 6 was posted in the Indiana Register on September 16, 2015; however, no requests were received to adopt any of the rule sections separately. Wilson recommended final readoption of 312 IAC 6, in its entirety, without amendment.

Vice Chair Jane Ann Stautz moved to approve readoption of 312 IAC 6 in its entirety without amendment. Carol Comer seconded the motion. Upon a voice vote, the motion carried.

Adjournment

The meeting adjourned at approximately 10:55 a.m., EST.