

NATURAL RESOURCES COMMISSION MEETING

Fort Harrison State Park - The Garrison
Indianapolis, Indiana

Meeting Minutes of November 17, 2009

MEMBERS PRESENT

Bryan Poynter, Chair
Jane Ann Stautz, Vice Chair
Robert Carter, Jr., Secretary
Thomas Easterly
Phil French
Doug Grant
Mark Ahearn
Brian Blackford
Donald Ruch
Robert Wright
Larry Klein

NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas
Sandra Jensen
Jennifer Kane

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

John Davis	Executive Office
Ron McAhron	Executive Office
Chris Smith	Executive Office
Cheryl Hampton	Executive Office
Shelly Reeves	Executive Office
John Seifert	Forestry
Linnea Petercheff	Fish and Wildlife
Mitch Marcus	Fish and Wildlife
Mike Crider	Law Enforcement
Steve Hunter	Law Enforcement
Joanne Williams	Indiana State Museum and Historic Sites
Laura Minzes	Indiana State Museum and Historic Sites
Mark Basch	Water
Kenneth Smith	Water
Phil Marshall	Entomology and Plant Pathology

Megan Abraham	Entomology and Plant Pathology
Dan Bortner	State Parks and Reservoirs
Gary Miller	State Parks and Reservoirs
John Bergman	State Parks and Reservoirs
Matthew Taylor	State Parks and Reservoirs
Phil Bloom	Communications
Lee Casebere	Nature Preserves
Karie Brudis	Historic Preservation and Archaeology
Jim Glass	Historic Preservation and Archaeology
Bourke Patton	Indiana Natural Resources Foundation

GUESTS PRESENT

Paul Arlinghaus	Jeff Dukes
Priscilla Wilson	Phyllis Price
Dale LaCognata	Ce Ann Lambert
Pete Hanebutt	Susan Davis
Jennifer Cunnigham	Bill Myers
Mark Wernert	Laura Nirenburg
Doug Allman	Don Gorney
Marian Harvey	Anne Sterling
Tim Rose	Shane McKee

Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 10:08 a.m., EST, on November 17, 2009, at the Garrison, Fort Harrison State Park, Indianapolis, Indiana. With eleven members present, the Chair observed a quorum.

Thomas Easterly noted a clerical error in the draft September 22, 2009 minutes on page twelve, last sentence of the second paragraph. The “\$4” and the “840” were separated, and should read “\$4,840”. Thomas Easterly moved to approve, with this correction, the minutes of the Commission’s September 22, 2009 meeting. Doug Grant 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 said that the DNR, along with Tom Easterly and other agency heads, has been working on the “latest round of budget cuts”. There is approximately a \$310 million shortfall in the first quarter of 2009 fiscal year. “We’ve been ordered to make another reversion of 5%, a total of 10% for fiscal year 2010, which has been pretty tough for us to try to find savings.” He said the Department is “doing [its] best” to limit activities, without affecting customer service. “We have a large customer base and a lot of funds that are dedicated...that are supplied and funded by customers”. He added, “At the same time, we are trying our best not to lose any staff and lay off employees”.

The Director said the Department is reviewing several avenues to “combat the budget shortfall”, such as limiting travel. “We haven’t been traveling unless it’s absolutely necessary or that will help with grant funding.” In order to meet the 5% budget reduction, vacant positions are being held open even though some Department divisions are “terribly understaffed”. The Director said other divisions are assisting the understaffed divisions.

The Director said DNR employees have been asked to consider voluntarily taking time off without pay. “I was the first one to volunteer for our Department. I’ve had a pretty good response from employees...that are very supportive in trying to help out”. He said that the impact of those taking voluntary leave without pay is not yet known, but a total of 400 days have been submitted. The Director indicated that the Department is continuing to search for ways to save, “but it’s pretty tough.”

John Davis, Deputy Director, Bureau of Lands and Cultural Resources, gave his report. He reiterated that there has been a decrease in tax revenues and the Department’s “budgets are strained.” He noted state park gate admissions and license sales are “good. That’s a little bit of buffer, at least, to help some of our divisions.”

Ron McAhrn, Deputy Director, Bureau of Resource Regulation, provided his report. He provided additional information to follow up on questions raised regarding the applicability of “aerator rule” that was given preliminary adoption by the Commission members at its September meeting. He said a temporary rule has been drafted, which will be effective this December 1, and “basically tracks the rule given preliminary adoption” by the Commission in September. McAhrn explained that the Department does not have statutory authority to govern placement of aerators in Morse Reservoir, Geist Reservoir, Lake Shafer, and Lake Freeman. He said a proposed rule to set standards to evaluate individual permits is also being drafted. “I hope we are in position to do a temporary rule for this season and to be back to you for final adoption to be ready for next season”.

Patrick Early, Chair of the Advisory Council, was not present.

CHAIR AND VICE CHAIR

Consideration and discussion of tentative meeting schedule for year 2010

The Chair explained that dates have been tentatively scheduled for year 2010, with a confirmed date for January 12, 2010. The tentative meeting dates and locations for 2010 are as follows: March 16, May 18, July 20, September 21, and November 16.

The Chair said that Vice Chair Jane Ann Stautz, Stephen Lucas, Sandra Jensen, and he discussed ways in which the Commission “can help reduce stress regarding the Department’s budget. While we have not made a complete determination of this, we have looked at a number of different things”. He explained the Commission typically meets six times a year, but it is statutorily required to meet only four times per year. “There are expenses incurred for the meetings that we attend, but instead of trying to cut the number of meetings that we have, and

slow down the process for the citizens and those that are concerned, we are probably going to be eliminating remote travel”.

John Davis said that if the Commission meets in Indianapolis, the Department could arrange for some informative sessions. He commended Chairman Poynter on his leadership on the comprehensive fish and wildlife rule review process. “We appreciate your level of involvement and your cool head when things got a little heated at some of the meetings.”

The Chair responded, “I feel it is important and I do believe this Commission receives benefit from going to different parts of the state; and hopefully, in the next couple of weeks at the latest, we might try to consider some things where the members of this Commission...will have a final determination” of meeting dates and locations to minimize budgetary impacts.

Updates on Commission and Committee activities

The Chair noted that a steering committee was appointed approximately 18 months ago to comprehensively review the rules governing fish and wildlife (312 IAC 9). He said that “remarkably” the steering committee is on schedule and recently met to review the minutes from the past five Advisory Council meetings. The Chair said the Advisory Council would provide its report and recommendations for Commission consideration at the January 12 meeting. The comprehensive review process has been “very, very successful.... The outcome of this will help our law enforcement, and it will certainly help our Division of Fish and Wildlife. I’m anxious for the next stage of this, which will involve some additional rules and policy changes to come forth, as well as...issues that will require legislative review” following comments by the Department’s scientists and biologists.

DNR, EXECUTIVE OFFICE

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

No new topics were referred to the Advisory Council.

PERSONNEL ACTION

(Permanent Appointment)

Consideration of permanent appointment of Joanne Marie Williams, Assistant Property Manager of the Whitewater Canal Historic Site, Metamora, Indiana

Laura Minzes, Assistant Director of the Indiana State Museum and Historic Sites, presented this item. Minzes said that Joanne Williams, as Assistant Property Manager of the Whitewater Canal Historic site has “succeeded in bringing in at least five grants, and over approximately \$5,000 in sponsorships and donations towards programming. This is an area where we had not had much activity before, so now we have some really good programming events to offer the public.” She said the Twilight Cruise is one of the “most successful programs offered”. Minzes

explained that there have been two evening cruises, and with the most recent cruise over 100 people attended. She said there is a waiting list for a future cruise.

Larry Klein moved for permanent appointment of Joanne Marie Williams as Assistant Property Manager of the Whitewater Canal Historic Site, Metamora, Indiana. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

(Personnel Interview)

Consideration of personnel interview for position of Assistant Property Manager of Clifty Falls State Park, Madison, Indiana

John Bergman, Assistant Director of the Division of State Parks and Reservoirs, presented this item. He said that Matthew Taylor has been selected as the candidate for the position of Assistant Property Manager of Clifty Falls State Park. Bergman added that eight “very highly” qualified candidates applied for the position. “It was a very difficult choice. Any one of them could have done the job, but Matthew rose to the top of the chart.”

Matthew Taylor thanked the Commission members and provided a brief education and employment background. He said he has received two Bachelors degrees, one in Business Management and the second degree in Elementary Education. Taylor said that his past employment included positions of assistant receiver manager and acting receiving manager at Menards where he was responsible for employee hiring and training, public and customer relations, and other duties. He also said he was employed with the Department as a seasonal employee at Raccoon State Recreation Area and also assisted with the Hoosier Outdoor Experience.

The Chair observed that Taylor’s Regional Supervisor, Steve Lemen, sent “a very nice letter talking about your appointment. I know that Clifty Falls is one of the nicest and busiest state parks we have, so to hold that position, I’m sure it comes with a lot of responsibilities. Thank you for your willingness to do that.”

Larry Klein moved to approve Matthew Taylor as the Assistant Property Manager at Clifty Fall State Park. Brian Blackford seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF NATURE PRESERVES

Consideration of the dedication of an addition to Donaldson’s Woods Nature Preserve, Lawrence County

Lee Casebere, Assistant Director of the Division of Nature Preserves, presented this item. He explained the 67-acre Donaldson’s Woods Nature Preserve is located at Spring Mill State Park, and proposed is an addition of a 76-acre parcel to be dedicated in honor of Fr. Damian Schmelz, Ph.D. Casebere recalled Fr. Schmelz served on this Commission for “many, many years”. He reported Schmelz also conducted a study on Donaldson’s Woods that encompassed over 50

years. “Every ten years for five different times, [Fr. Schmelz] did a study that documented the changes that have taken place”.

Casebere invited Commission members to visit Donaldson’s Woods. “It is clearly one of the premiere forests in Indiana in terms of being visually impressive. It’s a ‘near virgin’ tract; it ranks at the very top”. He said Donaldson’s Woods is “easily accessible and is within the state park. Casebere then asked the Commission to consider dedicating the 67-acre parcel to the existing nature preserve.

The Chair said last fall Fr. Damian Schmelz was recognized for his dedication and the dedication of this parcel is “the second part, the more permanent, of our honors for him.” He said Director Rob Carter, Division Director Dan Bortner, Deputy Director John Davis, and “a whole lot of other folks worked very hard, including John Bacone, to make this dedication happen.” He reported a public dedication would be scheduled for early spring 2010, and Commission members would be notified.

Jane Ann Stautz moved to approve dedication of a 67-acre addition to Donaldson’s Woods Nature Preserve in honor of Fr. Damian Schmelz. Thomas Easterly seconded the motion. Upon a voice vote, the motion carried.

Consideration of the dedication of an addition to Donaldson Cave Nature Preserve, Lawrence County

Lee Casebere also presented this item. He said for consideration was the dedication of an addition to Donaldson Cave Nature Preserve, which is also at Spring Mill State Park. The existing nature preserve is approximately six acres and the addition is 33 acres. “It would include a lot of more of the...underground passage system”, and he said the tract also contains “very nice” old-growth woods. Casebere then recommended dedication of the 33-acre addition to Donaldson Cave Nature Preserve.

Thomas Easterly moved to approve dedication of a 33-acre addition to Donaldson Cave Nature Preserve. Brian Blackford seconded the motion. Upon a voice vote, the motion carried.

Consideration of the dedication of Jackson-Schnyder Nature Preserve, Vigo County

Lee Casebere also presented this item. He said the proposed nature preserve is a 15-acre tract located near Saint Mary-of-the-Woods College that was purchased by Julia Schnyder during the Depression. He said the tract has not had any timbering since the time of purchase. Subsequently, Dr. Marion Jackson from Indiana State University acquired the tract, and he has donated the parcel to the Sycamore Trails Resource Conservation and Development Council, Inc. Casebere explained the parcel is an “old-growth tract and has a fine spring wildflower display”.

Dr. Jackson has been “very active in a lot of things related to ecology and land preservation and was the editor of The Natural Heritage of Indiana.” Casebere recommended dedication of the 15-acre tract as a nature preserve.

Donald Ruch moved to approve dedication of Jackson-Schnyder Nature Preserve. Doug Grant 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 #61) that provides a list of public freshwater lakes in northern Indiana; Administrative Cause No. 08-059W

Linnea Petercheff, Staff Specialist with the Division of Fish and Wildlife, presented this item. She explained that in 2008 the Legislature amended IC 14-26-2-24 requiring the Commission, on recommendations by the Department and the Advisory Council, to adopt and maintain a nonrule policy document that would list Indiana's public freshwater lakes. The statute requires that the list contain the name of the lake and the county and specific location within the county where the lake is located. Currently, the Department "does not have an official listing of public freshwater lakes so this will provide guidance for both the public and DNR professionals to determine which lakes are governed by the Lakes Preservation Act and the rules".

Petercheff said that the Division of Fish and Wildlife, the Division of Law Enforcement, and the Division of Water cooperated to compile an initial listing of public freshwater lakes located in northern Indiana. The listing contains lakes "that we know and believe to qualify as a public freshwater lake" as defined by IC 14-26-2-3 and that are located north of State Road 26. Due to Northern Indiana's concentration of natural lakes, this area was the initial focus for compilation. Petercheff said the Department has begun compiling a list of public freshwater lakes for the rest of the Indiana, and "we anticipate that will take a few more months to get that finalized".

Petercheff said that the nonrule policy document is subject to amendment through adjudications, through licensure actions, and with Department and Advisory Council recommendations. "We don't expect this list to stay exactly the same over the course of time. There may be additions made through public access sites and different avenues." Petercheff noted that since review of the nonrule policy document by the Advisory Council, revisions have been made to "make sure that this list was as accurate as possible." She said deleted from the list approved by the Advisory Council were Lake Galatia, Grant County; Ringneck Lake, Jasper County; Hollister Lake, Porter County; and "a couple of lakes in St. Joseph County. We did additional verification through visiting the site to determine if [the lakes] qualify." She said several lakes were added to the list, such as Buttonbush Lake, Elkhart County, and Pleasant Lake and Sweet Lake, Noble County. "Those were verified as well for access to the public." Petercheff said lakes that are located in two counties are listed under both counties.

The Chair asked Petercheff to explain the origins of the public freshwater lake list.

Petercheff said that the determination regarding whether a lake is a public freshwater lake is "critical when a person wishes to install a group pier or alter the shoreline and whether a permit is required." She said that in past instances the determination of whether a lake was a public freshwater lake was "questionable". In those situations, the Department would make a site view

to determine lake status. Petercheff said listing Indiana's public freshwater lakes would provide clarification for the public, the Department, and other agencies.

Stephen Lucas, Director of the Commission's Division of Hearings, congratulated Linnea Petercheff on the "tough work she's done to put the information together. This is quite a list." He explained that the "seeds for the nonrule policy document were sown probably a decade ago, but the DNR was not previously able to achieve a consensus. Linnea did a great job of bringing it together."

Lucas said that Nathan Long of the Indiana Lakes Management Society ("ILMS") sent an email to Patrick Early expressing support for the nonrule policy document. He added that the Division of Hearings has received "quite a few inquiries" about the proposed nonrule policy document. In answering the inquiries, he would emphasize the public freshwater lake list was a nonrule policy document. "It's not an adjudication by the Commission. If a person who disagrees with the listing, either that some lake is listed and the person believes it should not be listed, or conversely, the person can come forward in the context of a proceeding." He said adjudications seemed "likely and may be reviewed by the AOPA Committee, which is chaired by Jane Ann Stautz. Having the list is just so much better than not having the list. It's a huge step forward."

Mark Ahearn moved to approve nonrule policy document, Information Bulletin #61, which provides a list of public freshwater lakes in northern Indiana. Brian Blackford seconded the motion. Upon a voice vote, the motion carried.

Consideration for preliminary adoption of amendments to 312 IAC 9 governing the hunting of ruffed grouse and wild turkey; Administrative Cause No. 09-165D

Petercheff also presented this item. She explained that the proposed amendments to the rules governing the hunting of ruffed grouse would limit hunting opportunities. She said proposed is the reduction of hunting ruffed grouse on public lands to a period of six weeks. The current season occurs across all or portions of 25 counties from October 1st to December 31st with a two bird bag limit. "Extremely low grouse population levels and deteriorating habitat have raised additional concerns over the past few years regarding hunting mortality, especially on public lands where there is unrestricted hunter access." She said any grouse taken after December 31st is considered "additive mortality" not likely to be replaced during that year's breeding season. The proposed rule amendment would shorten grouse season on public lands to reduce concerns about over harvest of potential breeder birds. The proposed would not, however, reduce hunting on private land nor penalize landowners who are improving woodlots for grouse habitat.

Petercheff explained the proposed amendments governing the hunting of wild turkey would expand hunting opportunities by opening 16 additional counties for fall firearm season, including seven counties in Northern Indiana. The amendment would also open all Indiana counties for fall turkey archery season, add seven days to the early archery portion of the fall turkey season, add a second or late season to coincide with the late deer archery season, and expand the fall turkey firearms season in Southern Indiana for an additional seven days. Petercheff said the relatively low harvest, hunter participation, and hunter success under the current "conservative fall turkey season" supports the expansion of the hunting range and the number of days allowed

for both archery and firearms. The expansion “would not likely have an impact on the spring turkey harvest.” Petercheff said amendments were not proposed to change the spring season or bag limits. “We believe these changes are needed to be in place for next year’s season for ruffed grouse to help protect additional population declines.” She then recommended the proposed rules be given preliminary adoption.

Don Gorney, Indianapolis resident and President of the Amos W. Butler Audubon Society serving Central Indiana, said he addressed the Advisory Council at its August 12, 2009 meeting. “I took a very conservative stance on the ruffed grouse season and encouraged that the season be closed.” He said the Audubon Society is “very concerned about the steep declines in Indiana’s ruffed grouse population.” Gorney noted that he has not had discussions with the Department’s biologist regarding any research that has been done in order to understand the mortality causes. He said the increased timber cutting in Southern Indiana should help the grouse population, “but if the grouse aren’t there to begin with, it can’t help them. Gorney said the Audubon Society supported shortening the hunting season on public lands, but it remained concerned the changes do not go far enough. “We are very concerned that the grouse population is on its way to being an extirpated species from Indiana.”

Doug Allman, resident of Fishers, stated he was representing himself but is a member of Indiana Wildlife Federation, Indiana Deer Hunter’s Association board member, and member of the Sportsmen’s Round Table. He said the proposed amendments associated with the grouse season are relatively new, and he was not expecting the rule proposal. “I would have liked if the DNR came to some of the groups, brought it before the FWCC; this kind of caught many of us off guard.” Allman said two years ago the Department proposed to shorten the grouse hunting season, and a group was formed to discuss grouse issues. “Things were discussed and there was supposed to be some action taken out of this, but now I am at a loss as to ...now we are going to shorten the season again. There hasn’t been action taken to really address the problem of why grouse are declining in Indiana.”

Allman said reduced tree cutting in forests, especially in the Hoosier National Forest, has adversely impacted the grouse populations. “The grouse are not declining because of hunting. In fact, hunting numbers are so few.” He said in 1990 it was estimated that only 3% of all small game hunters hunted grouse. He suggested grouse mortality is caused by lack of early successional habitat, which is created when stands of trees are cut and vegetation is allowed to grow to provide nesting.

Allman concluded, “I am against [the proposed amendments], because I don’t see a plan of action in place to reverse the trend of what is happening. We are penalizing hunters; we are not causing the problem. Hunters have been screaming for years, ‘Cut some trees; cut some trees; cut some trees.’ We need this habitat.” He indicated that he was “willing” to give up season “and do some things, but there has been no action.... I don’t see a real good cooperation between our state agency and the feds. I would like to see something done before [DNR] proposes to cut season.”

The Chair said, “Your points are well taken,” but he added “the Department’s forest policy is not an issue for the proposed rules. I know its habitat, but that’s not the issue here.”

Allman said, “It is. You are in charge of the species. You are in charge of a lot of landholding divisions, and the two are tied together. Indiana needs habitat to benefit grouse populations. We need a plan before we just go out and say, ‘We are going to start cutting seasons.’”

Pete Hanebutt, Indianapolis resident, said he has been an Indiana grouse hunter for about 30 years and has been involved with conservation and habitat improvement efforts. “My record of helping the DNR with forestry issues and wildlife issues is well known to most people.” He urged that increasing forest harvest is “the way to go with this. I don’t think the way to go is to limit the opportunities for sportsmen.” Hanebutt said he participated in a committee that studied the Indiana grouse population. “Having spent all my time and my money in hosting those meetings in our office where I could help them facilitate, I feel this is a little disingenuous to come back now and say that the only answer is limiting the season.” He said the committee’s discussions resulted in a report proposing six initiatives with bullet points. “Of those six, one of the bullet points under one of the initiatives could be interpreted to say limiting the season is the answer. All the rest of have nothing to do with limiting the season.” He suggested the Department review the initiatives before adopting a rule to limit the hunting season.

Hanebutt said the Department’s explanation of the proposed rule implies that hunters are “the problem, and that’s why we need to limit the season. [Hunters] are not the problem.” He explained that grouse taken after December 31st are grouse taken by predators such as avian predators, squirrels, coyotes, or bobcats. “Hunters are not the issue here. We are limiting the ability of hunters to take advantage of this resource.” He urged the Commission to “reject this proposal. If the DNR wants to come up with a plan...to help the ruffed grouse in Indiana, then I’ll stand by limiting the season and cutting the season back. I think it is disingenuous and a farce to bring to this [Commission] limiting the opportunity for the less than 20 sportsmen, probably, to hunt grouse in Indiana”.

Mitch Marcus, Wildlife Research Supervisor with the Division of Fish and Wildlife, agreed the decline in Indiana grouse population was “primarily an issue of habitat” but added the agency was “comfortable bringing the rule proposal to the Commission.” At the request of the Fish and Wildlife Conservation Committee, the Department hosted a Grouse Summit and was “very appreciative of the participation of the main groups.” The Summit urged five or six action items, one of which was creating a core population area and eliminating or decreasing negative impacts on breeding stock of grouse. He added that the Advisory Council supported limiting the hunting season.

John Davis said he attended the last meeting of the Grouse Summit. He did not recall all the Summit’s recommendations, but recommended was timber stand cuts to create openings in the state forest system, which “I do feel has been responded to by the State Forester and I think [the Department] has a policy that’s pretty mindful of grouse along with other elements.” He said timber cutting has “gone up in the past few years.”

Davis said Steve Backs, the Department’s Grouse and Turkey Biologist, recommended cutting timber in the state parks, fish and wildlife areas, and the reservoirs. “A couple of those suggestions are not going to happen because of the way we manage land.” He said the

Department manages parts of the approximate 600,000 acres in “different ways for different purposes and the purposes have different histories. We are very comfortable with the mosaic that we create as we manage these properties in different ways.” He said the forests are managed for timber production, wildlife, and recreation, and state parks are managed for preservation.

Davis said, “I know grouse hunters have been frustrated with the change, and really it is succession that has happened. Succession is necessary for grouse, but then succession is what eventually creates the need to have an opening so you can start over again. The grouse issue is complex. I think we do have a plan, perhaps we have not outlined it in the context of [Agenda] Item 10, but this is preliminary adoption so a lot of those things will be discussed during the process.”

Marcus added that the Department does not believe the proposed rule would be the answer to the problems facing grouse and other small game species that rely on early successional habitat. “It’s not the answer, but it is a step in the right direction.”

Mark Ahearn asked what the Department thinks the rule would accomplish.

Marcus explained the proposed rule should protect “birds on the landscape so that they will be there to breed the following spring in the habitat that is available.” As the State and private landowners continue to cut timber stands to develop habitat, those birds will be there to move into the available cover.

Larry Klein asked whether there are counties that are considered “critical” or “flourishing” in regards to grouse populations. Davis responded Indiana does not have a flourishing grouse population in any county. “I think their numbers are diving and have been for decades.”

Marcus said the Department provided a grouse range map to the Advisory Council which listed counties as “critical and in peril”. He said he could provide the same material to the Commission.

The Chair requested a copy of the Grouse Summit report be provided to the Commission. He urged the Department to continue discussions with interested groups. “Limiting a hunting opportunity for purposes of no measurable conservation gain seems a little suspect to me as someone who likes to hunt.”

Director Carter thanked those commenting on the proposed rule. He said the issue of grouse population is “controversial because it involves harvesting timber. I’m on the fence with this thing. I really am not convinced this is the right way to go. I want to take a more holistic approach to it. I think we have to look at the big picture.” He said there was no question but that Indiana’s grouse population was in decline.

Thomas Easterly moved to give preliminary adoption of the amendments to 312 IAC 9-4-10 and 312 IAC 9-4-11 governing the hunting of ruffed grouse and wild turkey. As a condition of preliminary adoption, he asked that the rule adoption process, the public hearing, and the hearing

officer's report fully address the issues presented at today's meeting. Jane Ann Stutz seconded the motion. Upon a voice vote, the motion carried.

Consideration of recommendation of DNR Committee formed to consider citizen petitions regarding chasing and hunting of coyotes and foxes with dogs; Administrative Cause Nos. 09-069D, 09-073D, and 09-074D

John Davis, Deputy Director, Bureau of Lands and Cultural Resources, introduced this item. He said the committee's report, as presented in the Commission's packet, contains statements that are "in doubt and would need clarification". Since the report was issued, the agency received information regarding an existing Indiana facility. He suggested the Department return in January with "the confidence our report on these petitions is whole and complete".

Col. Michael Crider of the Division of Law Enforcement said he was part of the committee that reviewed the petitions. Last year the Commission adopted a rule relating to the live movement of coyotes outside of trapping season. The committee discussed the shipment and use of live coyotes, and "it came out that a lot of these animals were going to other states to be used in running enclosures." Research was conducted to assess whether Indiana had enclosures, the condition of those enclosures, and if the enclosures were being used. Crider said the report indicated there were two enclosures in Indiana, both in "very poor" condition and not being "actively used" for field competition hunts.

Crider said after submittal of the committee report, the Department received information that one of the enclosures was used for a competition hunt this year. The Commission members were provided photographs of the facility, which a conservation officer took early in the week. Crider said, "I will stand by the assessment that the enclosure is in poor condition. There are holes in the fence where animals can get in and out. The overall condition of the fence is rusted." But that the enclosure has been recently used "does cause us pause. We want to take an opportunity to go back and explore a little bit more about what conditions exist when that facility is being used. That will help us, I think, have some confidence as to what is actually taking place."

Phil French asked where the enclosures were located. "What are the sizes of these structures?"

Crider responded the enclosure depicted in the photographs contains about 300 acres and is located in Southwest Indiana near Linton. Surrounding states have enclosures that are in a variety of conditions. "Most of the animals we are aware of," that were being taken from Indiana, were transported to southern states. "The crux of the issue" for the petitioners "is what happens with the animals. I think we have groups of people who do all kinds of different things. I can't speak to the conditions in this enclosure. However, I can't imagine in Indiana that we would have some of the practices that are happening in other states without that having been brought to our attention." Crider said the Department has conducted "audits using undercover officers to see what's happening with the movement of coyotes. Our impression overall it has generally stopped from Indiana. It's very limited, if at all."

French asked for an update on the Department's policy on these types of enclosures relating to disease and other issues.

Crider said there were discussions regarding the enclosures as to “what is or should be allowed. There is some discussion about interstate movement of animals...and based on what I know—very sketchy information at this point—that is not the situation with this facility. I need to know more what is transpiring so that I feel like that we have considered all the factors in our report that finally comes to the Commission.”

Vice Chair Stautz said it is “important to note” the two different issues. One issue is whether to allow hunting of coyotes with dogs. The second issue is of running enclosures or running pens allowing the training of dogs to “harass, and, in some cases, kill the coyotes.”

Bryan Poynter added, “I don’t think we are looking here to suspend or change any of the rules as they pertain to allowing dogs to be used for [hunting of] coyotes and fox, but this issue brought forth here really does suspend the integrity of what this was intended to do today because of this new information.” The Chair asked Linnea Petercheff whether she had additional information.

Petercheff agreed with the Vice Chair regarding the issues surrounding the petitions. She explained, however, the petitions “specifically addressed the chasing, the killing, the mauling, and the hunting of coyotes with dogs, both in the wild and in a pen or running enclosure.” The petitions did not address “prohibiting the live sale of coyotes or addressing the importation or transportation of coyotes. So, those aspects were not discussed as part of the committee.” She said public comments received recently regarding this agenda item addressed the “sale of live coyotes to these pens and movement of these coyotes.” These were not issues in the original petitions. Petercheff said the committee would “be happy” to address the topics in a “more full report and to address the whole issue” surrounding coyotes and foxes, these pens, and their movement in and out of Indiana. “We think there is support for some limitation in those areas.”

Mark Ahearn asked, “By what authority now would our enforcement and policing agencies inspect one of these facilities?”

Petercheff responded the conservation officer who recently inspected the enclosure near Linton was given access to the facility by the owner. The owners of the facility are not operating under a Departmental running pen permit. Petercheff said the agency was recently made aware that several field trials “took place under field trial permits from the Department, and those were used inside that enclosure.” She said that under existing rules, coyotes can be live trapped during the hunting and trapping season, put in an enclosure, chased, hunted, or killed without a special permit.

John Davis asked whether a field trial permit is required to run a field trial on private land.

Petercheff responded that by statute and rule, a field trial permit is needed for a sanctioned field trial. Thousands of permits are issued for field trials to chase raccoons. For coyotes, field trials are operated under the strict rules of a sanctioning authority.

Poynter reiterated, “It is the Chair’s and Vice Chair’s opinion that this issue be addressed completely, comprehensively, and correctly. If that means, unfortunately, that we pause over

this issue to make sure that the new information that was brought before this Commission is dealt with in an evergreen, clear, and comprehensive approach, that's what should be done." He then opened the floor for public comment.

Ce Ann Lambert, President of the Indiana Coyote Rescue, said she filed two of the petitions in April 2009, and she noted she received a copy of the Committee's Report on October 25, 2009. She said the Department's report sites concerns regarding fair chase, xenotic diseases, and illegal activity such as cruelty, but the Department, in its report, "goes on to say that [it] will continue to allow these things to happen." She urged that the Department was "keeping eyes closed to the brutality of the running pens, and brutal abuse of the coyotes and foxes in the wild is not a compliment to the DNR." Lambert said the video, "Coyote Hunting in Indiana", which was forwarded to Commission members prior to the meeting, was filmed in Indiana "by one of our citizens."

The Chair asked Lambert who filmed the video and the location where the video was filmed.

Lambert responded she was not aware who or where the video was filmed. "I do not even know his name. I have his license number on his Harley if anyone wants to track him down."

Lambert said the committee that reviewed the petitions was comprised of three Department employees, all of which "had a vested interest in keeping the status quo. Where were the scientists? Where were the biologists? Where were the representatives of the animals?" She said to allow the continuance of the chasing and hunting of coyotes with dogs "is really a black eye on our State. It is a way to circumvent dog fighting laws in Indiana because abuse laws do not apply to our wildlife. These activities in no way can be called 'fair chase.'" She asked the Commission to take the petitions under advisement.

The Chair said, "There are many, many people working on this issue, and it is in the 'light of day'. If we can improve the communication, and be more efficient in that, that would be my hope".

Marian Harvey from Greencastle, Indiana said she was an "advocate for the animals". She said she was speaking for not only the coyotes and the foxes, but also advocating for the dogs. "We really have no business training dogs to kill anymore, not non-essential killing. It is no longer appropriate to the needs of the time." She said she has provided public education in Putnam and Parke Counties to "teach people to live with the coyotes so [the coyotes] don't kill their dogs."

Anne Sterling said she is the Indiana Director for The Humane Society of the United States, and said she is representing The Humane Society of the United States and over 180,000 Indiana constituents. She asked the Commission to consider prohibiting fox and coyote pens where dogs are released in enclosures with fox and coyotes, often in competition. Last year the Commission adopted a rule to prohibit the trade and sale of live coyotes except during the regular coyote hunting and trapping season. In support of the rule and to educate the Commission regarding the commercial trade of penned wildlife, the Department urged live coyotes should not be trapped outside the season and sold for use in running enclosures in which there is no fair chase. The

Department also urged in its report “Coyote Euthanasia” that many times the coyotes are not just chased, but they are killed by dogs within these enclosures.

Sterling said that competitions within these enclosures last one to three days with the “hounds judged on how they chase animals. Pens may be several hundred acres in size, but the largest enclosures also claim the biggest density of animals.” She said “captive wildlife subsist unnaturally on a diet of dog food and den in abandoned house appliances or plastic tubes. In these competitions, dogs tear apart the wildlife frequently causing a constant demand for the restocking of enclosures with more foxes and coyotes.” Sterling said the enclosures are not regulated, but are “considered by the DNR to be illegal outside the coyote hunting season.”

The Chair asked whether Sterling was familiar with the enclosures located in Indiana. She answered in the affirmative.

Sterling continued, “What is unethical and inhumane during part of the year is just as unethical during the regular hunting season.” The enclosure near Linton continues to advertise major field trials to take place outside the coyote hunting season with participants coming from several states. Event organizers publish place winners and a synopsis of the trials. Competitions took place on June 6 through 8, 2008, August 1 through 3, 2008, August and September 2008, and June 5, 2009. “Obviously, this is not legal hunting and trapping season for coyotes. If these operators are not blatantly violating the law, then there is at least confusion about what is legal and what is not.” She said the Department informed the media running pens are “completely illegal”—a quote from an *Indianapolis Star* article dated October 18, 2007.

Sterling urged a “clear rule prohibiting fox and coyote enclosures would stop this confusion and frequent illegal activity”. She said the Department states the only pen in existence has a fence in such state of disrepair that it does not prohibit the escape of coyotes. “Presumably this makes the chase more fair by having a fence that allows animals to escape.... If there weren’t some means of containing stocked animals, then having animals to pursue would not be guaranteed, and individuals would not patronize this facility.” Sterling provided the Commission a written copy of her comments.

Laura Nirenburg, Executive Director of Wildlife Orphanage in LaPorte, Indiana, said the Department adopted a rule last year to prevent running pens being operated outside the legal hunting and trapping season for coyotes. “Primarily, I believe the Committee was moved on the disease threat, the transmission of wildlife diseases. The question that is most perplexing to me is how that disease can no longer be a threat if it happens in November? The same premise that brought you to that rightful position...is still before you now. I don’t understand how that is different just because the calendar month is changed.” She said the statute specifically mandates that the Director of the Division of Fish and Wildlife to be responsible for the protection, the reproduction, the management, the care, the survival, and regulation of wild animal populations regardless of whether the wild animals are present on public or private property. “To not address this serious issue seems to be a difficult issue for you to reconcile.”

The Chair said, “I hope that, by virtue of [the Commission] recommending that this become a more comprehensive review, that satisfies those questions.”

Nirenburg said, “To some degree, but I do have another concern about the Division of Fish and Wildlife’s report, notwithstanding the lack of science or biological opinion.” She said she was concerned about the imported wild animals escaping the enclosures resulting in the “mingling with the wild populations.” She asked whether the fact that the fence, which exists in a state of disrepair, would “reinforce the primary concern that these animals are now being exposed to the wild animals.”

Mark Wernert, a resident of Harrison County and the Director of the Indiana State Trappers Association, said he did not support additional rules against the taking of coyotes. He said he did not think that “the occurrence of dogs actually catching coyotes and ripping them apart is very common.” Wernert said he is a hunter and a trapper, and “I think several dogs would be hard pressed in the wild or in a 300-acre enclosure to catch a coyote.”

Shane McKee, Secretary of the Indiana Coyote Rescue Center (ICRC), said that trappers constitute less than 0.1% of Indiana’s population. Trapping has been in practice for centuries, “mainly because it is a cheap, economical way the coyotes can be beaten or stabbed to death. There is no regulation on how the animals are killed.” With the use of firearms, trapping “lost popularity to hunting.” McKee said the ICRC possesses coyotes that were obtained illegally by Indiana citizens, with some of the coyotes being transported by Indiana conservation officers. He said wildlife rehabilitators “spend their own money” to support their facilities as “opposed to making a \$100,000 profit as one running pen operating in another state did this year.” McKee said that the Department’s comparison of commercialization of wild animals to rehabilitation of those animals shows the agency is “not concerned about the economics of the rehabilitator”.

McKee said the only place that live bait is “routinely unquestionably and acceptably” used is in fishing. “If the State is going to continue to allow the blood-sport of killing coyotes, then running pen operators must be heavily taxed to share the revenue with taxpayers for the removal of their property. Follow Illinois’s example of not allowing the animals to be killed, and be regulated and inspected.”

Doug Allman said he supported the adoption of last year’s rule that prohibited the live sale of coyotes out of season. “I don’t support some of the things that I have been hearing here, but at the same time, I’m concerned.” He said there was a “real simple solution to these problems. Wild animals need to be kept wild. They don’t need to be possessed live.... We would solve a whole host of issues if we quit allowing the live taking of wild animals out of the wild.” Rehabilitated wild animals are “a problem.... They are either habituated or...spread disease.” He said allowing one person to possess wild animals “opens up the door for other people to possess [wild animals] for unscrupulous reasons. Just keep [wild animals] in the wild and stop the rehabilitation, and stop the [running] pens.” Allman said the issues surrounding live coyotes are the same issues surrounding the penning of live deer.

Tim Rose of Columbus, Indiana said he is representing the Fur Takers of America and the Wildlife Control Agents of Indiana. The organization is comprised of 131 Indiana small businesses. He invited Commission members to view a “legal operating pen” in Illinois “to

actually go and see for yourself.... It will dispel or you will know firsthand what is happening in these pens.” He said there is “a lot of misinformation surrounding the coyote issue”.

Ce Ann Lambert said she has been observing and studying coyote social behavior for 22 years. She said she has learned “so much about coyote behavior that even now I am consulting with the people in Nova Scotia” regarding the incident of the killing of a woman by two coyotes. She said that the coyotes’ behavior, as witnessed, was “so aberrant that it had never happened in 200 years. We’ve never had coyotes attack and kill an adult human.” Lambert said the ability to observe and study coyotes allowed her to provide information to Nova Scotia’s investigation.

Mark Ahearn suggested the Commission, as part of its motion, “set some limit of when we expect to see this issue come before us again.”

The Chair agreed with the recommendation of setting a time limit for further review of the citizen petitions.

John Davis said the Department could plan to come back before the Commission in January, but at the latest, make a presentation of recommendations at the Commission’s March meeting. He agreed with “tabling the agenda item”, but he asked the Commission to “make its will known” regarding broadening the scope of review. “We don’t want to just come back and talk about the words that were in the petition.”

The Chair said the Commission could table the petitions to allow further Departmental review. He asked, “Can we open this up beyond” the petitions?

Davis said the Commission could instruct the Department to broaden the scope of review. The Department could review the issues as stated in the petitions and also include “a description that gives [the Commission] the boundaries and let [the Commission] see where we drew the limits to our report. If [the Commission] wants more than that, we will go back.”

Ahearn asked, “Our dilemma is we are sort of the last stop. Everybody has gone around the bases, and we have to make a decision. Would it be too much to ask for recommendations?”

Davis responded the committee provided recommendations regarding the citizen petitions. But the committee or the Department could also provide recommendations on the other issues raised today.

The Chair said that he and the Vice Chair “wish to have this issue addressed as comprehensively and completely as we possibly can.” The committee addressed the petitions and provided recommendations, but there are “questions unanswered and pages unturned that we will eventually see again. I would like to see this issue as comprehensively and completely vetted as we possibly can with recommendations as soon as possible. If January is too soon to have this done, which I’m firmly convinced it is, then I would like to see this be done at our March Commission meeting.”

Davis responded, “As an example, what I meant by telling you where we ‘draw the line’, one place is...the holding of an animal. We will mention to you that we aren’t going to talk to you about raptors, but we are going to talk to you about some species, and we’ll try to figure out what [the Commission] will be able to see what we didn’t address.”

The Chair reflected, “I don’t want to exclude the work that has already been done by the Advisory Council. I firmly believe that I speak for the majority on the Commission that this is a sensitive issue. And, in light of what we’ve done consistently here over the last several years, we would like to do this...efficiently and comprehensively.”

Thomas Easterly moved to table the citizen petitions regarding chasing and hunting of coyotes and foxes with dogs, and the committee’s report, to allow additional time for the Department to conduct a comprehensive review and to report back to the Commission no later than the March 2010 meeting. Phil French seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF WATER

Consideration for preliminary adoption of proposed amendments to surface water emergency standards to relocate rules from 312 IAC 11-6 to 312 IAC 11.5; Administrative Cause No. 09-176W

Steve Lucas, Director of the Commission’s, Division of Hearings, introduced this item. He said the proposed rule is “mostly a housekeeping measure and would assist in the administration of what is sometimes referred to as the ‘Surface Water Emergency Lakes Act.’” The proposal would “relocate existing rules at 312 IAC 11-6, which govern the emergency regulation of surface water rights, to be codified at 312 IAC 11.5. He said the existing language is included within rules which otherwise assist with implementation of the Lakes Preservation Act, and this location has caused notable public confusion. He added that “water rights is a growing area of the law that really thus far the Commission and its AOPA Committee has had fairly limited exposure, but I think that will change in the future.” Lucas then introduced Mark Basch, Section Head of the Water Rights and Use Section of the Division of Water.

Mark Basch explained the proposed rule’s enabling statute provides protection to owners of freshwater lakes against the impacts of nearby “high capacity” pumping operations that might substantially lower lake levels and result in “significant environmental harm.” He said the rule is “very similar” to regulations governing ground water rights that protect small capacity wells from the impacts of high capacity pumping. He said “freshwater lake” is defined as “being at least ten acres in size and...constructed originally to retain water” along with other provisions.

Basch reported the Surface Water Rights Act has been in effect since 1990. The Department has “only had a handful of investigations, mainly because the provision that [the lake] has to be ten acres in size prohibits a lot of the complaints or discounts them. Most of the time, [the bodies of water] are smaller ponds.” Some complaints that are governed by the rule have been resolved “somewhat voluntarily” by restriction of pumping by the high capacity facility.

Basch said moving the rule to 312 IAC 11.5 “makes sense and is prudent” because of its similarity to the groundwater rights rule, which is codified at 312 IAC 12. He then recommended preliminary adoption of the proposed rule.

Larry Klein moved to give preliminary adoption to proposed amendments to surface water emergency standards to relocate rules from 312 IAC 11-6 to 312 IAC 11.5. Thomas Easterly seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF STATE PARKS AND RESERVOIRS

Consideration of preliminary adoption of amendments to 312 IAC 2-4 governing fishing tournaments and other organized activities on public waters; Administrative Cause No. 08-186P

John Bergman, Assistant Director of the Division of State Parks and Reservoirs, presented this item. He said proposed are minor amendments to 312 IAC 2-4 which governs the fishing tournament rules. The amendments apply primarily to lakes administered by the Division of State Parks and Reservoirs as listed at 312 IAC 2-4-12. He said the proposal was an attempt to modify existing language to make the rules “easier to read”. An amendment would clarify who can make application for a tournament drawing. An individual would also be able to participate in the fishing tournament draw, and an individual would be allowed to represent an organization.

Bergman said that the Department adopted an “80% rule”, where, if an organization reserved a date to hold a fishing tournament, the organization would have to pay 80% of the cost associated with the conduct of the fishing tournament in advance. As a result, organizations “decided not to ask for as many dates or as many participating boats.” Organizations have now requested to be allowed to increase the amount of boats participating on the actual date of the tournament if boat slots are still available. The amendments would allow an increase in boats on the date of the tournament, and this option would be clarified through a nonrule policy document. Bergman said the proposed rule would allow application for a fishing tournament within 14 days of another event on the same waterway, and it would increase the required bond from \$150 to \$300 to cover the cost, liability, and risk of “groups not showing up” or potential property damage.

Robert Wright moved to give preliminary adoption of amendments to 312 IAC 2-4 governing fishing tournaments and other organized activities on public waters. Donald Ruch seconded the motion. Upon a voice vote, the motion carried.

Recommendation for preliminary adoption of proposed new rule, 312 IAC 8-2-4.5 to regulate the placement of fish attractors on waterways within DNR properties; Administrative Cause No. 08-095P

Steve Lucas, Director of the Commission’s Division of Hearings, presented this item. He explained that in November 2008, the Commission gave preliminary adoption to a rule addressing this subject. Subsequent to the preliminary adoption, new agency concerns were identified. The 2008 proposal did not adequately address the Flood Control Act and the Navigable Waters Act requirements. The proposed amendments before the Commission today

incorporate additional language to resolve these concerns. He then recommended the Commission give preliminary adoption.

Larry Klein moved to give preliminary adoption of proposed new rule, 312 IAC 8-2-4.5, to regulate the placement of fish attractors on waterways within DNR properties. Thomas Easterly seconded the motion. Upon a voice vote, the motion carried.

Consideration for the negotiation of a ground lease for a marina and boat rental operation at the Cutright SRA, Monroe Lake, Monroe County, IN with Pleasure Craft Marina

Gary Miller, Assistant Director of the Division of State Parks and Reservoirs, presented this item. He said there has been a marina and boat rental operation at this site for the past 20 years under a 10-year ground lease with two 5-year options to renew. The options were about to expire, so the Department publishing a prospectus to solicit new proposals. The current marina operator, L.D. Honeycutt, submitted the only proposal.

Miller explained that the Department is required to bring any proposals before the Commission to seek permission to enter into negotiations with prospective operators. He said a draft lease is not available “because... [the Department] is to negotiate the lease afterwards and then take the [lease] through the signatory process all the way to the Attorney General’s Office. The process on the prospectus actually is to determine who we negotiate with not necessarily that we take the proposal carte blanche.”

Larry Klein asked, “So, what are we doing?”

Miller explained that the Department is seeking permission from the Commission to allow the Department to enter into negotiations for lease.

The Chair noted that the lease would contain language to allow for expansion of services and boundaries at the marina. “Is there anticipation that there will be an expansion?” Miller responded that currently there are 50 slips at the marina, and the Honeycutt’s proposal requests another 50 slips. The U.S. Army Corps of Engineers is “working with some new regulations that seem to have changed some things...to require economic feasibility studies, environmental impact statements. We are trying to get clarifications.” The lease would be “very much like the original lease” with added language to allow expansion. He said any expansion would need the approval of the Department and the Corps. “We are not talking about ten times the amount of land base or water base. We are not saying that they could put a hotel or anything like that in.”

Larry Klein inquired of the revenue the Department would receive from this lease. Miller said the operator estimated gross receipts of a little over \$600,000, and the Department would receive 5% of the first \$300,000 and 7% of anything above \$300,000.

The Chair asked, “Why a 40-year lease proposal?” Miller responded the Department likely would not grant a 40-year lease. The statute allows a maximum initial term of 40 years, with two additional renewals of up to 30 years each. The length of the lease would be “up to the Department on how much [it] wants to grant within that authority, but those longer [leases]

would be for much higher level of capital development involvement by the operator, for instance, if there was a hotel or much, much larger multi-million dollar project.”

Thomas Easterly moved to give permission to the Department of Natural Resources to enter into negotiations with L.D. Honeycutt, d/b/a Pleasure Craft Marina, for a ground lease for a marina and boat rental operation at the Cutright State Recreation Area on, Monroe Lake, Monroe County, Indiana. Mark Ahearn seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF HISTORIC PRESERVATION AND ARCHAEOLOGY

Consideration of preliminary adoption of rules governing procedures for obtaining approval of a project funded in whole or in part by the State that would alter, demolish, or remove a historic site or historic structure owned by the State or a historic site or historic structure that is listed on the National Register or Indiana register; Administrative Cause No. 08-096H

James Glass, Ph.D., Director of the Division of Historic Preservation and Archaeology (the “DHPA”), presented this item. He said the proposal would provide procedures for state agencies that undertake construction projects, which are state funded, and have a potential to alter, demolish, or remove either a historic site or historic structure that is owned by the state or that is listed in the National Register of Historic Places or the Indiana Register of Historic Sites and Structures. The new rule would help administer IC 14-21-1-18 that requires a “certificate of approval” from the Indiana Historic Preservation Review Board for state funded projects that adversely impact historic sites or historic structures.

Glass said that in 2008 Director Carter approved a temporary rule governing the subject, and earlier this year a very similar temporary rule was approved which is set to expire in October 2010. The DHPA has had an opportunity to see the temporary rules in effect. He said the temporary rule has been “well received” by the agencies affected and by organizations that support historic preservation. The temporary rule would be made permanent with adoption of the proposed rule.

Mark Ahearn asked whether the proposed rule would create additional requirements for agencies beyond requirements under National Environmental Policy Act (“NEPA”). Glass answered that the proposed rule is a “completely separate issue” from any NEPA requirements.

Robert Wright moved to give preliminary adoption of 312 IAC 20-4 governing procedures for obtaining approval of a project funded in whole or in part by the State that would alter, demolish, or remove a historic site or historic structure owned by the State or a historic site or historic structure that is listed on the National Register or Indiana register. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of preliminary adoption of rules to provide expedited procedures under IC 14-21-1-26 for a person to obtain a cemetery restoration license from the Department’s Division of Historic Preservation and Archaeology; Administrative Cause No. 08-106H

James Glass also presented this item. He said the proposed rule would provide an expedited procedure for obtaining a permit “for the many cemetery restoration advocates in Indiana who wish to restore fallen memorials and headstones in historic cemeteries.” Glass reported a temporary rule has been in effect since 2008 to govern the subject, and the proposal would make permanent the temporary rule. The expedited application process has been “well received by the advocates”. Glass said the DHPA provides a training program for those “who wish to coordinate a project to restore fallen memorials or headstones.” Successful completion of the training qualifies individuals for a DHPA “cemetery restoration license” to oversee restoration projects. Glass recommended the proposed rule be given preliminary adoption.

Brian Blackford moved to give preliminary adoption of new rule, 312 IAC 22-5, to provide expedited procedures under IC 14-21-1-26 for a person to obtain a cemetery restoration license from the Department’s Division of Historic Preservation and Archaeology. Thomas Easterly seconded the motion. Upon a voice vote, the motion carried.

INDIANA STATE MUSEUM AND HISTORIC SITES

Consideration for approval of long term lease proposal, Gene Stratton-Porter Historic Site, Sower Farmhouse

Laura Minzes, Assistant Director of the Indiana State Museum and Historic Sites (“ISM&HS”), presented this item. She said the ISM&HS has statutory authority to pursue and execute a long term lease of property through IC 14-20-1. The ISM&HS has received two long term lease proposals, one from Thomas Woodcox and the other from the Historic Landmarks Foundation of Indiana (“HLFI”). The HLFI proposal was inadvertently omitted from the Commission’s packet but was forwarded electronically to Commission members before today’s meeting.

Minzes said the ISM&HS recommends approval of the long term lease submitted by the HLFI. The HLFI proposal mirrors a similar arrangement the HLFI has with the National Park Service and the Indiana Dunes National Lakeshore, where HLFI has “attracted private investment” for sublease of nine structures within the National Lakeshore with HLFI serving as the primary lessee. Minzes explained that HLFI would serve similarly, as the primary lessee, for the Sower Farmhouse within the Gene Stratton-Porter Historic Site. She also noted that HLFI acting as the “landlord of the property would have little impact on the site staff and would have little to no cost to the state, because the sub-lessee pays for the administrative fees of that lease.”

Robert Wright asked whether the ISM&HS has worked with Thomas Woodcox on other projects.

Minzes responded the ISM&HS has not previously worked with Woodcox. She said the ISM&HS had several concerns regarding Woodcox’s proposal. Woodcox indicated in his proposal his willingness to donate up to \$15,000 in labor, but “We are pretty sure it’s going to take more than that.” Woodcox’s proposal required that the State cover the costs of materials and carry the insurance. Minzes said ISM&HS is “looking for a solution that relieves the State of much of the fiscal responsibility.” Minzes then recommended the Commission approve the long term lease as submitted by the Historic Landmarks Foundation of Indiana.

Thomas Easterly moved to approve the Historic Landmarks Foundation of Indiana's long term lease proposal for the Sower Farmhouse within the Gene Stratton-Porter Historic Site. Brian Blackford seconded the motion. Upon a voice vote, the motion carried. Mark Ahearn abstained.

DIVISION OF ENTOMOLOGY AND PLANT PATHOLOGY

Information Item: Status of emerald ash borer infestations; state and federal cooperative surveys; quarantine status/management; financial impact; Indiana projections

Phil Marshall, State Entomologist and Director of the Division of Entomology and Plant Pathology, presented this information item. He said Indiana has been surveying for emerald ash borer (EAB) since 2003, with the first finding of EAB in 2004. In coordination with APHIS, Indiana has placed "purple panel traps" in southern Indiana, and traps were placed in northern Indiana in coordination with funds from the U.S. Forest Service. The traps were placed to attempt to detect the expansion the EAB. He said the 2008-2009 survey attempted to find new introductions, but not necessarily the natural spread of the invasive species.

Marshall said the result of the 2008-2009 survey found EAB in Brown County, Monroe County, Lawrence County, Orange County, and Floyd County, which were added to the quarantine area. Additional counties were found to have "positive known trees" infested with EAB: Dubois County, Harrison County, Blackford County, Grant County, Delaware County, and Miami County.

Marshall said there are mainly four areas of tree mortality in Indiana, with the largest infestation within Fort Wayne, but with other major infestations in Huntington, Orange County, and Lawrence County. The next wave of tree mortality will be located near Howe, Indiana moving west into Michigan. "All the ash trees on Pigeon River are in the process of dying." Marshall said the Division of Entomology and Plant Pathology will combine the EAB survey with the gypsy moth survey in high risk sites.

Marshall said Indiana has received federal funding of approximately \$3.5 million for the EAB program, \$2.1 million dedicated to the eradication project in Shipshewana. APHIS provides 80/20 fund match to Indiana's EAB program, which a portion of the funds covering public outreach provided by Purdue University, and the U.S. Forest Service provides a 50/50 match. He said Indiana has spent approximately \$4 million on EAB since 2003.

Marshall concluded that APHIS will provide some funding for additional surveys. "After this year, we don't know where it is going to go. I would anticipate that we will stop surveying after this year depending on how we find distributions in Indiana, plus the lack of funding."

NRC, DIVISION OF HEARINGS

Consideration of final adoption of new rule adding 312 IAC 27 to assist with the implementation of the Flood Control Revolving Fund; LSA Document #09-199 (F); Administrative Cause No. 08-064A

Jennifer Kane, Hearing Officer, presented this item. She said the Flood Control Revolving Fund was created by IC 14-28-5 in the 1950s to encourage local initiatives to address flooding and water resource issues. By statute, the Fund provides low interest loans to a “local unit” (as defined by IC 14-28-5-4) of government to help finance flood control projects. She explained that a “local unit” is a county, city, town, or special taxing district created by law, such as a conservancy district.

Kane said previously the State Board of Finance and the Natural Resources Commission jointly administered the Fund. With a 2008 statutory amendment, the responsibility shifted exclusively to the Natural Resources Commission. “With the Commission’s delegation, the Division of Water would coordinate matters regarding applications for loans and provides technical analyses.” Kane explained statutorily loans may not exceed \$300,000 to any one local unit of government, and the loan terms are at a 3% interest rate to be repaid over a ten year period.

Kane said certain types of projects qualify for a low interest loan under the Flood Control Revolving Fund, such as removal of obstructions and accumulated debris; clearing and straightening channels; channel widening; building or repairing levees or flood protective works; and construction of bank protection works. The proposed rule codifies ongoing agency practice, clarifies definitions and existing requirements as set forth by IC 14-28-5. Kane then recommended that final adoption of the proposed rule adding 312 IAC 27, to assist with the implementation of the Flood Control Revolving Fund, be given final adoption as set forth in Exhibit A.

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

Consideration of final adoption of proposed amendments to 312 IAC 5-7-6, to establish a revised idle zone on Deer Creek in Perry County; LSA Document #09-210(F); Administrative Cause No. 08-094L

Sandra Jensen, Hearing Officer, presented this item. She explained the proposal was initiated by Mark Newton as a citizen petition for rule change. Newton requested that the idle zones on Deer Creek and Little Deer Creek be expanded to address safety concerns and stream bank erosion. Jensen said an internal Department review committee was formed to review Newton’s petition, and the committee “deemed the petition meritorious”. She said the committee’s report found that the idle zones on both Deer Creek and Little Deer Creek “should be extended from 300 feet and 600 feet, respectively, to 2,500 feet from their confluence.”

Jensen said the Commission gave preliminary adoption to the rule proposal at its March 2009 meeting. The version given preliminary adoption has since been amended as a result of three written comments offered during the public hearing process. “Comments that were received indicated that the idle zone extension on Little Deer Creek to 2,500 feet was not sufficient to address the public’s concerns.” Jensen said that Maj. Felix Hensley, Indiana State Boating Law Administrator, who chaired the Department’s committee, reviewed the written comments and

filed a memorandum dated October 22, 2009 recommending that the idle zone on Little Deer Creek be extended beyond the original proposed 2,500 feet to 3,200 feet, and the idle zone on Deer Creek would be extended to 2,500 feet.

Mark Ahearn asked, "Is there anyone who is going to be shocked thinking they left the public hearing and Little Deer Creek [idle zone] was going to be 300 feet?"

Jensen responded that all of the individuals who comment during the hearing process, of which most of the persons reside in close proximity to the affected area, were provided a copy of the Hearing Officer's report. She has not received any comments from those persons. "They were in contact with me prior to receiving the [Hearing Officer's Report] so I have to assume the answer to that question would be, 'no'." Jensen recommended final adoption of the proposed rule amendments contained in the Commission's packet as Exhibit C of the Hearing Officer's Report.

Mark Ahearn moved to give final adoption of amendment to 312 IAC 5-7-6, to establish a revised idle zone on Deer Creek to include 2,500 feet, and an idle zone on Little Deer Creek to include 3,200 feet from the confluence of the two Creeks. Thomas Easterly seconded the motion. Upon a voice vote, the motion carried.

Consideration of approval of amendments to the nonrule policy document (Information Bulletin #20), which provides the ratemaking process for resorts and marinas under lease with the Department of Natural Resources; Administrative Cause No. 09-054P

Sandra Jensen, Hearing Officer, also presented this item. She said the Commission received a citizen petition from two marina operators who sought an amendment to nonrule policy document, Information Bulletin #20. The nonrule policy document sets forth the procedure for determining rates at marinas under lease with the Department. Jensen said she chaired the internal committee comprised of members Gary Miller and Dan Bortner from the Division of State Parks and Reservoirs, and Bob Felix and Jim Roach, property managers for Brookville Reservoir and Monroe Lake, respectively, that was formed to review the petitions. Jensen said all the marina operators that are impacted by Information Bulletin #20 were invited to a meeting to discuss potential amendments. "It is my understanding that both Department personnel and all of the marina operators are generally satisfied" with the committee's recommendations.

Jensen said seven main areas of the nonrule policy document were proposed to be amended. The phrase "any fee" would be deleted and replaced with a "more specific description of the fees intended to be covered". The term "comparable marina" would be defined to include other marinas within a 400 mile radius that maintain facilities and provide similar amenities to the marina seeking a rate establishment or increase. Petitions for rate increase would be submitted by January 1st rather than April 1st as is currently provided and other dates would be modified accordingly. Marina operators currently are required to notify slip patrons of any rate increase petition by First Class mail. With the proposed amendments, operators could provide email notification. A marina operator would be required to post a written notice at its business office by March 1st that a fee increase for accommodations, lodging, or a house boat (including floating cabins) has been requested. "The reason for this is that most people who use the

accommodations are not those that are using the marina...slips.” Currently, the Commission’s Division of Hearings is required to hold public hearings on all petitions involving marina rates. A public hearing would no longer be required unless requests are received from 10% of the existing marina patrons, and public hearings would no longer be held regarding accommodation rate increase unless 25 people make a request for a public hearing.

Jensen explained another amendment proposed would create a three-tiered review process. The three-tiered review process would also apply to interim rates that would need Commission ratification.

(1) For requests for rate increase that are 2% or less of the existing fees, for which there are not the requisite number of requests for a public hearing, the Commission would delegate the review authority to a hearing officer with the Division of Hearings. The hearing officer would consult with the Division of State Parks and Reservoirs, and the report and recommendations would go directly to the U.S. Army Corps of Engineers without presentation to the Commission.

(2) For requests for rate increase over 2% ..., for which there are not the requisite number of requests for a public hearing, the hearing officer would not conduct a public hearing, but would present a report and recommendations to the Commission, with the approved Commission recommendation forwarded to the U.S. Army Corps of Engineers.

(3) For requests for rate increase where there is a sufficient number of requests for public hearing, even if the rate increase itself is 1%, a hearing officer will hold a public hearing, make a report with recommendations, and presentation to the Commission. The Commission’s recommendations would then be forwarded to the U.S. Army Corps of Engineers.

Jensen reiterated, “Generally speaking, everyone is fairly satisfied—not total agreement on every point—but fairly satisfied with everything that has happened.”

Jane Ann Stautz moved to approve amendments to the nonrule policy document (Information Bulletin #20) which provides the ratemaking process for resorts and marinas under lease with the Department of Natural Resources. Thomas Easterly seconded the motion. Upon a voice vote, the motion carried.

Adjournment

The meeting was adjourned at approximately 12:30 p.m., EST.