

NATURAL RESOURCES COMMISSION

The Garrison, Fort Harrison State Park
6002 North Post Road
Indianapolis, Indiana

Minutes of September 20, 2005

MEMBERS PRESENT

Michael J. Kiley, Chairman
Rick Cockrum, Vice Chairman
Kyle Hupfer, Secretary
Jane Ann Stautz
Matthew T. Klein
Damian Schmelz
Raymond McCormick, II
Bryan Poynter
Chad Frahm
Mark Ahearn

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
Burgess Brown	Executive Office
Ric Edwards	Executive Office
Cloyce Hedge	Nature Preserves
Laura Minzes	State Museum and Historic Sites
Kathleen McLay	State Museum and Historic Sites
Linnea Petercheff	Fish and Wildlife
Glenn Salmon	Fish and Wildlife
Bruce Stevens	Reclamation
Jim AmRhein	Oil and Gas
Ann Knotek	Legal
Ihor Boyko	Legal
Dan Barton	State Parks and Reservoirs
Terri Price	Water
Jomary Crary	Water
Michael Crider	Law Enforcement
William Snyder	Law Enforcement
Cheryl Hampton	Personnel

GUESTS PRESENT

Terri Czajka	Dick Mercier	Tom Tiller
Judy Brown Fletcher	Doug Allman	Jeff Bauermeister
Judy Aikman	Ed Schrier	Alise Pate
Jack Corpuz	Frank Otte	Patrick Lyp
Gary Doxtater	Scott Fetters	Jim Kovacs
Robert Lewis	Robert Scott	

Michael J. Kiley, Chair, called to order the regular meeting of the Natural Resources Commission at 10:08 a.m., EST, on September 20, 2005, at The Garrison, Fort Harrison State Park, 6002 North Post Road, Indianapolis, Indiana. With the presence of ten members, the Chair observed a quorum.

Damian Schmelz moved to approve the minutes of July 19, 2005. Bryan Poynter seconded the motion. Upon a voice vote, the motion carried.

Director Kyle Hupfer stated that since the Commission has an “aggressive agenda, I am going to be very brief.” He announced that Chairman Michael Kiley has “given notice to both myself and the Governor that he intends to resign effective at the end of this meeting.” Hupfer noted that Chairman Kiley was originally appointed to the Natural Resources Commission by “Doc Bowen”, and has served as its chair “in a distinguished capacity since 1990. As a result, I have the honor today to deliver to Chairman Kiley, on behalf of the Governor, the Distinguished Hoosier Award.”

Chairman Michael Kiley explained that back in 1973 “a number of us at Lake Wawasee stood by and watched dump truck loads of fill being put into one of the wetlands up there. We ended up in litigation in the U.S. District Court in South Bend. The judge was Judge Grant. Judge Grant wasn’t too certain about the fact whether or not in litigation this was a real wetland or whether it was solid ground. So he made a trip over to the wetlands between hearings to take a look himself. He took four steps at the area in question and went under water. It took about 35 minutes back to South Bend to get a permanent injunction. This is how all this got started.”

Chairman Kiley stated, “I thank you all for the privilege to serve the state, and for the friendships that we made. It has given me an opportunity to be in every county in the state, and meet some really fine people. I wish you all the best. You may see me back here in a consulting mode on the other side of this desk. If that’s the case, let me have it because it would be good for me.”

Division of Nature Preserves

Consideration of the Dedication of Thompson Bog Nature Preserve, LaPorte County

Cloyce Hedge, biologist with the Division of Nature Preserve, presented this item. He said, “Mr. Chairman, I consider it an honor to be here at your last Commission meeting.” He distributed a one-page fact sheet on the Thompson Bog Nature Preserve. Hedge said Thompson Bog is a 31-acre tract in the “extreme northeastern corner” of LaPorte County, and about 1½ miles from Michigan. Thompson Bog was discovered in 1979 during natural area survey work as part of the first stage of research for what is today Indiana’s Lake Michigan Coastal Program. “Most of Indiana’s bogs have been drained and filled for peat mines. A few of them remain.” He also noted that Thompson Bog was among the “highest quality remaining example in the state. There are about a half dozen left.”

Hedge explained that the bog is a community of species that are “precisely” adapted to wet, acidic, nutrient poor conditions. He said the species “assemblage excites we botanists and ecologists to see these things out on the landscape.” Hedge invited Commission members to visit the Thompson Bog. He explained that the land was purchased from Margaret Thompson with money from the Heritage Trust, various waterfowl management acts funds, and from The Nature Conservancy. “It was a partnership acquisition.” Hedge stated that the Division of Nature Preserves recommended dedication of Thompson Bog as a state nature preserve.

Damian Schmelz moved to approve state dedication of the Thompson Bog Nature Preserve. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Division of Law Enforcement

Consideration for Preliminary Adoption of Proposed New Rule Section, 312 IAC 5-9, to Establish Watercraft Restrictions on Sullivan Lake in Sullivan County; Administrative Cause Number 05-106L (LSA Document #05-264)

Lt. Col. Michael Crider, Division of Law Enforcement, presented this item on behalf of Maj. Samuel Purvis, Indiana State Boating Law Administrator. Lt. Col. Crider said a petition for rule change from the Sullivan County Parks Department initiated this proposal. The proposal would establish speed limits, idle speed zones, and no-boat zones to assist the Sullivan County Parks Department to “manage their lake more properly.” Crider said Sullivan Lake is a 469-acre reservoir. “This request is similar to requests we have had in the past.” He said the Division of Law Enforcement recommended preliminary adoption be given to the rule amendments.

Jane Ann Stautz moved to give preliminary adoption to new rule section, 312 IAC 5-9, to establish watercraft restrictions on Sullivan Lake in Sullivan County. Rick Cockrum seconded the motion. Upon a voice vote, the motion carried.

Consideration for Preliminary Adoption of Rule Amendment (312 IAC 5-7-5) to Amend the Watercraft Restrictions on Turtle Creek Bay of the Ohio River; Administrative Cause Number 05-104L (LSA Document #05-263)

Lt. Col. Michael Crider also presented this item. He explained that a citizen from Florence, Indiana initiated the rule proposal. The rule amendment would establish an “idle speed zone” in an area known as “Turtle Creek Bay” along the Ohio River. He explained that the water in the proposed zone is “typically at a very low level and not safe for high speed boating. Currently, there is an area that after you travel through about 1,100 feet idle zone, you can pick up higher speed. As a rule, the water is too low for that to take place.” He asked the Commission to give preliminary adoption to the rule amendment. Crider explained that with rule adoption, navigational aides could be placed to regulate the speed in the area.

Chairman Kiley recalled that the Commission established an idle speed zone in Turtle Creek Bay “some years ago.” He said the zone extended for a “lengthy distance” upstream from the mouth on the Ohio River, then terminated, allowing for renewed high-speed boating. Crider said the Chair’s recollection was accurate. Kiley commented that he had reservations at the time about allowing for a resumption of unlimited speeds upstream within Turtle Creek. Concerning the proposed amendment he said, “It needs to be done.”

Damian Schmelz moved to give preliminary adoption to an amendment to 312 IAC 5-7-5 to extend the idle speed zone on Turtle Creek Bay of the Ohio River. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Division of Fish and Wildlife

Consideration for Preliminary Adoption of Amendments to 312 IAC 9 Governing Hunting of White Tailed Deer, the Taking, Possessing, and Releasing of Exotic Mammals; and Adding 312 IAC 9-3-18.5 Governing the Possession of Exotic Cervids; Administrative Cause Number 05-144D (LSA Document #05-261)

Linnea Petercheff, Division of Fish and Wildlife, presented this item. She said the rule proposal would add a provision in the rules governing deer hunting to clarify that white-tailed deer cannot be hunted if the deer is possessed under the authority of a game breeder license. Petercheff explained that under the new proposal, Indiana citizens who wish to possess white-tailed deer for any purpose must obtain a game breeder’s license issued by the DNR. “The scope of the game breeder’s license is limited to propagation of an animal in captivity or the possession purposes for the sale of an animal for the purpose of propagation, which is indicated in statute.” Petercheff said the rule proposal would not allow for the “purposeful killing” of deer maintained under a game breeder’s license.

Petercheff explained another aspect of the rule proposal would prohibit the taking of exotic animals and “essentially releasing them in the wild in Indiana.” The proposal would prohibit hunting of exotic animals such as fallow deer, elk, antelope, and zebra. “The list of families of exotic animals in the rule includes many species found throughout the world that could possibly be kept in captivity under a permit.” Petercheff said the intentional release into the wild of lawfully possessed animals would be prohibited. The rule proposal would require notification to a conservation officer of an escape of an animal within 24 hours. She also explained that cervids are required to be registered with the Animal Board of Health, but there is no notification required of a cervid escape. “Wild boar would be allowed to be taken at any time due to disease concerns for domestic swine and a potential for damage to property.”

Petercheff said the proposal would allow for other species of exotic animals to be taken by a landowner or a tenant if the animal is causing damage to property. She also said the proposal would authorize possession of exotic animals from a family listed in the rule “only if allowed by statute or administrative rule.” Petercheff said a new exotic animal possession permit would be established under the proposal to allow for possession of animal from the cervidae family, such as elk and fallow deer. She explained that the new permit is needed to allow for lawful possession of these species and to provide “protection from disease stress” to Indiana’s white-tailed deer population.

Petercheff said the DNR does not currently allow for the possession of these species under any type of permit. “Furthermore, if they are not licensed by the USDA, the Animal Care Division of the Animal Welfare Act, as a breeder or an exhibitor [persons] would not have any license provision to possess them at all.” Persons keeping these species as “pets” would not be licensed by the USDA and would be under the DNR’s jurisdiction. “This rule would establish a permit to allow them to keep those animals, and

includes many of the same provisions that are in the game breeder license.” Petercheff said that other states, such as Kentucky, have similar possession permitting for captive cervids.

Commission Member, Raymond McCormick, asked for clarification in the rule proposal of the word “propagation”. He said, “When you say strictly ‘for propagation’, people in my area that collect urine from deer, would that practice be allowed then?” Petercheff, responded that the collection of urine would be allowed under the proposal.

Dick Mercier, Indiana Sportsmen’s Roundtable, said the rule proposal is “something we needed to clarify early assaults that we have had in this state for some years.” He thanked Chairman Kiley for his service, and added, “Mike, we are going to miss you.” Kiley characterized the Indiana Sportsmen’s Roundtable as a “great organization.” Rick Cockrum, Commission Member, asked Mercier to summarize some of the organizations the Round Table represents. Mercier responded that the Roundtable consists of sportsman groups as well as individual members, clubs and organizations throughout the state, including the Indiana Deer Hunters Association, Indiana Ducks Unlimited, Bow Hunters Association, and Bass Federation, and many others.

Gary Doxtater, Indiana Wildlife Federation, said, “We just want to go on record supporting this item, and, in fact, Agenda Items 4, 5, 6, and 7.” He reported the Federation is “glad to see this moving forward for preliminary adoption.”

Doug Allman, Indiana Deer Hunters Association, said, “We strongly support this.” There have been many escapes of animals, most recently of elk in Steuben County. He urged the Commission to look at “visible identification” such as tagging so that “we can, in terms of deer, differentiate between wild deer and the captive deer that have escaped. With elk, we can then trace back with the visible ID number towards where that animal escaped.” Chairman Kiley asked if the Indiana Deer Hunters Association would participate as the proposal moved forward through the hearing process. Allman said it would.

Jack Corpus, Ruff Grouse Society, added, “We thoroughly support this particular action to eliminate the loopholes.”

Rick Cockrum moved for preliminary adoption of rule amendments to 312 IAC 9 governing the hunting of white-tailed deer; the taking, possessing, and releasing of exotic mammals; and adding 312 IAC 9-3-18.5 governing possession of exotic cervids. Bryan Poynter seconded the motion. Upon a voice vote, the motion carried.

Consideration for Preliminary Adoption of Amendment to 312 IAC 9-3 Establishing a Special Youth Deer Hunting Season; Administrative Cause Number 05-156D (LSA Document #05-262)

Linnea Petercheff also presented this item. She said the rule amendment would establish a new special youth deer hunting season on the weekend prior to the early archery season to start October 1st. “Any youth 15 years or younger, and accompanied by an adult age 18 or older, would be able to take one antlerless deer during the special youth deer season.” She said the accompanying adult would not be allowed to take a deer when in the field with a youth hunter. Petercheff said the youth hunter would be required to possess a valid youth hunting license, and to have taken an approved hunter education course. She said the youth hunter would be required to comply with all other deer hunting laws. The youth hunter could use any legal weapon, including a shotgun, muzzle-loader, a compound bow, or a cross bow, to take a deer.

Director Hupfer explained the special youth deer hunting season is a product of a FWCC youth committee. “Their first success was this past weekend when they had Take a Kid Hunting Day.” He said the proposal is a “second attempt is to get more youth in the field. Virtually all sportsmen’s organizations that are involved with this are supportive. We are way behind in youth hunting opportunities in this state.” He noted that all contiguous states have a youth deer hunting season. “It’s time that we catch up.”

Dick Mercier, Sportsmen’s Round Table, stated, “We certainly do favor this.” He thanked Director Hupfer “for all the work he did for Take a Kid Hunting Day. It was an exceptional thing.”

Chairman Kiley reflected, “I might ask the public’s consent to note in the record that all those people who spoke in favor of Agenda Item 4 are equally supportive of this item. We will show that in the record so that it can be demonstrated appropriately.”

Jane Ann Stutz moved for preliminary adoption of amendments to 312 IAC 9-3 establishing a special youth deer hunting season. Raymond McCormick seconded the motion. Upon a voice vote, the motion carried.

Consideration of Request to Establish a Reduced Fee for the Issuance of a DNR Deer Reduction Donation License; Administrative Cause Number 05-149D

Director Kyle Hupfer presented this item. He said he met with Commissioner J. David Donahue of the Department of Correction’s (DOC) on a “first joint effort” between DNR and DOC for a deer reduction program. Under the license, hunters could “harvest a doe in specific counties and proceed to a select group of check stations who are volunteering for this and who are taking a reduced fee.” The DOC will process the deer at its facilities and “use them to educate offenders on meat processing that will also be served at the correctional facility.”

Director Hupfer explained the that the DNR’s incentive for the program is to “give everyone who donates a deer to this program a \$10 coupon for reduced replacement doe license.” The Commission may not legally need to consider this proposal, but “I wanted to ‘bootstrap’ to make sure we were jumping through all the correct hoops.” The DNR will “still be above the statutory minimum to charge for a license. Because we will be charging a reduced rate, I wanted to get the consent of the Commission.”

Bryan Poynter asked, “How will lifetime license holders be affected? Will they still have to have a coupon for that?” Director Hupfer answered, “I guess they will just be able to donate a doe. We will not prevent them from donating a deer.” He said the DOC has indicated it will accept “every deer they can get.” Cockrum asked whether the proposal would be an annual program. Director Hupfer characterized the proposal as a “pilot project.” The project is dependent upon having a willing processor in each county where the license applies. “Depending on how this program goes, I think it will be extended next year.”

Ramond McCormick moved to approve request to establish a reduced fee for the issuance of a DNR deer reduction donation license. Rick Cockrum seconded the motion. Upon a voice vote, the motion carried.

Consideration of Request to Establish a Reduced Fee for the Issuance of a Duplicate License Based Upon Statutory Authority That Became Effective July 1, 2005.

Linnea Petercheff, Division of Fish and Wildlife, presented this item. She explained that the automated license system is now available at retail establishments to purchase a hunting license. “However, many of

those individuals already are losing the license they obtained.” License holders are allowed to make copies of the license before they sign. She added that in order for a license to be valid, the license must have an original signature. Petercheff said license holders who have lost their licenses are currently contacting DNR’s customer service center to obtain a duplicate license. Previously, the duplicate license fee was set at one-half the cost of the license up to the nearest whole dollar. “A \$14.25 license would cost approximately \$7 for us to replace for them.”

Petercheff said DNR surveyed surrounding states regarding similar duplicate licensing system where either a retailer or a centralized location could print out duplicate licenses. “Most of the surrounding states charge \$3 for a duplicate license, and Kentucky charges \$4.” She said the license holder would have to provide pertinent information in order to receive a duplicate license. “We would also like the retailers to be able to do this throughout the state. If we did that, we would allow the retailer to keep \$0.75 cents for each duplicate license sold.”

Rick Cockrum indicated that he could appreciate the convenience to the license holder. “Did you discuss enforcement problems?” Petercheff explained that the database for all licenses purchased are accessible online, and conservation officers are able to access the database. Director Hupfer added that some license purchasers print extra copies in advance of signing. “It’s only for those people that print only one and lose it. It’s a pretty simple process.” He said the license holder would still be required to provide identification.

Bryan Poynter asked, “Has anyone quantified the revenue that’s lost if we reduce the fee? Does this happen a lot or is it an occasional occurrence?” Petercheff answered, “It’s happening a lot. We are getting calls pretty much everyday through our customer service center.” She added that she was “not sure” how many duplicates have been issued in previous years because it was still on a paper system.” Director Hupfer said that the DNR would be “more than capturing our costs at \$3.”

Rick Cockrum moved to approve request to establish a reduced fee of \$3 for the issuance of a duplicate license. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

Raymond McCormick stated that the surrounding states do not allow white-tailed deer to be fed or baited into a tree stand. Indiana does not allow baiting; but “we allow the feeding and pulling together of deer with the use of feed and baits.” He urged DNR staff to review “stopping the feeding and baiting of deer before hunting season.” Also, McCormick said surrounding states do not allow spotlighting of deer, and he urged the DNR and the Commission to review the use of spotlights in locating deer year round. Dick Mercier added, “I concur with Mr. McCormick’s information. I don’t know how many times we have proposed legislation that prohibits spotlighting. We just can’t seem to get it done.” Lt. Col. Crider said, “I have an indication that there is going to be legislation addressed to the issue during this session.” Chairman Kiley said that McCormick’s comments are “so noted.”

Division of Oil and Gas

Consideration for Preliminary Adoption of Amendments to 312 IAC 16-1 Adding Definitions Regarding Production of Oil and Gas; Administrative Cause Number 05-126G

Bruce Stevens, Director of the Division of Reclamation, presented this item on behalf of Herschel McDivitt, Director of the Division of Oil and Gas. He said staff from the Division of Reclamation and the Division of Oil and Gas jointly worked on the rule proposal. “In July, there was a rule package to bring regulations in conformance with statutory changes regarding protection of coal resources and

requirements for intermediate string casing installations, which was preliminarily adopted.” The new definitions are proposed to “insure clear meaning of terms.” Stevens said the oil and gas industry and the coal industry have conducted an initial review of the proposed rules, and there are “no major issues at this point. We intend to work closely with these industries throughout the process in order to attempt to reach consensus on all aspects.”

Jane Ann Stautz moved for preliminary adoption of amendments to 312 IAC 16-1 adding definitions regarding oil and gas, particularly in the context of the placement of intermediate strings of casing. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

Division of State Museum and Historic Sites

Consideration of Recommendation for Approval of Establishing fees for New Programming

Kathleen McCary, Division of Indiana State Museums and Historic Sites, presented this item. She noted the Indiana State Museum opened in May 2002. She requested approval of an adjustment of the Museum’s programming fees “to keep competitive in the marketplace.” Jane Ann Stautz observed the recommended cost for one “Natural History Poster Series” was \$6. She inquired whether the recommended cost of \$40 for a set of six posters was a misprint. McCary said it was and apologized for the error. In fact, \$40 is the fee for a set of ten not six posters. She said the error would be corrected. Cockrum asked whether the recommended fees cover costs. McCary answered that the recommended fees do cover Museum costs.

Jane Ann Stautz moved for approval of recommended fees for new programming at the Indiana State Museum, including a correction to reflect that a \$40 set includes ten not six posters. Rick Cockrum seconded the motion. Upon a voice vote, the motion carried.

Consideration of Amendments to Nonrule Policy Document for Geocaching on DNR Properties to Authorize Geocaching Activities on Properties Administered by the Division of Museums and Historic Sites; Administrative Cause No. 05-147M

Kathleen McCary also presented this item. She said the nonrule policy document governing geocaching activities on DNR properties would be amended to allow the activity on historic sites “that we might encourage visitation of our properties.” Director Hupfer asked, “Are you at all worried that at some of these historical sites that an over-anxious participant might disturb something in their effort to place an item in the game?” McCary responded that, under the nonrule policy document, the property manager would “dictate” the placement of the cache. Stautz noted that youth groups and school organizations “are using this opportunity and there would be potential advantages to allow it on these properties, but within rules and limits.”

Rick Cockrum moved to approve amendments to the nonrule policy document for geocaching on DNR properties to authorize geocaching activities on properties administered by the Division of Museums and Historic Sites. Jane Ann Stautz 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 8-2-8 to Implement HEA 1765 Governing the Use of Motorized Carts on DNR Properties; Administrative Cause Number 05-148.

Ric Edwards, Director of Safety and ADA Compliance, presented this item. He explained that the DNR is “faced with the legislative mandate to address the use of motorized carts, commonly known as ‘golf carts’ on DNR properties.” He said DNR is statutorily required to adopt rules “to provide for the use of motorized carts in state parks and recreation sites by those at least 65 year of age or older, or those with disabilities as defined by the Social Security Administration.”

Edwards said the DNR’s Property Use Committee reviewed the new legislation and prepared the proposed amendments. He said several concerns were addressed, including hazards to other guests, damage to areas not designed for motorized traffic, and danger to the operator. “These are just few of the concerns.” He also explained that the rule proposal would “minimize” the concerns and would authorize operation of motorized carts only within a campground. “We hope this will balance the hazards while satisfying those who wish to operate the carts.” Edwards said the Property Use Committee recommended preliminary adoption of the rule amendments.

Chairman Kiley asked, “What do we do in our state parks, for instance on our trails, that are accessible to the handicapped for the use of motorized vehicles, carts, and that sort? What do those folks use?” Edwards explained that currently there is no prohibition of use of a motorized wheelchair or a single-use chair. The amendments “area simply providing the ability for folks to operate a golf cart in a campground area. Right now there is no prohibition to use a single-use wheelchair or amigos on these trails. This rule would also allow the use of golf carts to move around in campground.” Kiley added, “We have to be absolutely certain that we provide as much access to our facilities and our properties as much as we possibly can.”

Jane Stautz asked for clarification concerning the distinction between an off road vehicle and a golf cart. “There are a lot of hybrids. Is there any potential conflict?” Edwards explained that “motorized cart,” means a conveyance that is motor driven either by gas or electricity used to carry passengers. “They are smaller than the type vehicles that are required to be registered with the Bureau of Motor Vehicles, such as recreational vehicles.” Bryan Poynter asked, “The age provision, where did that come from?” Edwards responded that the age provision is in the new legislation.

Rick Cockrum moved for preliminary adoption of amendments to 312 IAC 8-2-8 to implement HEA 1765 governing the use of motorized carts on DNR properties. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of the Approval of a Nonrule Policy Document (Information Bulletin #50) to Describe the Purposes, Definition, and Administration of a “Waterfowl Resting Area” on a DNR Property; Administrative Cause Number 05-048D.

Ihor Boyko, attorney with DNR’s Office of Legal Counsel, presented this item. He said the nonrule policy document would currently have application to the Division of State Parks and Reservoirs and the Division of Fish and Wildlife. These divisions have designated certain areas managed as “waterfowl resting areas”. He said the basis for this designation was to “minimize, but not totally eliminate disturbances, and create favorable conditions for waterfowl to congregate during their respective seasons.” The nonrule policy document was in response to an administrative ruling by Judge Lucas (*Tiller v. DNR*, 10 CADDNAR 5 (2005)) where it was found that currently “DNR lacked ascertainable

standards to issue licenses for individuals to enter waterfowl resting areas.” He requested Commission approval of the nonrule policy document.

Tom Tiller said he was “against the approval” of Parts II and III of the document. “There is no process or procedure or intent that exists for designation of a waterfowl resting area.” He said, “Technically, ‘waterfowl resting area’ at this time is used as code word for ‘waterfowl hunting area.’” Tiller said the licensure rules submitted for approval would only apply to a single location—a 491-acre section of low water at the north end of Brookville Reservoir.

Tiller said there was no procedure process for identifying a waterfowl resting area. “The item is on the agenda only because of the intent of the original 312 IAC 5-10-2. It was never spelled out. There is no intent.” He said there is no process or standard for “how that singular area came to be a waterfowl resting area.” The “problem still exists.” He said “waterfowl resting area” designation is “deceptively used to set aside an area to use for hunting. I think that’s contrary to public understanding and support for all DNR postings.” He added, “If you expect the public to support, observe, and respect your posting, they ought to be descriptive or commonly used meanings.”

Tiller said the licensure rules are “really only for this one singular area” on Brookville Reservoir. “This is the only one area in the entire state that’s closed by Indiana Administrative Code.” He said it was “unnecessary to apply this great body of licensure rules and standards across the entire state to water and land without bounded or description for this one little application.” He urged the Commission to reject the nonrule policy document.

Bryan Poynter asked Tiller if he was resident in the area. Tiller responded that he is a resident “quite near the area.”

Director Hupfer said the Department administers other properties, such as within the Pigeon River Fish and Wildlife Area, which have the designation of “waterfowl resting area”. He added, “There are times when the area is off limits. We also have problems with nuisance geese. The geese were hunted in the waterfowl resting area at a noncritical time.” He said there was “no reason, when it is not a critical time, not to allow folks to come in there and hunt.”

Rick Cockrum observed that the proposed nonrule policy document gives discretion to the property manager. “Are you comfortable with that as the Director of the DNR?” Kyle Hupfer responded, “They are the ones who know, and they are not making a decision in a vacuum.” Cockrum asked, “How is that publicized?” Hupfer said that most of the fish and wildlife areas have a check-in station.

Ihor Boyko noted at Brookville Lake that the nonrule policy document authorized not only hunting, but also other uses such as bird watching and boating. “There is a closure period between October and March. The hunting that is allowed is typically 14 days during the closure period. That is six or seven percent of the time. 93% of the time, there is no hunting allowed.”

Doug Allman said he was “familiar” with the waterfowl resting areas. “There are times you have draw hunts that you apply for prior to the hunt. You are in a designated area. It’s not like you are disturbing the entire area.” He added that there are times when there are “harvestable” waterfowl, but at other times, these areas are set up as resting areas for migration. Allman pointed out that federal duck stamp funds is a primary source for the development of waterfowl habitat. “This area is solely funded by duck stamp money.” He also pointed that deer hunting and other activities are prohibited in these waterfowl resting areas unless upon a reduction type program.

Raymond McCormick said he is a guide to “a lot” of waterfowl hunters. He indicated he has heard complaints regarding the waterfowl resting area at Brookville Reservoir. He said the area is opened to hunting during the week when it is “difficult for most people to get in there and hunt and commonly staff are taking the day off. Staff is in there in the best spots hunting that refuge area.” He said he has heard “many complaints over the years” about conservation officers and staff at other state properties “using their position to gain access or intimidate other people out of certain hunting spots.” McCormick asked Director Hupfer to look into these issues. “This notion that staff and conservation officers are using their position to gain access really harms the public relations. They need to be very careful about doing this.”

Director Hupfer said, “I appreciate these comments. I will look into this. I would encourage you to tell any of these people that talked to you to shoot me an email with names and places.” He added, “There are a lot of rumors that go around, and a lot of reality. I will look into anything with some facts behind it.”

Cockrum asked how the public is notified of an area designation. Allman explained that “wildfowl resting areas” are posted with DNR signs, as well as designated on property maps. Cockrum asked, “How are you notified of a draw?” Allman said there is notification by email, by Wild Bulletin, and by outdoor writers. “Those dates and times are posted. In fact, it’s online, and you can apply online.” He said that waterfowl hunters are aware of the designated areas, “but whether the general public is aware, I do not know.” Davis said the DNR’s “Hunting Guide” directs hunters to all properties.

Matthew Klein moved to approve the nonrule policy document (Information Bulletin #50) to describe the purposes, definition, and administration of a “Waterfowl Resting Area” on a DNR Property. Bryan Poynter seconded the motion. Upon a voice vote, the motion carried.

NRC, Division of Hearings

Consideration of the Recommended Report of the Natural Resources Commission with Respect to the “Petition for Establishment of the Indiana Beach Conservancy District” (Administrative Cause Number 05-071C; White Circuit Court Cause Number 91C01-0501-MI-006)

Stephen Lucas, Hearing Officer, presented this item. He said that on April 14, 2005, the White Circuit Court entered an order directing the Natural Resources Commission to conduct a hearing to consider statutory factors pertaining to possible formation of the Indiana Beach Conservancy District. The Conservancy District Act authorizes formation of a conservancy district for any of a variety of purposes. Formation of the Indiana Beach Conservancy District is proposed for the collection of sewage and disposal of other liquid wastes.

Lucas said the Commission’s duties with respect to the evaluation of a proposed conservancy district are set forth in statute at IC 14-33-2-17(b). He paraphrased the statutory factors to be considered under section 17(b) as:

- Whether the proposed district appears to be necessary.
- Whether the proposed district holds promise of economic and engineering feasibility.
- Whether the public health would be served, immediately or prospectively, by establishing the district for sewage disposal.
- Whether the proposed district proposes to cover and serve a proper area. In the context of this finding, there shall be findings on territorial limits of the proposed district pursuant to IC 14-33-2-22.

Factors for determining appropriate district boundaries are set forth in IC 14-33-3-1 and include a requirement that each part of the district is contiguous to another part.

- Whether the proposed district could be established and operated in a manner compatible with established conservancy districts, flood control projects, reservoirs, lakes, drains, levees; and other water management or water supply projects.

Lucas said the recommendation portion of the hearing officer's report begins on page 68. "For this proceeding, the questions largely are dominated by the abilities of two competing entities to provide services." The proposed Indiana Beach Conservancy District would provide sewer services to facilities of the Indiana Beach Amusement Park, as well as a contiguous mixed residential and motel development commonly known as the Untalulti Area. Indiana Beach currently provides these services, and is regulated by IDEM through an NPDES permit. "The evidence that we had at hearing in Monticello was that [Indiana Beach's] operations have been exemplary." Lucas said the recommendations as to the Indiana Beach facilities—the amusement park and its related facilities—are "favorable" to the formation of the district.

Lucas explained that for the Indiana Beach facilities, wastewater is treated through a traditional sewerage system. The current services would be provided effectively by continuing the system as the Indiana Beach Conservancy District. "Denying formation of the district as to this area, in favor of the Twin Lakes Regional Sewer District, would provide no better service and likely would result, based upon the evidence that we heard, in a significantly greater cost to the freeholders. Formation of the district would serve "need" both in terms of efficacy and economic efficiency.

Lucas said that with respect to the Untalulti Area, there are additional questions because the current service "addresses a kind of hybrid sewerage-septic system." The Indiana Beach wastewater system does not regulate, nor does the NPDES permit address, whether septic systems in the Untalulti Area are properly maintained. "On the other hand, neither is there compelling evidence to demonstrate they are not properly maintained." Lucas said the Twin Lakes Regional Sewer District is "ready and able" to provide the Untalulti Area with full sewerage services. "Many of the residents of the Untalulti Area prefer to be part of the Indiana Beach Conservancy District because participation in the Twin Lakes Regional Sewer District comes at a notably higher cost." Lucas explained that if the Commission were to approve the hearing officer recommendations, the Untalulti Area would be excluded from the Indiana Beach Conservancy District "based upon the record currently before the Commission." The Petitioner could, however, provide additional evidence to the White Circuit Court to the effect that the Indiana Beach Conservancy District would provide equivalent services to the Twin Lakes Regional Sewer District, and at a lesser cost to the freeholders. "It would be a matter for the court to take additional evidence" and to determine whether the additional evidence was persuasive. Lucas explained that as the record stands—the record the Commission received it at the hearing in Monticello and subsequently—it's such that it is my perspective that the Untalulti Area should not be included in the proposed district."

Lucas acknowledged the "special efforts" Jennifer Kane of the Commission's Division of Hearings contributed to this report. He also thanked the attorneys for the "respectful and professional manner in which they presented their cases in a rather difficult environment." Lucas introduced the attorneys for the Petitioners, David L. Hollenbeck and Patrick Lyp of Valparaiso. He indicated that Lyp was present. Lucas noted that Jerry D. Altman of Monticello also provided evidence for the Petitioners, particularly as it bears upon the Untalulti Area. He introduced the attorneys for the Twin Lakes Regional Sewer District as Donald J. Tribbett of Logansport and Terri Czajka of Indianapolis.

Patrick Lyp, attorney for Petitioners, said the hearing officer's report was "very comprehensive." He said there is a competition between the proposed conservancy district and the Twin Lakes Regional Sewer District to service the Untalulti Area. Lyp asked that the Commission adopt the hearing officer's report.

Terri Czajka, representing Twin Lakes Regional Sewer District, said previously she “may not have fully understood Judge Lucas’ written recommendations.” She said the TLRSD’s position is that Indiana Beach Amusement Park “should not be a part of our district. It already has its own NPDES permit.” She said that if it is recommended that Indiana Beach “need not be served by the [TLRSD], but that the rest of the proposed customers of the proposed conservancy district have a need to be served by [TLRSD], then I think we agree” with the recommendations. Lucas said, under the record before the Commission, “That’s basically what it is.”

Czajka said the TLRSD then “agrees” with the report. She subsequently added, “Since Indiana Beach already has a validly issued NPDES permit, a conservancy district just for Indiana Beach would not be necessary. In that respect, we would disagree with the recommendation.”

Chairman Kiley said it was his understanding that the conservancy districts and regional sewer districts are not mutually exclusive. “If the conservancy district comes to fruition, there is no way [the TLRSD] can force Indiana Beach to become part and parcel of the [TLRSD]. So we have two distinct organizations. The point is moot with respect to the recommended report. We can make recommendation without jeopardizing the position of either one of these entities.” Cockrum said he understood that the Commission’s responsibility is “fact-finding and to certify whether the new district meets the statutory requirements.”

Czajka noted that the TLRSD has installed pipes “for everyone except Indiana Beach, and are ready to go.” She added that the “utility infrastructure is in place.”

Jane Ann Stautz moved to approve the Hearing Officer’s Report with respect to the “Petition for the Creation of the Indiana Beach Conservancy District” as the Commission’s report and recommendation to the White Circuit Court. Rick Cockrum seconded the motion. Upon a voice vote, the motion carried.

Consideration of the Recommended Report of the Natural Resources Commission with Respect to the “Petition for Establishment of the Brown Conservancy District” (Administrative Cause Number 03-176C; Hendricks Circuit Court Cause Number 32C01-0307-MI-60)

Jennifer Kane, Hearing Officer, presented this item. She explained that the Petition for Establishment of the Brown Conservancy District was initially referred to the Commission in an order from the Hendricks Circuit Court on September 10, 2003. In early 2004, the Petitioners moved to set aside the referral, and the motion was granted. In May 2005, the Hendricks Circuit Court again referred the Petition to the Commission. Kane said the report before the Commission sets forth findings and recommendations to be forwarded to the Hendricks Circuit Court. “The Commission acts as a ‘friend of the court’ so this is a recommendation. It is to the Hendricks Circuit Court to make the determination whether the conservancy district should or should not be established.”

Kane explained that IC 14-33-2-17 and IC 14-33-2-18 describe alternate structures for the Commission to develop its report and recommendation. IC 14-33-2-18 applies to any county with population of more than 100,000 but less than 105,000 persons. The 2000 census would have included Hendricks County within IC 14-33-2-18. She said the Hendricks Circuit Court referred the petition to the Commission under IC 14-33-2-17. A special 2004 census estimated the population of Hendricks County at 123,476. “Because of the Court’s referral in 2005 under IC 14-33-2-17, and a population estimate greater than 105,000, the findings and recommendations before you are within the statutory structure of section 17.”

Kane directed the Commission’s attention to the findings and recommendation beginning on page 49 of the report. The Brown Conservancy District would encompass a 308-acre residential development, Fox

Haven, with approximately 544 homes. Kane said the proposed district would provide water supply, as well as provide for the collection, treatment, and disposal of sewage and other liquid wastes for Fox Haven.

Kane said the Hendricks County Regional Sewer District was formed in 1988 to provide for the collection and disposal of sewage in Hendricks County. “The Regional Sewer District is not yet providing service to the area where the proposed district is to be formed.” She noted the Commission made a determination in 2000 regarding the Petition by the West Central Conservancy District to Add Additional Area. Where adequate [sewer] services are currently being provided, there is no need. Need is not satisfied, however, by the development of a plan for future services.” In considering whether a proposed district would serve a proper area, the Commission does not make a determination of exclusivity and does not determine the relative abilities of competing entities to provide services. IC 13-26-5-2(15) provides an opportunity for a regional sewer district to enter into agreements with “another eligible entity...,” and the “cooperating entities may jointly appropriate land either within or outside their respective borders...” Indiana statute also provides a regional sewer district may “[c]onstruct, acquire by purchase...and maintain works considered necessary to accomplish” its purposes “within or outside” its boundaries. IC 13-26-5-2(12).

Kane noted that the Commission’s current “Procedural Guidelines for the Interpretations of the Conservancy District Article (IC 14-33)” states “‘contiguous’ will ordinarily be applied to require that each part of the district adjoin every other part.” She said evidence was presented that indicated each area of the proposed district is contiguous to another. The proposed district could be established and operated in a manner compatible with other districts or water management or supply projects regarding water supply and collection and treatment of sewage and other liquid wastes. Kane said she believed the hearing officer report followed the statutory requirements under IC 14-33-2-17, and she recommended that it be adopted as the Commission’s report to the Hendricks Circuit Court.

Rick Cockrum inquired of the procedure regarding proposed conservancy districts. “Our job, as the Commission, is to certify whether the statutory test has been met and refer [the report] back to the circuit court.” Chairman Kiley indicated Cockrum’s procedural interpretation was correct. Cockrum asked, “Did we not do that for this one? Stephen Lucas, Director of the Commission’s Division of Hearings, responded that there have been multiple conservancy districts from Hendricks County.

Robert Scott, representing the Petitioner, explained that the proposed district would be located in the “far northeast corner” of Hendricks County and would include approximately 300 acres. “100% of landholders or freeholders have petitioned for or consented to the petition for this particular district.” Roberts indicated that Hendricks County and its Plan Commission approved the Fox Haven development. “That development is in immediate need of sewer service and water service.” He said the developer has had numerous meetings with Hendricks County Regional Sewer District dating back five years. “A number of proposals have been presented by the petitioner and the developer, for sewerage this particular area by the Regional District, all to no avail. At this point, we believe the conservancy district is the absolute best option for providing this service to the area.”

Scott said that the Hendricks County Regional Sewer District might wish to submit additional information to the Commission. “Most of the information that I saw was presented at the public hearing in this proceeding.” He noted that the Hearing Officer kept the record open after the public hearing to allow for additional comment. The comment period closed on July 15, 2005. “Everyone has had ample opportunity to present information on this particular matter. We believe the hearing officers did a very good job of putting this report together. We believe the report complies with the statutory requirements, and we respectfully request the approval of the report and the referral of the report to the Hendricks Circuit Court.”

Judy Brown Fletcher stated that she believed the application on file for the Brown Conservancy District was for “75,000 gallons per day for about 242 homes.” She said the economic analysis submitted by the developer was based on 544 homes. “I believe the applicant has failed to prove economic feasibility of the conservancy.”

Judy Aikman spoke as a representative of the Advisory Committee of the Eagle Creek Park Foundation. She said the Foundation is a not-for-profit organization that represents approximately 1,800 members and was initially formed to protect Eagle Creek Park and the reservoir. “Historically, we have opposed this development because it would drain wastewater and natural drainage into [Eagle Creek Reservoir]. Aikman said that Eagle Creek currently has “problems” with algal blooms. “Any additional pollution to the area is probably going to push us over. So obviously we are protesting it in fear of any further pollution to the area.”

Ed Schrier, President of the Hendricks County Regional Sewer District (HCRSD), tendered an information packet to Commission members. He said the HCRSD entered in the record its position regarding the proposed Brown Conservancy District. “My purpose for being here today is to continue spread in the record our willingness as the [HCRSD] to serve this territory.” He said the HCRSD was granted the territory where the proposed district would be located. “IDEM recognized our position in our petition to handle all the unsewered area in Hendricks County.”

Schrier said, “The only reason that we do not have an agreement with Mr. Lewis and his consortium is that they have simply failed to agree to what agreements have been put on the table.” He stated that HCRSD has made “numerous” attempts to service the proposed district area. Schrier explained that the packet provided to the Commission “reiterates our entire situation.” Included in the packet is a “complete cost analysis, which indicates that we can arrange for gravity sewers in that area at a very similar cost that it will take to put in the package plant for the conservancy district.” He said the designs for the proposed development have been changed throughout the process. “It is not something that has been precise from day one.”

Schrier said the HCRSD has the “capacity and the ability” to provide service to the proposed district area. He said the proposed district would be a “conflict forever, and ever, and ever.” He said that since the proposed district was originally proposed, the “gap” from the proposed district area and the terminus of the HCRSD sewer has “since closed. So, bottom line is we would recommend the [Commission] that you respectfully refer this matter to the [Hendricks Circuit Court].” He asked, however, that the Commission’s report also include the information packet tendered during the meeting.

Director Hupfer said the Commission’s role regarding the proposed conservancy district is “fact-finding. Does IDEM have a role in this?” Matthew Klein said an NPDES permit would be necessary for the proposed conservancy district. Kane stated that IDEM has issued an NPDES permit, but the issuance is currently under administrative review before the Office of Environmental Adjudication.

Hupfer said, “At the base, it appears to me as a conflict as to who is going to be able to provide this service to this residential community. It’s a fight over who is going to get that revenue. Is that accurate?” Schrier acknowledged it was but said, “It’s more than that. Given the North Vernon ruling, our establishment of that territory trumps all. We will have to pursue this in court if this situation persists.” He said the proposed district was an “intrusion” in the HCRSD’s territory.

Cockrum asked, “How big is your service area now?” Schrier said the HCRSD area is the entirety of Hendricks County with the exception of areas serviced prior to the HCRSD being formed. Cockrum asked where the Regional District treatment plant was located. Schrier said the plant was located in the east central portion of Hendricks County at Avon, which discharges into Eagle Creek Reservoir.

Kiley asked for clarification. “If I understood you correctly, you want us to go ahead and adopt the recommended report of the hearing officer with the inclusion of this packet of material that you have given us?” Schrier responded, “I see no other way to do it.”

Director Hupfer asked, “Is part of your argument an allegation that you did not have an opportunity to comment in the past?” Schrier said, “The conclusion of the hearing officer is her opinion based on the information that she received. It is my opinion that the conclusion did not take into consideration our existence and our willingness to serve that area.” He said the packet of materials tendered to the Commission was a “last ditch effort” to forward the HCRSD’s position to the Hendricks Circuit Court. Hupfer said the established process appeared to have been followed in this matter. He noted that there were letters from the HCRSD included in the hearing officer’s report. “It appears there has been ample opportunity for you to submit documentation into the record. To alter the process at this point before our Commission seems inappropriate.”

Stephen Lucas added, that by statute, “What would come from the Commission is *prima facie* evidence to go before Judge Boles. The other side to this point is that when the case goes before Judge Boles, a remonstrant has the opportunity to present additional evidence.” Chairman Kiley said that he “did not see any particular need” for the packet of material to be included in the recommended report to the Hendricks Court. The documentation tendered by the HCRSD during the Commission meeting was not ordered to be included within the Hearing Officer’s Report.

Bryan Poynter moved to approve the Hearing Officer’s Report with respect to the “Petition for the Creation of the Brown Conservancy District” as the Commission’s report and determination to the Hendricks Circuit Court. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of Report of Hearing Officer and Recommendation for Final Adoption of Amendments to 312 IAC 3-1-9 Streamlining Finalization of Uncontested Final Orders Under AOPA (Administrative Cause Number 05-065A; LSA #05-57(F))

Steve Lucas, Hearing Officer, presented this item. He explained that there are two situations for proceedings that go to adjudication that would be affected by the proposed rule change. “The process is such that prior to going to the administrative law judge, the Director of DNR would have the ability to control what agreements would be entered, or there is a situation where someone could object or doesn’t object to what the [administrative law judge] writes.” Currently, the administrative law judge “signs off” on an agreement after “everybody has agreed to it”, and then the agreed order “goes back to—it’s really the same person—the Secretary of the Commission.” He said additional time is added in this “final stage” before an agreement (or at least an acquiescence) between the parties is achieved. The last stage of the signature process might add “a couple days or even three weeks.” Parties “are not happy at times” with what they may view as a “meaningless delay.” He said no adverse comments were received during the hearing process, and he recommended the proposed rule be given final adoption.

Raymond McCormick moved to give final adoption to amendments to 312 IAC 3-1-9 streamlining finalization of uncontested final orders under the Administrative Orders and Procedures Act. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration for Preliminary Adoption of Amendments to 312 IAC 11-5-2 to Provide Greater Specificity in the Treatment of Lawful Nonconforming Uses for Structures Subject to the Lakes Preservation Act; Administrative Cause Number 05-014A (LSA Document #05-274)

First Sergeant William Snyder, Division of Law Enforcement, presented this item on behalf of Maj. Samuel Purvis. He said the Commission previously asked DNR staff to “find a more uniform and more specific way to treat lawful nonconforming uses.” He said the Division of Law Enforcement, the Division of Fish and Wildlife, the Division of Water, and the Office of Legal Counsel met several times in a session facilitated by the NRC Division of Hearings to draft the rule proposal. A proposal was developed and shared with the Lakes Management Work Group. Following public discussions, the Lakes Management Work Group recommended the proposal set forth in the Commission packet be given preliminary adoption. Sgt. Snyder said the Division of Law Enforcement also recommended that the Commission give preliminary adoption to the proposal.

Damian Schmelz moved to give preliminary adoption of amendments to 312 IAC 11-5-2 pertaining to lawful nonconforming uses of structures along and within public freshwater lakes. Bryan Poynter seconded the motion. Upon a voice vote, the motion carried.

Consideration of Requests for Instructions and Delegations to Begin Compliance with Statutory Requirements for Fiscal Analyses that Became Effective July 1, 2005 (Administrative Cause Number 05-168A)

Steve Lucas presented this item. He deferred the formal presentation, however, to express his “personal appreciation” to Chairman Michael J. Kiley “for being the Chair and for giving assistance and direction to the Department, for attending to our natural resources, but also to the Division of Hearings of the Natural Resources Commission in particular.”

Lucas said he could “go on and on” in describing the special support Mike Kiley had provided, but he promised to limit his remarks to just two examples. The Chair provided support in the “darkest hour” of public review for what has come to be known as the Lake Michigan Coastal Program. At the time, “we didn’t have many friends” who actively favored the initiative, but Michael Kiley was consistent in helping to assure that the review process would be completed. Today, the Lake Michigan Coastal Program brings to Northwest Indiana roughly \$1 million annually from the federal government for match in support of the Coastal Area.

Lucas explained that amendments were made to the Administrative Orders and Procedures Act in IC 4-21.5-3.5 to authorize state agencies to use mediation in efforts at dispute resolution. He said to use the mediation option, agencies were statutorily required “to opt in. There wasn’t a lot of enthusiasm from agencies.” Due in large measure to Mike Kiley’s vocal support for the new mediation opportunity, the Commission was the “first agency in Indiana to opt into the program.” Lucas said mediation in state government is now in “fairly common usage, but at that time, we were kind of ‘out on the plank.’ Mr. Chairman, I just want to say, ‘Thanks.’”

Mike Kiley said that he has been a certified mediator for 20 years. “I’ve been told the perfect mediation is when both parties think they have lost.”

Lucas then addressed the agenda item. He noted that “four separate bills were passed by the Indiana General Assembly to establish significant new responsibilities in rule adoption with respect to fiscal consequences, particularly as they relate to a new entity called the ‘small business regulatory coordinator’

(or 'SBRC') appointed for each rule adoption." Substantial analyses must be completed for each rule adoption, including the appointment of a SBRC, and the consideration of regulatory alternatives.

Lucas identified and apologized for an error on page one of the Commission's information packet. He said the packet incorrectly reported the new rule requirements do not extend to "temporary or permanent rules." Lucas said the word "permanent" should be replaced by the word "emergency". The new requirements "certainly apply to all permanent rules."

Lucas said one recommendation is that Division Directors assign the SBRC. Another recommendation clarifies that the NRC's Secretary (traditionally, the DNR Director) would be the entity who would make the presentation of what is "going to a substantial annual report with respect to rule adoption." He added, "As you read this legislation, you could very legitimately come to the conclusion that it is the Director's prerogative in a legalistic sense rather than the Commission's prerogative." Because the process is "so sensitive, and it is so important that we try get it right, I would ask for Commission's imprimatur to give the reporting responsibility to the Director so that there is no question later on as to whose responsibility it is." Lucas said future presentations with more "specificity and clarification pertaining to the new statutory responsibilities" would be made to the Commission as "we gain experience." He asked the Commission to "endorse" the recommendations on page two of the information packet.

Damian Schemlitz moved to approve the recommended delegations as included in the information packet and set forth below.

- The Division Director, for the Division primarily responsible for administering a rule, is authorized to select the small business regulator coordinator. The person selected may be an employee of that Division or of the NRC's Division of Hearings. To facilitate the annual reporting function, a Division Director is urged to consider the selection of an employee of the NRC's Division of Hearings for rules that appear unlikely to result in frequent comments or concerns from a small business. For rules that are administered independently by multiple Divisions, a Deputy Director shall select the small business regulatory coordinator.
- The NRC's Division of Hearings is identified as the repository for analyses and reports that a small business regulatory coordinator is required by law to generate. These analyses and reports shall, within the limitations of the law, be open for inspection and copying by the public. The hearing officer for a proposed rule shall forward the fiscal analyses to the Indiana Office of Management and Business and to the Indiana Economic Development Corporation. The NRC's Division of Hearings shall compile the records and forward them to the DNR Director for completion of the annual electronic report.
- By November 1 of each year, an annual report is required to the Legislative Council and the Indiana Economic Development Corporation. The NRC's Secretary (or DNR Director) is authorized to issue and approve the annual report on behalf of the Commission and the Department.

Rick Cockrum seconded the motion. Upon a voice vote, the motion carried.

Other Comments

Informal Comments by Jeff Bauermeister Concerning Licensures and Adjudications

Chairman Kiley introduced Jeff Bauermeister, who requested permission to address the Commission. Jeff Bauermeister said he lived in Rome City, on Sylvan Lake, about 30 miles from Fort Wayne. Bauermeister noted that he was on the Sylvan Lake Board, but said he was appearing strictly in an

individual capacity. “I have been through an appeals process, which was an interesting process, that took a number of months.”

Bauermeister said he is a process workflow manager. Even with an “administrative order from the Commission,” an applicant has to go “through additional people.” Would it be possible that for lake construction activities, which aren’t a lot of businesses, IDEM, and those folks that have other issues, that when the people evaluate whether you can get a seawall or temporary structure, or anything under [the Lakes Preservation Act] that...the people can get together at once?” They could “say ‘here is my check list, and here’s your stuff,’ rather than having to go through a long drawn out process?” He urged that “all of these things could be under one umbrella, and [you could] quickly get a ‘yea’ or ‘nay’, and once you appeal to one board the other board agrees.”

Mike Kiley responded, “It depends on what you are doing.” He asked whether Bauermeister was referring to the permit process for construction of a seawall. Bauermeister indicated he was. Kiley said, “That process has been streamlined considerably.” The Chair added, however, “there are also situations where the Army Corps of Engineers would be involved, and that is a different process.”

Matthew Klein, Commission Member representing IDEM, said Bauermeister’s remarks “echo some of the comments we have received from other folks. When you enter the world of water, you may be seeking jurisdiction of a number of state and federal authorities depending on what you are seeking.” He acknowledged Bauermeister’s comments were “not unfounded.” He said Indiana State government was examining its current processes to try and make them “more understandable to the public.” The Chair added in responding to Bauermeister, “Your point is well taken.”

Bauermeister said, “Judge Lucas ruled in cases some time back that one of the things in 312 IAC is you shall balance the public trust doctrine against the effects on the individual.” He urged the concept from the Judge’s decisions should be put “into the rule itself. It should say, ‘You must balance these rights, and not just ‘shall consider’ them.” Bauermeister said no one could know all the past adjudications. “It took me a long time reading through Steve Lucas’ stuff, because it reads like a textbook, because he gives you a lot of background and a lot of information.”

Lucas responded that the Commission adopted a nonrule policy document to help structure the consideration of petitions for rule change. He indicated to Bauermeister that a petition seeking to clarify or modify how the Lakes Preservation Act rules are written could be filed with the Commission’s Division of Hearings, “and it would ultimately come before the Commission for possible action. As a matter of fact, two of the rules before the Commission today were the result of citizen petitions for rule change.”

Bauermeister asked, “If individuals come before the appeals process, is there any way—I’m basing this on Mr. Kiley’s comments in the May meeting minutes that you need to be ‘more user friendly’—individuals can get some assistance or a little bit of legal help from folks in the DNR so that it’s not an adversarial thing, but at least” explain procedurally “what you have to do?”

Informal Comments By Damian Schmelz Concerning Discovery at Sandstone Mine at St. Meinrad

Damian Schmelz shared information and photographs regarding a geological find in the sandstone mine that St. Meinrad has operated for several decades. He said a Brazil, Indiana company is now producing “marketable” sandstone from the 230 million year old Mansfield sandstone strata. He said that “4x4x8 blocks are mined and shipped up to Brazil. As they progressed in the removal, one morning they uncovered, of all things, what appeared to be huge cross-sectional fossils of 230 million year old trees.”

He said the Indiana State Geologist explained the formations otherwise, a geo-chemical process, which lays down irregularly the circular concentric rings of minerals, essentially of iron oxide. “It’s an interesting phenomenon nevertheless.” Schmelz said he has contacted the Indiana State Museum’s paleontologist for a second perspective. “Maybe this story isn’t finished, and maybe they are fossils.”

Resolutions of Appreciation to Michael J. Kiley for His Personal Support and Friendship and for His Years of Dedication to the Interests of Indiana’s Natural and Cultural Resources

Rick Cockrum said, “Mr. Chairman, I think we would be remiss if we adjourn without the Commission thanking you. I’ve learned a lot as a Commission member. I think that you have set an extraordinary example of fairness and even-handedness. While we sometimes had to make unpopular decisions, I don’t think anybody that has been before this Commission, at least since I’ve been part of it, could complain about how they have been treated. The respect you show for the citizens of this state and the efforts that you put forward to put the balance between resources and the needs is commendable. While it is not on the agenda, I call for a motion for the Commission to pass a resolution of ‘thank you’ for your tenure, your leadership, your direction, and your friendship.”

Damian Schmelz moved to approve the resolution. Jane Ann Stautz seconded the motion. Director Hupfer called for the question. Upon a voice vote, the motion carried.

Chairman Kiley reflected, “As I said in my letter to the Governor, when I made this decision, ‘It was time.’ I have been here almost 30 years. It’s time.”

John Davis, Deputy Director for the Bureau of Lands and Cultural Resources, addressed Chairman Kiley. He said, “Thank you for your wisdom and generosity, and your guidance, and your dedication to the people and the resources of the State of Indiana. I consider it a real highlight in my time at DNR to have been able to sit here with you or in the audience. I appreciate it.”

Kiley, said he has been here through six Governors—three Republicans and three Democrats. “This particular Commission, I believe, has been absolutely, with two very minor circumstances, been devoid of political influence on the decisions that were made by the members of this Commission, and policy decisions that have been made by staff over the years. I think that goes a long way in addressing the dedication of the people who sit on this Commission.” He added, “The people who work for DNR are incredible. It has been a pleasure for me to be around.”

Adjournment and Next Meeting

The meeting adjourned at approximately 12:30 a.m. The next meeting is scheduled for November 15, 2005, 10:00 a.m., EST, in Room B, Indiana Government Conference Center, 402 West Washington Street, Indianapolis, Indiana