

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

Minutes of September 19, 2006

MEMBERS PRESENT

Richard J. Cockrum, Chair
Jane Ann Stautz, Vice Chair
Kyle Hupfer, Secretary
Matthew T. Klein
Bryan Poynter
Damian Schmelz
Chad Frahm
Mark Ahearn
Richard Mangus

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
Cheryl Hampton	Human Resources
Samuel Purvis	Law Enforcement
Dan Bortner	State Parks and Reservoirs
Jim Gerbracht	State Parks and Reservoirs
John Bacone	Nature Preserves

GUESTS PRESENT

Dick Mercier	Kent Reineking
Deanna O'Ware	Paula Reineking

Richard J. Cockrum, Chair, called to order the regular meeting of the Natural Resources Commission at 10:08 a.m., EDT, on September 19, 2006 at The Garrison, Fort Harrison State Park, 6002 North Post Road, Indianapolis, Indiana. With the presence of nine members, the Chair observed a quorum.

Jane Ann Stautz noted an error on page three of the proposed July 18, 2006 minutes under permanent appointment of Chastity Spindler. Stautz indicated that the minutes should be corrected as follows:

Jane Ann Stautz moved for permanent appointment of ~~Lucas Green~~ **Chastity Spindler** for Assistant Manager at ~~Versailles~~ **Harmonie** State Park.

Damian Schmelz moved to approve the minutes of July 18, 2006 as amended. Richard Mangus seconded the motion. Upon a voice vote, the motion carried.

DNR, Executive Office

Consideration and Identification of Any Topic Appropriate for Referral to the Natural Resources Advisory Council

In lieu of the Director's Report, Director Kyle Hupfer presented this item. He explained that the previous two Advisory Councils were merged into one following 2006 legislation. The Advisory Council met for its first organization meeting on August 30, 2006. Director Hupfer said the Advisory Council "will meet in the months between NRC meetings." He announced that Patrick Early was elected Chair of the Advisory Council, and will sit on the Commission.

Director Hupfer reflected, "In the past the advisory councils have operated as sort of a 'shadow' of the NRC". He said the Council's reach is "much broader" than an advisory group to the Commission, and the Council is an "advisory group to the Department." He said "immediately or shortly after" the Commission meeting Patrick Early, John Davis, Ron McAhron, and himself would sit down and set the next month's Advisory Council meeting agenda. The Advisory Council will report back to the Commission. "I would like to have a standing topic on the agenda here at the NRC where we have an open discussion if there are issues that anyone on the Commission feels should be taken into consideration by that agenda." Director Hupfer also said the Council's focus should be "less on what the Commission's next agenda is and potentially be a longer term focus on issues. Let [the Advisory Council] do some advance work."

Chairman Cockrum responded, "I am very supportive of this concept, because without it, it puts the Commission in a reactionary mode. We are kind of waiting until issues come to us. This gives us the ability to put some things on the table to have them thoroughly discussed through the Advisory Council and others." The Chair asked Director Hupfer to "refresh the Commission's memory" on the membership of the Advisory Council. The Director responded that the Advisory Council has membership of twelve of which ten have already been appointed. The membership is in "three sets of rolling terms" with eight of the initial membership from members of the prior two advisory councils "so there is some continuity".

Director Hupfer noted that the previous advisory councils would "vote on items" for approval, and then each Advisory Council Chair would relay to the Commission "the will of the Advisory

Councils” as to approval, and “then the NRC would just approve it. I think this [Commission] has some statutory duties, as far as ruling making, they need to not delegate.” Director Hupfer indicated that he asked the Advisory Council that “it not necessarily vote, but instead they fact-find and advise on all aspects of the issue. Then let this body who is the actual rule-making body glean” from the information provided by the Advisory Council. The Commission is the “voting body, not necessarily the Advisory Council.”

Damian Schmelz, Commission member, noted that he “for one had never known for sure who the members of each advisory council were.” Schmelz asked that a membership list of the new Advisory Council be sent to Commission members. Director Hupfer said a membership list would be emailed to each Commission member.

The Chair asked whether there were geographic criteria for Advisory Council membership. Director Hupfer said, “The biggest criteria was that eight of the ten had to be former members, but basically they need to be interested in the natural resources and have some connection to them.”

The Chair also asked whether the Director had staff reports for the Commission. Director Hupfer indicated there were no reports. He asked Commission members to “spend a little time thinking about topics” of interest and “let us know” before the next Commission meeting.

Division of Nature Preserves

Consideration of the Dedication of Bob Kern Wetlands Nature Preserve, Fulton County

John Bacone, Director of the Division of Nature Preserves, presented this item. He characterized the wetlands located on the southern end of Lake Manitou as “one of the highest quality wetlands known in the state, and they have long been a target for the Department to try to protect.” Bacone said the Department and its partners have had “great success in protecting most of these wetlands.” There is only a “little bit” of private ownership of Manitou wetlands remaining.

Bacone said the proposed nature preserve would be named in honor of Bob Kern, “a long time conservationist who worked for the Department in forestry, Christmas tree farming, fish, wildlife, and hunting issues for many years, and owned a lot of land around Lake Manitou.” He explained that Kern sold the tract to the State at a “super significant bargain sale.” Partners in the acquisition included The Heritage Trust and a U.S. Fish and Wildlife Service state wildlife grant. “This particular tract contains some of the rarest birds and some very rare plant species which are also found at two other parts of this wetlands complex.”

Bacone said he was “delighted” to recommend dedication of the Bob Kern Wetlands Nature Preserve. The property is a worthy inclusion, and Bob Kern “has been famous on conservation issues for many, many years. He actually was an initial supporter of the first piece that the DNR with the Wildlife Society and The Nature Conservancy bought in the late 70s.” Bacone said this section is open in terms of a small boat access point. “It’s not open in terms of hiking

trails. It's all open to the public, but the developed hiking trails are in the parcels on the other side of the lake." He said the tract is managed jointly by the Division of Fish and Wildlife and the Division of Nature Preserves, and it is open for hunting and all other appropriate conservation uses.

Damian Schmelz moved for approval of the dedication of the Bob Kern Wetlands Nature Preserve in Fulton County. Mark Ahearn seconded the motion. Upon a voice vote, the motion carried.

Division of Water
Division of Law Enforcement

Consideration of Preliminary Adoption of Amendments to the Bass Lake Special Watercraft and Temporary Structure Rule (312 IAC 5-6-3); Administrative Cause No. 06-155L

Maj. Samuel Purvis, Indiana State Boating Law Administrator, presented this item. He explained that Bass Lake in Starke County has had "a special consideration due to its shallowness in that piers are allowed to extend farther than the general license for piers." The current rule for Bass Lake allows for ten miles per hour speed limit within 300 feet of shore. "That rule has been set for some time on Bass Lake, and the issue that we want to correct there is to have an idle speed zone outside of those long piers." Purvis said "idle speed" is established by statute, and means "the lowest possible speed to maintain steerage not to exceed five miles per hour." When the rule was adopted, there was a ten-mile-per hour speed limit along the shoreline of a lake, but subsequently to adoption of the rule, the speed limit was reduced to idle speed. Purvis noted that discussion was held in-house to plan for the dissemination of the proposed rule and public hearing information to homeowners. He recommended preliminary adoption of the proposal.

Jane Ann Stautz moved to give preliminary adoption to amendments to the Bass Lake special watercraft and temporary structure rule. Bryan Poynter seconded the motion. Upon a voice vote, the motion carried.

Consideration of Preliminary Adoption of Amendments to Lake of the Woods Special Watercraft and Temporary Structure Rule (312 IAC 5-6-6.5); Administrative Cause No. 06-154L

Maj. Samuel Purvis also presented this item. He noted that the rule proposal would result in a special watercraft and pier restriction on Lake of the Woods in Marshall County that would be similar to the Bass Lake rule. The "idle speed" limit would extend beyond the statutory delineation of 200 feet to 350 feet for motorboats. "Lake of the Woods has a very large shallow area on one of the shorelines." He said discussions have been held with the local citizens, and Director Hupfer and Deputy Director Ron McAhron have visited the site. "We want to explore

a 'Bass Lake Rule' as it would apply to Lake of the Woods. We know there is a good possibility of getting buy in from boaters and the lakefront property owners for that area.”

Purvis explained that in the summertime the eastern shore “gets real shallow water, and it’s really hard for those lakefront property owners to get their boats in and out of there from their piers.” If the rule were given final adoption, piers could be extended out “only to the point where they would reach three feet of water giving them enough depth.” Purvis noted that high speed boating is “uncommon” in the area due to the shallowness of the water. He recommended the rule for preliminary adoption.

Richard Mangus, Commission member, asked whether the rule proposal was based on the Lake of the Woods higher elevation. “What happens at the lower level?” Purvis explained that the dates for the higher elevation are during the boating season. “I don’t think that would bring any problem, because most of the piers are out. It’s not typically boating season when the lake’s at the lower level.”

The Chair asked for clarification on how a lake has two elevations. Director Hupfer said that many Indiana lakes have dual levels, and these are established by court order. He explained that lakes with dual levels are “tied to agricultural concerns located in the drainage area of the lake, such that if the lake is not lowered, the watermark would be too high for agricultural practices.” Purvis said discussion with the local citizens on other issues has been “contentious. We expect to get a lively conversation while we are up there.”

Damian Schmelz moved to give preliminary adoption to proposed new 312 IAC 5-6-6.5 to set special watercraft and temporary structure standards for Lake of the Woods in Marshall County. Bryan Poynter seconded the motion. Upon a voice vote, the motion carried.

Division of State Parks and Reservoirs

Consideration of Preliminary Adoption of Rule Amendments Pertaining to the Administration of Fishing Tournaments, Whether within and outside of DNR Properties; Administrative Cause No. 06-142P

Jim Gerbracht from the Division of State Parks and Reservoirs presented this item. The proposed rule would amend the standards governing the issuance of fishing tournament permits on reservoir properties. He explained that the rule proposal “came about through a meeting with different tournament organizations to bring some accountability to their organizations and others when applying for permits.” Gerbracht indicated the rule amendments were ready for preliminary adoption.

Dick Mercier from the Indiana Sportsmen’s Roundtable said, “The bass tournament members seem to agree” with the proposal.

Richard Mangus noted that he had seen catfish tournament advertisements. “What is that?” The Chair said that catfish tournaments are “getting real popular across the country and in the

state.” The Chair indicated that he has received comments from persons interested in these tournaments. Director Hupfer explained that the catfish tournaments “would not be included in what we are talking about here for the fishing tournaments.”

Mark Ahearn asked regarding proposed rules, “if it relates to a specific geographical area, do we do the hearings in those areas?” Stephen Lucas said public hearings are held in the local area “as a matter of courtesy and convention, typically speaking, if we can identify an area.” He noted additionally for certain types of rules, such as those discussed in the two prior agenda items for Bass Lake and for Lake of the Woods, “we are statutorily mandated” to hold the public hearing “in the county.”

Jane Ann Stautz moved to give preliminary adoption to the rule amendments to 312 IAC 2-4-12 governing administration of fishing tournaments. Bryan Poynter seconded the motion. Upon a voice vote, the motion carried.

NRC, Division of Hearings

Consideration of the Report of Hearing Officer, including Findings of Fact and Proposal to the Natural Resources Commission as to Its Recommendations to the U.S. Army Corps of Engineers in the Matter of Petition for Rate Increase by Kent’s Harbor; Administrative Cause No. 06-093P

Sandra Jensen, Hearing Officer, presented this item. She explained that Kent Reineking, owner of Kent’s Harbor and Marina located on Brookville Lake, petitioned for a marina rate increase. She said Kent and Paula Reineking were present. “Rate increases of this nature are processed according to the nonrule policy document, Information Bulletin #20, which calls for the Commission to issue a recommendation to the U.S. Army Corps of Engineers relative to the approval of the rate increase.”

Jensen said Reineking provided information indicating the proposed slip rate increase was “essentially a one percent increase to offset normal operating costs.” She said Kent’s Marina reported the increase would allow for continued and regular maintenance of the facility. “The last increase for Kent’s Marina was in 2004.” Since 2004, \$75,000 was spent on maintenance and improvements of the facility. Jensen said the DNR, Division of State Parks and Reservoirs, reviewed the marina comparables provided by Reineking, and the Division “concur with the approval of this particular increase.”

Chairman Cockrum noted that there was “a lot of contention” a few years ago regarding the marina at Lake Monroe. “We had the staff do a market survey in that particular case. My recollection is that they were pretty significantly out of line. Are we still doing comparables when these petitions come before you?” Jensen explained that comparables were provided by Reineking, and with the approved rate increase, Kent’s Marina would have a fee structure comparable to other similar marinas.

Director Hupfer requested clarification on who is the “decision maker” regarding approval of marina rate increases. Jensen explained, “This is simply a recommendation to the [U. S. Army] Corps of Engineers, and the Corps has final approval.” The Director reported he has visited Kent’s Harbor “many times. It’s a great facility”, and he added that the new sewer system is “second to none.” He said a full-service sewer system is located on the marina’s docks so that “folks don’t go to the middle of the lake and dump in the middle of the night. It’s great for their facility and the lake. It’s undoubtedly going to improve the water quality over time.”

Kent Reineking said that the U.S. Army Corps bases its approval on the state’s recommendation. He indicated he was also available to answer questions.

Bryan Poynter moved to approve the Hearing Officer’s report and recommendation to constitute the Commission’s recommendation to the Army Corps regarding the rate increases requested by Kent’s Marina. Richard Mangus seconded the motion. Upon a voice vote, the motion was carried.

Consideration of the Report of Hearing Officer, including Findings of Fact and Proposal to the Natural Resources Commission as to Its Recommendations to the U.S. Army Corps of Engineers in the Matter of Petition for Late Increase by Lake Monroe Sailing Association; Administrative Cause No. 06-094P

Sandra Jensen also presented this item. The Lake Monroe Sailing Association filed with the Department a petition for a slip rate increase. Due to the facility’s age, the petition is for an “approximate three percent across-the-board increase” to cover upgrades. “The Association is operating under a 5-year plan to complete those upgrades, and they are pretty much on track.”

Jensen noted that the Association’s most-recent slip rate increase was in 2002. The Lake Monroe Sailing Association “has made improvements to the facility to the tune of \$486,000. Most of those have been completely paid off.” Facility improvements included replacement of two docks and increased slip space on one of the docks from ten to 48. “They have made some major improvements, including to the manager’s residence.” Jensen said the Lake Monroe Sailing Association reported the rate increase, if approved, would provide finances for continued facility improvement within the 5-year plan. The Division of State Parks and Reservoirs reviewed and commented favorably upon tendered comparables. Jensen noted, however, the Lake Monroe Sailing Association “doesn’t exactly have [a comparable] that is right on mark.” She said that no public comments were received regarding the rate increase.

Mark Ahearn asked whether the U. S. Army Corps holds additional hearings or make its own findings. Jensen explained that the Corps has the ability to conduct additional proceedings following receipt of the Commission’s recommendation but such additional action is not typical. Director Hupfer said “the Department leases the ground from the Corps,” and the marina operators work with the Department. “We have the ability to do this, but under our lease we just need to get consent” from the Corps. John Davis, Deputy Director, added, “In addition, it’s more than just looking at comparables that the petitioner has sent in. We do a process.” He suggested that an employee within the Division of State Parks and Reservoirs

“call different lakes and have personal relationships with a lot of different marina operators and DNR-type people in other states that trade information. I think the Corps looks at that process and trusts the state.”

The Chair inquired of the public notice process regarding petitions for increase of marina slip rates. Jensen explained that Information Bulletin #20 contains a requirement that marina operators requesting a slip rate increase “notify slip holders that are presently associated with the marina. Basically, [the marina operators] are required to provide all notice.”

Jane Ann Stautz moved to approve the Hearing Officer’s report and recommendation to constitute the Commission’s recommendation to the Army Corps regarding the rate increases requested by the Lake Monroe Sailing Association. Matthew Klein seconded the motion. Upon a voice vote, the motion was carried.

Consideration of Final Adoption to Address a Technical Matter Raised by the Attorney General's Office in the Rule Adoption Process for Amendments Proposed to 312 IAC 25 (Indiana SMCRA); LSA #06-68(F); Administrative Cause No. 06-046R

Sandra Jensen, Hearing Officer, presented this item. She said this item was “associated with the rule package” given final adoption by the Commission at its July meeting. A Deputy Attorney General noted the amendment to 312 IAC 25-5-16(j) did not conform to statute, and the Deputy Attorney General requested recall of LSA #06-68(F). The proposal was recalled so the problem could be returned to the Commission and corrected.

Jensen explained that 312 IAC 25-5-16(j) governs notice requirements regarding the performance bond release. Language would be amended to require public notice be published in a newspaper “one time each week for two consecutive weeks” in the county where the mine and reclamation operation is located. Jensen said the proposed amendment would cause the rule to conform with the underlying statute.

Richard Mangus moved to give final adoption to amendments to 312 IAC 25-5-16(j) regarding public notice requirements of performance bond releases under ISMCRA. Matthew Klein seconded the motion. Upon a voice vote, the motion carried.

Consideration of Proposed Updates to or “Sunsetting” of Specified Commission Nonrule Policy Documents (1st of 3 Parts); Administrative Cause No. 06-002A

Stephen Lucas, Director of the Division of Hearings, presented this item. “What we are trying to do is upgrade, update, or in some cases, simply to sunset nonrule policy documents that have been adopted previously by the Commission.” He noted that new nonrule policy documents were not included for discussion, “but rather just those already out there.”

Lucas provided a brief explanation of the each nonrule policy document. Information Bulletin #1 governs the Commission’s Division of Hearings. The modifications would be “strictly

technical”, with a Web page address update. “This is also the [nonrule policy document] that includes fees for court reporting.”

Lucas characterized Information Bulletin #3 as the “poster child” for information bulletins. The bulletin includes a listing of waters declared navigable or nonnavigable. It is “essentially a non-subjective list. We didn’t go through an analysis. We took all the documents that we could find, judicial decisions, decisions by the General Assembly, U.S. Army Corps of Engineers” and other governmental entities with the legal ability to determine navigability. The information was formatted into a list “that says these [waterways] have been declared navigable or nonnavigable.” The bulletin states “very clearly” the list is “not comprehensive. Someone could contest [a statement regarding navigability] through a judicial process.” He said the Division of Law Enforcement and the Division of Water, “put a lot of time into coming up with this research.” Lucas said the Division of Hearings regularly receives inquiries regarding navigability, and several DNR Divisions receive similar inquiries. He said the information bulletin has been “extremely helpful” to agency efficiency and to public understanding.

The Chair asked Lucas to clarify the significance of the meaning of “navigable” and “nonnavigable.” Lucas explained that “some regulatory statutes are dependent on whether the waterway is navigable or nonnavigable; for example, IC 14-29-1 administered by the Division of Water” applies only to navigable waters. Navigability also is pertinent to public usage of waters for boating and other recreational or commercial purposes. Generally, a watercourse must be navigable, a public freshwater lake, or have a prescriptive easement to be available for public usage. If a licensure process is involved, such as under the Flood Control Act, and the waterway is also navigable, the Division of Water and the Division of Law Enforcement reviews the “consequences of a project upon navigation. ‘Is a project going to be a hazard to navigation or public safety?’”

Lucas said the designation of navigability is also important regarding ownership. The state of Indiana holds in “public trust” all the navigable waters, “and it has since the Ordinance that formed the Northwest Territory, so it’s even pre-statehood.” Indiana owns the surface of the waterway, the bed, and what is underneath the bed. The designation has consequences in such things as oil and gas. “If there is an oil and gas well...the shares of production for a unit are allocated [in that] the part that’s under the navigable waterway goes to the state of Indiana.”

Lucas added that a determination of navigability does not govern public access to a navigable watercourse. “You have to have permission” from whomever owns the lands adjoining a navigable water to cross the land and enter the water. “But once you are lawfully on the navigable waterway, you can go upstream or downstream.” He said there were other contexts in which navigability had legal consequences.

The Chair thanked Lucas for the explanation.

Lucas continued with his reviews of the nonrule policy documents. He said Information Bulletin #5, Burial of Human Remains at Angel Mounds State Historic Site, addresses the situations where persons “desire to have their loved ones buried” at the historic site. The bulletin would be retained in its current status with updates to citations.

Information Bulletin #7 addresses the process for the consideration of petitions for rule change within areas subject to the Commission's jurisdiction. The bulletin would be amended to reflect a practical "internal structure changes in terms of how DNR handles the petition for rule change", and it would correct statute citations. Lucas indicated that currently the bulletin provides the Deputies Director "would oversee" the review of the petition, "but that has not really worked very smoothly that way." In fact, the current practice regarding these types of petitions is to "circulate through the agency to see who might have an interest", and upon the approval of the Director, a committee is formed to investigate the merits of a proposal. The committee would then make recommendations to the Advisory Council, and, ultimately, if favorable, the proposal would come before this Commission for preliminary adoption. Lucas said he recommended this nonrule policy document be retained but with the amendments included in the packet.

Information Bulletin #8 addressing field trials on Division of Fish and Wildlife properties "is no longer utilized." He said the Division of Fish and Wildlife recommended this nonrule policy document be "sunsetting".

Information Bulletin #11 covers permitting of properties under Indiana Surface Mining Control and Reclamation Act (IC 14-34) where particular land is not under the control of the individual coal company's ownership. The bulletin is "consistent with the practice and helps give landowners a comfort level" and "reduces stress" regarding approved surface mining permits. Before the bulletin was approved, the Division of Hearings would field "occasional phone calls about this, but we never do any more."

Lucas said Information Bulletin #19 was a response to a specific and focused legislative enactment regarding annual pass fees at state parks. He explained that the annual pass fee is "now encompassed in a broader review", and he recommended the bulletin be "sunsetting."

Richard Mangus inquired of the status of the Golden Hoosier annual state park pass. Lucas explained that the fee for the annual state parks pass, including the Golden Hoosier pass is now established in the "whole fee system that comes before the Commission. This is one of many fees." Mangus asked, "Is the Golden Hoosier pass included?" Director Hupfer explained that the fee for the Golden Hoosier annual pass is set by statute. "Once this Commission sets a fee for the annual pass, the Golden pass is automatically one-half" the cost. The Director added that the Golden Hoosier pass "is included in the fees 'laundry list', but that amount is set by statute."

Lucas said Information Bulletin #22 sets forth the process for petitioning for a seaplane base on public waters. The DNR and the Indiana Department of Transportation jointly "have jurisdiction over the use of a waterway for a seaplane base. The DNR makes the initial review, then if found acceptable as a base, a petitioner proceeds to INDOT which makes the final agency decision. Both the DNR and INDOT decisions are independently subject to administrative review. This nonrule policy document is a 'How To' book." As is also true of some other information bulletins, the purpose is primarily to explain a process rather than to include extensive substantive materials. When the bulletin was written, the Division of Law

Enforcement was overseen by a Deputy Director. Today, there is no Deputy Director over the Division of Law Enforcement. As a result, an amendment would designate the Director of the Division of Law Enforcement as the person authorized to take DNR agency action. Lucas recommended this nonrule policy document be retained as amended.

Information Bulletin #31 addresses fishing tournament organizational meeting protocols for the Division of State Parks and Reservoirs. The bulletin accommodated “rules adopted several years ago regarding fishing tournaments.” Lucas noted that “at the time, there was a lack of comfort by the regulated community. The sense is that [the bulletin] is no longer needed, and probably is an undue restriction on flexibility”. He said Reservoirs recommended Information Bulletin #31 be “sunsetting.”

Also included in the packet was Information Bulletin #38 that helps explain implementation of groundwater quality standards at coal mines regulated under Indiana SMCRA. This nonrule policy document would be retained with a technical amendment.

Information Bulletin #47 addresses horseback riding on Department properties. “This concept has existed for many, many years” but was modernized by the Commission effective at the beginning of 2005. Amendments would modify the treatment of horse tags to conform to more recent rule changes. Otherwise, the nonrule policy document was recommended for retention.

Matthew Klein moved to update and approve or to sunset the eleven nonrule policy documents as recommended. Bryan Poynter seconded the motion. Upon a voice vote, the motion carried.

Information Item: Preparation of First Annual Report under IC 4-22-2-28.1 with Respect to Small Business Regulatory Coordinators for Rule Adoptions; Administrative Cause No. 06-090X

Stephen Lucas also presented this item. He said an updated copy (printed on blue paper) of the Annual Report was provided to Commission members prior to commencement of the meeting. He reminded the Commission that at the September 20, 2005 meeting, the members delegated to the Director the authority to complete the statutory report required under IC 4-22-2-28.1. A copy of the report must be provided, in an electronic format, to the Indiana Legislative Council and to the Indiana Economic Development Corporation by November 1 of each year. “It would be pretty cumbersome for the Commission to do this on its own.” Lucas said the report is presented to the Commission to “show that we had followed through; that we were working on the project” the members assigned to us. He noted that the related materials for each adopted rule were not included in the copy provided to the Commission, but they were available for review. Lucas held up a copy of the materials at the Commission table. “Essentially [the materials] are repetitious of what [the Commission] has done last year. These are rules that you have given final adoption.”

Lucas explained that the report reflects the cost of reporting by the small business regulatory coordinators and emphasized the costs only include those associated with the coordinators. “Rule adoption has a much bigger financial impact on agencies than those attributable to small

business regulatory coordinators.” He said every rule is assigned a small business coordinator who will “work with small businesses in the event there is an impact to small business.” Lucas said the “early experience” is small business regulatory coordinator responsibilities are “not a big impact” as to the rule adoption process, and the costs reported are “relatively small. Maybe that won’t continue to be true.” He suggested a “culture change” could occur in which the small business coordinator will become the “main contact”, rather than the current situation where most interested persons contact the hearing officer, causing the dollar amounts attributable to small business regulatory coordinators to increase in the future. “But this hasn’t happened yet...so the \$2,500 reported [for the fiscal year ending June 30, 2006] is pretty modest.” Lucas said the projected costs for next fiscal year of \$2,700 were determined by DNR’s fiscal people under Deputy Director, Todd Tandy. Because of the uncertainties with a new statutory requirement, this estimate “could be conservative”.

Lucas said no action on this item was required, but he would welcome any Commission input. He indicated that “at least one more time” in 2007, the draft Annual Report would be placed on the Commission’s agenda as an information item. Next year, he would ask whether the Commission believed continuing updates were productive or whether they should be discontinued.

Adjournment

At approximately 11:55 a.m., EDT, the meeting adjourned.

Next Meeting: November 14, 2006, at The Garrison, Fort Harrison State Park, Indianapolis