

NATURAL RESOURCES COMMISSION

Minutes of August 30, 2000

MEMBERS PRESENT

Michael J. Kiley, Chair
Jack Arnett, Vice Chair
Larry Macklin, Secretary
Damian Schmelz
Jerry Miller
Joseph Siener
Beth Admire
Jane Ann Stautz

NATURAL RESOURCES COMMISSION STAFF PRESENT

Steve Lucas
Jennifer Kane
Sylvia Wilcox
Debbie Michaels

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Jack Costello	Executive Office
Paul Ehret	Executive Office
Carrie Doehrmann	Executive Office
John Davis	Executive Office
John Bacone	Nature Preserves
Gary Doxtater	Fish and Wildlife
Gary Miller	State Parks and Reservoirs
Gerald Pagac	State Parks and Reservoirs
Cathy Wolter	Legal
Terry Swoveland	Water
Jeff Barker	Law Enforcement
Scott McDaniel	Law Enforcement

GUESTS

Julie and Gary Burt
David and Mary Mummerl
Charles and Marlene Deneler
Ted Heemstra
Dan McNerny
Mindy Shapiro
Kent Reineking
Clarke Kahlo
Glenn Pratt
Tedd Jones

Carl Tipker
Chad Critser
Carl Downey
Mike Mullett
Mike Smith
David Hollenbeck
Tim Maloney
Kevin Hardie
Kevin Strunk

MONTHLY REPORTS

Michael J. Kiley, Chair, called to order the regular monthly meeting of the Natural Resources Commission at 10:10 a.m., EST, on August 30, 2000 in the Mathew Welch Room of the Indiana State Museum, Indianapolis. With the presence of eight members, the chair observed a quorum.

Damian Schmelz moved to approve the minutes of July 20, 2000. Joseph Siener seconded the motion. Upon a voice vote, the motion carried.

Larry Macklin gave the Director's Report and announced to the Commission Members that Jack Costello was in transition to retirement. He said John Davis has been made Acting Deputy Director. Macklin praised Mickey James for her efforts with the budget and said she has been "working very hard on the budget since May. Things are going very smoothly."

Director Macklin said the Natural Resources Study Committee had its first meeting on July 25 to set agendas for the rest of the summer session. He announced there would be a meeting in Columbia City that evening to discuss concerns regarding boating laws, particularly those administered by the Bureau of Motor Vehicles. He provided brief updates on changes to cemetery, historic preservation, and land acquisition laws. Macklin said he attended the Native American Council in August where he presented a Proclamation, on behalf of the Governor, establishing Native American Month.

Director Macklin said the Indiana State Fair was a "wonderful success." He said the U.S. Fish and Wildlife Service "came forth" with funding for renovation of the fish tanks. A new fountain was added, as well as other major DNR building renovations. Macklin said Phase I of the renovation was complete, and Phase II will begin next year. He recommended holding a Commission meeting at the DNR building in the future.

Macklin said the State Park Deer Reduction Program has finally reached a “kind of pinnacle, and we are phasing into a maintenance program.” He said 15 state parks have been selected for special deer reduction based on Dr. Parker’s report. Kiley asked whether recoveries from deer impact are noticeable. Macklin said the deer reduction is “beginning to work and the reduction is being pared down.” Damian Schmelz added “some plant species were returning, but others may never recover.”

Jerry Miller, Chairman of the Advisory Council for Lands and Cultural Resources, reported “all items were approved” from the Council’s July agenda. He said he attended the Annual Meeting in Brown County, and there was a surprise party for Jack Costello.

John Davis, Acting Deputy Director for the Bureau of Lands, Cultural and Recreational Resources, announced that a retirement party for Jack Costello at Fort Harrison will be held on October 6, 2000. He said golf would be an optional activity. Davis said the Prophets Town Conference is slated for September 15 and 16. Dedication of the new Visitors Center at Angel Mounds is set for September 22, 2000.

Chairman Kiley inquired as to the status of land acquisition at Prophetstown State Park. Davis replied that the process is “moving along,” and the state has now obtained “about half of the anticipated acreage.” Because there are several “unwilling sellers,” however, “completing acquisition from them can be complicated.”

Joe Siener, Chairman of the Advisory Council for Water and Resource Regulation, said the Council did not meet.

Paul Ehret, Deputy Director for the Bureau of Resource Regulation, reported that Bruce Stevens was hired as the new Director of the Division of Reclamation. He said Steve Herbert is the new assistant for AML. Ehret announced Rusty Retherford of the Division of Oil and Gas is resigning. Rusty is going to work for the Army Corp of Engineers in Evansville. Ehret said everyone has worked very hard on this year’s annual budget, as well as the Indiana State Fair.

BUREAU OF LANDS, RECREATIONAL, AND CULTURAL RESOURCES

DIVISION OF NATURE PRESERVES

Consideration of the Dedication of Marsh Wren Nature Preserve, LaGrange County, Indiana.

John Bacone of the Division of Nature Preserves presented this item. Bacone said the proposed 50-acre nature preserve contains high quality marsh and some rare species. He said it is a “significant piece of property that DNR was fortunate to have the opportunity

to purchase.” Bacone said the Division of Nature Preserves recommended dedication of this site as a state nature preserve.

Jerry Miller moved to dedicate Marsh Wren Nature Preserve in LaGrange County. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of the Dedication of an Addition to the Edmund Virginia Ball Wetlands Nature Preserve, Kosciusko County.

John Bacone of the Division of Nature Preserves presented this item. Bacone said this 64.91-acre tract of land is adjacent to the existing 221-acre Edmund and Virginia Ball Wetlands Nature Preserve located on Tippecanoe and James Lakes in Kosciusko County. Both the nature preserve and the proposed addition are owned and managed by YMCA Camp Crosley. He said the addition was purchased with the assistance of the Indiana Heritage Trust. Bacone said the Division of Nature Preserves recommended dedication of this site as a state nature preserve.

Chairman Kiley said “this is a terrific area and a great advertisement for the Trust.”

Damian Schmelz moved to dedicate the Edmund Virginia Ball Wetlands Nature Preserve in Kosciusko County. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of the Dedication of Wing Haven Nature Preserve, Steuben County, Indiana.

John Bacone of the Division of Nature Preserves presented this item. Bacone said the 176.33-acre tract of land is located approximately four miles north of Angola in Steuben County. Bacone said this land has been a target for preservation for many years, and the Division of Nature Preserves recommended dedication of the site as a state nature preserve.

Chairman Kiley reflected, “Damian did the original study here 50 years ago.”

Damian Schmeltz said the site was an “absolutely gorgeous piece of property.” He said it was “fortunate that I-69 skirted the site.”

Schmelz moved to dedicate the Wing Haven Nature Preserve in Steuben County. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

LEGAL PROCEEDINGS

NRC DIVISION OF HEARINGS

Consideration of Report, Findings of Fact, and Nonfinal Order of the Administrative Law Judge in the matter of *Paul Lin Elizabeth Mahoney (Claimants) v. Centre Properties and Department of Natural Resources (Respondents), and Hoosier Environmental Council and Sierra Club (Intervenors); Administrative Cause Numbers 99-019W and 99-020W.*

Sylvia Wilcox introduced this item. At issue are objections to the June 27, 2000 Report and Nonfinal Order of the ALJ. A three-day hearing was held in November 1999 to consider Elizabeth Mahoney's and Paul Lin's objections to DNR's approval of two permits for construction in the floodway near 96th and Allisonville Road in Indianapolis. Wilcox explained that Hoosier Environmental Council and Sierra Club intervened and presented their positions at hearing.

She provided that the hearing was well represented by excellent counsel on both sides. Wilcox indicated that both sides provided expert witnesses evaluating possible adverse impacts to the floodway by this activity. She provided that counsel was present except for Rosemary Spalding, legal counsel to the Sierra Club. Wilcox explained that Ms. Spalding filed a motion last week requesting the Commission allow the other claimants to use the time allotted to Sierra Club for presentation.

Wilcox stated that two permits are objected to: FW-18,487 constitutes the permit for construction activities to alter existing wetlands at Behner Brook near 96th Street and Allisonville Road; FW-18,488 is a mitigation permit for creation of new wetland areas at Heath Ditch between Behner Brook and the White River. She states that her findings on the merits substantively consider dueling expert testimony. Highly qualified experts were presented on both sides with the determining factor for me lying in: 1) the level of knowledge regarding the specific sites, both the construction and mitigation sites; and 2) the evaluation of biota and resources at the sites. Wilcox continued that "one set of evaluations were cursory." She stated the permittee's evaluating experts performed water and soil analyses, stream classifications, wetland delineations, and biological assessments to determine the adequacy of the mitigation plan. Wilcox concluded that while the credibility of all the experts was impressive, constructive and detailed knowledge and evaluation led to her determination that both permits should be approved. The experts for Centre Properties were more convincing.

Michael A. Mullett presented objections to the findings and nonfinal order of the Administrative Law Judge. He spoke for Paul Lin and Elizabeth Mahoney, as well as on behalf of the Sierra Club. With respect to the Sierra Club, he introduced a letter dated August 30, 2000 written by its attorney, Rosemary Spalding.

In her correspondence, Spalding reflected she has been representing the Sierra Club but could not attend the Commission meeting because of an unavoidable conflict. Spalding wrote she wanted to make it “clear that the Sierra Club does not oppose all development” but does oppose “rapacious development that damages our environment unnecessarily.”

Spalding wrote in “considering this particular development, it is very important that you consider the big picture. The two permits being considered today are but a part of that big picture.” She argued, “Centre Properties has steadfastly refused to disclose its ultimate plan for the property,” but clearly the company wishes to “significantly reconfigure the landscape in order to maximize the area that can be developed.” She wrote that Mullett would address issues concerning specific objections, but she wished to review “aspects of this case that I find disturbing from a policy perspective, especially to the extent they represent typical Department procedures in considering and processing permit applications.”

Spalding argued that comments received at a prior public hearing were ignored by the DNR’s Division of Water in performing the permit review. “This revelation was astounding and should be of great concern to the Commission. This is a prime example of why the public’s trust in the Department has become eroded.”

Spalding wrote the NRC’s guidance document for wetland mitigation was an excellent effort but unfortunately was not applied in the permit review. “However, it was clear at the hearing that the [DNR] permit writer did not consult or follow the Guidelines in making his recommendations, because he did not believe they were in effect.” The basic principle of the wetlands mitigations guidelines is there must first be avoidance, and only to the extent avoidance cannot be accomplished, minimization to wetlands destruction and disturbance.

Spalding argued in her letter that the mitigation project approved in the permit was ineffective. “When I was General Counsel for the Indiana Department of Environmental Management, one of my areas of responsibility was the Office of Enforcement. I can tell you with certainty that *the mitigation permit upheld by the Administrative Law Judge is completely unenforceable.*” [Emphasis supplied by Spalding.]

Michael Mullett expressed concurrence with the comments by Spalding then moved ahead with argument on behalf of his clients. He urged that 2.02 acres of wetlands will be destroyed or disturbed by the project anticipated by the permits. According to the wetlands mitigation guidelines, four times this area (8.08 acres) must be rehabilitated as viable wetlands. Yet the mitigation plan provides for only 5.2 acres of mitigation.

Mullett said there were two basic principles of administrative law that should structure the standard of review by the Administrative Law Judge. First, he agreed that as objectors, his clients and the Sierra Club had the burden of persuasion to demonstrate the permit was inappropriately granted. Mullett said expert testimony for the objectors met the burden of persuasion, and on this basis alone, the permit should be remanded back to the DNR.

In addition, Mullett argued the standard of evaluation by the Administrative Law Judge was “hearing *de novo*.” He said the ALJ is not acting as a Court would upon judicial review, or as the Indiana Appeals Court would act upon appeal. Rather, the ALJ is to give no deference to the agency decision. Mullett reflected that the ALJ had here indicated the permit issuance by the DNR was “affirmed,” a clear indication she had applied the wrong standard of review.

Mullett closed by saying the findings and nonfinal order by the Administrative Law Judge were in fundamental ways flawed. While not all of the aspects were in error, the order was “partly a bad order” and should be remanded for corrections consistent with the written objections.

Daniel McInerny provided argument on behalf of his client, Centre Properties. He said he had not previously seen the correspondence from Spalding, and he believed the correspondence inaccurately characterized the record. First, the testimony was clear that the DNR Division of Water had considered the mitigation guidelines and found the mitigation plan in the permit was consistent with those guidelines. McInerny said the permit application was made before the guidelines were approved by the Commission, so technically the guidelines were not legally effective, but even so, they had been met.

McInerny urged that the wetlands being damaged by the proposed project were of medium or low quality. The mitigation guidelines do not contemplate four-to-one mitigation for wetlands of this nature. When the mitigation is completed, he said, the mitigation site will provide wetlands of a higher quality. He urged, also, that the ability to provide effective wetlands mitigation has already been demonstrated nearby the permit site.

McInerny urged that the experts for Centre Properties had carefully evaluated site conditions and developed a permit with those conditions fully in mind. The Administrative Law Judge found the experts for Centre Properties to be more persuasive than those for the objectors, and he said, rightly so. Centre Properties experts had better site-specific knowledge of the impacts of the permit than did those for the objectors.

McInerny closed by saying he did not believe the objectors “are giving DNR staff the credit here they deserve.” The standards of the Flood Control Act have been met, the findings and nonfinal order of the ALJ should be approved, and the permits should be granted.

Catherine Wolter also argued in favor of approving the findings and nonfinal order of the Administrative Law Judge. He said the burden of proof was upon the objectors to show the “DNR did something wrong” in granting the permits. They failed to meet this burden, and the permits should be affirmed.

Contrary to the arguments of counsel for the objectors, Wolter urged that the professionals within DNR did carefully evaluate and study the permit applications. Indeed, an initial permit proposal was “rejected out of hand” by the DNR because it

failed to properly consider environmental factors. Centre Properties then worked with the DNR and modified its project scope so “unreasonable detrimental affects upon fish, wildlife, or botanical resources” could be avoided. Wolter said there “is nothing wrong with that. It shows the DNR staff was doing its job.”

Wolter said she believed the ALJ had properly reviewed the permit applications. Upon finding independently that the permits should be granted, the ALJ determined their issuance should be affirmed. Wolter urged the Commission to affirm the findings and nonfinal order of the Administrative Law Judge.

In a brief rebuttal, Mullett again emphasized the standard of review. He said that the ALJ “affirmed” permit issuance, demonstrating an inappropriate view by the Administrative Law Judge of what the standard is. He said the mitigation was inadequate, and the opportunity for public participation thwarted.

Chairman Kiley said he believed use of the word “affirmed” was not dispositive of the case. “That’s semantics.” He said what was important is whether the Administrative Law Judge independently reviewed the evidence and came to her own conclusions. Both from the text of her proposed findings and from the oral presentations before the NRC, he was convinced she had exercised independent judgment.

Kiley reflected that the DNR had, pursuant to the Flood Control Act, an array of options open for enforcement. The DNR could file an NOV or could seek injunctive relief in the Marion County Courts. He asked for discussion from the Commission.

Jane Ann Stautz said she believed the mitigation plan was enforceable. She suggested the findings of the ALJ should be approved and the nonfinal order made final.

Jack Arnett moved to adopt the ALJ’s findings and nonfinal order as the findings and final order of the Natural Resources Commission. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

Consideration of Report of Hearing Officer, Including Findings and Proposal to the Natural Resources Commission as to its Recommendations to the U.S. Army Corps of Engineers; 2000 Petition for Rate Increase by Kent’s Harbor Marina and the Sagamore Resort; Administrative Cause Number 00-083P.

Steve Lucas, Hearing Officer, introduced this item. He said for consideration was the review of maximum rates at facilities operated on properties where the DNR held a long-term lease from the U.S. Army Corps of Engineers. Unlike the typical AOPA case, the Commission made a recommendation rather than a final agency decision. Authority for the final decision on rates rested with the Army Corps, and the Corps could give as little or as much deference to the Commission recommendation as it wished.

Lucas said there was a significant amount of public comment on the petition, reflecting varying levels of dissatisfaction with some aspect of the operations of Kent's Harbor Marina. He said those comments were included in the report to support a complete administrative record, but the focus of the analysis was properly upon rates charged for comparable facilities. To this end, Gary Miller of DNR's Division of State Parks and Reservoirs assembled schedules of rates at other marinas. Based on those comparables, the determination was that slip rates be increased 2% and increases to motel and lodging facilities, and for houseboat rentals, be approved as sought. The hearing officer concurred in the recommendations by the Division of State Parks.

In addition, the hearing officer urged that discernable standards be established for determining what rates applied to particular vessels and how rates were determined if personal watercraft or other additional mooring was included. He also emphasized the need by Kent's Harbor to comply with timing requirements in notices to slip holders when a rate increase was sought.

Kent Reineking spoke for Kent's Harbor Marina and the Sagamore Resort. He indicated he accepted the recommendations of the hearing officer. Reineking added that he now fully understood the public notice requirements and would be careful to comply with them in the future. He also said he was working with Gary Miller and the DNR to establish uniform standards for assessing fees.

Several persons spoke briefly concerning the proposal. Some slip holders indicated they opposed the recommendations of the hearing officer and believed all issues should be resolved at Kent's Harbor Marina before any rate increase would be considered. Others said they were not opposed to the 2% rate increase and believed Kent's Harbor Marina was generally a well-managed facility. There appeared to be a consensus that standards needed to be established to support uniform rate assessments.

Gary Miller indicated he was working with Kent's Harbor to determine methodologies for uniform rate assessments. Progress had already been made on this issue, and he expected a fair structure could be established. In response to a question from the Commission, Miller said a policy statement on slip rates would be developed, for consideration and possible approval by the NRC, that could be applied to all marinas.

Jerry Miller moved to recommend the rate increases sought by Kent's Harbor Marina be approved by the U. S. Army Corps of Engineers, as conditioned in the analysis by the Division of State Parks and Reservoirs and as recommended by the Hearing Officer. Maximum price increases for slips should be limited to 2% above current rates. Increases to approved price increases for motel and lodging facilities, and for houseboat rentals, should be approved as sought by Kent's Harbor Marina. Jack Arnett seconded the motion. Upon a voice vote, the motion carried.

Consideration of Report of Hearing Officer, Including Findings and Proposal to the Natural Resources Commission as to its Recommendations to the U.S. Army Corps of Engineers; 2000 Petition for Rate Increases by Lake Monroe Sailing Association, Inc.; Administrative Cause Number 00-084P.

Steve Lucas, Hearing Officer, also presented this item. He said the proposal was governed by the same nonrule policy document as in the previous item. In this instance, however, the proposed increases were seemingly noncontroversial. In accordance with the analyses by the Division of State Parks and Reservoirs, he recommended the rate increases sought by the Lake Monroe Sailing Association be approved as requested except for new wet slips. Wet slips under 30 feet should be recommended for approval at an annual rate of \$2,250. Wet slips of 30 feet or more should be recommended for approval at a rate of \$2,750.

Ted W. Jones, Commodore for the Lake Monroe Sailing Association, said he supported the recommendation by the DNR and the NRC's hearing officer. He expressed appreciation to the DNR and the Commission for its cooperation in this year and previous years. He praised the Commission for establishing the review process now used for rate increase requests, saying it was helpful to receive public input and to encourage fair rates at the regulated facilities. Finally, the Commodore offered to work with Gary Miller and the Division of State Parks in establishing discernable standards for assessing rates.

Chairman Kiley thanked Commodore Jones for his comments and his years of service at Lake Monroe. He urged the Division of State Parks to accept the offer of assistance in setting standards. Kiley said the Commission looked forward to the review of these standards at a later meeting.

Jerry Miller moved to recommend the rate increases sought by the Lake Monroe Sailing Association, Inc. be approved as requested except for new wet slip. Wet slips under 30 feet were recommended for approval at an annual rate of \$2,250. Wet slips of 30 feet or more were recommended for approval at a rate of \$2,750. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of Recommendation of Hearing Officer for Report of the Natural Resources Commission with Respect to the Petition for the Creation of the Furnessville Conservancy District, Administrative Cause Number 00-096C.

Jennifer Kane, Hearing Officer, presented this item. She said the Furnessville Conservancy District is proposed to be established for all purposes listed in the report (IC 14-33-1-1). Kane said the proposed district area encompasses a 181-acre planned residential development called Dunes County at Furnessville—a one landowner development. She said that Dunes Country is a proposed “conservation development” similar to the Coffee Creek development the Commission toured in May.

Kane explained that the conservancy district and its board would take the role similar to a homeowner's association to maintain infrastructure and the natural areas, as well as being the vehicle for development. She gave an example of the Nature Works Conservancy District being a successful model that used the structure of a conservancy district for its development.

Kane said that no one in opposition to the creation of the conservancy district appeared at the public hearing held on July 12, 2000. She said Dave Hollenbeck, attorney for the Petitioner, presented sufficient evidence to make a determination and report to the Porter Circuit Court in regards to the six conditions listed in the report (page 16) except for the purposes of Flood Prevention and Control and Storage of Water for Augmentation of Stream Flow. Kane explained that the NRC is currently authorized to provide analyses described in IC 14-33-2-17 and IC 14-33-3-33, but nothing more. The statutory structure does not anticipate the NRC approve or decline the petition to establish the proposed conservancy district or even approve or decline a purpose for which the district is to be established. The Indiana General Assembly has in IC 14-33-2-26 and IC 14-33-2-27 placed this authority squarely and exclusively within the Porter Circuit Court.

Kane said the NRC acts as a "friend" to the court. The report compiles evidence for the court to base her decision for appropriateness or denial of the proposed conservancy district. Kane recommended the Natural Resources Commission adopt the report as written.

David Hollenbeck was introduced as attorney for the Petitioner. He said the supporters of the proposed Furnessville Conservancy District were satisfied with the report of the hearing officer. He hoped the NRC would approve her report and refer it to the Porter Circuit Court for action.

Damien Schmelz spoke favorably regarding the concept envisioned by the proposed district. He said having a legal structure responsible for its protection would improve the likelihood of long-term success.

Jerry Miller moved to approve the report of the hearing officer as the report of the Natural Resources Commission regarding the proposed Furnessville Conservancy District. Jack Arnett seconded the motion. Upon a voice vote, the motion carried.

Consideration of Report of Hearing Officer Concerning the Disposal of an Interest, the Dedication of Additional Tracts, and the Approval of a New Master Plan; Amendments to the Ropchan Memorial Nature Preserve in Steuben County; Administrative Cause Number 00-082N.

Steve Lucas, Hearing Officer, presented this item. He noted a clerical error on the first page of his report. In the second paragraph of the information quoted from Ted Heemstra, the year was "1997" rather than "1977."

Lucas said the proposal to the NRC was extraordinary in that the Commission was being asked to dispose of lands within an existing nature preserve. To the best of his knowledge, a request of this nature had never been made, and it was not now made lightly. Lucas said from the beginning, however, the parties had not understood the parcel to be disposed was within the preserve. In effect, the physical boundaries of the nature preserve were never as they were thought to be. He said this disposition would reconcile what had been a mutual mistake among the parties (as well as the DNR), and only within the following very narrow terms was the transaction recommended for approval:

- (1) From the beginning, the parties understood the area to be disposed was outside the nature preserve. This understanding was also shared by the Division of Nature Preserves.
- (2) Acting in good faith, the neighboring landowner had developed the property to be disposed by the placement of temporary greenhouses and other improvements. These improvements are incompatible with the existence of a nature preserve.
- (3) As a result of actions by the buyers and sellers, as well as the successors in interest to the sellers, a cloud exists as to the title of the area to be disposed. The proposed exchange of property would resolve any potential property dispute and preclude the need for litigation.
- (4) Land to be received in exchange for the parcel to be disposed is compatible with usage as a nature preserve and would more effectively buffer the nature preserve from the pressures of development than the area to be disposed. The net result is likely to be a superior preserve both immediately and prospectively. This public trust land will be augmented rather than diminished by the modification.
- (5) An equal amount of land is being received in exchange for the land disposed.
- (6) Both the property manager (Acres, Inc.) and the Department of Natural Resources, Division of Nature Preserves, favor this disposition.

Theodore H. Heemstra, Vice President of Acres, Inc., expressed his support for all aspects of the recommendation by the hearing officer (including approval of the “Amended Master Plan” as sought by the Division of Nature Preserves).

Joseph Siener moved to give approval, and forward to the Governor for possible final action, the “Additional Articles of Dedication for Ropchan Memorial Nature Preserve” as set forth in Exhibit 3 of the report of hearing officer. Simultaneously, approval would be given to the “Amended Master Plan for Ropchan Memorial Nature Preserve” as set forth in Exhibit 4. Damian Schmelz seconded the motion. Upon voice vote, the motion carried.

Consideration of Report of Hearing Officer and Recommendation for Final Adoption of Rule Amendments Governing Advanced Fishing Tournament on Reservoirs Administered by the Division of State Parks and Reservoirs. Administrative Cause Number 00-027P; LSA #00-33(F).

Steve Lucas presented this item. He said the absence of public attendance at the Commission meeting was in contrast to two well-attended lively public hearings on the rule proposal. Being presented for final adoption was an amendment to 312 IAC 8-3-3. The amendment would allow date approval for fishing tournaments on lakes managed by the Division of State Parks and Reservoirs, and owned by the U.S. Army Corps of Engineers, two rather than the current one season in advance. Lucas said most persons were neutral or spoke in favor of the proposal, and it seemed a worthy management adjustment to allow more reasoned and efficient advance planning.

Chairman Kiley said the concept was long overdue. He also urged the DNR and the Commission to look at the challenges provided by fishing tournaments on lakes of natural origin along the northern tier of Indiana counties. He said a management strategy was also needed on these lakes.

Lucas responded that legislation enacted in the most recent session of the Indiana General Assembly had provided the NRC with rule-making authority for public waters, in addition to Army Corps lakes, to help manage fishing tournaments and similar activities. The Legislation was HEA 1075 and was largely inspired by the Lakes Management Workgroup. A “notice of intent” to adopt rules to implement this authority was scheduled for publication in the September 1, 2000 INDIANA REGISTER. He expected the Commission would be asked to look at proposals to address tournaments on public freshwater lakes, and perhaps other public waters, in the near future.

Paul Ehret said the activities of the Lakes Management Workgroup had been reauthorized by the General Assembly. He added that the LMW was again scheduled to meet September 14 at 1:00 in the Government Center South.

Jane Ann Stautz pointed out the hearing officer had also recommended the Division of State Parks and Reservoirs be urged to reduce to writing the policies and protocols they use in administering fishing tournaments on Army Corps lakes. She said developing a workable policy document was important to good management. Stautz urged that this aspect of the hearing officer’s report also be included in the Commission resolution.

Jerry Miller moved to give final adoption to amendment to 312 IAC 8-3-3 as recommended by the hearing officer. As part of his motion, the Division of States Parks and Reservoirs was also urged to develop written protocols for its management of fishing tournaments pursuant to 312 IAC 8-3. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of Report of Public Hearing and Recommendation of Hearing Officer for Final Adoption of Repeal of Rules of the Department of Natural Resources Governing Relocation Assistance. Administrative Cause Number 00-043A; LSA #00-61(F).

Steve Lucas said for consideration was the proposed repeal of DNR rules established to govern relocation assistance and related standards pertaining to agency land acquisition. He said soon after the rules were adopted, legislation was enacted which was thought to adequately address the subject. To the best of his knowledge, no agency has used 310 IAC 18 since its adoption more than ten years ago. Lucas said the repeal of these rules was part of the continuing recodification process by which all DNR rules were being evaluated, and if warranted, re-adopted as NRC rules. In this instance, the recodification of 310 IAC 18 did not appear warranted.

John Davis said he agreed with the hearing officer's recommendation. He said the rules had not been used recently by the DNR's Division of Land Acquisition.

Jane Ann Stautz moved to give final adoption to the repeal of 310 IAC 18. Jack Arnett seconded the motion. Upon a voice vote, the motion carried.

ADJOURNMENT

At 12:10 p.m., CDT, the meeting was adjourned.
