

NATURAL RESOURCES COMMISSION
Meeting Minutes, May 15, 2018

MEMBERS PRESENT

Bryan Poynter, Chair
Jane Ann Stautz, Vice Chair
Cameron Clark, Secretary
Bruno Pigott
Laura Hilden
Patrick Early
Bart Herriman
John Wright

NATURAL RESOURCES COMMISSION STAFF PRESENT

Sandra Jensen	Dawn Wilson
Scott Allen	Jennifer Kane

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

John Davis	Executive Office
David Bausman	Legislative
Lloyd Arnold	Law Enforcement
Terry Hyndman	Law Enforcement
Tara Wolf	Communications
Marty Benson	Communications
Justin Paicely	Legal
Elizabeth Gamboa	Legal
Mark Reiter	Fish & Wildlife
James Kershaw	Fish & Wildlife
Linnea Petercheff	Fish & Wildlife
Sam Jordan	Fish & Wildlife
Scott Johnson	Fish & Wildlife
Dan Bortner	State Parks
Terry Colman	State Parks
Melissa Stewart	State Parks
Jamie Miller	Water
David J. Smith	Water
John Bacone	Nature Preserve

GUESTS PRESENT

Herb Higgins
Steve Cobb
Stacey Roesch
Cathy Kammen
Kevin McAndrews
H. Lacy-Conner
Bill Eberhard
Niki Kelly
Katie Harbridge
Melissa Penwell
Marguerite Topping
Herma Compton
Betty Comphere
Tris Perkins
Stacy Cachules
Ed Roesch
Holly Carter
Karin Anderson
Leslie Bishop
Anne Sterling
Stuart Grell
Dean Farn
Bob Hammerle

Erin Huang
Lynn Burry
Jeffery Stant
Anne Lakre
Mary Booauatry
Anna Hopkins
Kathryn Kullberg
Bowden Quinn
Cory Millikam
Stevi Kersh
Sandy Bueched
Whitney Myers
Jenny Jones
Tammy Terry
Sarah Bowman
Richard Weaver
Kathleen Meservy
Marti Matthews
Cynthia Greene
Kelly Kingston
Elizabeth Mahoney
Julie Gray
Emily Kerch

Tim Maloney
Melissa Mansfield
Cliff Chapman
Karen McAndrews
M. Lacy
Jill Wise
Jill Fritz
Justin Jett
Angie Bridgewater
Thomas Meek
Mike Mesemy
Dennis Cobb
Norma Bridgewater
Cheryl Yoder
Emily Roesch
Rebecca Thele
Judy Bruch
Charlie Masherh
Greg Dugan
Julie Kingston
Suzanne Huizinga
Allison Hess

Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 10:01 a.m., ET, on May 15, 2018, at Fort Harrison State Park, Garrison, 6002 North Post Road, Ballroom, Indianapolis. With the presence of eight members, the Chair observed a quorum.

APPROVAL OF MINUTES

The Chair asked for a motion for the approval of the Commission's March 20, 2018, minutes.

Jane Ann Stautz moved to approve the minutes of the meeting held on March 20, 2018, as presented. John Wright, seconded the motion. Upon a voice vote, the motion carried.

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

Director Cameron Clark provided his report. The Director stated that the Kankakee River Basin experienced significant flooding within the last couple of months due to a large amount of snow melting and a large rainfall at the same time. He noted that the 2,100-acre Kankakee Fish and Wildlife Area was flooded, along with many farms in the basin. He stated that the Department has worked to repair 14 breaches in the levees. Clark stated that the basin is a former marsh that had been drained in the last 125 years and is now land that is used for agriculture. He stated that the Department has met with the property owners, local officials, and state legislators to put together a basin-wide approach to attempt to reduce the amount of flooding. He stated that the project to reduce flooding would take time and be a significant project. The Director reported that there has already been a lot of work that has gone into the project and he commended the Division of Fish and Wildlife for the work that the Division staff has already put into the flood reduction project.

The Director said that turkey season ended on May 13. He noted that with the short spring season it impacted the turkey behavior, but preliminary turkey harvest numbers show that the season turned out to be an average season.

John Davis, Deputy Director for the Bureau of Lands and Cultural Resources, provided his report. Davis stated that the Prescribed Fire Season ended with very little accomplished due to the weather was not conducive for burning.

Davis stated that the Department is preparing for the recreation season, and noted that Memorial Day is a big holiday for the state parks.

Davis reported that the more than 70 Department employees who were displaced due to flooding in Central Office are almost all back into their office space. Davis commended the Indiana Department of Administration for its efforts in repairing the damage in a timely manner.

Davis stated that the Department has received approval from the U.S. Army Corp of Engineers to proceed with the Indiana Stream and Wetland Mitigation Program (Program) and noted that there will be an announcement as to when the Program will go live. Davis noted that putting the Program together took time and involved close coordination with the Indiana Department of Transportation and the Indiana Department of Environmental Management. Davis observed that this Program will benefit the state wetland system.

Davis announced that the Division of Nature Preserves is holding a series of hikes on its nature preserves, with a hike scheduled on May 16, 2018 at 5:30 p.m. at Scout Ridge Nature Preserve in Morgan-Monroe State Forest.

The Chair noted that Deputy Director Chris Smith was not present to provide the Bureau of Water Resource and Regulation's report.

Patrick Early, Chair of the Advisory Council, provided an update on the activities of the Advisory Council. He stated that since there were no items referred for consideration the Advisory Council has not met since January 9, 2018, but noted that there is a meeting scheduled for June 12, 2018.

CHAIR, AND VICE CHAIR

Updates on Commission and AOPA Committee

Jane Ann Stautz, Chair of the Commission's AOPA Committee, stated the Committee met immediately before today's full Commission meeting. She said there would be an additional meeting scheduled, but that there was nothing to report.

Information: Remaining 2018 meeting dates (Fort Harrison State Park–Garrison, Indianapolis)

The Chair noted that the remaining 2018 Commission meeting dates are scheduled for July 17, September 18, and November 13.

DNR, EXECUTIVE OFFICE

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

No items were identified for referral to the Advisory Council.

DNR, DIVISION OF NATURE PRESERVES

Consideration of the dedication of the Glacier's End Nature Preserve in Johnson County

John Bacone, Director of the Division of Nature Preserves, presented this item. Bacone stated that the proposed nature preserve is located in Johnson County near the town of Trafalgar and is owned and managed by the Central Indiana Land Trust, Inc. He said that the proposed nature preserve contains high quality upland forest with some rare plant and animal species, and is located where Wisconsinan Glaciation stopped with remnants of glacial boulders. He stated that the proposed nature preserve was acquired with funding from the Indiana Heritage Trust. Bacone then recommended the proposed site be dedicated as a nature preserve.

The Chair recognized Cliff Chapman, Executive Director, of the Central Indiana Land Trust, Inc.

Chapman stated that the Central Indiana Land Trust, Inc. is excited to support the dedication of the Glacier's End Nature Preserve. Chapman said that the proposed nature preserve is the largest nature

preserve Central Indiana Land Trust, Inc. has ever protected and is home to more species than the Central Indiana Land Trust has managed in the past. Chapman noted that a state endangered plant has been located on the proposed site and that a researcher from the University of Indianapolis has found seven species of spiders at the proposed nature preserve that are undescribed. Chapman noted that there are a lot of biodiversity and life packed into this one area.

Bruno Pigott moved to approve the dedication of the Glacier's End Nature Preserve. John Wright seconded the motion. Upon a voice vote, the motion carried.

NRC DIVISION OF HEARINGS

Consideration of Hearing Officer's Report, including findings and proposal to the Natural Resources Commission as to recommendations to the U.S. Army Corps of Engineers regarding Fourwinds Resort and Marina's ratemaking petition; Administrative Cause No. 17-151P

Dawn Wilson, Hearing Officer, presented this item. Wilson explained that in accordance with the guidelines set forth in the 5th amendment to Information Bulletin #20, Fourwinds Resort and Marina (Fourwinds), filed a Petition on December 18, 2017, with the Commission's Division of Hearings seeking rate increases for slip rentals operated on Monroe Reservoir. Wilson noted that the Petition is identified as Exhibit B to the Hearing Officer's report (the Report).

Wilson stated that the Commission most recently addressed a request for rate increase in 2011 and the majority of the requested rate increases were approved at that time. She said that some of the rates were capped for rates that were determined to be higher than rates charged by comparable facilities. Wilson noted that, at that time, there was a concern expressed that approved rates varied for same size slips at different docks within the marina and the rates for same size slips were aligned so that the same rate was charged at all docks.

Wilson stated that the request for rate increase currently before the Commission is for rate increases for a wide range of slip sizes.

Wilson stated that Fourwinds notified renters of the opportunity to comment on the rate increases and to request a rate hearing. She said the notice advised renters that a rate hearing would be scheduled upon submission of requests for rate hearing by 10% of renters. Wilson noted that because no deadline to request a hearing was included in the original notification, the notice was reissued to include additional information that identified an appropriately extended deadline.

Wilson stated that she received comments and requests for a rate hearing but that based on the number of requests received, no rate hearing was required for the proposed rate increases and that no rate hearing was held.

Wilson said that Fourwinds rate increases requested are between 2.61% and 10%. She noted that Information Bulletin #20 provides that, for increases sought that exceed 2%, when no hearing is required, the hearing officer, in consultation with the Department, will prepare a written report

for the Commission which includes written findings and a proposal to the Commission for recommendations to the U.S. Army Corps of Engineers.

Wilson stated that in determining whether to recommend that the proposed rate increase be granted, the Department's Division of State Parks and Reservoirs (Division) is tasked with analyzing similar facilities and comparing rates with those sought by Fourwinds.

Wilson stated that Information Bulletin #20 provides that the Commission's recommendation for rate increase shall not be withheld unless the rates proposed exceed the fair market rates charged by operators of other similar privately-owned resort developments comparable to the project. Wilson stated that the Division determined that the rate increases proposed by Fourwinds are comparable to other similar marinas in that the proposed rates fell within the averages calculated by Fourwinds and the Division.

Wilson stated that the majority of the rate increases requested do not exceed the fair market rates charged by comparable projects. She said that there are two slip sizes for which the rate increase requested appears to exceed fair market rates charged by comparable facilities that were identified by Fourwinds, to reflect a need for modesty in rates. Wilson stated that the rate for a 20 x 10 slip is currently \$1,360 and the comparable rate is \$1,325. She said the requested increase is 10%. Wilson said that based on the rate charged by a comparable facility, an increase of 2% is recommended and has been identified in bold on the recommendation within Exhibit A. Wilson stated that the rate for a 30 x 12 slip is currently \$4,002 and the comparable rate is \$4,100. She said the requested rate is for an increase of 7.45%. She said that based on the comparable rate, an increase of 4% is recommended and is also identified in bold on Exhibit A.

Wilson stated that the Division's analysis for the proposed rates for these two slips is found on page 10 of the Hearing Officer's report. She noted that Melissa Stewart is present and available to speak to the Division analysis.

Wilson stated that the Hearing Officer's recommendation is for the Commission to approve rate increases for Fourwinds as set forth in the "Proposed Commission Slip Rate Recommendation" within the column identified as "Recommended Slip Rate" on Exhibit A of the Hearing Officer's report. Wilson asked the Commission to consider for approval the findings and recommendation so that the findings and recommendation might be forwarded to the U.S. Army Corp of Engineers for final approval.

The Chair asked if there were questions from the Commission.

Herriman stated that Fourwinds requested rate increases in 2007, 2008, 2009, and 2011 and asked if it was common for a marina to make rate increase requests every year.

Wilson stated that it varies by marina and that some marinas will request small rate increases more frequently and other marinas might wait for longer periods and make a larger request.

The Chair offered clarification on the marina rate increase process. He noted that there have been rate increase requests that have been denied by the Commission due to remonstrators and it also

depends on upgrades to a marina. He state that each marina rate increase request stands on its own.

Jensen added that she was the Hearing Officer on Fourwinds' previous rate increase request. She stated that between 2007 and 2011 there were some significant improvements that were being made to the marina. Jensen said that some of the previous requests were to establish a rate for new slip sizes or on docks that were overhauled and upgraded.

Bart Herriman moved to approve the Hearing Officer's findings and recommendation to the U.S. Army Corps of Engineers in the matter of the Petition for rate increase by Fourwinds Resort and Marina's. John Wright seconded the motion. Upon voice vote, the motion carried.

Consideration of Hearing Officer's Report, including findings and proposal to the Natural Resources Commission as to recommendations to the U.S. Army Corps of Engineers regarding Hoosier Hills Marina Inc.'s ratemaking petition; Administrative Cause No. 17-128P

Wilson also presented this item. Wilson stated in accordance with the guidelines set forth in the 5th amendment to Information Bulletin #20, Victor Polen, on behalf of Hoosier Hills Marina, filed a Petition on November 4, 2017, with the Natural Resources Commission's, Division of Hearings seeking rate increases for slip rentals operated on Patoka Lake. Wilson stated that to correct an omission of certain information, Mr. Polen revised the Petition on November 14, 2017 and that the revision is attached to the Hearing Officers Report as Exhibit B.

Wilson stated that the Commission most recently addressed a request for rate increase in 2017 with the majority of the rate increases requested effective in 2018. She said the majority of the requested rate increases were approved. Wilson said some rates being charged by the marina had not been previously approved by the Commission. Wilson noted that for those rates, the Commission approved the rates being charged, but approved no increase beyond those rates. Wilson stated that Hoosier Hills transferred management of the marina in 2017.

Wilson state that the request for rate increase currently before the Commission is for the establishment of a rate for a 14 x 36 slip that received interim approval by the Department, the establishment of a rate for a small slip with no power, and increases to the rates for three slip sizes, 22 x 100, 14 x 30, and 10 x 30 that were previously requested and denied in 2017.

Wilson stated that Hoosier Hills provided notice to renters of the opportunity to submit written comments and to request a public hearing. Wilson said that no comments were filed with the Division of Hearings and no public hearing was requested on the proposed rate increase.

Wilson stated that the Department's Division of State Parks and Reservoirs (Division) conducted a review of the requested rate increase because the increases requested are between 8% and 17%. Wilson stated that the Division completed its analysis and determined that Hoosier Hills' proposed rates are comparable to the rates of other similar marinas and that the rate increases proposed are reasonable and justified.

Wilson stated that her recommendation is for the Commission to approve the rate increases for Hoosier Hills set forth in “Proposed Commission Slip Rate Recommendation” found at Column 4 of Exhibit A to the Hearing Officer’s report. Wilson asked the Commission to consider for approval the findings and recommendation so that the findings and recommendation might be forwarded to the U.S. Army Corp of Engineers for final approval.

Jane Ann Stautz moved to approve the Hearing Officer’s findings and recommendation to the U.S. Army Corps of Engineers in the matter of the Petition for rate increase by Hoosier Hills Marina Inc. Cameron Clark seconded the motion. Upon voice vote, the motion carried.

Consideration of recommended report of the Natural Resources Commission with respect to the Petition for the Establishment of the Lake George Conservancy District; Administrative Cause No. 18-022C

Wilson presented this item. Wilson stated that an Order of the Steuben Circuit Court dated January 25, 2018 the “Petition for Formation of Lake George Conservancy District” (LGCD), filed by the Lake George Cottagers Association, was referred to the Commission for review in accordance with IC 14-33-2-17. Wilson said while the decision to establishment a conservancy district is within the jurisdiction of the Steuben Circuit Court, the Commission, in coordination with the Department’s Division of Water, acts as a friend of the court. Wilson stated that the role of the Commission includes the receipt of information from potentially interested government entities, notice of and participation in at least one public hearing at which evidence is publically presented by the Petitioner as well as other interested persons, and the preparation and filing of a fact finding report with the Court by the Commission within 120 days of the Court’s referral.

Wilson said that the fact finding report, filed by the Commission, is to address five inquiries for each purpose proposed for the district. She said that the proposed LGCD purposes, as stated in the Petition is for; “dam repairs and routine maintenance as a means of catastrophic flood prevention, and invasive weed control as a work of improvement for water based recreational purposes and to preserve and maintain the lake as a natural resource.” Wilson noted that a conservancy district may be established for a purpose identified in IC 14-33-1-1. Wilson stated that a determination is made in the report that the allowed purposes proposed for the LGCD are 1) flood prevention and control, 2) operation, maintenance, and improvement of a work of improvement for water based recreational purposes.

Wilson said that the Indiana Utility Regulatory Commission stated that it did not have authority over the Petition. Wilson said that the response from the Indiana Department of Environmental Management stated no objection to the formation of the LGCD. Wilson stated that the analysis prepared by the Department is found on pages 20-24 of the report and was fully considered in the report recommendations. Wilson noted that no other substantive comments were received from government entities.

Wilson stated that written public comments that were received by the Division of Hearings, are included in the report and were considered. She stated that testimony presented at the public

hearing held on March 14, 2018 are summarized within the report and were considered, as well as other documentation and information submitted by the Petitioners before and after the public hearing. Wilson noted that the report assumes representations made by the Petitioners regarding revisions to the proposal originally filed with the Court have been made or will be incorporated as proposed revisions for the Court's consideration in its final determination regarding the establishment of the proposed LGCD. Wilson stated that for the first three of five inquiries, evidence presented appears to be sufficient to support the establishment of the LGCD.

Wilson stated that the proposed LGCD appears to be necessary for flood prevention and to conduct dam repair and maintenance. She said that the Lake George dam is classified by the Department as a high hazard dam and in 2008 was found to have "critical safety deficiencies". Wilson noted that a licensed professional engineer has recently rated the dam and its spillway as "poor". Wilson said the LGCD also appears to be necessary for aquatic weed control for Eurasian watermilfoil and starry stonewort. Wilson noted that aquatic weed control has been approved by the Department and supported through competitive grant funding through Lake and River Enhancement and Great Lakes Restoration Initiative grants.

Wilson stated that the LGCD seems to offer benefits in excess of costs and damages. Wilson noted that dam repair costs are estimated by the Petitioners to be approximately 1.4 million dollars and the Petitioner also presents an annual budget of an additional \$100,000. Wilson stated that a residential appraiser estimated that a former lake with no water would result in a loss of 70-80% of the assessed value of properties, a value range of approximately 67.8 to 77.5 million dollars.

Wilson stated that the LGCD is proposed in a manner compatible with other districts or projects. No government or public comment, evidence presented at the public hearing, or other information presented by the Petitioner identifies a conservancy district flood control project, reservoir, lake, drain, levee or other water management or water supply project that would overlap the boundary of the proposed LGCD.

Wilson stated that for two of the five inquiries, gaps in evidence that was presented has resulted in a recommendation that the Court conduct further inquiry before determining that the LGCD establishment is appropriate.

Wilson stated that the first of these inquiries is that the LGCD proposes to serve a proper area for the purposes of flood prevention and work for improvement of water based recreational purposes. She noted that the proposed LGCD, that includes properties with lake frontage and off lake properties having enhanced lake access, may not serve a proper area in two ways. First, Wilson stated that a determination regarding a proper service area includes an analysis of the proposed district to determine if the district boundaries are contiguous. She noted that there were some frontage properties that may not have been included. She noted that the Hearing Officer's report recommends that the Court confirm all frontage properties are included within the proposed district boundary. Wilson also stated that one or more off lake properties may not be contiguous to any other district property.

Second, Wilson stated that for the off lake properties included in the LGCD there was insufficient evidence and other information available to allow a determination regarding whether some off-lake properties possess enhanced access to the lake distinguishable from other lots that are not included in the district due to lake access through a public right-of-way. She stated that the Hearing Officer's report recommends that the Petitioner clarify for the Court its basis to justify tax assessment of some properties, while other properties having the same lake access through a public right-of-way are not proposed to be assessed or included in the district.

Wilson stated that the final inquiry of the LGCD is if it appears to have engineering and economic feasibility. Wilson noted that the Lake George dam was built in the 1920's and that a licensed professional engineer made recommendations for regular management and maintenance of the dam and also recommended "immediate action" to begin to assemble plans and specs for reconstruction of the embankment and spillway. She noted that the Petitioner has obtained an estimate for conceptual remediation plans and other information toward this goal. She stated that because dam repairs, maintenance, and inspections are required and anticipated, the LGCD holds promise of engineering feasibility for such obligations.

Wilson stated that it is the responsibility of the Department to control nuisance aquatic weeds through weed management and to hold and control all public freshwater lakes for the benefit of the public for recreational purposes, including fishing, boating and swimming. Wilson noted that this ongoing effort by the Petitioner represents an ongoing pursuit that is supported by the Department and is determined to hold the promise of engineering feasibility.

Wilson stated, however, that with respect to economic feasibility the Petitioner proposes an equal distribution of costs to support the two purposes by 326 Indiana freeholders. Wilson stated that proposed dam repairs of \$1,410,000 amortized over 30 years at 5% interest would result in an annual assessment, as calculated by the Department, of \$277 for each freeholder. Wilson stated that in addition, the proposed \$100,000 annual budget would result in an assessment to each of 326 freeholders, as calculated by the Department, of \$307 annually. She stated that the total for these assessments appears to be economically feasible.

Wilson noted that some portion of Lake George is in Michigan and the Petitioners assume some contribution from Michigan residents. Wilson said that the assessment conclusions of the Petitioner vary from the costs per freeholder anticipated within the report. She noted that no Michigan contribution is contemplated within the Hearing Officer's report because no actual contribution has been defined, ordered, or otherwise included within the Petition before the Steuben Circuit Court. Wilson stated that it is acknowledged that contribution toward costs by Michigan residents could alter the assessment amount of each freeholder.

Wilson stated that the Petitioner's budgets anticipate an "equal distribution" among 326 Indiana freeholders, which appears to be inconsistent with the evidence presented. The recommended report includes no final determination or recommendation concerning the economic feasibility of the LGCD for the five following reasons:

1. The costs are not specifically identified to reach a determination that all necessary costs are included in the proposed budget. For example, it is unknown if the budget anticipates the costs for ongoing dam maintenance and required inspections.
2. Distribution among 326 freeholders could be altered based on the analysis provided in the proper service area portion of the report, based on determinations made concerning the need for contiguity for the district, and a determination regarding whether properties having a public right-of-way access have distinguishable rights that warrant inclusion in the district.
3. Petitioners do not anticipate an equal distribution of costs among freeholders. The Petitioners have proposed a plan of assessment to assess freeholders at 100%, 50% and 25%, based on the lake access rights associated with the property.
4. While not anticipated by the assessment criteria stated in the Petition, some properties have been assessed at 0%. This further reduction in the number of freeholders sharing the cost burden could result in higher costs for each freeholder and would impact the economic feasibility of the LGCD. This additional tier of assessment for properties within the LGCD boundary has not been adequately defined by objective criteria to allow for an economic feasibility analysis. In correspondence from the Petitioner, a property owner's current utilization of the lake may be a consideration. A criteria that includes utilization of the lake by a property owner would be fluid and not easily managed.
5. It is unclear if there has been an inconsistent method of application of the percentage assessment applicable to each freeholder. The combination of parcels and a failure to define "per lot assessment" appears to have resulted in parcels of all "property owners with a residential dwelling having lake front property or deeded access" to Lake George being inconsistently assessed. Some examples appear in the Hearing Officer's report. Without clearly defined objective criteria, a complete and full economic feasibility analysis is unavailable.

Wilson stated that once the Petitioner clarifies the actual costs necessary to support the LGCD and the Court makes a determination concerning the total number of freeholders appropriately included within the LGCD's boundary, the criteria determining the level of tax assessment should be clearly stated so that objective criteria can be identified accurately and consistently applied. The report recommends that the Court address these issues and reach its own logical and supportable determination concerning the economic feasibility of the proposed LGCD.

Wilson stated that it is her recommendation for the Commission to consider the proposed fact finding report and accept the Hearing Officer's report as the "Report of the Natural Resources Commission on the Petition for Formation of Lake George Conservancy District".

Wilson stated that Bill Eberhard, attorney for the Petitioner, Lake George Cottagers Association, is present and available to answer questions. She noted that for questions regarding the Department's technical review of the Petition, David Smith from the Division of Water is also present.

Bruno Pigott moved to accept the Hearing Officer's report, as the Report of the Natural Resources Commission on the Petition for the Formation of the Lake George Conservancy District. John Wright seconded the motion. Upon voice vote, the motion carried.

Consideration of report on rule processing, written comments, public hearings, DNR responses to public comments and hearing officer's analyses, and recommendations regarding final adoption of amendments to (312 IAC 9), the biennial wildlife rule amendment package; LSA #17-436(F); Administrative Cause No. 16-161D

The Chair introduced the biennial wildlife rule amendment package for consideration. Secretary, Clark stated "Mr. Chairman, I would like to move that we separate two particular rule proposals from that overall package. The first of the two would be 312 IAC 9-3-18.1; that is the proposed bobcat season. I would also like to separate from that agenda item 312 IAC 9-10-11, which is the rule entitled Nuisance Wild Animal Control Permits. I would ask that we take those separately, in that order, then once we get through those two, we deal with the rest of that package in total. So my motion is that we separate those two, take the bobcat rule first, nuisance wild animal control permit rule second and the remainder of the package third."

Bruno Pigott seconded the motion. Upon a voice vote, the motion carried.

Clark stated "Mr. Chairman, I would also like to move that we withdraw the proposed season for bobcats, which is those amendments to 312 IAC 9-3-18.1. As we all know that is a rather sensitive topic to a number of people. We have heard from you. We appreciate the interest, we always appreciate people getting involved in this process. What we do feel as though we probably need to work more with our constituencies on sensitive rules like this. So, going forward, I will commit to this Commission that if we were to propose a bobcat season, we will do just that, we will engage our constituencies. I would also suggest that if in the future we propose a bobcat season we would send it also to the advisory council first before it makes it to the Commission agenda. So my motion is that as you know Mr. Chairman we have an existing rule on bobcats, which makes the taking of bobcats illegal. So what is on the agenda is altering that rule to put in a season. My motion is that we withdraw that proposed rule from consideration, which would leave the existing rule that prohibits the take of a bobcat in place; and I'm happy to explain it further to any of the Commission members if they need."

Bart Herriman seconded the motion. Upon a voice vote, the motion carried.

Clark stated "Mr. Chairman, I have another motion to make. We have in place a rule, 312 IAC 9-10-11, which is the rule that permits nuisance wild animal control operators. We have proposed amendments to that rule, one of which is to require euthanization of all animals taken under such permit. There are other portions of the rule that are not as sensitive as that particular piece of the proposed rule. So what I'm going to propose Mr. Chairman is that we amend that rule as proposed as follows, under subsection (j)(4) the proposal calls for the following: Notwithstanding subdivision (1), raccoons, Virginia opossums, and coyotes must be euthanized. Part of my motion is that be stricken from consideration today, take that out of the proposed rule. Also as part of my motion I would ask that we insert into subsection (k), which is the subsection that explains that these permits expire on December 31 of the year that the permit is issued. That subsection requires certain records to be maintained by operators. I would ask that another item of record be included in the rule, that is, that the permit holder keep a record of the name and

address of the land owner where each animal was released if that is applicable and under subsection (m), which has to do with the reporting, year-end reporting, add the following under subsection (m)(4), which is in existence to read as follows: the name and address of the landowner, including the county, where each animal was released, if applicable. What I'm proposing is that we strike the language that requires euthanization and insert language that requires permit holders to keep track of the animals that they release and where they release and the property information. I have a copy of the specific language that I would like to put into the record to make it easier for LSA and others, but that is my proposal."

Bruno Pigott seconded the motion. Upon a voice vote, the motion carried.

Clark stated "Mr. Chairman, I have another motion that I would like to make. As you know we have the rest of the package under agenda item 7, contains a multiple of rules and proposals to those rules, within which there are certain references to bobcats. Since we have withdrawn the proposed rule to create a bobcat season I believe we need to address those references to bobcats in the remainder of the package. So I am going to move that we accept the remainder of the package, or adopt the remainder of the package with the exception of the following references to bobcats, and they are as follows under 312 IAC 9-2-3 that is entitled application of this article to wild animal parts. Proposed as an insertion currently is that it would be legal to possess any portion of a bobcat. I believe that needs to be stricken from this proposed rule, as a result again of withdrawing the bobcat season. Additionally, under 312 IAC 9-3-18.4 the rule is entitled possession and sale of badgers. Under 18.4(a) the word 'bobcat or' is currently proposed to be stricken from that rule. I would suggest that they stay in so that the rule reads as it did prior to this meeting. It shall say, assuming my motion is adopted, 'A person must not possess or sell a carcass, hide, or any part of a bobcat or badger unless the person meets one of the following requirements.' Additionally, under 312 IAC 9-10-12, (e), subsection (1), (2), and (3). (e) Its entitled 'A licensed fur buyer must do the following: Not possess the carcass or untanned hide or any part of a bobcat or.' Currently the proposal is to strike 'bobcat or', my motion is to include not striking that so it stays in the rule. Under subsection (e)(2) 'Document the date and method of lawful acquisition of each untanned hide or carcass of a bobcat and.' Currently 'bobcat and' is being proposed to be stricken. I move as part of my motion that actually remain in the rule and under subsection (e)(3) 'Record the date and method of lawful acquisition of each untanned hide or carcass of a wild animal other than a bobcat and badger.' Currently what is proposed is striking 'and method of lawful acquisition' and the words 'bobcat and'. My motion is to not strike those, but have them remain in the rule as is currently the case. So that's a long winded motion that we adopt the rest of the package with the exception of those so stated references to bobcats."

Jensen stated "there's actually two more it appears in 312 IAC 9-3-18.4 (b) and (c), there are also references to 'bobcat or' that were stricken, that would need to be... under 18.4 (b) and (c). You covered (a), but I want to make sure. You covered the reference to 'bobcat or' am I right? Those strike through's are hard to find..."

Clark stated "Mr. Chairman, I would like to amend my motion. In addition, under 312 IAC 9-3-18.4 (b) where 'bobcat or' is proposed to be stricken, my motion is to keep those two words in

that subsection and under (c) the word ‘bobcat or’ are currently purposed to be stricken. I move that those words not be stricken, but they remain in the rule.”

John Wright seconded the motion. Upon a voice vote, the motion carried.

The Chair explained that the proposed bobcat hunting season and the nuisance animal permit amendments were removed from consideration regarding final adoption of the biennial wildlife rule amendment package and clean up some language in the rule package. The Chair said that the Commission will be voting on the approval of the rule amendment package for 312 IAC 9.

Sandra Jensen, Hearing Officer, presented this item. Jensen stated that the Commission granted preliminary adoption to this rule amendment package on September 19, 2017. She noted that the proper notices have been completed and all the requirements have been met. Jensen stated that Indiana Office of Management and Budget conducted a fiscal review and approved of the rule. Jensen stated that two public hearings were conducted in Mitchell, Indiana on March 14, 2018 and in Anderson, Indiana on March 23, 2018 and that the public hearings were very well attended. Jensen noted that more than 2,000 written comments were received. Jensen stated that all of the procedural requirements for the amendments of 312 IAC 9 have been met. Jensen observed that the previously approved revisions to 312 IAC 9-2-3 would take that rule out of the package.

Jensen noted that during the comment period the Division of Hearings received complaints that the on-line comment system was not functioning correctly. She observed that the Division of Hearings staff provided personalized assistance to people who, were then able to provide their comment without difficulty. Division of Hearings staff followed up on all complaints, including some received during the public hearings and were unable to duplicate the problems being reported.

Jensen noted that she didn’t have enough information to make a recommendation with respect to the amendment of 312 IAC 9-2-2, which would allow hunting squirrel from a boat, but in all other respects she recommended final adoption of the proposed amendments to 312 IAC 9.

The Chair noted that there were several people who had requested to speak on the proposed amendments to 312 IAC 9 and asked if there was still anyone who would like to speak now that the rule package has been amended.

Cameron Clark moved to give final adoption to the proposed amendments to 312 IAC 9, the biennial wildlife rule amendment package. Patrick Early seconded the motion. Upon voice vote, the motion carried.

Adjournment

The meeting was adjourned at approximately 11:00 a.m., ET.