BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA

IN THE MATTER OF:

NEW RULE TO ESTABLISH SPECIAL	**)**	
WATERCRAFT AND TEMPORARY	**)**	**Administrative Cause**
STRUCTURE STANDARDS FOR	**)**	**Number 06-154L**
LAKE OF THE WOODS,	**)**	**(LSA Document #07-29(F))**
MARSHALL COUNTY	**)**	

REPORT OF PUBLIC HEARING
AND RECOMMENDATION FOR FINAL ADOPTION

I. REPORT OF PUBLIC HEARING

1. Prehearing Process

During the meeting held on September 19, 2006, the Natural Resources Commission gave preliminary adoption to a new 312 IAC 5-6-6.5 which would authorize the placement of piers and similar structures farther from the shoreline of Lake of the Woods, Marshall County, than is typical for public freshwater lakes. The rule section was intended as an accommodation to the unusually shallow waters that characterize major portions of this lake. In order to provide for public safety in light of the portions of the lake where longer piers would be authorized, the same section would extend a restricted speed zone from 200 feet to 350 feet from the shore.

Lt. Col. Samuel Purvis, in his former capacity as Indiana State Boating Law Administrator, presented the item as recorded in the minutes of the September 2006 meeting:

> 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[, Starke County] rule [at 312 IAC 5-6-3]. 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."
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> 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.

The proposal was then opened for discussion by members of the Commission.

> 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."
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> 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.

A "Notice of Intent" to adopt proposed 312 IAC 5-6-6.5 was posted in the Indiana REGISTER on January 31, 2007 as DIN: 20070131-IR-312070029NIA. The notice identified Lt. Col. Samuel Purvis as the "small business regulatory coordinator" for purposes of IC 4-22-2-28.1. The proposed rule section was identified by Legislative Services Agency as LSA Document #07-29. Analyses of the proposed rule section, as required by IC 4-22-2.1-5 and IC 4-22-2-24(d)(3), resulted in the determination that the proposed rule would not impose requirements or costs on small businesses or regulated entities. No comments were received in response to the "Notice of Intent".

Proposed 312 IAC 5-6-6.5, along with the necessary fiscal impact analysis, cost-benefit analysis, and statement concerning rules affected small businesses, and a copy of the published "Notice of Intent", were submitted to the Office of Management and Budget on February 2, 2007. In a letter dated April 2, 2007 (and received May 25, 2007), Charles E. Schalliol, Director of the Office of Management and Budget, recommended that the proposed rule section be approved.

On June 29, 2007, the NRC Division of Hearings submitted proposed 312 IAC 5-6-6.5 to the Legislative Services Agency along with an "Economic Impact Statement" (which corresponds to the statement concerning rules affected small businesses previously submitted to the Office of Management and Budget). The proposal reflected a site review by the Division of Law Enforcement and was somewhat less ambitious than the original proposal, including less than the entirety of the shoreline. Also, on June 29, the Legislative Services Agency informed the Division of Hearings that LSA's intended date of publication for the proposed rule section was July 11, 2007. On July 3, 2007, and consistent with the intended date of publication, the Division of Hearings provided the Legislative Services Agency with a draft public hearing notification.

The Legislative Services Agency issued to the Commission an "authorization to proceed" with the rule adoption later in the day on July 3, 2007. The issuance also affirmed the intended date of publication as July 11, 2007.

On July 11, 2007, the Legislative Services Agency published a notice of public hearing and the text of the proposed rule amendments in the Indiana REGISTER. In addition, LSA published the "Economic Impact Statement" for the proposed amendments in the Indiana REGISTER as follows:

Economic Impact Statement
LSA Document #07-29

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses
Estimated Number of Small Business Subject to this Rule
The Department of Natural Resources (DNR) estimates that no small businesses would be directly affected by proposed 312 IAC 5-6-6.5. Lake of the Woods is a public freshwater lake, and its waters are managed by the DNR in support of the public trust established by IC 14-26-2.

Estimated Average Annual Administrative Costs That Small Businesses Will Incur
The DNR estimates that there will be no administrative costs to small businesses as a result of compliance with these rule amendments.

Estimated Total Annual Economic Impact on Small Businesses
The DNR researched the area of Lake of the Woods that would be affected by this rule proposal and found no small businesses. Therefore, this rule will have no impact on small businesses as a result of compliance with these rule amendments.

Regulatory Flexibility Analysis of Alternative Methods
The DNR does not propose an alternative regulatory method since the proposal has no impact on small businesses. The DNR did not rely on any studies in its decision not to employ alternatives to the proposed rule amendments.

In addition to the publication in the Indiana REGISTER on July 11, 2007, notice of the public hearing was published in the Indianapolis DAILY STAR (a newspaper of general circulation in Marion County, Indiana) on July 11, 2007; the Plymouth PILOT NEWS (a newspaper of general circulation in Marshall County, Indiana); and, on the statewide calendar for the website of the Natural Resources Commission. The DNR's Division of Law Enforcement also prepared a press release for distribution in the community surrounding Lake of the Woods.

2. Public Hearing and Citizen Comments

A public hearing on proposed 312 IAC 5-6-6.5 was conducted as scheduled in Plymouth, Indiana on August 9, 2007. The hearing officer reviewed the process for rule adoption with members of the general public, and an opportunity was provided to ask procedural questions. In addition to the general public, the following persons attended from the Department of Natural Resources, Division of Law Enforcement, to assist with interpreting the proposal and its potential significance to the community at Lake of the Woods: Major Felix Hensley, Captain Ed Troche, Lieutenant John Sullivan, and Conservation Officer Ashley Jackson. The hearing officer announced the comment period would be held open for two weeks (through August 23, 2007) following the public hearing.

A large aerial photograph of Lake of the Woods was posted at the site of the public hearing. The photograph depicted the shoreline in blue, the statutory idle speed zone adjacent to the shoreline in orange, and the proposed additional idle speed zone in yellow. A copy of the aerial accompanies this report. The hearing officer explained at public hearing that the GPS points referenced in the proposed rule had used NAD'27, which is no longer favored by licensed surveyors and not the version sanctioned by the Commission, but the aerial was consistent with the GPS designations. For purposes of any final rule, he indicated the numerical references would be converted to modern GPS references, using NAD'83, but this conversion would not alter the designation of the idle speed zone as indicated in yellow on the aerial photograph.[1]

A. Public Hearing Comments

The following are summaries of citizen comments received at public hearing:

Joseph Skelton of Lake of the Woods observed that a "300 foot pier, that's a very expensive pier. I don't know how many people on the lake can afford that. I wonder if having the whole zone, somebody could just apply for a longer pier."

The hearing officer responded that his belief was the current statutory structure would not generally allow for a new 300-foot pier. He agreed a rule might be written that would allow for piers of this length, by permit, on an individual basis. For this result to be accomplished, there would need to be accompanying buoy markers to establish restrictive speed limits. If there were only one or two piers requiring extraordinary length, the suggested approach might be feasible. If lengthy piers were to be characteristic of a particular area, individual licensure and buoying might be unwieldy and not significantly different in effect from the rule proposal. "You'd have to think about how to write" a rule as Skelton suggested, and "it might present some enforcement issues."

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[1] Robert Wilkinson, a Land Surveyor Registered in Indiana, who is employed by the DNR's Division of Water, provided technical background with respect to NAD'27 and NAD'83 in an August 6, 2007 email. "Around 1900 the U.S. Coast and Geodetic Survey and their equivalent in Canada had enough triangulation data to adjust all of it together in one adjustment. They call it the North American Datum. As more data became available, they readjusted several more times and appended the year of readjustment to the NAD. The last readjustment of this first original North American Datum was in 1927. It was in use from 1927 to about 1985 when it was officially retired by the National Geodetic Survey. NAD'27 had several deficiencies and the decision was made in the 1970s to replace it with what would come to be called NAD'83. It has a completely different set of constants defining it than the earlier NADs. The ellipsoid used in NAD'27 was developed in 1866. The ellipsoid used in NAD'83 was developed in 1980. It is slightly larger than the 1866 ellipsoid. Since it is slightly larger the same distance in meters north of the equator, [it] falls south of the same distance measured on the smaller surface. On average it is about 705 feet in Indiana." The apparent discrepancy was occasioned when the Division of Law Enforcement converted points established in terms of longitude and latitude to NAD'27, and were accurate for NAD'27, but the rule for final adoption would be stated in NAD'83.

Skelton asked whether buoy markers would be required. The hearing officer responded that to be enforceable on Lake of the Woods, there would have to be buoys that conformed to navigational standards. These standards were developed by the U.S. Coast Guard and are also set forth in Commission rule. "They are white buoys with orange markings."

Skelton asked, "We have to supply the buoys, the state would not supply the buoys?"

The hearing officer responded, "That's a fair question. I don't have the answer to it." He suggested the Department of Natural Resources should follow-up with a response later.

Skelton observed that longer piers are allowed on Bass Lake in Starke County. "The problem they have is riparian owners with piers that run into each other." The hearing officer responded that Skelton's concern was legitimate. Disputes between riparian owners and the placements of piers and other structures in public freshwater lakes is "probably the biggest part of the business" of the Commission's Division of Hearings at this time. Longer piers can aggravate the problem because the potential for intersecting piers increases. The hearing officer said Bass Lake had not, however, been a particularly active site for litigated pier disputes, perhaps because most of Bass Lake's shoreline is relatively straight. Disputes are more common in coves and in artificial channels connected to lakes. The areas suggested for idle speed zones on Lake of the Woods are mostly along long relatively straight shorelines, so there might not be a great increase in this type of problem, but there is a potential for more disputes between riparian owners as piers lengthen. These same concepts were applicable whether a routine pier was authorized under a general permit or a pier requiring an individual DNR permit, such as a group pier.

Joe Skelton asked whether a rule could be eliminated if it approved ineffective or counter-productive. The hearing officer responded, "Yes, it could be repealed or modified through exactly this same process." [Joseph Skelton provided supplemental comments by email, and these are set forth later in this Report.]

John Oswald of Lake of the Woods stated that "he was instrumental working with the [property owners'] association and getting Lt. Sullivan out there to really start the process, the problem being there are a lot of lengthy piers…. A lot of homeowners in that [proposed eastern restrictive boating] zone already have 175 foot or longer piers. Now, to preserve the opportunity of the potential for a recreational lake, the longer piers are essential for them to recreate with speed boats. You need the depth to get the lift in so you can get the boat off the lift. I'm all for the proposal for the 300 foot rule…. Also, the issue is safety. Running along that area, there are such shallow areas where there are some pretty good sized rocks sticking up. I think that will really help to cut down some of the boat damage."

In responding to comments urging that a zone not be established on the south end of the lake, Oswald said he agreed that western half of the zone was possibly unnecessary, but

he recommended that it be approved for at least the eastern half along the south end. He said, "I know there are some extended piers" in the eastern half with a sand bar into the lake.

Tom Rzepka of Lake of the Woods said he thought the rule proposal was "right on" with respect to the proposed idle speed zone along the eastern shore of the lake. With respect to the zone proposed along the south shore, however, "I don't think you have any need for it at all. I don't think it makes any sense."

Rzepka recommended that the Commission consider starting a new rule adoption process to establish three "ecozones" to restrict boating operations. One would be in the south. "The one that scares me most though, as far as a safety concern," however, would be out from a ditch entering a bay on the west side of the lake and near its center north and south. The third would be on the northern end of the lake.

Bill Reest of Lake of the Woods stated, "I grew up on the lake. I'm 75 now, and I'm interested in just seeing what this is all about. I'd like to know who is going to enforce this." Reest said "you don't see Conservation Officers on the lake."

The hearing officer responded that any state law enforcement officer with jurisdiction over the geographic area could perform enforcement. These would typically include the Indiana State Police Officers, the Marshall County Sheriff and his Deputies, and DNR Conservation Officers. In some jurisdictions, Deputies Sheriff take a major role in law enforcement on lakes. On Lake of the Woods, as a practical matter, most enforcement would probably be performed by Conservation Officers. The hearing officer said Conservation Officers are probably on the lake more than Reest realized but probably not as much as Reest would like or they would like. The resources of Conservation Officers are sorely stretched.

Marvin Houin of Lake of the Woods said he owns real estate on the south side and on the west side of the lake. He said he agreed with Tom Rzepka that an idle zone was unneeded on the south end. A boat channel within the lake provides adequate access to persons on the south end.

Houin asked whether a topographic map of depths of the lake was reviewed prior to establishing the proposed expanded idle speed zones. Lt. Sullivan responded that he was uncertain because the Conservation Officer who prepared the proposal was on vacation and currently unavailable, but he would follow-up and subsequently provide an answer.

Houin asked how many buoys would be placed to identify the idle speed zones. The Department of Natural Resources indicated it would review this question and provide a subsequent response. The hearing officer added that if Houin had a suggestion as to the density of buoys, he would place the suggestion in the report to the Natural Resources Commission. Houin responded, "I'd say maybe every 500 feet."

Sue Ferrell of Lake of the Woods said she and her family lived along the shoreline on the east side of the lake. She said the property was near the center of the proposed expanded idle speed zone along the eastern shore, and the area of the lake adjacent to this property was particularly shallow. She expressed general support for the rule proposal but concerns her family's pier might exceed 300 feet long. Farrell said she hoped a rule could be approved by the Commission in a way that would help her and her neighbors without excessively impeding boating activities on the lake. [Sue Ferrell provided supplemental comments by email, and these are set forth later in this Report.]

B. Written Comments (August 1 through August 23, 2007)

The following are the substantive portion of written comments (including email comments) received from August 1 through August 23, 2007, the final day set for the receipt of comments:

Kim and Carol Hochstetler of Lake of the Woods sent an email dated August 1, 2007:

> We write this letter with great concern over the request to allow piers to built up to 300 feet from shore at Lake of the Woods. Granting this request would jeopardize the safety of lake users and limit lake usage overall. Lake of the Woods is a public lake with hundreds of residents and thousands who enjoy it for recreational use each year.
>
> The gravest problem with extending the pier limit is the safety of those living with the pier. Currently, numerous residences with piers have buoys and/or rafts anchored at distances further from the shore than their pier length. Children, and even adults, swim and play in this area; in general, many lake users swim beyond the length of their pier. With a 300-foot long pier, it is very probably that children will play up to another 100 feet past the pier; this they would be swimming up to 400 feet from shore. This puts them at greater risk for being in the path of motorboats. On weekends and holidays, many motorboats with drivers of various ranges of experience are on the water. Whether it is a veteran lake user accustomed to driving a typical path at a legal distance from shore or an inexperienced driver not watching with extra care, a boater could more easily hit those swimming at such a distance from shore. Extending piers only encourages people to swim farther from shore, increasing the risk of accidents.
>
> Another problem with permitting piers to extend to 300 feet is the amount of lake available for all to use. If an extension does benefit anyone, it is only those you reside from where the pier extends. Consequently, all other lake users will be limited in what they can enjoy at Lake of the Woods. Legally the pier may be "public," but de facto the use is private while the result is a reduction in lake area for public use. The 300-foot pier allowance could substantially reduce the amount of lake available for fishers, boaters, water-sports enthusiasts, and others. For a public lake, such an ordinance would unfairly benefit only a few while limiting the greater public good.

> Finally, even on an individual basis, such a drastic pier length is unnecessary. Several types of boats, including inboards, jet boats, jet skis, pontoons, and non-motorized boats, can go across 2-foot deep water. The Lake of the Woods is a natural lake; thus the depth and drop-off from shore are not constant for each lake property. Nevertheless, the lake is public and its rules should protect and benefit all who use it. Keeping the pier-length regulation as is best serves the recreational and safety needs of all lake residents and users.

Gerald Sus of Lake of the Woods sent an email dated August 6, 2007:

> My name is Gerald Sus. I have a home on Lake of the Woods. I am very much in support of the new rule on dock length. Without this rule I may as well have a home off the lake. Taxes are $1000 cheaper off the lake and without this rule I do not reach 2.5 ft of water for 200 ft. I feel the rule should be measured at summer pool for 3 ft. not winter pool. In light of the fact that we do not get access to the Indiana full boating season we have a good chance of never seeing summer pool since the dam does not get closed till May 15. Please support our position as without this change we are being unfairly taxed and not given access to the lake in the same way as the majority of Indiana lakes. Thanks for you support on this matter.

Rick Farrell of Lake of the Woods sent an email dated August 10, 2007:

> Yesterday, during the Lake of the Woods "dock length"… [rule proposal] meeting in Plymouth, my wife Sue Farrell spoke on my behalf. She related my statement that our dock is presently "300" feet in length and requires an additional 30 feet in length to reach 3 feet in water depth. At home that evening, she expressed the comments of other residents present at the meeting that I was in error in my measurements.
>
> I subsequently used a tape measure and re-measured the dock distance. To my embarrassment, I determined I indeed was wrong! Our dock is "265" feet in length and requires and additional 30 feet in length to reach a 3 foot water depth. A total of 295 feet!
>
> I apologize to you, the meeting attendees, and my wife, for my miscalculation.
>
> Sue and I are 100% in support of the pending 300 foot dock length ordinance!

Sue Ferrell of Lake of the Woods sent an email dated August 17, 2007, which said in substantive part: "Yes, I do support the rule proposal and our pier does not exceed the 300 feet."

Joseph Skelton of Lake of the Woods sent an email dated August 19, 2007:

> In regards to creating a 300' pier rule for Lake of the Woods, Marshall County, I feel it is just a band aid solution to pacify a few residents and make the DNR look as if they are doing something for Lake of the Woods.

> The real solution is giving us back our 12" of water or at the very least giving us the dates other lakes have and what we had prior to 1986 (prior to 1986 they opened the dam on November 15th and that was OK with the local farmer). Changing the dates as to when we open and close the dam will solve the pier length problem and not cost anyone anything. Right now we open the dam on September 15th and close it on May 15th, which only gives us four months (even less if you factor out that it takes two weeks to reach the normal lake level). The recreational season for Indiana is April 1st to November 1st.

Later on the same day, he wrote:

> I feel that the plan Conservation Officer Kaser developed should stay intact. At the hearing it was debated to remove parts of the south end of Lake of the Woods from the rule. Officer Kaser was not present to defend his plan, but I know he put in a lot of time, thought and work surveying the area. I am sure the residents in that area would like to extend their pier out further if need be. I know the area is very shallow and has a lot of rocks. Residents in this area already put their own flags out marking the rocks and shallow area. The farmer who said he owns a lot in this area does not own property on the lake and has not been on the lake in years. He stated at other hearings he does not go on the lake because there are too many boats. Others looked at it from a fishing boat stand point rather than a speed boat pulling a skier stand point.
>
> Eliminating this southeast area from the rule could prove to be a big safety hazard for boats. For this reason, I feel, it should remain included in the Pier Rule.

Maynard and Louise Hochstetler of Lake of the Woods wrote in a letter mailed on August 20, 2007:

> We are greatly concerned over the recreational changes proposed for the Lake of the Woods. As a lakeshore property owner and warm-season user of the lake since 1962, we are opposed to the proposed changes for the following reasons:
>
> 1) Lake of the Woods is a public access lake. The rules of the lake should be consistent with other Indiana public access lakes. Different rules for certain lakes would be difficult for the DNR to police and difficult for the public to know.
>
> 2) A large majority of the property owners would not extend their piers beyond normal length. A few 300-feet piers (the length of a football field) would be a lake hazard to both the piers and the boats. It's an accident waiting to happen.
>
> 3) None of the boats currently on Lake of the Woods need 3 feet of water to get across. Inboards, outboards, inboard/outboards, fishing, and sailing boats can operate safely at slow speeds in 2 feet of water.

> 4) The proposed 350 feet from the shore at idle speed would force the boat traffic into a much smaller and congested area. We cannot imagine dropping skiers and tubers 350 feet from shore. Someone would be sure to get hurt.
>
> We do not need special operating rules for a few recent newcomers to the lake. They knew the rules and characteristics of the lake before they located there.
>
> In closing, we ask that you keep the pier length and speed regulations as at present, thereby providing the safety and recreational needs of all lake residents and users.

C. Response to Public Comments by Division of Law Enforcement

Major Felix Hensley, Indiana State Boating Law Administrator, provided responses to citizen comments by email dated August 24, 2007. These stated in substantive part as follows:

> Officer John Karris collected the coordinates for the establishment of both of the special zones in question. The criteria he used in the creation of these zones were those areas of the lake where it was at least 300 feet from the normal shoreline to 3 feet of continuous water. The two proposed special zones were the only locations on Lake of the Woods where those criteria were met. These proposed zones will enable the residents in those areas to utilize temporary piers out to 300 feet to obtain sufficient water depth for watercraft operation. Then an additional 50 feet was added to create an idle zone from the normal shoreline out to 350 feet for navigational and public safety. Beyond the 350 foot distance is the high speed area of the lake in these proposed zones.

Major Hensley observed that most citizens who commented were supportive of the proposed zone along the eastern side of Lake of the Woods, but support was more problematical along the southern side. For this reason, Conservation Officer John Karris, Lieutenant John Sullivan, and he gave a second look to the proposed southern idle speed zone.

> The Law Enforcement Division endorses maintaining the southern zone as proposed in the rule for the following reasons.
>
> > 1) Total elimination of the proposed southern zone would leave some existing unlawful piers in the eastern portion of the southern zone. Total elimination of the southern zone would leave us exactly where we started before the proposed rule in this area. The water is too shallow for the normal 150 foot pier to reach sufficient water depth for those residents. The creation of the proposed zones makes allowances for those piers in existence, which are longer than 150 feet.

2) Elimination of the western portion of the southern zone would deny the residents in that area of Lake of the Woods the same rights we are giving the others affected by the creation of this rule. Information at the public hearing indicated there was an existing channel where the water depth was 5 feet or possibly deeper in an area close to the shore on the western side of the southern zone. There was concern voiced at the public hearing that the creation of this zone might cause the channel to be blocked by the placement of a temporary pier. Currently, any resident could lawfully place a temporary pier in this area to a distance of 150 feet which would block the existing channel. If that occurred we would find ourselves exactly where we are now, with the residents in the area asking for exactly what this proposed rule will give them. In addition, there are very valid navigational and public safety based benefits for approval of the proposed rule as written. Numerous residents at the public hearing spoke of the shallow water and large exposed rock that exist in the area created by the proposed southern zone. Under current statute (14-15-3-7) boaters are prevented from operating their watercraft at greater than idle speed at a distance less than 200 feet from shore. The distance greater than 200 feet from shore is a lawful high speed operation area. The area in question at Lake of the Woods contains large exposed rock in an area greater than 200 feet from shore, which is currently a high speed area. Boaters can lawfully tow skiers or tubers in this area. The local residents have attempted to mark these hazards by the placement of PVC pipe near the rocks. The implementation of the southern zone as proposed would extend the idle zone area out to a distance of 350 feet from shore which would encompass most if not all of the navigational hazards in this area according to Officer Karris. It is our belief this is a very important benefit of the proposed rule.

Major Hensley also spoke to the subjects of purchasing and placing the buoys.

Another point of conversation was who would be responsible for providing and the placement of buoys for the proposed zones. At this time, the Law Enforcement Division will commit to providing a reasonable and adequate number of buoys for the establishment of the proposed zones. The placement of the buoys must be accomplished by someone else, possibly the Lake of the Woods Homeowners Association might assume that responsibility. Due to the vast responsibilities given to Law Enforcement Division Officers, they simply cannot commit to the buoy placement.

II. RECOMMENDATION FOR FINAL ADOPTION

The Natural Resources Commission is authorized to adopt rules for boating safety under IC 14-15 (sometimes called the "Boating Code") and for pier placement in a public freshwater lake under IC 14-26-2 (sometimes called the "Lakes Preservation Act"). In 2006, the Indiana General Assembly enacted an amendment to the Lakes Preservation Act directing the Department of Natural Resources to coordinate regulatory activities under IC 14-15 and IC 14-26-2. Licensure under the Lakes Preservation Act is to consider the "management of watercraft operations under IC 14-15." IC 14-26-2-23(c)(4). Even before the enactment of this legislation, however, the Commission adopted a rule for Bass Lake in Starke County which coordinated longer piers and an extended "idle speed" zone (formerly a ten-mile-per hour speed zone) where the shoreline was characterized by shallow waters. Proposed 312 IAC 5-6-6.5 would function similarly for Lake of the Woods, although as finally envisioned, the rule section would apply to only a portion of the shoreline. The rule for Bass Lake applies to the entirety of its shoreline. There is clear legal authority for the current rule proposal.

Whether the Commission should adopt 312 IAC 5-6-6.5 for Lake of the Woods in Marshall County is a policy question. The portion of the proposal that would apply to the eastern shore of the lake enjoys broader public support than does the portion that would apply to the southern shore. In both instances, however, the Division of Law Enforcement has stated an appropriate legal justification. With conversion of the GPS numerals from NAD'27 to NAD'83, the rule is presented to the Commission for consideration as to final adoption, as published for preliminary adoption, and as set forth in Exhibit A.

Dated: August 31, 2007

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Stephen L. Lucas, Hearing Officer
Natural Resources Commission

EXHIBIT A

Final Rule
LSA Document #07-29(F)

DIGEST

Adds 312 IAC 5-6-6.5 to govern special watercraft standards and the placement of temporary structures on Lake of the Woods in Marshall County, to approve, on designated portions of Lake of the Woods, temporary piers and boat lifts for as long as 300 feet from the shoreline or water line, as otherwise provided under 312 IAC 11, and, for those locations, the idle speed limit for watercraft is extended to 350 feet from the shoreline or water line, and the defined term "shoreline or water line" is made specific to the legal elevation of Lake of the Woods during the primary boating season. Effective 30 days after filing with the Publisher.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

312 IAC 5-6-6.5

SECTION 1. 312 IAC 5-6-6.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 5-6-6.5 Lake of the Woods; special watercraft zones and temporary structure standards

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-2-26-23
Affected: IC 14-15; IC 14-26-2-4

Sec. 2. (a) Notwithstanding 312 IAC 11-3-1(b)(5), a temporary pier or boat lift is authorized on Lake of the Woods in Marshall County by a general license under IC 14-26-2 if the structure conforms with both of the following:
(1) Satisfies 312 IAC 11-3-1(b)(1) through 312 IAC 11-3-1(b)(4), 312 IAC 11-3-1(b)(7), and 312 IAC 11-3-1(b)(8).
(2) Extends not more than either of the following:
(A) One hundred fifty (150) feet from the shoreline or water line and satisfies 312 IAC 11-3-1(b)(6).
(B) Three hundred (300) feet from the shoreline or water line and does not extend over water that is continuously more than three (3) feet deep at either of the following locations:
(i) From a point at the shoreline or water line at 16 T 0564236 UTM 4587255 clockwise to a point at the shoreline or water line at 16 T 0564816 UTM 4585984.
(ii) From a point at the shoreline or water line at 16 T 0565073 UTM 4585166 clockwise to a point at the shoreline or water line at 16 T 0564606 UTM 4585044.

(b) A person must not operate a watercraft in excess of idle speed within three hundred fifty (350) feet of the shoreline or water line for the areas identified in subsection (a)(2)(B).

(c) As used in this section, "shoreline or water line" means the line formed under IC 14-26-2-4(1) at eight hundred three and eighty-five hundredths (803.85) feet, National Geodetic Vertical Datum of 1929 (NGVD-29).
(Natural Resources Commission; 312 IAC 5-6-6.5)