

NATURAL RESOURCES COMMISSION

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

Minutes of September 18, 2007

MEMBERS PRESENT

Bryan Poynter, Chair
Jane Ann Stautz, Vice Chair
Robert Carter, Jr., Secretary
Richard Mangus
Mark Ahearn
Damian Schmelz
Brian Blackford
Patrick Early
Doug Grant
Lawrence Klein
Mary Ann Habeeb
Robert Wright

NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas
Sandra Jensen
Jennifer Kane
Debra Michaels

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

John Davis	Executive Office
Ron McAhron	Executive Office
Shelley Reeves	Executive Office
Adam Warnke	Executive Office
Ryan Huff	Executive Office
Linnea Petercheff	Fish and Wildlife
Gregg McCollam	Fish and Wildlife
Thomas Flatt	Fish and Wildlife
Steve Hunter	Law Enforcement
Felix Hensley	Law Enforcement
Steve Morris	Outdoor Recreation
Phil Bloom	Communications
Laura Minzes	Indiana State Museum and Historic Sites
John Bacone	Nature Preserves

GUESTS PRESENT

Jeff Hammond	Bob McAdams	Justin Schneider	Don Coleman
Tim Rose	Tim Julien	Todd Sellers	Lynn Dennis
Ron Hellmich	Jim Girot	Paul Brooker	

Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 3:02 p.m., EST, on September 18, 2007 at The Garrison, Fort Benjamin Harrison, 6002 North Post Road, Indianapolis, Indiana. With the presence of all twelve members, the Chair observed a quorum.

Damian Schmelz noted an apparent typographical error on page six of the July 17, 2007 Commission minutes. The last sentence in the fourth paragraph reads, "The Commission's mission is linked to the DNR's, but the two are not identities". He said the word "identities" should be amended to read "identical".

Lawrence Klein moved to approve the minutes of July 17, 2007, including Schmelz's proposed modification. Doug Grant seconded the motion. Upon a voice vote, the motion carried.

The Chair recognized Mary Ann Habeeb, proxy for IDEM Commissioner, Thomas Easterly.

Report of the Director and Deputies Director

Ron McAhron, Deputy Director, Bureau of Resource Regulation reported that Dr. Paul Finkelman, from Albany, New York, would present his talk on "Slavery, the Courts, and the Underground Railroad" in the Indiana State Library's Great Hall on November 15, 2007, 7:00 p.m. to 9:30 p.m. The session is offered as part of the *Spirit and Place Festival: A Civic Collaboration of Arts, Religion, and Humanities*. Finkelman "is a noted scholar in the area, and I think it's a real good opportunity for us to understand a little bit more about Indiana's history." Information on the event can be found on the Indiana Division of Historical Preservation and Archeology website at: http://www.in.gov/dnr/historic/event_talk.html.

Report of the Natural Resources Advisory Council

Patrick Early, Chair of the Natural Resources Advisory Council, reported that the Advisory Council's August meeting consisted of three main agenda items. The first item involved an "ongoing discussion" concerning various riparian issues and rights pertaining to piers. Early said the Advisory Council formed a work group to develop a single document that could be referenced to better understand how the DNR and the NRC would determine the boundaries of riparian zones. "It's just a group right now that's going to get together and discuss what the issues are, what appear to be the problems, and what we think possible solutions might be."

Early said the second item on the agenda involved a presentation from the Division of Law Enforcement concerning the illegal taking of paddlefish from the Ohio River and the value of paddlefish roe. "This was somewhat in preparation for what may become an emergency rule that deals with what can and cannot be done in terms of snagging and mutilating the fish while they're still alive" to check for the presence of roe. The value of the paddle fish roe "has become pretty amazing.... It's really a pretty wide-spread problem that threatens to wipe out our paddlefish." The Chair reported that Director Carter has since approved a temporary rule.

Early said the third agenda item considered extending the raccoon-dog running season. Presently there is a 20-day "blackout period" on both the front end and back end of the taking season. "Originally it appears that the purpose of the blackout was to discourage hunting prior to the season and immediately after the season. The rest of the year dogs can be run even during the

parts of the year that do not involve the taking of raccoons.” Due to plummeting prices of raccoon pelts, raccoon populations have “sky-rocketed. There appears to be no biological reasons for that blackout to occur.” Early noted some of the sportsmen’s groups believed they would be affected and voiced their concerns “on the blackout being lifted.” There was “really no proposal on the table from DNR. There was no proposed rule. It was really trying to determine what the opposition or the support might be.” Early said, “We learned there seems to be significant enough opposition that we sent [the proposal back] to the sportsmen groups to first try to work out any differences...before we look at it further in our fish and wildlife area.”

Update on Commission and Committee Activities

The Chair introduced this item. He reported that the Division of Hearings would be relocating its office, and he deferred to Stephen Lucas for additional information.

Lucas reported the NRC’s Division of Hearings is “currently an island within DNR. We have high walls, but we are supposed to be adjudicating” the propriety of orders from the DNR. The physical proximity of the Division of Hearings to the DNR is not always welcomed by the affected citizens or their attorneys. He noted the Indiana State Bar Association’s Environmental Law Section has for years been “encouraging us to be physically somewhere else. That encouragement has now reached a level of apparent fruition.” He said the Division of Hearings would be sharing space with the Office of Environmental Adjudication, which handles the IDEM adjudications, and the State Employees Appeals Commission. The new offices would be located on the 5th Floor of the Indiana Government Center North.

Consideration of Proposed Mission Statement for the Natural Resources Commission; Administrative Cause No. 07-135X

The Chair introduced this item. He said the item was “tabled” at the last Commission meeting “in hopes that we would have additional time for comments and time for reflection.” The Chair indicated a slight modification was made to the proposed mission statement contained in the Commission’s packet. He circulated the modified statement to Commission members. He thanked Commission members for their comments and suggestions. “Simply stated, it’s a mission statement that reflects the work of the Natural Resources Commission.”

With modifications, the mission statement would provide as follows:

The mission of the Natural Resources Commission is to provide leadership in the responsible management and use of the natural, cultural and recreational resources of Indiana, consistent with directives made by the Governor and the Indiana General Assembly.

The Commission is committed to the following:

facilitating receipt of professional opinions and comments from the public at large for incorporation into decision-making responsibilities;

overseeing a dispute resolution process fully capable of rendering full and fair determinations of disputes when necessary, but which also encourages parties to reach resolution through mediation when appropriate;

in coordination with the Director, developing policy for the management of the activities and facilities of the Department of Natural Resources; and

directing the development of rules and nonrule policy documents that clearly and faithfully implement statutory pronouncements.

Damian Schmelz moved to approve the Mission Statement of the Natural Resources Commission as modified. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of the development of biographies of members for inclusion of the Commission website (<http://www.in.gov/nrc/>)

The Chair presented this item. “This is something that I hope we’re trying to add more substance” and “more human dimension” to the Commission’s website. The Chair noted a picture of Commission members was added to the website. “What we would like to do, or what I would like to do in recommending is to put words behind the faces, if you will...asking the Commission members to add a little bit of their personal biographies.” The Chair explained that a “formal vote” by the Commission was not necessary. “I’d just like to see if you felt, as fellow Commissioners, if it would be something that you would participate in if asked to do so for our website and for the purposes of having the public know who we are.”

Jane Ann Stautz commented, “I think it’s a good idea. I’m very comfortable with providing the information.”

The Chair asked Steve Lucas to draft a “simple question” template for the Commission Members to complete and provide to Jennifer Kane prior to the next Commission meeting.

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

Mark Ahearn asked the Chair, “Might I make a recommendation for something for the” Advisory Council? The Chair invited Ahearn to proceed. Ahearn explained that during the AOPA meeting, “there was a matter that turned on the single question of a cumulative effects analysis. It was a challenging record to work through.” He referenced IC 14-28-1-22(f) governing permits for construction in a floodway, and he requested that the Advisory Council review “what sort of analyses the Department should do. I think that would be helpful. It requires some thinking, working through it, and considering the alternatives.”

The Chair said, “That seems appropriate.” He asked whether Jane Ann Stautz, Chair of the Commission’s AOPA Committee, had additional comments. Stautz responded, “We’re very supportive of it. And, again, we probably anticipate additional cases to come before the Commission as it relates to construction in a floodway and the cumulative affects analyses. Based on some of the guidance that we had in this case and others, there will be an opportunity to look at providing some structure and some guidance to the Department.” Bryan Poynter replied, “I think that’s an excellent recommendation from the AOPA Committee.”

Mary Ann Habeeb added, “I think one additional thing that we were interested in seeing was the record that the Department had developed with regard to cumulative affects, in addition to the

analysis and any guidance with regard to decision making along that line, but also the administrative record that would be available to demonstrate the analysis.”

Deputy Director Ron McAhrn volunteered to work with the AOPA Committee on the development of standards for a cumulative affects analysis.

The Chair added, “I think it’s a great recommendation from the Chair and from the AOPA Committee to work with you as the Deputy Director, and I’m referring that to Chairman Early. From this Chair’s perspective, the Advisory Council is working flawlessly.” The Chair thanked the Advisory Council and the AOPA Committee for their work and recommendations, and he asked if there were any other recommendations from any other Commissioners.

Commission Member, Larry Klein, asked for clarification on what was being recommended by the Commission to the Advisory Council for consideration. “I’m missing the nature of what it is.”

Jane Stautz explained that when dealing with construction in a floodway, there is a requirement that cumulative affects be considered prior to the issuance of a permit. “It’s a little gray as to how to conduct that cumulative affects analyses, the steps that should be taken, and what all should be taken into consideration as well as the type of documentation that you’d want to see, whether it be the Department records or records before us as far as a summary analysis of that determination.”

Mark Ahearn added, “To the extent that the Department doesn’t maybe have some boundaries in how it proceeds in its statutory requirement, it’s an open invitation to an aggrieved party to appeal a permit decision.” He said clarification is needed.

Klein asked, “Ultimately, the Commission is responsible for issuing a permit for construction in a floodway?” Steve Lucas responded the Commission is responsible for writing rules for the Department, as well as for deciding adjudications pertaining to the administration of its laws. Among the laws where there are both Commission rules and Commission adjudications is the Flood Control Act. The Commission is responsible for Flood Control Act rules, and the Commission is responsible for Flood Control Act adjudications. The Commission does rule adoptions through the entire board and has delegated adjudications to its administrative law judges and to the AOPA Committee. The Commission does not issue floodway permits, but the Commission’s ALJs and AOPA Committee adjudicate disputes regarding floodway permits.

Mary Ann Habeeb added, “I think any time the Commission can do something to make standards more clear for the public to know what is expected of them, and for staff to know what is also expected of them, I think we go a long way toward doing the right thing. It’s basically a statutory mandate” that the cumulative affects “evaluation be done.”

Stautz observed, “It’s quite common that we’re seeing some of these riparian rights cases and pier disputes. We would also want in that discussion to take into account appropriate set-back policies, and maybe have some documentation around the rationale, because of safety considerations and public access rights to public freshwater lakes. There was some discussion on whether it’s a five foot or a ten foot set-back. Some guidance around that would also be helpful.”

Habeeb added, “I think it’s just a matter of understanding what the guidelines are and the rationale behind it in how those decisions are made so that the public can be put on notice as to what those are, so that when or if there is a determination, as to whether to appeal something or how to handle it, then they know.”

The Chair commended the AOPA Committee and the Commission Members for their work and reports.

The Chair reiterated the invitation of Commission members to suggest additional items for the Advisory Council. “As always, we welcome those, whether it’s at this forum or otherwise.”

PERSONNEL ACTION Division of State Parks and Reservoirs

Consideration of personnel interview for the position of Property Manager at East Fork State Fish Hatchery, Montgomery, Indiana.

This Chair reported this item withdrawn.

Consideration of personnel interview for the position of Assistant Property Manager at Brookville Lake (Brookville, Indiana) and Whitewater Memorial State Park (Liberty, Indiana)

Larry Klein, Chair of the Commission’s Personnel Committee, stated, “We have two very good candidates for consideration of the Commission.” He then deferred to Dan Bortner, Director of State Parks and Reservoirs, to provide additional information.

Bortner recommended Amanda Tikkanen for the position of Assistant at the Brookville Lake and Whitewater State Park property. Bortner said that Brookville Lake and Whitewater Memorial State Park, “while different from a management process, they are close enough in proximity that we managed them with the same management team.” He noted that Tikkanen would be the assistant primarily working at Whitewater Memorial State Park. Bortner informed that Amanda Tikkanen has been employed at Pokagon State Park since 2003 as a wastewater treatment operator.

Amanda Tikkanen stated that she graduated from Eastern Michigan University in 2003 with a degree in recreation park management. She began employment with the DNR at Pigeon River State Fish and Wildlife Area in October 2003, as an intermittent for five months, then a full-time laborer at Pokagon State Park, and most recently as a sewage disposal plant operator.

Lawrence Klein recommended the temporary appointment of Amanda Tikkanen as Assistant Property Manager at Brookville Lake and Whitewater Memorial State Park. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

Consideration of personnel interview for the position of Assistant Property Manager of Mounds State Park (Anderson, Indiana) and Fort Harrison State Park (Indianapolis, Indiana)

Dan Bortner presented this item. He recommended the temporary appointment of Nicole Thiele as Assistant Property Manager for Mounds State Park and Fort Harrison State Park. He said Thiele is currently a park manager with Florida State Parks, where she held several positions in properties in southwest Florida.

Nicole Thiele said she is a Florida native and obtained a degree in Environmental Science and Policy from University of South Florida, Tampa. She was employed as an intern with the Florida Park Service in 2005, and then hired at Other Personal Services (OPS) as the Administrative Assistant. She was later employed as a museum guide at Gamble Mansion Historic State Park and was subsequently a Park Ranger at Lake Manatee State Park.

The Chair thanked both candidates for their “willingness to assume these new responsibilities. We are obviously very familiar with Pokagon having had our last Commission meeting there. We were treated very well, and it’s just a wonderful property.”

The Chair asked Thiele to describe the amenities of Mounds State Park. Bortner introduced James Davis, the Property Manager at Mounds State Park to provide further information.

James Davis said that Mounds State Park contains approximately 300 acres on the northeast side of Anderson. “Historically, we were one of the smallest state parks, about one tenth the size of most of the other state parks.” He noted that “close to” 400,000 people visit the park in any given year. Davis said there are camp grounds, and a pool, which is in the process of a “very nice” renovation. He said the pool’s grand opening may be scheduled for 2008 Memorial Day Weekend. Davis said the primary attractions at Mounds State Park are the Native American earthwork complexes (religious and ceremonial sites). These date back to 250 B.C. to 160 B.C. The sites were “very important to the Adena and Hopewell cultures.” James invited the Commission members to visit the property. “We’re very proud of ‘Little Ol’ Mounds’, as it gets called.”

The Chair added, “If you’re a parent to a fifth-grader, like I am, who are studying those cultures, I used our reference there. We camped there two years ago. At the time, she had no clue what she was looking at, but we’ve made it a little more personal with our visit. It’s a great place.”

Larry Klein moved to approve the temporary appointment of Nicole Thiele as Assistant Property Manager at Mounds State Park and Fort Harrison State Park. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

The Chair thanked the appointees and said, “We look forward to your long tenure. Thank you for coming today.”

DIVISION OF NATURE PRESERVES

Consideration of the dedication of Whippoorwill Woods Nature Preserve, Brown County

John Bacone, Director of the Division of Nature Preserves, presented this item. He said the Whippoorwill Woods Nature Preserve “is a fairly large property” by nature preserves standards. “It’s a large track of forested land located adjacent to Camp Atterbury in Brown County.” The

proposed nature preserve contains a number of rare species and has “some high quality” forest communities that range from the “dry on top of the slopes to mesic in the ravines.”

Bacone said the property was given to the DNR over a period of 25 years by two sisters, Jean Vietor and Suzanne Rodgers. “They started this in 1982, with a gift of about 80 acres to The Nature Conservancy, and continued the giving over the last 25 years with the final gift being completed just this past year.” The Department used Indiana Heritage Trust funds to purchase one track of land, “which gives us better access” to a road in the northwest corner. Since the tract was gifted “another valuable spin-off is that this was able to be used for Land and Water Conservation Fund Grant for one million dollars.” The funds were used to buy other tracts of land “scattered around” the state. “This is an amazing gift that really got enhanced.” Bacone recommended the dedication of Whippoorwill Woods Nature Preserve.

Damian Schmelz moved for the approval of dedication of the Whippoorwill Woods Nature Preserve in Brown County. Patrick Early seconded the motion. Upon a voice vote, the motion carried.

Jane Ann Stautz asked whether there had been any “recognition or appreciation” to the sisters who donated the land for the Whippoorwill Woods Nature Preserve. Bacone replied, “I think it would be wonderful if the Chair wanted to write a letter and thank them. This is a pretty amazing gift. I’d be happy to get you some information about that.”

Chair Poynter asked Bacone whether the Department, historically, had a formal recognition process regarding gifted tracts of land. Bacone answered that Jean Vietor and Suzanne Rodgers were invited to the meeting today, but they had previous engagements. “Sometimes there is a public ceremony at the site, but they were not really interested in receiving that much fanfare. And, actually, the access and so on would make that pretty difficult.”

Klein asked whether Vietor and Rodgers were previously acknowledged for their donations. Bacone replied that the sisters have been recognized in The Nature Conservancy’s newsletter. Klein also asked if the sisters had ever been nominated for a national award. Bacone replied that he was not aware of any national award being presented regarding the donations. Bacone noted that Jean Vietor had painted “really great water colors of birds and flowers which have received awards in competitions throughout the Midwest.”

The Chair thanked Jean Vietor and Suzanne Rodgers for their “generous gift.” He said on behalf of the Commission, a letter of appreciation would be sent to them.

DIVISION OF INDIANA STATE MUSEUM AND HISTORIC SITES

Consideration of request for recommendation for final approval the conveyance of Pigeon Roost Memorial Site to Scott County for use as a county park

Laura Minzes, Deputy Director, Historic Sites and Real Estate, Indiana State Museum, presented this item. Minzes explained the conveyance request began in March 2007. Bob McAdams, Executive Director of the Scott County Visitors Commission, contacted her to ask permission to work at the Pigeon Roost Memorial Site “because the site is unmanned by Historic Sites staff.” She said his permission request later led to a request to transfer the property to Scott County,

which in “our opinion is an ideal situation, because it all boils down to the care and preservation of the site.”

Minzes suggested this approach would be similar to the transfer of Tippecanoe Battlefield from the State to Tippecanoe County for use as a county park. Minzes reiterated “It all boils down to the care and preservation of the site, and that’s what we’re most interested in.” McAdams has been able to “marshal and organize” different local groups to perform maintenance work at the property since March, and the property “has come a long way” in the past six months. Minzes indicated that she has been monitoring the progress of the property. She said McAdams was present and wished to provide support for the property transfer.

Bob McAdams thanked the Commission for considering Scott County’s request for transfer of Pigeon Roost Memorial Site. He said he was a descendent of two of the families from Pigeon Roost. The Pigeon Roost Memorial Site was on one of the Scott County driving tours. “As we considered the reprinting of the driving brochure, one of my board members said, ‘We shouldn’t include that site, because it doesn’t look very good anymore.’ And, somebody else said, ‘Well, you know, it’s a historic site for Scott County, and it’s very important to the county.’” McAdams added, “There was a kind of going back and forth, and I said, ‘You know, it shouldn’t be that big of a deal to just make sure the place is cleaned up and straightened up.’”

McAdams said he contacted Minzes for information. “I can’t tell you how wonderful she is to work with. I came from a corporate background, and she is just bottom line, this is how we need to get the job done, and this is what you need to do to do it.” McAdams said within two or three weeks, he had permission to contract with the Henryville Corrections Facility for labor, and “within the course of the last five to six months, we have had a crew of ten people there putting in probably over 100 hours. Previously, you couldn’t even much more than see the historical markers.” He said grass was planted, and “the place looks much better now. You couldn’t see it from State Highway 31. As a result, it was kind of a great spot for nefarious activities day and night, which didn’t make a very good spot for tourism.”

McAdams said that William Graham, Mayor of Scottsburg, Scott County Commission, and the Scott County Council members, are “all very much in favor” of the site being returned to Scott County. He added a local scout group was interested in painting the black fence that surrounds the property. “Essentially, there’s been a huge amount of clean-up done, and that will continue.” The site will “at some point fall under the Scott County Commissioners wing, and it’s their budget that would maintain” it, but “Scott County Corrections will do a lot of the mowing.”

McAdams noted “the site’s plaque has been missing since the late 1990s.” A request has been presented to the Scott County Visitors Commission for a new granite plaque to replace the original bronze plaque. “We have great community support. What I’ve done in the process of the cleanup is work with the local newspapers so there’s been a little bit of hype about what’s going on. Finally, there is a great deal of interest in Scott County about the local site.” McAdams concluded, “It is with our hope and our recommendation that the property be returned to the County, which I think will really give it an easier way of being maintained and cleaned.”

The Chair thanked McAdams for his hours of service at the Pigeon Roost Memorial Site.

Robert Wright moved for final approval the conveyance of Pigeon Roost Memorial Site to Scott County for use as a county park. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF LAW ENFORCEMENT

Consideration of citizen petition to reduce the boat speed limit on a Lake Freeman bay formed by Snow Ditch from 20 m.p.h. to idle speed; Administrative Cause No. 07-134D

This Chair announced this item withdrawn. Following a thorough site review by Maj. Felix Hensley, Indiana State Boating Law Administrator, the citizen had determined to withdraw her petition. A copy of the citizen's withdrawal letter was distributed to the Commission members before the meeting.

DIVISION OF WATER

Consideration of request to amend the definition of "marina" as used in the regulation of public freshwater lakes, navigable waters, and lakes on DNR properties; Administrative Cause Number 07-176W

Jim Hebenstreit, Assistant Director for the Division of Water, presented this item. He said the proposal was to amend the rule that defines "marina." Part of the proposal is an out-growth of a problem with a definition when the Commission created a definition for "group pier" about two years ago. With the increase of condominium developments on Indiana's public freshwater lakes, there are "a lot of large pier complexes being put in, and we wanted to make sure that we could have permitting authority over those pier complexes. We created a definition for 'group pier' to specifically exempt those from the general license that covers most piers."

Hebenstreit explained that after adopting the definition of "group pier", "most of the condominium owners would pay a fee, which by virtue of paying a fee you suddenly become a marina if you look at the current definition of 'marina'." In order to distinguish between a "group pier" and a "marina", it was recommended to amend the current "marina" definition to "provide that the marina can service simultaneously at least five watercraft and provide, for a fee, two or more of the following:

- (A) Watercraft engine fuel.
- (B) Docks.
- (C) Watercraft repair.
- (D) Watercraft sales or rental."

"We thought that this was a good proposal until about four hours ago." During a discussion by the AOPA Committee, "we learned there is a marina on Lake Wawasee which provides only fuel." As a result of this information and the discussion by the AOPA Committee members, Hebenstreit presented an alternative version that would provide amendments to 312 IAC 6-2-6, 312 IAC 8-2-13, and 312 IAC 11-2-12 essentially as follows:

- A "marina" provides, for a fee, one (1) or more of the following:
 - (A) Watercraft engine fuel.
 - (B) ~~Docks.~~
 - (~~C~~) Watercraft repair.
 - (~~D~~) (C) Watercraft sales or rental.

"We don't want to be in the business of calling pier complexes—whether it be rented by church camps or whatever—'marinas'. So, I think eliminating 'docks' might very well take care of the problem."

The Chair commented, “I think it’s a very timely subject since we addressed a lot of these issues in our tour at our last Commission meeting, so again, very appropriate.”

Mark Ahearn said, “Approaching this problem in this way is something that we all ought to feel good about. It came up as a single issue, it got moved into the regulatory study analysis side, and it’s just a good way for the different groups to work together to address the issue.”

Larry Klein moved to give preliminary adoption of amendments to the definition of “marina” as used in the regulation of public freshwater lakes, navigable waters, and lakes on DNR properties as modified by the AOPA Committee and described by Jim Hebenstreit. Damian Schmelz seconded the motion. Upon a voice motion, the motion carried.

DIVISION OF OUTDOOR RECREATION

Consideration for preliminary adoption of rule amendment to 312 IAC 6.5-1-5 to establish a \$15 application fee for duplicate certificate of registration for a snowmobile or off-road vehicle; LSA Document #07-542, Administrative Cause Number 07-031T

Jennifer Kane, Hearing Officer, presented this item on behalf of the DNR’s Division of Outdoor Recreation. She explained that the Department, through its Division of Outdoor Recreation, administers the off-road vehicles (ORVs) and snowmobile registration program. “With a few exceptions listed in statute, all off-road vehicles and snowmobiles purchased after December 31, 2003 are required to be registered.” Kane noted the DNR is authorized and required to issue duplicate certificates of registration of ORVs and snowmobiles. If an original certificate of registration issued is “lost, mutilated, or illegible”, an owner of the vehicle must obtain a duplicate certificate upon application and payment of fee established by the Commission in order to be compliant with statute. She said the proposed rule amendment to 312 IAC 6.5-1-5 would codify a \$15 application fee that the Department currently assesses for a duplicate certificate of registration for a snowmobile or off-road-vehicle. “The proposed rule would essentially codify the Department’s current practice as well as continue to meet a public need.” She recommended the proposed rule amendment be given preliminary adoption.

Klein asked, “Are we removing or are we just renumbering to include a new number” for the proposed fee?” Kane responded that subsection (4) is added for inclusion of the proposed fee.

Mary Ann Habeeb moved for preliminary adoption of proposed amendment to 312 IAC 6.5-1-5 to establish a \$15 application fee for duplicate certificate of registration for a snowmobile or off-road vehicle. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF FISH AND WILDLIFE

Consideration of request for preliminary adoption of rule amendment to 312 IAC 5-6-5.5 governing special watercraft zone on Lake Manitou; Administrative Cause Number 07-173D

Tom Flatt, Aquatic Habitat Coordinator with the Division of Fish and Wildlife, presented this item. He said that Lake Manitou is a 743-acre lake located in Fulton County, just southeast of

the city of Rochester. “The ecozone is approximately 40 acres and is located in the northwest middle part of the lake”. Flatt provided Commission members with an aerial photo depicting the location of the proposed ecozone. He said the ecozone encompasses a small island and a natural shallow area, locally known as a “Prairie”, and was once “largely covered” with rushes and emergent vegetation.

Flatt said the boating restrictions that created the ecozone were effective in the spring of 2005 as a result of a petition by the Lake Manitou Association. The ecozone was created “for several reasons, but the main one being an attempt to restore the emergent vegetation.” The evidence suggested that motorized boating through the area was “a large contributing factor” to the decline in that vegetation. There were safety concerns associated with the ecozone “as it was reported that boat motors would drag on the sediments and also hit some stumps present out there.”

Flatt noted that since there was “enough” opposition heard when the ecozone was proposed in 2005 “a sunset provision” was added. “The idea was to show progress in re-establishing the emergent vegetation. First of all, three years is a very short time to show improvement in emergent vegetation. It took decades for that vegetation to be removed in the first place, and it’s going to take a long time to restore it.”

Flatt said that the Department had planned to plant experimental plantings on the “Prairie” this year. He noted, however, Lake Manitou was the location of the first discovery of Hydrilla. “We had to have a lake-wide treatment, which caused us to cancel the experimental planting.” Before the lake-wide treatment, submergent vegetation “was covering most of the “Prairie”, and there is “still one small stand of rush near the island.” Anglers like the area because of the existing vegetation. “It is good fish habitat, attracts fish, and it is an area that [the angler] can get away from other boating traffic.”

Flatt said the Lake Manitou Association discussed the renewal of the ecozone at its last meeting. “Nearly everyone was strongly in favor of continuing with the zone. I think they’re now used to the zone being there and realize that the area of the ecozone is a shallow area where boating traffic shouldn’t be going through there in the first place, so they don’t really miss it.” Retaining the ecozone would support boating safety, provide fish habitat, and afford the possibility of restoring the rush vegetation over time, “as well as other ecological factors that will help restore the lake functions.” He recommended the preliminary adoption of the proposed rule.

Klein asked, “Did the elimination of Hydrilla cost \$500,000 at its first treatment?” Flatt answered in the affirmative.

The Chair asked, “I heard you say that the Association was overwhelming in support, yet there still may be some opposition. Where does that come from?” Flatt responded, “That was before I got those last reports. And, so far, we haven’t had any formal contact from anyone that has been opposed to it, but usually someone shows up somewhere.”

Damian Schmelz moved to approve the preliminary adoption amendment to 312 IAC 5-6-5.5 governing special watercraft zone on Lake Manitou to remove its stated “sunset” termination date. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

The Chair commented, “I think that’s a testimony of good work, by staying in touch and doing noticeable progress.”

Consideration of request for preliminary adoption of amendments to 312 IAC 9 concerning the European wall lizard, mute swans, removal of the bald eagle from the list of endangered birds, turtle possession permits, and dog training ground permits; Administrative Cause Number 07-172D

Linnea Petercheff, EPO Staff Specialist, presented this item and gave a summary of the proposal. The European wall lizard is an exotic species. “For the past couple of years, our herpetologists have been trying to remove it from the Falls of the Ohio State Park under an emergency rule.” The herpetologists need more time for trapping, in order to prevent the wall lizard from displacing any native species, and to prohibit the species from expanding into other areas of Indiana.

With respect to mute swans, the proposed rule would allow live mute swans to be possessed and sold, provided the swan’s wings are pinioned and they are kept in an enclosure to prevent the their escape into the wild.

Petercheff said the rule adoption would remove the bald eagle from the state’s list of endangered species. “As many of you know, the U.S. Fish and Wildlife Service removed them from the federal list of endangered and threatened species only recently.” There are no indications of bald eagle decline at the state or regional level. She said that the bald eagles are now found in 43 of Indiana’s 92 counties, and they are successfully nesting in areas where “we originally thought they wouldn’t be able to nest.” Even though the bald eagle would be removed from the endangered species list, the federal Migratory Bird Protection Act and state statute would still prohibit the species from being taken.

Petercheff said the request for an amendment to the “special turtle possession permit” rule would require a Conservation Officer’s inspection only once, and then on an as-needed basis. The amendment would also extend the permit’s term from one to three years. She said the rule amendment would “provide an avenue” for individuals to legally possess Eastern box turtles that were legally obtained.

Petercheff said the amendments to the “dog training grounds permit” rule would clarify that a person can have a dog training ground to take captive-reared bobwhite quail and ring-necked pheasants, on no more than 20 acres of land, and on no more than one training ground per contiguous tract of land. Other changes include that a game breeder’s license would be required if breeding and possessing birds in captivity for than five (5) days, and clarify that the training ground cannot be used for commercial purposes. The DNR has received numerous applications from groups that want to use the training grounds as a commercial entity. The changes are needed to clarify “what the training grounds can and cannot be used for. It certainly allows individuals and their families and friends to train their dogs using captive-reared bobwhite quail and ring-necked pheasants.”

Robert Wright moved to approve the request for preliminary adoption of amendments to 312 IAC 9 concerning the European wall lizard, mute swans, removal of the bald eagle from the list of endangered birds, turtle possession permits, and dog training ground permits. Larry Klein seconded the motion. Upon a voice vote, the motion carried.

Consideration of request for preliminary adoption of amendments to 312 IAC 9 concerning the taking and possession of the following furbearing mammals: beavers, foxes, coyotes, skunks, mink, muskrats, long-tailed weasels, opossums, and raccoons; Administrative Cause Number 07-164D

Linnea Petercheff also presented this item. She said that the package “deals with furbearers and trapping, so they’re all pretty well related in this package.” Several changes remove the subsections that state when each species of animal can be possessed. The provisions have been modified and incorporated into a new section to clarify the intent of the rules.

Petercheff said the amendments would add a hunting season for striped skunks and would allow taking by additional methods, such as firearms. The amendments would extend the trapping season for skunks to March 15 to coincide with the trapping season for coyotes. The amendments would clarify that coyotes taken outside the hunting and trapping season (March 16 through October 14) must be euthanized and cannot be sold, traded, bartered or gifted live. The rule currently states that coyotes must be promptly disposed of, and the provision has been interpreted different ways in recent years. “We want to allow coyotes to be taken as authorized in state statute, but the statute does not address the sale or possession. So, the coyotes being taken as nuisance animals, we want them to be killed because of the problems they do create for farmers and other landowners.”

Petercheff said the proposal also seeks to modify the season for mink, muskrats and long-tailed weasel to a taking season. “Again, that’s to allow additional methods” of taking.

She said the new rule proposal for untanned hides and carcasses of the ten species of furbearing mammals would allow for possession for no more than 20 days after the close of the season. “This is the same as is currently allowed, but we have formatted it in a separate rule now to make it more easily understood.”

Petercheff said other rule changes associated with traps including “changing the term ‘leg-hold’ to ‘foot-hold’, and removing the ‘trap sized number 3’ because there is no manufacturer’s standard for the number 3 sized trap. There’s also some trap pans that don’t have the numbers on them. So, when Officers are in the field, they’re unable to determine whether it’s a legal trap or not.” The measurements would allow traps commonly used in Indiana, including those used to catch coyotes and other furbearing mammals. Other changes would clarify the measurements for body-gripping traps, define the term “offset jaws”, and change the term “furbearing mammal” to “wild animal” in some instances.

The rule change would modify the “nuisance wild animal control permit” rule to match the trap sizes mentioned previously—the same as those allowed during the trapping season for both foot-hold and body-gripping traps. They would clarify traps and snares must be checked each day, and when an animal is caught, it must be removed on the same day.

Klein asked the purpose for having a 20-day rule of possession if the animal was taken legally. Petercheff responded the trappers needed 20 days after the end of the season to get carcasses skinned and the hides sold to fur buyers. “A few years ago” the trappers had a shorter time period, but it was extended to 20 days. “With the question then being if they possess them longer than that, then they’re considered a poached animal?” Petercheff replied, “Yes, that was the original intent, that if it was after that time period, it could be an animal taken outside of season, right.” Klein continued, “So they can’t throw them in the freezer and wait for the price

to go up?” Petercheff replied, “With a fur-buyer’s license, fur-buyers can keep untanned hides and the carcasses throughout the year.”

Robert Wright said a citizen from his home county questioned him about coyotes being taken outside the hunting and trapping season. “He was telling me that there’s a market for coyotes to sell through places that run dogs, where they just chase the coyotes. I guess it’s a tournament or a competitive-type event. And, where a coyote would only normally bring \$15 dollars, they could sell them in that market for \$50 to \$100. And, I didn’t know if that had been considered by your group.”

Petercheff responded, “We have heard about that, actually, about a month or so ago.... Our intent, and we feel that the statute that was written that talks about the taking of coyotes throughout the year, was to allow a landowner to take that nuisance coyote and kill it, but not to keep that animal. We know that there is a live market, but we don’t believe coyotes taken outside the season should be sold for that market. I understand the price is a little higher, but again, we don’t believe that was the intent of the original statute or the rule. They can be sold live throughout the season which, again, is October 15 through March 15; they can be sold live if they’re possessed under a game breeder license. But we believe that a nuisance coyote should be euthanized and not sold on the live market.”

Larry Klein asked, “So, basically, you’re interpreting that to be sort of like a nuisance season for deer?” Petercheff replied, “Right, a nuisance animal that should be killed.” Klein said, “Okay, thank you.”

The Chair relayed there were several persons who registered to comment on agenda item 15. The Chair asked that each person, when called, state their name and whom they represented.

Tim Julien, President of the National Wildlife Control Operators Association, spoke. “We represent 35 companies that do wildlife control here in Indiana. So, I’m speaking on their behalf.” He said the NWCOA opposed the rule changes. Some of the wording or ramifications “were not well thought out. The original statute says to take a coyote year-round on private property, which would represent is a season to take coyotes year round on private property, which differs from the other paragraph that allows the taking between a certain period of time. To us that’s still a season.” Julien urged the law is clear that you can sell a furbearer taken during the season. “To prohibit the selling of that furbearer is waste. So, during the season, if I don’t take the coyote and sell it, I’m fined for waste. We think it’s contradictory, so we oppose that, and we think they should be sold, or allowed to be sold.” He also opposed the 20-day possession rule. “If I take a furbearer and possess it in the freezer, how come after 20 days, it’s no longer my property? It’s kind of a strange law that we’ve all put up with nationwide.”

The Chair thanked Julien for his attendance. “Many years ago, you were my Hunter Ed Instructor. Julien reflected, “Uh, oh, I’m sure you did good.” Klein joked, “He was ten; you were 15.” Julien joked, “You did well. You were a very good student. I remember that.”

Justin Schneider from the Indiana Farm Bureau spoke next. “This became an issue for us approximately a month ago, when our voting delegates passed a policy addressing this specific proposed rule change. So, I am here today to discuss that. I will say that I have not studied up much on this area of the law as much as I normally would before I do something like this. I guess I missed it in the Indiana REGISTER that it was going to be today.”

Schneider said “our concern” is most specifically with the provision addressing the taking of coyotes on private land. “I heard the comment that the rule, as now written, states that coyotes must be promptly disposed of no matter when they’re taken. I’m not sure that I agree with that interpretation of the law. Part (c) which addresses the season for hunting says that you must promptly dispose of it. Part (d) just says a person who possesses the land or another person designated in writing by that person may take coyotes on that land at any time.” He said the existing rules do not address how a coyote is to be disposed of and argued the present language presented a question of interpretation that should be clarified.

Schneider said that the market for live coyotes provides an incentive for these animals to be taken. “I grew up on a farm. I was a sportsman. I can tell you that my rabbit hunting has dwindled over the years, and we have a problem with coyotes coming up to our livestock buildings, as do many of our neighbors. My grandmother lost all of her chickens due to coyotes. Coyotes are now nothing more than a nuisance problem animal all the time.” Schneider said the Farm Bureau would oppose any rule that would cause a disincentive for individuals to take coyotes off private land, including the inability to use the live market to sell coyotes.

Todd Sellers thanked the Commission for the opportunity to speak. “I’m here representing myself, as a trapper. And, I’m here to represent my 19-day old son, who I hope some day will be a trapper as well.” He said Indiana statutes and rules allow a person who possesses land or another person designated in writing by the owner to take coyotes on that land at any time, “365 days a year; 366 on a leap year.” The statute describes what “take” means. “As Linnea said, there is not an allowance in that provision. Also, there’s not a prohibition. There’s no mention in that specific definition of ‘take’ that mentions the end use of the mammal.” When the rule is silent as to the end use, everything is allowed. The statute says any legally taken furbearers may be sold. He said most coyotes that are taken from March 16 through October 14 are sold alive. “The law went into affect, allowing year-round coyote taking early 1990s. The history of the live-market predates that. This law did not facilitate a creative interpretation. It did not create any loop-holes that people are exploiting. The live market sale of coyotes and foxes occurred well before the enacting of that year-round law. I’ve spoken with a dog-running facility and have been told that the coyotes are fed year-round and protected because the facility has an investment in them. They have brush piles and culverts for escape cover, and a dog that routinely attempts to kill the coyotes is not allowed to come back to the facility. The facility pays anywhere from \$50 to \$100 a piece for coyotes, and they don’t want them killed.” Sellers urged using a specific harvest date to determine allowable use is without a rational basis. A coyote harvested between March 16 and October 14, should have the exact same allowable end use as a coyote harvested between October 15 and March 15 of the subsequent year. “To make a distinction based on the harvest dates makes no sense.” Sellers said he has personally averaged \$13 to \$27 for coyotes that he has trapped, pinned, washed, shampooed, brushed, dried and shipped to Canada to an auction. “That’s a lot of work for \$13 to \$27 dollars compared to selling live coyotes for \$50 to \$100 dollars a piece. And that money is brought into the rural areas of Indiana where income generating opportunities are scarce.”

Sellers said that through direct conversations with the Division of Law Enforcement and email contact with Division of Fish and Wildlife employees, he “repeatedly” asked if there was a problem identified with current coyote harvest methods, “and I have not been provided one single rationale or problem. In fact, field personnel have expressed their approval for the current harvest methodology and utilization of the harvest of coyotes. So, in closing, I’d like to say that I’m opposed to this proposal, and I hope that you will consider that.”

The Chair asked Sellers if he was speaking on behalf of an organization or just personally. Sellers replied that he was with the “Fur Takers” as well. The Chair asked, “Are you speaking on their behalf?” Sellers replied, “The President, the organizer, will do that.”

The Chair reminded the Commission members that rule amendments for Item 15 are before the Commission for preliminary adoption and that there would be “ample” opportunity for public input and comment.

Tim Rose, State Organizer for the Indiana Fur Takers of America (FTA), addressed the Commission. He said the FTA supported the extension of the skunk season. “That’s pretty handy for us coyote trappers that are out late in the season.” Rose urged that a coyote is a furbearer and that 312 IAC 9-2-3 states that a “protected or regulated wild animals live, dead or the meat therefrom cannot be sold, traded, or bartered” except for a lawfully taken furbearer. A lawfully taken furbearer may be sold. IC 14-22-6-12(d) states: A person who possesses land, or another person designated in writing by that person, may take coyotes on that land at any time.” The FTA’s interpretation of the statute is there is no closed season on coyotes. “With written permission from a landowner, you or I can lawfully take coyotes. Since this coyote is lawfully taken and is a furbearer, you have the right to sell this coyote; and you can refer back to IAC 9-2-3.” Rose reflected that the proposed rule change in IAC 9-2-3 “is not in spirit with” the rules pertaining to furbearers and thus should not be considered.” Rose referred to page two of a handout which included the FTA’s proposed language. He said the FTA has over 300 trappers and friends of trappers who are in opposition to the proposed amendment of 312 IAC 9-3-12.

The Chair told Rose that there would be ample time for public comment and submission of the FTA’s suggested rule proposal. He suggested that the FTA’s comments would most effectively be provided to the Commission during the public hearing phase.

Rose commented on 312 IAC 9-3-18 which prohibits methods of pursuing and taking wild animals. He said the proposed amendment is “basically the trap size rule change” and expressed the FTA’s opinion that the wording of the amendment is “very complicated.” Rose distributed the FTA’s language proposal.

The Chair thanked everyone for their comments. “Again, I know this issue is going to have much more discussion and opportunity for input.” He added, “I expect there will be many other items to address.” The Chair said he would entertain a motion for preliminary adoption of the proposed rule.

Jane Ann Stautz asked Petercheff if there had been any problematic instances as far as inhumane treatment associated with the live taking and sale of coyote in Indiana. Petercheff replied, “Yes. There’s some information about that.”

Klein asked the Chair to “briefly outline what’s occurring at this point. I’m somewhat uncertain.”

The Chair said the draft rule encompasses several subjects. The Commission members received “public input today” on a portion of the rule package. The vote would be whether to give preliminary adoption to the whole rule package, and at subsequent time, there would be a public hearing to receive input on all the subjects within the rule. Comments from the public hearing would be brought back by the hearing officer before Commission action on permanent adoption. As a result of public input received during the public forums, the Commission could modify

what was preliminarily adopted. “There are things in here that I know the organizations that spoke today are in favor of or that we’ll be modifying. The purpose today, not to diminish any of the public comment, is a procedural matter that will allow for future public input, by which then if the Commission chooses, as a result of that public input, may modify the rule language that we preliminarily adopt today.”

Klein continued, “That was really the nature of my question. Then the action we’re taking today does not bind the Commission to any course of action? We’re not pre-determining any position on these at this juncture. We are just creating a process by which to get it out to public hearings?”

The Chair replied, “That is correct.” He asked Steve Lucas to outline the rule-adoption review process.

Lucas responded that if the Commission gives language preliminary adoption, a hearing officer in the Division of Hearings would carry the rule forward. Several things have to happen before a hearing is scheduled, including the publication of a notice of intent, the selection of a “small business regulatory coordinator”, the performance of fiscal analyses, their submission to OMB, and the approval by OMB. “If and when all of that occurs, a public hearing is scheduled.” Based on the hearing process, the Commission could give the entirety of the rule final adoption or could decline to give the rule final adoption. Changes to the text which are technical in nature can be made, and those based on the “logical outgrowth” of written citizen comments can be incorporated. In most instances, the Attorney General will accept deletions of language and allow just a portion of the rule to go forward, but that might not be the case if the deletions modified the spirit of what was given preliminary adoption. Ultimately, and this would occur only if the Commission gave final adoption to a portion of the rule, the Attorney General would have the decision to decide upon legality.

Jane Stautz suggested preliminary adoption was the originating part of the rule adoption process. Preliminary adoption did not bind the Commission to a final decision.

Mark Ahearn reflected that preliminary adoption was a stage at which options available to the agency were reduced. Prior to preliminary adoption, the DNR or the Commission had the ability to pursue different concepts. Once language was given preliminary adoption, changes were limited to those in the Indiana statutes pertaining to rule adoption.

Director Carter asked what happened to the coyotes after the dogs chased them. “Are they shot after they’re chased? How are they destroyed?” Todd Sellers replied that the coyotes were “in an enclosure. They’re provided escape cover, places they can get away from the dogs. The owner who owns the dogs does not want them killed. It’s just purely to hear the hounds. It’s more of a hunter and hound relationship. The coyotes are in the enclosure and fed year round.” He said a high enclosure keeps the deer out and the coyotes inside. The owners “have way too much money” in the coyotes to have them killed.

Director Carter asked, “If the dog catches the coyote, then it kills it?” Sellers replied, “Perhaps, but that’s certainly not the intent. If that’s a routine event with that dog, then the particular owner is asked not to participate and come back anymore. It’s not allowed.”

Commission Member Richard Mangus asked, “This is what brought this about, is that correct?”

Petercheff responded, “We’ve been getting questions over the years about what can and can’t be done with a coyote taken outside the season.” The Department does not believe a landowner’s authorization to take a nuisance coyote results in a year-around season on coyotes. A few years ago, the Commission added the requirement that coyotes taken outside the specified season be promptly disposed. She added, “There is information that coyotes sold live are not all being chased without that coyote being killed. If they are being sold live, there are laws that cover what permit a person is supposed to have to possess a coyote live outside of the season, and there are some concerns on that end as well. The intent of this was to clarify the original intent of an existing rule that says ‘prompt disposal’ that has been interpreted many different ways and to try and make the law enforceable for what can and can’t be done.”

Robert Wright asked, “If they’re not selling or killing them, what do they do with them? They have a pen for them or something?” Petercheff responded, “I’m saying that if they’re selling them live right now, they’re selling them to enclosures. Those people that have them live would need to have a license to have those live animals in their possession outside the season.”

Klein asked “But, they could still continue to sell them if they had the license?” Petercheff explained that they could be kept under a game breeder license only if they were lawfully acquired. Under the DNR’s interpretation, to be kept under a game breeder license, the coyote would have to be taken during the season. The Department does not consider a property owner’s ability to take coyotes year around as nuisance mammals to be a season. Coyotes taken by or with the written authorization of a property owner could not be possessed under a game breeders license.

Patrick Early asked the Chair for clarification. His understanding is that if a coyote is taken within the season, it can be sold live. The question being raised is why a nuisance coyote taken legally outside the season by a private property owner cannot be sold live, because it is still legally taken. “Is that how I understand the issue?” The Chair replied, “Yes”.

Chairman Poynter asked Major Steve Hunter to provide clarification.

Major Hunter responded, “We don’t really consider this actually a change in the practice that we’ve followed. It’s more of a clarification.” He said the taking season established by rule allows for all hunters to take those animals, trap them live, convert them to private possession under a game breeder license, keep them throughout the year, or sell them. The law that allows the coyotes to be taken on private property, with landowner permission, was to take nuisance coyotes. Individuals who want to take coyotes year round have interpreted the latter to allow for the private ownership of these animals in order to be able to sell them.

With respect to the 300-acre enclosure mentioned by one of the commentators, Hunter questioned how many coyotes would be needed, and why a sufficient number to fill an enclosure could not be obtained during the actual taking season, unless the coyotes were being killed by dogs or by shooting. If the interpretation that the nuisance taking of coyotes constitutes a season such that coyotes can be converted to private ownership and sold, what is to stop the application of this interpretation to other animals, such as raccoon and opossum, that can also be taken by property owners during the off season. He said the only difference is a landowner cannot give written permission to other people to take raccoon and opossum during the off season. “We do not consider this a change of practice. It’s a clarification, and it’s the practice that law enforcement has followed over the years that those animals taken outside the regular season are to be destroyed as a nuisance species and not to be converted to private ownership, relocated, or

sold. We allow deer to be taken out of season in certain circumstances, but they're not trapped. They're not sold. They're not converted to private ownership. They're taken, and that's what we're trying to accomplish with this rule clarification. Those animals taken out of season that are coyotes must be destroyed during that time and not moved on to other ownership."

Larry Klein asked if there was a way of setting the course for a public hearing without giving the proposed rule a formal preliminary adoption. Lucas responded, "You can have public meetings that would be conducted by the Division of Fish and Wildlife. But, if the point to this is to accomplish preliminary adoption, and initiate rule adoption, then you need to vote for preliminary adoption and that does create a statutory process."

Mark Ahearn added that the Commission would see the rule one more time. After the public hearing, it would come to the Commission for approval, then to the Attorney General, and to the Governor, before becoming effective as law. After preliminary adoption, if the Commission wanted to change something "we're not at liberty to do that unless it's the outgrowth of some comments that we receive during the public hearing."

Patrick Early reflected, "The point is there is a lot of stuff in this that needs to be moved along. And there still are going to be opportunities to visit the issues that are in front of us today. So, in order to get the clock running on some of these other things that aren't controversial in any way, you recommend this group moves this along today, is that correct?"

Bryan Poynter replied, "That would be the Chair's recommendation."

Director Carter asked Petercheff if there had ever been diseases with the transport of live coyotes. She answered that some states do not allow them to be imported, and one reason is the potential for the transport of disease. Another reason is that many states "have a lot of coyotes." She said coyotes can carry distemper and other diseases that can be transmitted to other canines.

Mary Ann Habeeb reflected, "By moving this along, you do then set the clock for an opportunity for the hearing, and then the hearing officer will make a report, which will have all sides' comments and an evaluation and recommendation based on what comes out of the public hearing. So, then you'll hear both sides through the hearing officer's report. So, this does set the opportunity for this process to move forward for whatever comes out at the end one way or the other."

Patrick Early moved for the preliminary adoption of amendments to 312 IAC 9 package as presented.

Jane Stautz suggested, "In anticipation of some of the groups that may be commenting in the public hearing process, I would suggest the possibility of breaking these into two rules, so that you would have a proposed rule that would deal with section 312 IAC 9-3-11 through 9-3-14.5. And, then as to the 312 IAC 9-3-18 basically dealing with the trap sizes, the types of traps, and that as a second rule." She said her suggestion would be one method of dealing with the interest "around the whole coyote issue".

Larry Klein asked if the Commission had to accept or deny the hearing officer's report in total or if it could be amended. Ahearn said changes could be made if they were consistent with comments received in the hearing process and complied with legal standards.

Klein continued, “But only based upon comments received from the hearing?”

Steve Lucas replied, “Generally, it has to be a logical outgrowth of the language given preliminary adoption.”

The Chair added, “Almost every issue that we preliminary adopt has a hearing. We receive the input, and often times there is a natural result of public input that modifies that rule. This is not the most controversial issue we’re going to address as a Commission, now or in the future. So, again, my recommendation would be that we move this rule forward on all issues and let the public outgrowth of this go as it will.”

Stautz reflected, “Chairman, just if I may. You can separate the parts of this rule proposal today, and move them both forward and start the clock moving on both. I mean, I just want to be clear. It’s not like we’re sending it back. We’re moving them both forward. It’s just that we’re separating them into two parts.”

The Chair replied, “My only concern of separating them is that there are items in the other aspect that more than likely have a result, or will have some conversation, because we’re talking about trapping issues in two different sections. One issue is about outside of the season, and the other issue has to do with some clarification on definitions of traps.”

Patrick Early commented, “I suspect that in the public hearing, anything that we would consider amending will come up. I doubt that we’re going to lock ourselves into a trap where we have adopted this, and we can’t change it.”

Ahearn concurred, “I absolutely agree with you but there are some additional burdens on the Department to do small business analysis and economic analysis and regulatory impact analysis. And, to the extent that those become more complex and more intertwined, you invite the Office of the Attorney General to say, ‘I don’t see how A relates to B,’ and kicking it back to you. So, when we do rulemaking, our goal is to make it easy for the Office of the Attorney General to say ‘yes’ and send it to the Governor. We want to do the right thing, but that’s perhaps what Jane is suggesting. Maybe her approach could make analysis less complicated.”

Early asked, “So, what are you suggesting? We leave it as one or separate it?”

Ahearn replied, “I would suggest we separate, but I don’t really know enough about the substance. I’m just supporting the concept of Jane Ann’s comment.”

Jane Ann added, “I was trying to help facilitate the process without burdening it, but that’s fine.”

The Chair asked Steve Lucas his opinion. He responded, “It seems to me we have a rule here that has some elements where time is of the essence. There are emergency or temporary rules that are going to run out. Those aspects of the rule proposal really need to move forward quickly.” He said he was not aware of the coyote issue being under “a great time pressure”. The DNR wants to move forward, but the coyote issue is not the subject of a temporary rule. He said if his understanding were accurate, he would prefer “the coyote issue be segregated and treated as one rule, and that the rest of the package be treated as another rule. I think we can pull the two items apart and go forward with them, and you could give preliminary adoption to both. I think that might have some merit.” He agreed with Mark Ahearn’s comment about keeping the rules clear and concise for the most satisfactory review by the Attorney General’s office.

Mary Ann Habeeb asked Lucas, “Can we separate procedurally after we vote to preliminary adopt?” Lucas answered, “You can vote to preliminary adopt and treat them separately.” Habeeb asked, “With the direction to segregate the coyote issue out?” Lucas answered, “You can do that.”

Mary Ann Habeeb moved to preliminary adopt amendments to 312 IAC 9 as drafted by the Division of Fish and Wildlife. As a condition of her motion, the matters addressing the coyote issue would be separated from other aspects of the draft, and treated under a distinct Legislative Document Number. Larry Klein seconded the motion. The Chair reflected, “I think that’s prudent.” Upon a voice vote, the motion carried.

NRC, DIVISION OF HEARINGS

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 in the matter of petition for rate increase by Fourwinds Resort & Marina; Administrative Cause Number 07-094P

Sandra Jensen, Hearing Officer, presented this item. She said the matter was guided by Information Bulletin #20 which sets forth the process for considering rate increase petitions for marinas under lease with the Department. The process requires a marina to submit a petition to the Department’s Division of State Parks and Reservoirs, which then notifies and works with the Division of Hearings. The process also requires the petitioner to provide notice to existing slip holders, as well as the public hearing date. The public notice provides contact information for individuals to offer written comments in advance of a public hearing, as well as the ability offer comments at the public hearing.

Jensen said a petitioner is obligated to provide the Division of State Parks and Reservoirs with a rate list from other comparable facilities. The Department will then provide an analysis of the comparable rates from other facilities, to both the petitioner and the Division of Hearings, for consideration in developing a final report and recommendation. As the Hearing Officer, her responsibility is to consider the petition, the public input and the comparables analysis, and then to recommend a course of action to the Commission. The Commission makes a recommendation to the U.S. Army Corps of Engineers. “It is not the Commission’s responsibility to actually increase these rates or make a determination. It is only the Commission’s responsibility to make a recommendation to the U.S. Corps of Engineers to increase the rates.”

Jensen said initially Fourwinds sought an across-the-board increase of 10%, “that it could, at its own discretion implement, based upon improvements, as those improvements occur.” The petition met with a considerable amount of protest from existing slip holders. She said Traina Enterprises, Inc., the owner of Fourwinds since 2001, has made major improvements to the facility. “However, the objections from the slip holders indicate that the vast majority of the improvements, they consider to be related to the hotel and resort, not necessarily to the marina.” The slip holders argued the improvements to the hotel and resort are something they do not “necessarily make use of nor benefit from.” These include expansion of the restaurant and the lounge, the water pond and the gazebo area and some of the shoreline beautification efforts that have been made near the hotel, not necessarily in the area of the marina. Slip holders provided

photographs of shoreline areas littered with debris. Slip holders concerns included problems with security, maintenance issues and parking facilities.

Jensen said, "As I noted in the report, the comparables that were provided reveal that Fourwinds' existing rates, in many instances, are already higher than comparable facilities. Therefore, I could not see my way clear to approve a 10% increase as originally requested." Jensen explained further that she was also not comfortable with the level of the rate increase recommended by the Division of State Parks and Reservoirs, which was an 8% increase for docks that had already been replaced or had been significantly improved. "Instead, my report recommended the Commission recommend to the Army Corp that the rates, previously approved by the Commission in 2002, be increased by 5% for the entirety of the marina with the exception of those rates associated with docks A, B, and C, which remain in need of significant repair or replacement. One half of Dock had previously been replaced." She indicated that Jeffrey Hammonds, Fourwinds' representative, was present and wished to speak to that item. With respect to Docks A, B, and C, Jensen said she was recommending only a 3% increase.

Mark Ahearn asked Jensen if the Army Corps of Engineers is bound by the Commission's recommendations. Jensen replied, "No, they can act on their own behalf. These are strictly recommendations only."

Mary Ann Habeeb asked Jensen if the U.S. Army Corps of Engineers "traditionally followed or ever not followed the Commission's recommendations." Jensen responded she believed that the Corps "typically" followed the recommendations, and she was unaware of any particular instance in which the Commission's recommendation was not followed. Steve Lucas added there was one instance the Army Corps "seriously considered" not following the Commission's recommendations, although "I think it ultimately did."

Habeeb asked, "Were they wanting to go up or down? Do you remember?" Lucas responded that he "did not recall".

Douglas Grant said, "I really have a problem with making an enlightened decision on what we've seen so far. You don't know if somebody needs an increase unless they need it for investment to get proper return on their capital. I can't see that we have any information to know what they've done here, how much money they make, how much money they lose, where the salaries are going, what the organization's schedule is. Setting that aside, then you say we compare it to other marinas all around the country. And, it seems to me that is almost an insurmountable job for you to do to have that be apples and apples."

Jensen said, "It's not necessarily within our purview, I don't think, to ask for marina operator to turn over cost analysis or income loss statements. That's not contemplated by Information Bulletin #20." Jensen explained that the goal is to maintain some consistency among the marinas that are under a DNR lease, and what we do is review rates that are charged by comparable facilities, not necessarily the income or profit loss margins of any respective marina. She said the comparable listing identified several other marinas that were not located in Indiana and others that were. "Whether they were in-state or out-of-state, it was relatively consistent that Fourwinds's present rates were typically greater than most all of them."

Grant continued, "Knowing what happened to fees and expenses in the last number of years, the increase is certainly modest. But I don't know how we sit here and tell ourselves we've done the right thing. We've got to do something, I suppose." Jensen said that she "simply followed the

policy and procedure that has been set forth” by the Commission in the nonrule policy document, “and the idea was to consider what’s comparable to other facilities in the state and in the area.”

John Davis asked Jensen if those policies and procedures were “partly outlined by the Corps of Engineers.” Jensen responded, “They are partially, I believe, the lease agreements. I’m not versed with them. But I think they basically place that responsibility on us to determine whether or not those rates are relatively consistent throughout the state.”

Larry Klein asked Jensen to explain the “chain of ownership” with regard to “marinas leased by DNR on Army Corps lakes. John Davis responded that “The Corps of Engineers is the owner of the property. They created the dam and the impoundment, and then we lease all the property except the dam. In the case of Lake Monroe, there’s one recreation property we control directly.” He added that under the lease between the Army Corps and the DNR, we are “able to lease to a concessionaire to provide normal recreation services.”

Klein asked if the sublease was then put out for public bid. Davis responded, “That’s correct, with a five-year renewal.” Klein added, “And the Corps has retained the right...to set fees?” Davis responded that the Corps of Engineers approved fees recommended by the Commission. He said that the Corp has also asked the Commission to make an analysis based on marina comparables.

Lucas added that “the way it used to be, whenever a slip rate petition came up, all the interested persons would come to the Commission meeting. There would be quick presentations where everybody would talk.” He said the former process was often very contentious, and the Commission decided it was unsatisfactory. The Commission established the process now embodied by the nonrule policy document for the hearing that Sandy Jensen described. “The nonrule policy document is not carved in stone. To some extent, I think it’s dictated by the lease between the Department and the Corps. But it would be a fair thing, in my perspective, to come back to you and say, ‘Do you want to change what you tell us to do in the nonrule policy document?’ But for this petition, we have a nonrule policy document that requires the consideration of comparables.” He said a hearing officer could not fairly change the analyses today if the change is not what the Commission directed in the nonrule policy document. “But the Commission has every right to review the process and make changes for the future.”

Kline responded, “It just occurs to me that the business of running that marina falls to a private operator who has to say either ‘I’m making money or I’m not.’ And, when they say, ‘I need more money for the slips,’ I don’t know how a comparable works in that regard.” Lucas responded, “I think that’s part of what you buy into when you lease a marina property at an Army Corps of Engineers Reservoir.”

Davis reflected, “I just think that there’s more to it than comparables. Jeff Hammond, in his write-up, has provided some justification” for the rate increase. “He talks about what he has done, the investments they’ve made, the improvements they’ve made. I would say that one reason there is that nonrule policy document is because all of that used to be presented here to you in real time.”

The Chair invited Jeff Hammond, General Manager of the Fourwinds Resort and Marina, to provide his comments.

Jeff Hammond told the Commission that a letter was sent out to all the slip holders informing them of the petition for a rate increase and “generically explaining the reason or need” for a rate increase. During his nine years at the Fourwinds Resort and Marina, there has been only one rate increase petition which was granted by the Commission and approved by the Corps of Engineers. “I believe, if I’m not mistaken, that would have been one of the times that Mr. Lucas was referring to that the Corps was kind of waffling on whether they wanted to agree or not agree with the Commission’s recommendation.” The “waffling” was because under previous ownership the marina had a history of not making property improvements.

Hammond continued, “Since that time, we have invested in excess of \$7.5 million into the facility.” He said that “realistically” a 10% increase on slip revenues would not pay debt service on the \$7.5 million. “To keep it in perspective, what we’re asking for, quite frankly, does not even at the 10% level, much less the lower level that the Hearing Officer came back with, does not keep up with CPI increases” since the new owner purchased the facility. Hammond advised the Commission that more investment is to be made to the marina and explained that at present the marina owner is approaching banks with respect to \$5 million of additional investment. He said “a fair amount” of the \$5 million would be for hotel improvements, because “quite frankly, we have neglected it from the standpoint of capital investment.” The “vast majority” of the marina’s investment to date has been for marina and marina related improvements. “Of course, we’ve got about 900 boaters and about 900 opinions about whether a particular piece of investment has positively or negatively, or not at all, affected any particular person. But, at this point, we have undertaken great initiatives and steps with the property. And, I think that anyone who has been to the property has concurred that that has been the case, and we’re just trying to keep pace with that and keep going.” Hammond indicated “Fourwinds’ CPI has increased by 15.1%, and the 10% would not even keep pace with inflation, much less the additional investment and debt service we’ve taken on. He reiterated Fourwinds’ belief in its investment and that the returns are going to come from more boats in the harbor, larger boats in the harbor, and longer tenure of people in the harbor. So, the investments will certainly be paying off in that regard.”

Hammond then referred to the Hearing Officer’s recommendation in regard to A, B, and C docks being at one rate and the remainder of the harbor being at a higher rate. He said that A, B, and C docks are the older docks, and have not been replaced, as have “most of” the rest of the harbor. Hammond explained that there are 100 slips on Dock A, and 50 of these slips are new slips and of the 94 slips on B Dock, 20 of them are open and are also new slips. Hammond stated, “We would respectfully request that those new slips be considered at the higher approved rate as the rest of the harbor that has been recently replaced.”

The Chair said, “Just for a point of clarification, you were asking originally for up to 10%, using the discretion of management, I assume?” Hammond agreed with this assessment. The Chair then asked Jensen if her recommendation was 3% and 5% with no discretion. Jensen replied, “Right. It was just a flat 5%, 3%.” Hammond explained that there are older slips on A Dock and older slips on B Dock and all of slips on C Dock are older. He said Fourwinds intended to impose only a minimal increase on those and that the 3% is about consistent on what Fourwinds had anticipated with respect to those slips. He said it was the other slips that are brand new for which Fourwinds was seeking up to a 10% increase based on the demand for those slips. “We’re very aware of the supply and demand issues out there and quite frankly boating is a very expensive hobby to have, and people will simply stop doing it if we make it less economically viable, and we don’t want to do that. This is how we feed ourselves. So, we want to keep people as happy as we can.”

John Davis asked Hammond how many docks exist at the marina. Hammond responded that the docks consist of A through K.

Klein asked Hammond for the total slip count. He responded there were approximately 950 slips.

Klein continued, "So, call it about 1,000. The average income off of those is what?" Hammond replied, "The average slip rate is around \$2,200 or \$2,300. There are some that are much lower and some that are much higher."

Klein asked, "So, it's \$2.2 or \$2.3 million a year?" Hammond responded, "That's about right, yes."

Klein then questioned whether the DNR would make any more money with a 3% to 5% increase. Hammond answered that the land lease paid to the state is based on top line revenue, rather than on any profit. "As our business improves, so does our lease payment."

Doug Grant asked if the marina's lease payment was also based on sales. Hammond replied, "Yes, sir."

Mary Ann Habeeb asked Hammond who was responsible for monitoring such things as facility improvements, security and toilet facilities. Hammond replied, "We do." Habeeb expressed concern about the request for the rate increase and complaint issues and how they balance out. "I just needed an explanation before I vote, I think, to understand. Because the complaints we saw are very practical ones from people who had specific issues who spent the time and energy to come to the hearing and make those desires known."

Hammond acknowledged that the issues addressed by those in opposition to the rate increase were generally legitimate and based on his recollection were accurate. He noted that in some cases the concerns raised were not accurate or were exaggerations of other situations. With respect to security, Hammond reiterated that Fourwinds has in-house security and has contracted security to patrol the property. Fourwinds has also installed security gates on the property. What cannot be controlled, because Fourwinds is not allowed to control it, is access from the water. He said there is also no practical way to control access from the water. Hammond expressed frustration on controlling theft without a "control point" from the lake. He said the bath facilities in the boater area and the hotel area are cleaned twice daily, Friday through Sunday, and one time daily, Monday through Thursday, unless a holiday would fall during the week.

Hammond said a \$5,000 dollar boat ramp was built at Lake Monroe for the public. "We did that for one reason and that is so that we could take over an existing fully utilized parking lot that was on the peninsula, and get rid of A, B, and C Docks" and orient them off of the peninsula in order to improve parking. An additional parking lot with 110 spaces was constructed. Hammond said they "took over" a third lot from a DNR area which they maintain and which allows access to the boaters.

The Chair told Hammond, "I'm sure we try to understand all the issues, but the limit of what our Commission is responsible for doing here today is really to make a recommendation based off of the Hearing Officer. Are there any other comments from the Commissioners?"

Doug Grant asked, “Did I understand that the lease comes up every ten years.” Hammond responded that Fourwinds lease is longer term lease that extends through 2066. The logic behind the long lease, as he understood, “was due to a large marina, infrastructure, and the need for longer term lease for an investor to be willing to take it on.”

The Chair said, “Again, the purpose of what we’re trying to do here today is action on the Hearing Officer’s report. I think these discussions are fascinating, and I appreciate all of the input from the Commissioners, and the questions, and they are very appropriate questions for the Commission to address. As Steve alluded earlier, we may want to look again at our nonrule policy document. In the interest of keeping this focused to what our job is, to accept the proposal as Hearing Officer Jensen has proposed, is there a motion to do so.”

Doug Grant moved to approve the Hearing Officer’s Report with respect to the “Petition for Rate Increase by Fourwinds Resort & Marina. Richard Mangus seconded the motion. Upon a voice vote, the motion carried.

Jane Ann Stautz requested further consideration of the Hearing Officer’s Report to specifically address the aspect of the petition pertaining to the new slips on Dock A and the new slips on Dock B. She suggested Fourwinds should be granted an increase of 5% similar to the 5% increase allowed for all of Fourwinds other new slips. The Chair agreed to have the Commission redefine this issue.

Larry Klein asked “how frequently” a marina can request fee increases. Lucas responded that marinas can request a fee increase once yearly. Jensen added that Fourwinds filed for the subject rate increase too late in 2006 to be considered last year “so we had to bounce it back to this cycle.”

Klein asked if when new docks are brought into operation the marina had to “come back” before the Commission for approval, “or can we put in motion that as they bring new docks into operation, they can go to the 5% increase on those docks as well.” Lucas responded that the nonrule policy document addresses this issue. On an interim basis, the Division of State Parks and Recreation can set the rate. The marina is then required to present a full petition to the Commission for review in the next annual cycle.

Jane Ann Stautz moved to amend the Commission’s previous approval of the Hearing Officer’s Report, with respect to the 50 new slips on Dock A and the 20 new slips on Dock B, to approve for them a 5% rate increase rather than a 3% rate increase. Larry Klein 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 in the matter of petition for rate increase by Quakertown Marina; Administrative Cause Number 07-093P

Hearing Officer, Sandra Jensen, also presented this item. She said that the petition for rate increase by Quakertown Marina was not contested. The petition was filed by James L. Girot, Sr., on behalf of Quakertown Marina, Inc., which operates on Brookville Lake. The requested rate would increase fees for houseboats by 7%, cabin cruisers by 10% and pontoons and runabouts by 5%. Part of the differentiation between the increases involved whether a boat used

electricity. Jensen said, “What they were trying to do, partially, is avoid the idea of metering out the electric at this facility because the infrastructure is simply not there to do that.” The infrastructure itself would have caused a rate increase in order to pay for the equipment to be installed and for the meter reading services. So, part of the reason for the differentiation between the different types of boats is some of them use electric and some of them do not. The rates that are requested, even after they’re increased . . . , are still going to be below some of the comparable facilities that are identified. There was not any opposition to this except for one person who believed that the metering of the electric should be done as opposed to differentiating between the different types of slips and different types of boats. The sought increases appear to be reasonable and practical and therefore I am recommending that the rates as requested be approved for recommendation to the U.S. Army Corps of Engineers. Jensen said Girot was present to respond to questions.

Patrick Early moved to approve the Hearing Officer’s Report with respect to the “Petition for Rate Increase by the Quakertown Marina.” Mark Ahearn seconded the motion. Upon a voice vote, the motion carried.

Consideration of Report of Public Hearing and Recommendation for final adoption of new rule 312 IAC 5-6-6.5 to establish special watercraft and temporary structure standards for Lake of the Woods, Marshall County; LSA Document #07-29(F); Administrative Cause Number 06-154L

Steve Lucas, Hearing Officer, presented this item. He said the proposed rule is similar to the rule that applies to Bass Lake which is also a shallow lake. Longer piers would be authorized, along with an idle speed zone extended from the statutory 200 feet to include areas 350 feet from the shore. He said the proposal for Lake of the Woods was unlike the existing rule for Bass Lake in that the current proposal included only portions of the shoreline while the Bass Lake rule applied to the entirety of its shoreline. Lucas referenced an aerial photograph posted for the Commission as a visual aid.

Lucas reflected that GPS coordinate numbers were modified from what were stated at preliminary adoption, but these changes merely converted references from NAD’27 to NAD’83. They would not change the physical locations of points described in the language given preliminary adoption.

Lucas said public comments on the rule proposal had an “interesting evolution.” There were negative comments in the early stages of consideration, but they “mostly died away.” Fewer than ten citizens attended the public hearing in Plymouth, Indiana. “Subsequent to this, I’ve had people call or email, and it has shifted around.” Some of the later public comments relayed the opinion that the proposed rule was “a good idea” but that the zone “wasn’t big enough. For a proposal of this nature there are both positives and negatives. It’s a policy decision based on balancing of interests.” He deferred to Major Felix Hensley, Indiana State Boating Law Administrator, to provide an explanation of the zone that would be established by the proposed rule.

Major Hensley said, “This process started long before I held my current position. The Conservation Officers that are assigned to Marshall County selected the area for this special zone based on where they could find three continuous feet of water depth. And, those areas along the eastern shore and the southern shore fit the same criteria. The shoreline is very shallow, and to

gain three continuous feet of depth, that is where they had to go. So, the areas that are marked there fit the same criteria on the southern zone and the eastern zone. If they could achieve three continuous feet closer in than that, they did not include it in the zone.”

Mangus asked if the standards for pier placements were based on high water or low water. Lucas responded that Lake of the Woods has two legal elevations. One is for the winter pool and the other is a foot higher and establishes the summer pool. The rule is written based upon the higher summer elevation, but this selection was chosen more on the practicalities of administering the Lakes Preservation Act than on a substantive policy determination. Using the higher elevation provides a coherent basis for determining riparian issues pertaining not only to piers but also to other structures such as seawalls.

Mangus asked, “In your opinion, is this going to help solve the problem?” Lucas replied, “Based upon what most citizens have said to me, it seems like a piece of the puzzle. It would be a step in the right direction. I certainly would not say to you that it will resolve all issues on Lake of the Woods, but I think that it will begin to work in that direction.”

Doug Grant asked Lucas, “How long can a pier be?” Lucas responded that under the rule “a pier could be as long as 300 feet if there isn’t continuous water depth of at least three feet. It’s the shorter of 300 feet, or where you get to three foot deep water.” Grant continued, “We’ve done that in one other lake in Indiana?” Lucas replied, “For Bass Lake, we have a rule using these principles going all the way around the lake. It’s a policy call, though, and everything has two sides to it. You can see that when we got long piers, those long piers do present new challenges.”

Mark Ahearn moved to give final adoption to 312 IAC 5-6-6.5, as recommended in the Hearing Officer’s report, to establish special watercraft and temporary structure standards for Lake of the Woods in Marshall County. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of Report of Public Hearing, Comments, and Recommendation for final adoption of new rule 312 IAC 18-3-21 establishing standards to regulate hydrilla (*Hydrilla verticillata*), as a pest or pathogen; LSA Document #07-186(F); Administrative Cause Number 06-168E

Sandra Jensen, Hearing Officer, presented this item. She said the proposed rule amendment was preliminary adopted by the Commission on November 14, 2006 and was being offered for final adoption. The proposal would authorize the regulation of Hydrilla, as a pest or pathogen, and it would prohibit the possession of the plant species or the transport of the plant from one water body to another. A person owning an infected water body would be required to take eradication measures, and a person who discovers Hydrilla in any water body would be required to report the discovery. The Department would have the authority to regulate any infected body of water found in Indiana. The amendments are “intended to prevent the spread of Hydrilla”, which is presently known only to exist within Lake Manitou in Fulton County. The Department estimates that \$500,000 would be spent annually for the first three years of treatment in Lake Manitou for Hydrilla eradication, with residual funding for an additional three years to “achieve full eradication.” The intent of the proposed rule is to have “continuing control to prevent the spread” of the Hydrilla.

Doug Grant asked Jensen, “Do you ever get entirely rid of it?” Jensen deferred to John Davis.

John Davis explained that Hydrilla lives on the lake bottom and produces tubers that can lay dormant for two or three years. “We have had good success at Lake Manitou treating the live plants. In fact, our survey just a couple of weeks ago found no live plants, but we still suspect that there are tubers lying in the muck ready to sprout next spring.” Davis said treatments for Hydrilla would continue next year. “We need more than just finding no green plants to make sure we’re done with this plant.”

Mark Ahearn asked if there were any enforcement mechanism regarding property owners and those persons reporting discovery of the plant in waterways. Jensen said enforcement mechanisms existed. “I believe they amount to infractions that can be enforced and a variety of other regulatory efforts that can be taken once the species is identified as a pest or pathogen.”

Patrick Early moved to give final adoption to 312 IAC 18-3-21 for the establishment of standards to regulate *Hydrilla verticillata* as a pest or pathogen. Mark Ahearn seconded the motion. Upon a voice vote, the motion carried.

Consideration of preliminary adoption of amendments to 312 IAC to make technical corrections, including changing the address of the Division of Hearings, Natural Resources Commission; LSA Document #07-486; Administrative Cause Number 07-107A

Jennifer Kane presented this item. She said this proposal was for the preliminary adoption to make technical corrections and updates to various rules. 312 IAC 1-1-4 would be amended to reflect the replacement of the former “advisory council for lands and cultural resources” and the former “advisory council for water and mineral resources” by the new single-entity “advisory council”, as currently chaired by Patrick Early. 312 IAC 1-1-24 would be amended to update the citation for the recently updated Information Bulletin #3 (ROSTER OF INDIANA WATERWAYS DECLARED NAVIGABLE OR NONNAVIGABLE). 312 IAC 3-1-3, 312 IAC 3-1-18, 312 IAC 5-1-2 and 312 IAC 14-2-7 would be amended to reflect the new address of Commission’s Division of Hearings. “312 IAC 5-10-6 is amended to reflect that Huntington Lake is also known as J. Edward Roush Lake.” She noted that Indiana Code citations of recognized and accredited nonpublic schools would be updated in 312 IAC 9-5-7, governing sale and transport for sale of reptiles and amphibians native to Indiana and 312 IAC 9-10-6 governing the scientific purposes license. Kane said citations would also be updated in 312 IAC 16-5-1 concerning standards for disposal of salt water and other waste liquids regarding oil and gas wells. She recommended the amendments be given preliminary adoption.

Doug Grant moved to give preliminary adoption to the proposed amendments to make technical corrections, including changing the address of the Division of Hearings, Natural Resources Commission. Larry Klein seconded the motion. Upon a voice vote, the motion carried.

INFORMATION ITEM

Preparation of Second Annual Report under IC 4-22-2-28.1 with respect to Small Business Regulatory Coordinators for rule adoptions during fiscal year 2006 –2007; Administrative Cause No. 06-144X

Jennifer Kane also presented this item. She said in 2005 the statutes governing rule adoption were amended to require a small business regulatory coordinator be assigned to every rule proposal. “The coordinator works with small businesses in the event there is an impact to small business.” At its September 20, 2005 meeting, the Commission delegated to the Department Director the authority to complete a new statutory report required under IC 4-22-2-28.1. A copy of the report must be provided to the Indiana Legislative Council and to the Indiana Economic Development Corporation by November 1 of each year. “This report is presented to you in order to demonstrate statutory compliance.”

Kane said that the “bulk of the report” references materials for each adopted rule given final adoption by the Commission in Fiscal Year 2006–2007 and Fiscal Year 2005–2006. The most “pertinent portion—the statutory responses required in IC 4-22-2-28.1(k)” —was contained in the Commission’s packet, but she indicated that a hardcopy of the entire report was also available for review. The report reflects the cost of reporting by each “small business regulatory coordinator” and emphasized the costs include only those associated with the coordinators. There are coordinators for 23 rule adoptions, and the cost reported for compliance with the statute was \$2,481.15 for this fiscal year 2006-2007. “The projected budget required by the Department to comply with this statute for fiscal year 2007-2008 is \$2,679.64.” She said the report was presented for information only, and no action was required by the Commission.

Kane added that the Commission’s September 19, 2006 minutes reflected the Division of Hearings would this year ask the Commission if it wished for subsequent annual reports to be placed on the agenda or if inclusion on the Commission’s webpage would suffice.

Chairman Bryan Poynter responded, “We know where we can get it if we want it.” He said the item was not required to be placed on the agenda in future years.

ADJOURNMENT

The Chair thanked Fr. Damian Schmelz “for all his work to the Commission. His service to the Commission and to the citizens of Indiana is unprecedented. The balance of the evening is about him and the other recipients of awards from the Indiana Wildlife Federation.” The meeting was adjourned at 5:45 p.m., EST.