

NATURAL RESOURCES COMMISSION
Meeting Minutes, March 21, 2023

MEMBERS PRESENT

Bryan Poynter, Chair
Jane Ann Stautz
Brian Rockensuess
Laura Hilden
Marc Milne
Bart Herriman
John Wright

NATURAL RESOURCES COMMISSION STAFF PRESENT

Elizabeth Gamboa
Aaron Bonar

Scott Allen
Billie Franklin

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Chris Smith	Executive Office	Ken Smith	Water
Ryan Mueller	Executive Office	Amanda Wuestefeld	Fish and Wildlife
Kirsten Haney	Executive Office	Linnea Petercheff	Fish and Wildlife
David Bausman	Legal	Gerriann Albers	Fish and Wildlife
Rebecca McClain	Legal	Sandy Clark-Kolaks	Fish and Wildlife
Joe Basile	Legal	Terry Coleman	State Parks
Whitney Wampler	Legal	Brandt Baughman	State Parks
Steve Hunter	Law Enforcement	Ron Hellmich	Nature Preserves

GUESTS PRESENT

Alan Hux
Sheryl West

Larry West
Nancy Tatum

Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 10:02 a.m., ET, on March 21, 2023, at Fort Harrison State Park, Garrison, 6002 North Post Road, Ballroom, Indianapolis. With the presence of ten members, the Chair observed a quorum.

APPROVAL OF MINUTES

The Chair asked for a motion for the approval of the Commission's January 17, 2023, meeting minutes. Brian Rockensuess moved to approve the minutes as presented. Marc Milne seconded the motion. Upon a voice vote, the motion carried.

REPORTS OF THE DNR DIRECTOR, DEPUTY DIRECTORS, AND THE CHAIR OF THE ADVISORY COUNCIL

Chris Smith provided the Department of Natural Resources (Department) Director's report on behalf of the Director as follows:

The legislators are still in session. The Department's Legislative Director, Caitlin Smith, has been busy. The appropriations hearing was about a week ago.

The annual Boat, Sport, and Travel Show was held in February at the Indiana State Fairgrounds. The event kicks off the recreation season giving vendors the opportunity to show their newest recreation products. The Department was well represented and sold hunting and fishing licenses and park passes.

The Department closed on the Monon South Rail Corridor running from Floyd County to Lawrence County, providing funding for the initial purchase and an additional \$24 million to begin development of portions of the trail. CSX has begun pulling up rail on the corridor.

The demolition is complete at Spring Mill Inn at Spring Mill State Park. Additional issues and necessary renovations were discovered that may double the estimated \$10 million dollar project. The next step is to reinstall mechanicals. The renovation project is still on schedule.

Goose Pond Fish and Wildlife Area has opened an accessible trail that loops around the visitor's center. The trail is an easy hike and offers a nice view of the property.

2,100 students competed at the National Archery in the Schools Program State Archery Tournament Finals held at the Indiana State Fairgrounds a couple of weeks ago.

Chris Smith, Deputy Director of the Land Management Bureau, provided his report as follows:

It is prescribed fire season and several small fires are currently burning. A few burns have occurred at LaSalle Fish and Wildlife Area. One of those burns was on four hundred acres of the property. The prescribed burns are used to manage landscape and invasive species on Department properties.

The Division of State Parks has partnered with Eppley Institute for Parks and Public Lands to examine Americans with Disabilities Act (ADA) accessibility and compliance at the state parks, beginning with Spring Mill State Park. Twenty Department staff completed an ADA training program. The staff will determine where the Department

could improve ADA accessibility. The intent is to have all Department property managers and assistant property managers take the ADA training.

The Indiana Urban Fishing Program is celebrating ten years of annually stocking channel catfish in urban lakes. The Department began stocking last week for the first of three stockings in 2023. The Urban Fishing Program introduces citizens to fishing in an urban setting.

The Department is preparing for seasonal hiring at properties across the state for individuals looking for short term employment.

Chris Smith asked David Bausman, Chief Legal Counsel for the Department, to announce promotions for the Office of Legal Counsel.

Bausman introduced Rebecca McClain, who has been promoted to Assistant General Counsel for the Regulatory Bureau; Joe Basile, former Director of Legal Services for the Lieutenant Governor's Office, who will be starting as General Counsel for the Land Holding and Administrative Bureau; and Whitney Wampler, who will be starting as Senior Attorney, a new position in the Department dedicated to rulemaking. Wampler worked on drafting Title 14 while at Legislative Service Agency and is familiar with the rules process.

Ryan Mueller, Deputy Director of the Regulatory Bureau, provided his report as follows:

The Division of Entomology and Plant Pathology will be inspecting plant and tree nurseries and nursery dealers to check for potential pests and plant disease to prevent the spread of the diseases and plants. Division staff continues with education and outreach awareness of the spotted lantern fly currently present in two counties. The efforts include providing information at the Flower and Patio Show, on billboards, and through a social media campaign.

The Division of Reclamation has awarded contracts to plug orphaned and abandoned oil and gas wells as part of the initial phase of funding authorized by the federal grant program, which awarded Indiana \$25 million. The initial phase will plug approximately 350 orphaned and abandoned wells, 25 of which have been plugged in 2023.

Kirsten Haney, Deputy Director of the Bureau of Administration, provided her report:

The Department continues to work with the Indiana Department of Administration on deferred maintenance projects around the state. One hundred eight projects are complete. The renovation has started at the Spring Mill Inn. The Department is working with the State Budget Agency to adjust the budget so the project can be fully funded to completion.

As of March 15, 2023, the Department had 1,221 regular positions filled and 176 regular positions vacant, a decrease from the last report. The Department is filling 84 of those

regular positions. Applications have increased, more qualified candidates are applying, and retention is improving due to the statewide compensation updates.

The Department successfully completed the fiscal year 2024 and 2025 budget hearings in the House Ways and Means Budget Committee and the Senate's Appropriations Committee. The Department is eager to see the Senate's version of fiscal year 2024 and 2025 biennium budget.

The Chair noted the Advisory Council did not meet since the last Commission meeting.

Smith added that the Commission addressed a citizen petition from Chad Miller at its January 17, 2023, meeting, regarding fish netting. Since that meeting, the Department staff have discussed fish netting and plan to have the issue addressed at the next Advisory Council meeting, which is anticipated to occur in April.

CHAIR AND VICE CHAIR

Information: Consideration of 2023 meeting dates:

The Chair noted the 2023 Commission meeting dates are May 16, July 18, September 19, and November 21. All meetings are scheduled to be held at the Fort Harrison State Park Garrison, but the locations are subject to change.

Information: Announcement from Chair:

The Chair announced information on the process for the public to request to make a comment during the meeting. public comments to be made during a meeting.

Updates on Commission and AOPA Committee

Jane Ann Stautz, Vice Chair of the Commission and Chair of the AOPA Committee, reported:

The Committee met on March 7, 2023, to consider Findings of Fact and Conclusions of Law with Nonfinal Order in the matter of *South Lake Sailing Association, Inc & Cedar Lake Yacht Club, Inc. v. Department of Natural Resources* (21-010W), which involved the use of aerators on public freshwater lakes in the winter. This case highlighted an opportunity for the Department to develop an Information Bulletin or rule amendment to clarify and make transparent the aerator permit process. Stautz recommended referring the matter to the Advisory Council.

DNR, EXECUTIVE OFFICE

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

Smith recommended the Advisory Council address fish netting as raised in Chad Miller's Citizen Petition to the Commission.

Stautz recommended referring the developing of a clear, more transparent, Department permit process to the Advisory Council.

DNR, DIVISION OF NATURE PRESERVES

Consideration of the dedication of the Limberlost Swamp Nature Preserve in Adams County and Jay County

Ron Hellmich, Division of Nature Preserves, presented this item and reported as follows:

The proposed nature preserve in Adams County and Jay County will protect approximately 720 acres. The main features of this site include early successional emergent wetlands with upland and floodplain forest. Also present are tree plantings and shrublands that provide mid-successional habitat that protects many species, especially birds. Northern harriers, short-eared owls, and red headed woodpeckers frequent the site. Whooping crane and trumpeter swan can be seen at the proposed nature preserve during migration season. Other birds on the Indiana Endangered Threatened and Rare Species List also visit the property. The Kirtland's snake and eastern red bat have also been observed at the site.

There are four miles of trails at the proposed nature preserve. Adding a bird observation is also possible.

The area is owned and administered by the Division of Nature Preserves. The Division recommends dedication of the site as a state nature preserve.

Jane Ann Stautz moved to approve the dedication of the Limberlost Swamp Nature Preserve in Adams County and Jay County. Laura Hilden seconded the motion. Upon a voice vote, the motion carried.

DNR, DIVISION OF FISH AND WILDLIFE

Report to the Natural Resources Commission on Citizen Petition to prohibit Wildlife Killing Contests for species of wild animals such as coyotes and foxes; Administrative Cause No. #22-FW-034

Linnea Petercheff, Division of Fish and Wildlife presented this item. Petercheff reported:

A Department committee reviewed a citizen petition filed by Nancy Tatum that requested banning wildlife hunting contests. Wildlife hunting contests allow people to win prizes based on the quantity and size of the fur bearing animals, such as coyotes and foxes, that are harvested.

A Purdue University found that people were neutral on wildlife contests. Some data suggested limits, such as limiting the number of people participating in the contests, is supported. In a 2021 Purdue University survey, 7% of trappers that hunt furbearers in Indiana indicated that contests are a form of recreation. The survey also estimated that harvest from contests made up less than 10% of the total hunting harvest of coyotes and less than 3% of the total red fox hunting harvest in Indiana in 2021.

The Department does not know how many of the contests take place in the state since they are not regulated. Some contests are advertised as fundraising opportunities. There is no bag limit for coyotes or foxes, but the coyotes and foxes must be taken during a legal hunting or trapping season using a legal method. The contest must have permission of the landowner and the participants must have a valid hunting or trapping license.

Ohio, Michigan, Missouri, Wisconsin, Illinois, and Kentucky have no regulations on these contests. Illinois is currently reviewing a petition to prohibit such contests. None of the eight states that have prohibited contests surround Indiana.

There are no biological concerns as the result of predator contests. The Division of Law Enforcement does not have safety concerns regarding the contests. Since the data does not support banning the contests, the Department does not currently support a prohibition on predator wildlife contests. The Department will continue to reach out to the Indiana State Trapper's Association, Fur Trappers of America in Indiana, and other potential groups to obtain more information and the number of participants in the contests.

The Chair asked if there were any questions.

Milne asked if the Department knew why the eight states prohibit wildlife contests.

Geriann Albers, Furbearer Biologist, with Division of Fish and Wildlife responded that states that have prohibited wildlife contests were concerned over the perception and moral issues surrounding the contests. Indiana has more data on the contests than most states.

Herriman asked if foxes are a threat to farm animals such as chickens.

Petercheff said foxes are a threat to chickens.

The Chair recognized the Petitioner, Nancy Tatum, who stated:

She read an article in the news about wildlife killing contests and found them disturbing because people can win money and prizes for killing wildlife in these contests. The practice of killing contests sounds bad and seems wrong because it is an inhumane practice. She is not against hunting and understands that some people do not like coyotes but disagrees with having contests to kill the animals that are not liked. She asked the Commission to consider the negativity around the idea of the wildlife contest and for the Department to find out how exactly many contests are happening. Tatum would like to know the results when the Department does reach out to the Indiana State Trapper's Association and Fur Trappers of America in Indiana.

The Chair stated he understood that the Division of Fish and Wildlife will continue to look at the data and research this issue. There could be opportunities for more dialog. The Chair noted that the Commission sometimes addresses issues that are legal for hunters at the time and without detrimental biological data it is hard to make a change to a rule until there is additional information. The information and supporting data could change and there may be a reason to address an issue like the wildlife contests again in the future.

Smith said the Department will continue to gather additional information and will update the Commission at later meetings.

Laura Hilden moved to approve the Report on Citizen Petition to prohibit Wildlife Killing Contests for species of wild animals such as coyotes and foxes. Brian Rockensuess seconded the motion. Upon a voice vote, the motion carried.

NRC, DIVISION OF HEARINGS

Consideration of Hearing Officer report (following recall) on rule processing, public hearing, and hearing officer analysis with recommendation regarding final action to amend 312 IAC 18-3-14 governing Gypsy Moth; LSA #22-183(F); Administrative Cause No. 18-109E

Billie Franklin, Hearing Officer, presented this item and reported:

The proposed amendments to 312 IAC 18-3-14 add Lake County and Whitley County to the listing of counties declared to be infested with and subject to the gypsy moth quarantine.

The Commission gave final adoption on November 15, 2022. Shortly after, the Office of Attorney General (OAG) had concerns over the time between the publication and the public hearing. The Division of Hearings filed a Notice of Recall with the Legislative Services Agency (LSA) on December 19, 2022, to make corrections. A second virtual public hearing was conducted on January 27, 2023. No members of the public attended the public hearing, and no public comments were received. No changes were made to the

rule language. It is recommended that the Commission grant final adoption to the rule amendments attached as Exhibit C.

John Wright moved to give final action to amend 312 IAC 18-3-14 governing Gypsy Moth. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of Hearing Officer report on rule processing, public hearing, and hearing officer analysis with recommendation regarding final action to amend 312 IAC 5-7-1 to identify speed zones with signage at the coordinates rather than just on-site buoys and remove references to navigable waterways; adds 312 IAC 5-7-16 for an idle speed zone on the St. Mary's River; adds 312 5-7-17 for an idle speed zone on the St. Joseph River, adds 312 IAC 5-7-18 an idle speed zone on the Maumee River. LSA #22-296(F); Administrative Cause No. 21-LE-025

Billie Franklin, Hearing Officer, also presented this item:

The proposed amendments identify speed zones with coordinates rather than just on-site buoys and remove references to navigable waterways.

Public hearings were conducted on December 3, 2022, and February 3, 2023, at the Community Center in Fort Wayne. Thirteen members of the public attended the first public hearing. Five written and six verbal comments were received in support of the rule amendment.

The Notice of Intent filed with the Indiana Register is attached to the report as Exhibit A, the public comments are attached as Exhibit B, and the rule language is attached as Exhibit C, The recommendation is final adoption.

Brian Rockensuess moved to give final action to amend 312 IAC 5-7-1 to identify speed zones with signage at the coordinates rather than just on-site buoys and remove references to navigable waterways; adds 312 IAC 5-7-16 for an idle speed zone on the St. Mary's River; adds 312 5-7-17 for an idle speed zone on the St. Joseph River, adds 312 IAC 5-7-18 an idle speed zone on the Maumee River. John Wright seconded the motion. Upon a voice vote, the motion carried.

Consideration of recommendation for final action on readoption of 312 IAC 11, governing standards for Public Freshwater Lakes; LSA #23-66(F); Administrative Cause No. 23-WA-001

Consideration of recommendation for final action on readoption of 312 IAC 11.5, governing standards for Surface Water Emergencies on Lakes; LSA #23-67(F); Administrative Cause No. 23-WA-002

Billie Franklin, Hearing Officer, presented these two agenda items together:

The readoption of 312 IAC 11 governs standards within public freshwater lakes and the readoption of 312 IAC 11.5 governs surface water emergencies on lakes.

The Director of the Division of Hearings approved preliminary adoption of both rules on January 3, 2023, the Notices of Intent were published in the Indiana Register on February 8, 2023, and fiscal analyses were submitted to the Legislative Council. No one requested to have a section of either rule readopted separately.

The recommendation is the Commission approve the readoption of 312 IAC 11 and 312 IAC 11.5, in their entirety and without amendment.

Brian Rockensuess moved to give final action on readoption of 312 IAC 11, governing standards for Public Freshwater Lakes and to final action on readoption of 312 IAC 11.5, governing standards for Surface Water Emergencies on Lakes. Bart Herriman seconded the motion. Upon a voice vote, the motion carried.

Consideration of the Hearing Officer proposed report of the Natural Resources Commission with respect to the Petition for the Establishment of the Hidden Hill Conservancy District; Administrative Cause No. 22-039C

Aaron Bonar, Hearing Officer, presented this item and reported as follows:

The Petition for Establishment of the Hidden Hills Conservancy District was filed with the Miami Superior Court on February 15, 2022, and is attached as Exhibit Four of the report. The Commission received the Petition on June 17, 2022, and after continuances, the deadline for submitting the Commission's Report to the Miami Superior Court is March 24, 2023.

The Commission received responses from the relevant governmental agencies attached as Exhibit 5. The public hearing was held in Peru, Indiana on December 6, 2022. The testimony from the hearing is outlined in the report and the exhibits presented are attached as Exhibits One through Exhibit Three.

On February 20, 2023, the Commission received a report from the Department's Division of Water, which is attached as Exhibit Six. The Department recommended the Petitioners make amendments to clearly demonstrate the need for the conservancy district and how the proposed district would fulfill the stated purposes.

The Commission makes determinations and provides recommendations to the county superior court as to whether the proposed district meets the requirements for the establishment of a conservancy district pursuant to Ind. Code § 14-33. This report will be filed with the Miami Superior Court, that court is responsible for granting or denying the petition for the proposed conservancy district.

It was determined, based on the evidence, the proposed conservancy district has not shown that it is necessary to create a conservancy district or that the conservancy district would be able to accomplish the proposed purposes. It is unclear if the proposed conservancy district is necessary, holds promise of economic and engineering feasibility, offer benefits more than costs and damages, and covers and serves a proper area. It is also unclear if the proposed conservancy district could be established and operated in a manner compatible with established conservancy districts, flood control projects, reservoirs, lakes, drains, levees, other water management or water supply projects.

The request is that the Hearing Officer Report be accepted by the Commission.

The Chair recognized Alan Hux, counsel for the Petitioners, Hidden Hills Conservancy District. Hux stated he had no comment regarding the report but was at the meeting to answer any questions the Commission might have.

Bart Harriman moved to accept the report on the Petition for the Establishment of the Hidden Hill Conservancy District. John Wright seconded the motion. Upon a voice vote, the motion carried.

Consideration of Hearing Officer report on rule processing, public hearing, and hearing officer analysis with recommendation regarding final action to adopt 312 IAC 5-6-3.5 establishing a special boating zones and standards for temporary structures on Clear Lake; LSA #22-349(F); Administrative Cause No. 22-WA-009

Elizabeth Gamboa, Hearing Officer, presented this item and reported as follows:

The proposed rule, attached to the report as Exhibit A, would establish special boating zones and standards for temporary structures for portions of Clear Lake. The proposed rule resulted from a citizen petition submitted in June 2021, because of shallow conditions in a limited area of the lake.

Preliminary adoption was granted by the Commission on November 15, 2022, a Notice of Intent to adopt the rule was published in the Indiana Register on November 23, 2022, and placed on the Commission's rulemaking docket. A Notice of Public Hearing was published in the Herald Republican in Steuben County and the Indianapolis Star on January 18, 2023.

The public hearing was held at Pokagon State Park on February 16, 2023, where seven members of the public attended the hearing and provided comments in favor of the rule. No other comments were received through the rule making docket, all other rule requirements were completed, and final adoption of the proposed rule is recommended.

Brian Rockensuess moved to give final action to adopt 312 IAC 5-6-3.5 establishing a special boating zones and standards for temporary structures on Clear Lake. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of Hearing Officer report on rule processing, public hearing, and hearing officer analysis with recommendation regarding final action to amend 312 IAC 1-1-26, amending the definition of Ordinary Highwater mark and 312 IAC 6-7-5, removing the reference to 581.5 feet from the definition of Ordinary Highwater mark contained in the rule; LSA #22-350(F); Administrative Cause No. 21-AD-034

Gamboa, Hearing Officer, also presented this item and as follows:

The proposed amendments are the result of legislative changes and remove the five hundred eighty-one and five-tenths (581.5) feet or lower as the definition of an ordinary high watermark on Lake Michigan. The codification of Ind. Code § 14-26-2.1-2 defined the Lake Michigan ordinary high-water mark.

Preliminary adoption was granted by the Commission on November 15, 2022, a Notice of Intent to adopt the rule was published in the Indiana Register on November 28, 2022, and place on the Commission's rulemaking docket.

A public hearing was held on November 28, 2022, no members of the public attended, and the Commission did not receive any public comments. All rule requirements were completed, and the proposed rule is recommended for final adoption.

Marc Milne moved to give final action to amend 312 IAC 1-1-26, amending the definition of Ordinary Highwater mark and 312 IAC 6-7-5, removing the reference to 581.5 feet from the definition of Ordinary Highwater mark contained in the rule. John Wright seconded the motion. Upon a voice vote, the motion carried.

Jane Ann Stautz requested the Department provide a legislative update at the next Commission meeting.

The meeting was adjourned at approximately 10:48 a.m., ET.