

NATURAL RESOURCES COMMISSION
Meeting Minutes, July 21, 2020

MEMBERS PRESENT

Bryan Poynter, Chair
Jane Ann Stautz, Vice Chair
Mike Smith
Bruno Pigott
Laura Hilden
Noelle Szydlyk
Patrick Early
Bart Herriman
John Wright
Phil French

NATURAL RESOURCES COMMISSION STAFF PRESENT

Sandra Jensen	Dawn Wilson
Billie Davis	Scott Allen

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

John Davis	Executive Office
Chris Smith	Executive Office
Terry Coleman	State Parks
Christie Sorrels	State Parks
Steve Hunter	Law Enforcement
Terry Hyndman	Law Enforcement
Jason Lee	Law Enforcement
Ron Hellmich	Nature Preserves
Megan Abraham	Entomology & Plant Pathology
James B. Brindle	Communications

GUESTS PRESENT

Walter Johnson	Paul Arlinghaus
Sarah Baumgart	Tom Greemann
Steve Sarette	

Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 10:04 a.m., ET, on July 21, 2020, at the Fort Harrison State Park, Garrison, 6002 North Post

Road, Blue Herron Ballroom, Indianapolis, Indiana. 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 May 19, 2020 meeting minutes. Bart Herriman moved to approve the minutes, as presented. Patrick Early seconded the motion. Upon a voice vote, the motion carried.

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

Mike Smith, Interim Director of the Department of Natural Resources (Department), provided his report. Smith noted that all of the Department properties have opened to the public with large "holiday weekend" crowds every weekend.

Smith said that the Department is experiencing operational challenges to meet a 15% cut in the budget. He stated the Department's reserve target fund is 5.6 million dollars because the Department anticipates receiving federal reimbursement from the Coronavirus Aid, Relief, and Economic Security (CARES) Act for law enforcement salaries from July to December 2020. Smith stated that the Department submitted a "strategic plan" to the Governor's Office and the Office of Management and Budget (OMB). He stated the strategic plan includes keeping a minimum of 150 positions vacant, which is 11% of the Department's full and part-time positions, including 30 Conservation Officer vacancies. Smith said that it appears that a similar budget reduction would be in place for fiscal 2022 and 2023 making future budgets challenging. The Department has been asked by the Governor's Office to consider eliminating or reducing programs.

Smith recognized and thanked the Department staff for their tremendous work during the Coronavirus pandemic. He said of approximately 250 employees that normally work at the Indiana Government Center only about 30 are present on a daily basis. Smith noted the Department's good work with no productivity shortfalls while working remotely.

John Davis, Deputy Director for the Bureau of Lands and Cultural Resources, provided his report. Davis stated there have been record crowds at the campgrounds and weekends where the State Park Inns were full with a 91% occupancy rate. He noted, because schools were not in session, there were also crowds mid-week. Davis said there were approximately ten properties at capacity presenting the Department with the challenge of managing the large numbers of people.

Davis noted the ability of Department staff to work efficiently from home observed the Department may consider consolidating office space in the future.

Sydlyk asked if the 91% occupancy rate was just lodging at the inns or if the occupancy rate also included camping.

Davis responded that camping normally runs above a 95% occupancy rate on a regular basis, but inn occupancy is not normally that high.

Sydlyk noted the Indiana Office of Tourism Development is continuing to promote Department properties.

The Chair asked about how food service on Department properties was operating with Coronavirus related challenges.

Davis stated that food service on Department properties has been altered in accordance with new guidelines and the buffets at State Parks have been eliminated. Davis said State Park dining service is observing social distancing in the dining rooms, providing outdoor dining and providing room service for guests. He noted that challenges are ongoing.

Chris Smith, Deputy Director of the Bureau of Water Resource and Regulation, provided his report. Smith said the regulatory inspection staff works remotely most of the year already so they have had no issues, the permitting staff started with challenges related to logging on from home, but those issues have been resolved and they continue to meet the permitting timeline matrix.

Smith stated the Division of Historic Preservation and Archeology received several comments from consultants who were impressed with the service they received during the pandemic. He noted the Division's initial challenges involved sharing paper files and explained they are now working with Indiana Archives and Records Administration to digitize those files for easier access and sharing.

Smith introduced James Brindle, who was announced at the May 19, 2020 meeting as the new Director of the Division of Communications. Smith commended the Division for doing a great job and playing a critical role in keeping the public informed.

Smith reported that gypsy moth treatment has been completed for the year.

Smith said the Division of Water has completed their efficiency review of the permitting process and have set an agenda on what they would like to do now. Smith said the Division will be automating the Flood Analysis and Regulatory Assessment (FARA) process so a property owner can enter their address in the geographic information system (GIS) to determine if they are in a floodplain. Smith said the Division may automate the lake inspection process, using Light Detection and Ranging (LiDAR) for determining contour when evaluating applications for permitting for structures on lake shorelines instead of staff physically going to the site for an inspection. Smith said the Division is also updating the deadline from 30 days to 7 days for paper submission of documents supplemental to an online permit application.

Smith noted that Montana Martin, staff archeologist in the Division of Reclamation, is leaving the Department to work for the United States Army Corps of Engineers. He noted that the Division of Historic Preservation and Archeology is currently helping to fill the void until a final staffing decision is made.

Patrick Early, Chair of the Advisory Council, reported that the Advisory Council has not met since the last Commission meeting.

CHAIR, AND VICE CHAIR

Information: Consideration of 2020 meeting dates:

The Chair noted that the remaining 2020 Commission meeting dates are September 15 and November 17 and announced that the meetings are currently scheduled to take place at the Fort Harrison State Park Garrison or Inn in Indianapolis.

Updates on Commission and AOPA Committee

Jane Ann Stautz, Chair of the Commission's AOPA Committee, stated that the AOPA Committee has not met since the last Commission meeting, but a meeting is scheduled to take place at 11:30 a.m. ET following the Commission meeting.

The Chair thanked the members who serve on the AOPA Committee.

DNR, EXECUTIVE OFFICE

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

No items were identified for referral to the Advisory Council.

DNR, DIVISION OF NATURE PRESERVES

Consideration of the dedication of the Laura Hare Nature Preserve Blossom Hollow Addition in Johnson County

Ron Hellmich, Director of the Division of Nature Preserves, presented this item. Hellmich said that the proposed nature preserve is a 40-acre property in Johnson County owned and managed by the Central Indiana Land Trust.

Hellmich noted the proposed nature preserve protects an oak-hickory forest and interior habitat. A trail goes through the proposed preserve.

The Division of Nature Preserves recommended dedication of the site as a nature preserve.

Phil French moved to approve the dedication of the Laura Hare Nature Preserve Blossom Hollow Addition. Laura Hilden seconded the motion. Upon a voice vote, the motion carried.

Consideration of the dedication of the Mossy Pointe Nature Preserve in Parke County

Hellmich also presented this item. Hellmich said that the proposed nature preserve is a 25.73-acre property is located east of the original nature preserve and adjacent to the Allee Woods Nature Preserve, owned by Wabash College.

Hellmich noted the proposed nature preserve protects high ridges intersected by deep cool ravines that supports relict eastern hemlock, forest birds, and other rare species. He noted the presence of trails that allow access to the public.

The Division of Nature Preserves recommended dedication of the site as a nature preserve.

Jane Ann Stautz moved to approve the dedication of the Mossy Pointe Nature Preserve. Bart Herriman seconded the motion. Upon a voice vote, the motion carried

DNR, DIVISION OF ENTOMOLOGY AND PLANT PATHOLOGY

Report to the Natural Resources Commission on citizen petition to amend the Terrestrial Plant Rule, 312 IAC 18-3-25; Administrative Cause No. 20-HP-028

Megan Abraham, Division of Entomology and Plant Pathology, presented this item. Abraham stated a Citizen's Petition requesting a review of 312 IAC 18-3-25 was submitted to the Division of Hearings on February 28, 2020, by CISCO Companies, on behalf of the forage farmers in Indiana. The petition requested an exemption or elimination of the species reed canarygrass from the rule.

Abraham stated that staff members from the Divisions of Fish and Wildlife, Nature Preserves, Forestry, and Entomology and Plant Pathology and the Department's Executive Office were on the committee to research the request. She noted that the research included input from the Indiana Invasive Species Council, researchers from Purdue University, and Indiana seed companies.

Abraham stated the Department identified one company selling the reed canarygrass plant in Indiana and selling seed from the reed canarygrass to other states. She noted that this company provided sales information of less than \$25,000 a year in total sales and \$9,800 in sales within Indiana annually. Abraham noted that the current rule restricts all sales and transport through the state. Abraham said the committee determined there are not many alternatives to reed canarygrass for poor drainage sites when working with cattle. She noted that there is not a lot of acreage wet enough for reed canarygrass and that cattle develop health issues in areas with poor drainage. Abraham noted that the committee reviewed the Purdue Agricultural Economics Report of August 2019 that calculated the lost revenue for leaving farmland fallow.

Abraham said that over 500 public comments were received in 2018 on the Terrestrial Plant Rule amendment to 312 IAC 18-3-25. There was overwhelming support for the rule and no concerns from forage farmers were voiced at that time.

Abraham noted that reed canarygrass is an invasive species, located in most wetlands in every county in the state, produces stems from creeping rhizomes, and emerges early in monotypic stands. She said the stands keep native vegetation from growing in areas that have been previously flooded and reduces diversity of the flora and fauna. Abraham stated that once the reed canarygrass is established in an area it is difficult to eradicate and floodwater can easily disperse the seeds, plants, and rhizomes to other areas.

Abraham stated the Invasive Species Council conducted a survey of 13 federal, state, and private entities working to control or eradicate the reed canarygrass and they reported spending a combined total of \$187,000 a year on 1,700 acres of wetland. Abraham said the committee determined the loss to seed companies and farmers who cannot sell or plant the reed canarygrass is approximately \$64,000 a year and the clean-up expense associated with the invasive nature of the species, is \$180,000 a year.

On behalf of the committee, Abraham recommended the reed canarygrass species remain on the list of banned species on the Terrestrial Plant Rule.

Herriman asked what the benefits are of the reed canarygrass.

Abraham stated that forage farmers are interested in keeping the reed canarygrass because they cannot get other species of plants to grow in wetland areas and when the water recedes, the cattle will eat the reed canarygrass.

Patrick Early moved to accept the Committee's Report and recommendation regarding the citizen petition to amend 312 IAC 18-3-25; the Terrestrial Plant Rule. Bart Herriman seconded the motion. Upon a voice vote, the motion was carried.

NRC, DIVISION OF HEARINGS

Consideration of amendments to non-rule policy document, Information Bulletin #1, which provides guidance for indexing of final adjudicative agency decisions and transcript fees; Administrative Cause No. 20-AD-030

Sandra Jensen, Hearing Officer, presented this item. Jensen said the Division of Hearings has been reviewing internal processes to improve efficiencies and identified that the indexing of final orders adopting parties' agreements and settlements is a redundant practice. She explained that the agreements and settlements can be found without the need for maintaining a separate index, which is time consuming to maintain and is not used often. She noted other areas where language was "cleaned up" with no other substantive changes in the non-rule policy document.

Mike Smith moved to adopt amendments to non-rule policy document, Information Bulletin #1. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of Hearing Officer’s Report, including findings and proposal to the Natural Resources Commission as to recommendations to the U.S. Army Corps of Engineers regarding Lake Monroe Sailing Association ratemaking petition; Administrative Cause No. 19-158P

Jensen also presented this item. She said the Petition for fee increase by the Lake Monroe Sailing Association (LMSA) was filed by Jeff Watson on December 16, 2019. She stated the current LSMA fees were approved by the Commission in 2012 and phased in between 2013 to 2016.

Jensen explained under Information Bulletin #20 (IB #20) the hearing officer evaluates the proposed fees and considers input from the petitioner, slip holders, Department, and the public. She said that evaluation includes consideration of fees; charged for similar slip sizes, and amenities offered by other comparable marinas, which are marinas located within 400 miles of the marina requesting a rate increase.

Jensen said that LMSA identified sixteen marinas for comparison with one not being considered because it was more than 400 miles from LMSA. She noted the Department determined the LMSA’s proposed fees for 2021 will remain below the fees charged by comparable marinas.

Jensen noted that on March 10, 2020, Walter Johnson, of LMSA, filed an affidavit confirming slip holders were notified of the proposed fee increase as required by IB #20. She observed that a rate hearing would have been scheduled if 10% of slip holders had made requests. Jensen said there was one request for a public hearing and one comment on the proposed rate increase, which requested that the Commission review LMSA’s petition but did not offer an objection. She noted that a rate hearing was not required.

Jensen stated that the fees currently charged by LMSA are not exactly what the Commission originally approved, but they are not significantly different. She offered that it appeared LMSA had rounded fees to the nearest five-dollar amount, with some fees being more and other fees being less than approved by the Commission. Jensen stated the “north bay slips”, for which fees were approved in 2012, were not included in the current Petition. She reported that Johnson confirmed this to be an oversight. Upon Johnson’s confirmation, Jensen advised there are only three slips on the north bay dock that are the same in size and rate as other slips for which she is recommending an increase. For that reason, Jensen stated that she is also recommending approval of an increase for the “north bay slips” through the current petition.

Jensen said the Petition seeks to establish two tiers of fees for winter storage, trailer/cradle parking, and board boat storage so that LMSA can keep the fees low for people who pay to moor or store boats at LMSA while charging a higher for non-club members who do not otherwise support LMSA.

Jensen stated that even though the proposed fees are higher than a 2% increase, the Department and the Hearing Officer agree that the proposed fees are reasonable and in some cases lower than other comparable marinas. Jensen stated the Proposed Findings and Recommendations to the U.S. Army Corps of Engineers by the Natural Resources Commission was identified as Exhibit C.

Bruno Pigott moved to approve the Hearing Officer's findings and recommendation to the U.S. Army Corps of Engineers, in the matter of the Petition for rate increase by Lake Monroe Sailing Association. Bart Herriman seconded the motion. Upon voice vote, the motion carried.

Consideration of Hearing Officer's Report, including findings and proposal to the Natural Resources Commission as to recommendations to the U.S. Army Corps of Engineers regarding Two Herons Marina ratemaking petition; Administrative Cause No. 19-154P

Jensen also presented this item and said the Petition for fee increase by the Two Herons Marina (Two Herons) was filed by Thomas Greemann on December 6, 2019, as required by IB #20. She noted Two Herons' purchased Lake Monroe Marina (LMM) on September 4, 2019, and that LMM last requested an increase in fees in 2011.

Jensen said Two Herons identified six comparable marinas and the Department determined that even though the proposed fees are up to 29% higher than the fees last approved by the Commission, the fees remain less than the fees charged by comparable marinas. Jensen said that table three of the Hearing Officer's Report provides a condensed fee comparison of slip sizes that are similar.

Jensen noted that on March 13, 2020, Greemann filed an affidavit confirming slip holders were notified of the proposed fee increase as required by IB #20, no public hearing was requested, and no comments were received.

Jensen stated that when Greeman purchased LMM the previous operator had been charging fees in excess of what had been approved by the Commission in 2011 for slips sizes in existence at that time and that LMM had added slip sizes that had not been brought to the Commission for the establishment of a fee. Jensen noted that a comparison of the approved fees to the fees being charged by LMM was provided in Table One of the Hearing Officer's Report.

Jensen observed that Mr. Greemann and Two Herons should not be held responsible for the inappropriate actions of LMM. She offered that to facilitate Two Herons' efficient commencement of operations she was recommending that, as necessary, the current petition for fee increase also be treated as one for fee establishment.

Jensen recommended approval of the proposed rate increase by the Commission and identified the Proposed Findings and Recommendations to the U.S. Army Corps of Engineers by the Natural Resources Commission as Exhibit D.

Mike Smith moved to approve the Hearing Officer's findings and recommendation to the U.S. Army Corps of Engineers, in the matter of the Petition for rate increase by Two Herons Marina. Bruno Pigott seconded the motion. Upon voice vote, the motion carried

Consideration of Hearing Officer's Report, including findings and proposal to the Natural Resources Commission as to recommendations to the U.S. Army Corps of Engineers regarding Hoosier Hills Marina ratemaking petition; Administrative Cause No. 19-152P

Dawn Wilson, Hearing Officer, presented this item. Wilson **stated** the Petition for fee increase by the Hoosier Hills Marina, Inc. (Hoosier Hills) was filed by Victor Polen on December 14, 2019, and an amended Petition was filed on December 16, 2019, and was included in the Hearing Officer's Report as Exhibit A.

Wilson noted that on March 4, 2020, Polen filed an affidavit confirming slip holders were notified of the proposed fee increase as required by IB #20. While an insufficient number of requests for public hearing were submitted, all requests and comments are included in the Hearing Officer's Report at Exhibit B.

Wilson stated that the proposed rate increases are between 1% and 5.71%, with only four slips over 2%, and the Department's report determined the increases are reasonable and justified. Wilson noted that the slip increases were comparable to other marinas with a single exception. While no comparable rate for a daily slip with electricity was provided, she determined the increase from \$35 to \$37 to be reasonable.

Wilson recommended approval of the proposed rate increase by the Commission and the Proposed Findings and Recommendations to the U.S. Army Corps of Engineers by the Natural Resources Commission is identified as Exhibit D.

The Chair asked if the Hoosier Hills Mariana had previously been before the Commission and at the time, he recalled a long list of complaints against the marina. He also asked if there was anything specific from the people who commented other than, they did not want a rate increase.

Wilson responded that the Commission had held back some of the rate increases previously and subsequently approved the rate increase. She confirmed for the Chair that the comments received did not specify complaints and noted that all comments were provided to the Department for follow-up, if necessary.

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

Consideration of Hearing Officer's Report, including findings and proposal to the Natural Resources Commission as to recommendations to the U.S. Army Corps of Engineers

regarding Kent's Harbor and the Sagamore Resort's ratemaking petition; Administrative Cause No. 19-143P

Billie Davis, Hearing Officer, presented this item. Davis stated the Petition for rate establishment by Kent's Harbor and Sagamore Resort's (Kent's Harbor), was filed by Kent Reineking on November 29, 2019 and attached as Exhibit A.

Davis noted that on January 6, 2020 Reineking filed an affidavit confirming slip holders were notified of the proposed rate establishment as required by IB #20, no public hearing was requested, no comments were received, and the establishment is reasonable and justified.

Davis recommended approval of the proposed rate establishment by the Commission and noted the Proposed Findings and Recommendations to the U.S. Army Corps of Engineers by the Natural Resources Commission is identified as Exhibit C.

John Wright moved to approve the Hearing Officer's findings and recommendation to the U.S. Army Corps of Engineers, in the matter of the Petition for rate establishment by Kent's Harbor and the Sagamore Resort's. Jane Ann Stautz seconded the motion. Upon voice vote, the motion carried

Consideration of recommendation for final action on readoption of 312 IAC 3, governing standards that assist with the implementation of proceedings governed by IC 4-21.5 (AOPA); LSA #20-206(F); Administrative Cause No. 20-AD-002

Davis also presented this item. Davis stated the final readoption of 312 IAC 3 assists with the implementation of proceedings governed by IC 4-21.5, commonly known as the "Administrative Order and Procedures Act" (AOPA) in its entirety, and without amendment.

Davis stated preliminary adoption of 312 IAC 3 was approved by the Director of the Division of Hearings on January 2, 2020, "Notice of Intent to Readopt" was posted to the Indiana Register on April 15, 2020 and the fiscal analyses was forwarded to the Legislative Council on April 15, 2020. Davis noted that no written request seeking to have a particular section of the rule readopted separately was received.

Davis recommended approval of the readoption of 312 IAC 3.

Phil French moved to readopt 312 IAC 3 without amendment. Noelle Sydlyk seconded the motion. Upon a voice vote, the motion carried.

Adjournment

The meeting was adjourned at approximately 10:58 a.m., ET.