

NATURAL RESOURCES COMMISSION
Meeting Minutes, May 18, 2021

MEMBERS PRESENT

Bryan Poynter, Chair
Jane Ann Stautz, Vice Chair
Dan Bortner, Secretary
Bruno Pigott
Laura Hilden
Noelle Szydlyk
Marc Milne
Phil French
Patrick Early
Bruce Walkup

NATURAL RESOURCES COMMISSION STAFF PRESENT

Sandra Jensen Dawn Wilson
Billie Franklin Scott Allen

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Chris Smith Executive Office
Ryan Mueller Executive Office
Mike Smith Executive Office
Steve Hunter Law Enforcement
Terry Hyndman Law Enforcement
Terry Coleman Parks
Allen Hurst Parks
David Bausman Legislative
Marty Benson Communications
Rebecca McClain Legal
Kenneth Smith Water
Moumita Mukherjee Water
Ronald Hellmich Nature Preserves

GUESTS PRESENT

Chuck Reddinger John Taylor Cliff Chapman
Kent Reineking Paula Reineking

Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 10:00 a.m., ET, on May 18, 2021, 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 March 16, 2021 meeting minutes. Patrick Early moved to approve the minutes, as presented. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

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

Dan Bortner, Director of the Department of Natural Resources (Department), provided his report. Bortner thanked Chris Fenner and Hiram Richardson with the Division of State Parks for setting up virtual access to the meeting. Bortner introduced Ryan Mueller as the new Deputy Director of the Regulatory Bureau and Chris Smith as the Deputy Director of the Land Management Bureau.

Bortner stated Governor Holcomb has invested in five initiatives that will assist the Department. He said the first is the goal to plant one million new trees in the next five years and noted in April 2021 the Division of Forestry, the Natural Resources Foundation, and the employees of Clif Bar and Company planted over five thousand trees at Ravinia State Forest. The second initiative is the Governor's deferred maintenance program on Department properties that was put on hold because of COVID. Bortner said the third initiative is the Next Level Trails program for which he announced that the Governor has added an additional \$60 million toward the construction of more trails. He said fourth is the Governor's allocation of \$20 million for additional land purchases and the fifth is the Governor's plan to add two additional lodges to the Division of State Park Inns. Bortner noted the last time a lodge was built was the Spring Mill Inn in 1939 and announced the plan to build the new lodges at Potato Creek State Park and at Prophetstown State Park.

Bortner reported that because of the Department's budget forecast the Department received record-level funding during the 2021 legislative session, but the Department's agency bill did not pass prior to the Legislators adjourning. Bortner said the Department worked with the Indiana Department of Environmental Management (IDEM) to protect the interest of the state in the wetlands bill that passed in Senate Enrolled Act 389 and that the Department and IDEM will both participate in the Indiana Wetlands Taskforce.

Bortner stated the Department and the Indiana State Department of Agriculture (ISDA) have committed to work together to explore voluntary carbon credit markets for forestry and farmland owners and reported they will meet with stakeholders to develop recommendations.

Bortner said in April 2021, the Indiana Department of Administration (IDOA) and Division of State Parks completed the renovation of the 54-room east wing of Abe Martin Lodge. He said this \$5 million project was funded from the deferred maintenance program.

Bortner stated the Division of State Parks had the “annual welcome back weekend” with free admission to the properties and free fishing on Sunday, May 2, 2021. He said May 15, 2021, was “Kids to Parks Day, a national day of outdoor play designed to connect kids and families with local, state, and national parks.

Bortner noted the ceremony held May 14, 2021, on the south lawn of the Indiana Statehouse recognized the graduation of nine K-9 teams from multiple states that completed the Division of Law Enforcement’s K-9 Resource Protection program. Bortner said the Division of Law Enforcement now has a K-9 unit in each of the state’s law enforcement districts.

Bortner said the projections indicate the Department will be very busy this upcoming recreation season. He reported that the properties’ inn and campground reservations are at near capacity for Memorial Day weekend, 88% full for July Fourth weekend, and 89% full for Labor Day weekend. He said the challenge is staffing, especially housekeeping staff for the inns and lifeguards for the pools.

Chris Smith, Deputy Director of the Land Management Bureau, provided his report. C. Smith said turkey season has closed and there were over 12,000 turkeys harvested, which was 2,000 less than last year, but noted 2020 was a high year with increased license sales.

C. Smith said the Division of Nature Preserves reported over 2,500 pounds of ginseng harvested in the state this year, with an average price of \$600 per pound, and noted that there are approximately 275 ginseng roots per pound.

C. Smith noted the Next Level Trails program received additional funding so that in March 2021, round two, included funding for 18 new grant recipients. He said the total grants awarded for the program is \$55 million, representing 35 different projects, 112 miles of trails, with projects spread over 28 counties.

C. Smith said there is \$25 million identified for conservation in the Department’s budget. There are ongoing discussions with the Division of Land Acquisition and property staff regarding the best use of funds, and there will be additional information forthcoming in the future.

C. Smith said the Division of Forestry is out planting trees and they currently have 130,000 planted with a goal of 200,000 trees planted this year. He noted tree planting has occurred at Ravinia State Forest, Morgan-Monroe State Forest, Jackson-Washington State Forest, Harrison-Crawford State Forest, Greene-Sullivan State Forest, Covered Bridge Retreat, Hovey Lake Fish and Wildlife Area, and Prophetstown State Park. C. Smith said the Department is on track to reach the “million new trees planted in five years” goal with 420,000 total trees planted in the last 2 years.

C. Smith said the online camping reservation system has been updated; it is more user-friendly, and it shows what campsites are still available. It also allows people to save their favorite campsites under their login.

C. Smith stated the Division of Fish and Wildlife have been working with the Indiana Native American Indian Affairs Commission (INAIAC) on the Hunting, Fishing, and Trapping Reimbursement Program for INAIAC members. C. Smith noted the current process is cumbersome with each member having to register as a vendor with Indiana and a new process would make it easier for members to receive reimbursements.

C. Smith reported the Department is working to connect wastewater treatment at Turkey Run State Park with the town of Marshall, McCormick's Creek State Park with the town of Spencer, and Brown County State Park is working to connect both wastewater and municipal water with the town of Nashville.

Ryan Mueller, Deputy Director of the Regulatory Bureau, provided his report. Mueller introduced himself and said that he had previously served as the Director of the Division of Water from 2017 until his appointment as the Director of the Regulatory Bureau. He said prior to coming to the Department he was the Water Resources Center Director for the Missouri Department of Natural Resources for approximately 10 years and has environmental management experience in the private sector.

Mueller stated that May is Historic Preservation Month, and the Division of Historic Preservation and Archaeology has several events planned to include the annual photo contest and noted that the winning entries can be viewed on the Division's website and social media sites. Mueller stated the Division and student volunteers from various local universities are surveying gravestones in the historic sections of Crown Hill Cemetery in Indianapolis. He noted they recorded the condition of the stones and the cemetery's Preservation Committee will use the information during future preservation.

Mueller stated in April 2021, the Division of Water with the Indiana Department of Homeland Security (IDHS) produced a drought workshop to identify and understand mitigation, planning, and response to drought. He added the three-day virtual workshop had about fifty attendees, with a lot of input, and there will be two regional drought meetings in July 2021.

Mueller stated the Brood X Cicada is the largest of the 17-year broods and is expected in 2021. The Division of Entomology and Plant Pathology had distributed a lot of cicada information to inform the public. He added that delayed planting of new trees and shrubs are encouraged to prevent damage caused by cicadas.

Mueller noted that Ken Smith is the Interim Director of the Division of Water until a replacement is appointed.

Mike Smith, Deputy Director of the Bureau of Administration, provided his report. M. Smith reported that in September 2019 the Department partnered with IDOA to receive \$30 million for deferred maintenance. He added the deferred maintenance funds were divided among ten

categories including but not limited to rehabilitation and masonry, Americans with Disabilities Act (ADA) accessibility, fish hatcheries improvements, heating, ventilation, and air conditioning equipment, restroom repairs or replacement, and campground upgrades.

M. Smith stated the most visible projects include the 54-room renovation at the Abe Martin Lodge Annex and noted the original plan was to do minor upgrades to the annex, but the discovery of mold in the rooms led to a complete renovation. M. Smith stated that over 60 vault toilets and comfort stations will be replaced with newer models at Department properties for \$3 million.

M. Smith said the Department and IDOA are in the process of submitting a second deferred maintenance request and they are reviewing and prioritizing needed maintenance on Department properties. He noted from the renovation experience at Abe Martin Lodge the Department is aware that State Park Inns need attention. M. Smith said the playgrounds on forty properties will be upgraded so they are ADA accessible. He said there are also some dams in need of repair. M. Smith said on June 23, 2021 a request will be presented to the State Budget Committee to renovate twenty family cabins at Brown County State Park.

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

CHAIR, AND VICE CHAIR

Information: Consideration of 2021 meeting dates:

The Chair noted that the remaining 2021 Commission meeting dates are July 20, September 21, and November 16 and announced that the meetings are currently scheduled to take place at the Fort Harrison State Park Garrison or Inn in Indianapolis. The Chair noted a possibility of the September 21st meeting being held at Indiana Dunes State Park.

Updates on Commission and AOPA Committee

Jane Ann Stautz, Chair of the Commission's AOPA Committee, stated that the AOPA Committee met last on March 16, 2021 and that currently no meetings are scheduled.

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 WATER**Consideration of the addition of a new nonrule policy document, Information Bulletin #81, which is a roster of low head dams presented for adoption by the Natural Resources Commission; Administrative Cause No. 20-WA-036**

Dawn Wilson, Commission's Division of Hearings, and Ken Smith, Division of Water, co-presented this item. Wilson stated Information Bulletin #81, is necessary to fulfill the requirements of IC 14-27-7.3-4, a new section that became effective on July 1, 2020, requiring the Commission's approval of a roster of low-head dams.

K. Smith introduced Moumita Mukherjee from the Division of Water and stated that they would be giving a presentation on low-head dams. K. Smith said the Regulation of Dams addresses basic safety of dams and was passed by the legislature in 1962. K. Smith noted that the Dam Safety Program had been focused on keeping traditional dams safe from failure to prevent flooding, but the Department now will also focus on "safety at dams" and recreation around dams.

K. Smith said the Department, IDHS, and the television station WFYI partnered together to make a documentary on the dangers of low-head dams called "Over, Under, Gone: The Killer in Our Rivers". He said the documentary is available on the Department's website and WFYI airs it on television regularly.

K. Smith said volunteers have helped educate the public on the safety around dams in prior years. K. Smith stated the Department is one of a few states that now have a Low-Head Dams Program and IC 14-27-7.3 was created to address issues at low-head dams.

K. Smith stated under the new statute and after a rule is put in place the owners of dams will have to place and maintain warning signs, notify the Department of ownership changes, be required to maintain \$1 million in liability insurance, and notify the Department if a low-head dam is damaged or breached. K. Smith said under IC 14-27-7.3 people are to stay 50 feet away from low-head dams and requires that the Commission shall adopt a roster of low-head dams located in the state that can create hazardous currents that pose safety issues to swimmers, waders, or boaters.

K. Smith stated there were originally 150 low-head dam structures the Department was looking at, but they are presenting 91 structures to include on the proposed roster of low-head dams. He said in the future there may be structures added or removed to the roster. K. Smith noted that removal of a low-head dam structure is expensive but recently, with the help of private funds, the removal of the low-head dam structures has had momentum. K. Smith said there were various divisions, agencies, and organizations that helped over the last five years to identify, educate, and worked to solve the problems that low-head dams create.

The Chair asked what purpose a low-head dam serves.

K. Smith said most low-head dams are over 100 years old and, while some were used to power gristmill or other structures, most do not serve a purpose anymore. He noted that for some of the low-head dams it is difficult to identify who the owners are.

The Chair asked what the purpose of the roster would be.

K. Smith the roster is a list of those low-head dams the Department will regulate and when adopted the Department will inform the dam owners of their rights and explain what will be required of them.

The Chair asked why it was so difficult to identify the owners of the dams.

K. Smith stated that finding information on the older dam structures, especially ownership is difficult. He said deeds and other county records do not identify ownership of some of the areas having dam structures.

French asked if the low-head dams were built by the state or were they built by private owners.

K. Smith replied it appears the dams were built by private individuals, businesses, or a local communities who used the structures for water supply.

French asked if the state has been held liable for any issues around the low-head dams.

K. Smith answered that he has not seen any liability issues and noted that over the years the state has acquired ownership of a couple of the low-head dam structures.

The Chair asked about the construction and material used in building the low-head dams.

K. Smith said most of the low-head dams were built with timber and filled in with rock, but over time they were covered with concrete. He noted a few of the dams were built with large limestone blocks.

Stautz asked about the average cost of removal of the low-head dams.

K. Smith replied that, if there is not contaminated sediment behind the dams, the removal could cost between \$50,000 to \$100,000, but it gets more complicated if there are other unforeseen issues that could make the cost jump to \$1 million.

Milne asked if the dams or their removal would have an impact on aquatic plants and wildlife downstream.

K. Smith said the removal of the dams have, in most cases, been encouraged and seen as a benefit by the Division of Fish and Wildlife and other biologists in the private sector.

Milne commented on page 9 of proposed Information Bulletin #81, where Indianapolis Power and Light (IPL) was listed as the owner of 2 dams, and that IPL has since changed their name to AES Indiana. He asked if the roster needed to reflect the current owner information.

Jensen stated the owner listed on the roster would coincide with the owner's name listed on the deed.

The Chair stated the matter of ownership and how the owner is listed on the roster would be further researched and corrected if necessary.

Stautz added that a footnote could also be included in the roster to identify that the company name was changed.

Bruno Pigott moved to approve the addition of a new nonrule policy document, Information Bulletin #81, as presented, and amended as necessary for the reference to ownership by IPL. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

DNR, DIVISION OF LAW ENFORCEMENT

Report to the Natural Resources Commission on citizen petition to adopt a rule to change the boat speed limit along portions of the St. Mary's River, in Fort Wayne; Administrative Cause No. 19-114L

Rebecca McClain, Department's Office of Legal Counsel, presented this item. McClain said the City of Fort Wayne through the City's Department of Parks and Recreation filed a petition for rule change to request a boat speed limit with the Commission under IC 14-15-7-3. She noted the Department's Committee was comprised of Lieutenant Kenton Turner and Lieutenant Erick Bolt, of the Division of Law Enforcement, and herself as Department's legal counsel.

McClain noted the legal standards for review and analysis of the petition under IC 14-15-7-3 and 312 IAC 5 and recognized the Commission's authority to adopt rules for speed or no wake zones due to water traffic congestion and safety.

McClain said the Committee recommends an "idle speed" zone because of increased boat traffic, effects on habitat, and safety issues. She said the "idle speed" zone was recommended instead of a "no wake" zone because "idle speed" is not allowed to exceed 5 miles per hour but provides speed necessary to allow the boater to maintain safe control over the boat. She said the "no wake" zone alternative could create a hazard because the decreased speed necessary to prevent causing a wake may result in some vessels being unable to steer in a river current.

The Chair noted the backup material included letters of support for a "no wake" zone and asked if the people who commented would be equally supportive of an "idle speed" zone.

McClain responded that no other comments were received other than those that were included in the material.

The Chair recognized Chuck Reddinger.

Reddinger, on behalf of the City of Fort Wayne, Department of Parks and Recreation, stated support for the addition of an “idle speed” zone instead of the “no wake” zone. He added that the process was new for them and they appreciated the support and guidance they received from the Department and Commission staff.

Bruno Pigott moved to approve the report on citizen petition to adopt a rule to change the boat speed limit along portions of the St. Mary’s River, in Fort Wayne, as presented. Patrick Early seconded the motion. Upon a voice vote, the motion carried.

DNR, DIVISION OF NATURE PRESERVES

Consideration of the dedication of the Ginn Woods Nature Preserve in Delaware County

Ron Hellmich, Division of Nature Preserves, presented this item. Hellmich stated the proposed nature preserve is located in Delaware County, and owned by Ball State University (BSU), who uses it as an outdoor laboratory.

Hellmich noted the undisturbed old growth forest supports diverse plant and animal species and the forest is dominated by beech and maple trees.

The Chair recognized John Taylor.

Taylor stated he is the Land Manager for the Field Station and Environmental Education Center with BSU and reported that managing Ginn Woods has been his responsibility for the last 20 years. Taylor stated that he supports adding Ginn Woods as a nature preserve.

The Chair recognized Cliff Chapman.

Chapman stated he is the Executive Director of the Central Indiana Land Trust (CILT) and that they would like to add more acreage and plant more trees over time as part of their conservation plan. Chapman expressed his thanks to John Bacone for the years he spent working to add Ginn Woods as a Nature Preserve and thanked Ron Hellmich, John Taylor, and others for their efforts. Chapman stated the CILT supports adding Ginn Woods as a nature preserve.

Jane Ann Stautz moved to approve the dedication of the Ginn Woods Nature Preserve. Marc Milne seconded the motion. Upon a voice vote, the motion was carried.

NRC, DIVISION OF HEARINGS**Consideration of Hearing Officer report with recommendations to amend Articles of Dedication and amend the master plan for the Dilcher-Turner Canyon Forest Nature Preserve; Administrative Cause No. 20-NP-048**

Dawn Wilson, Hearing Officer, presented this item. Wilson stated the Commission approved the original dedication of the Dilcher-Turner Canyon Forest Nature Preserve (D-TCFNP) in May 2020. She stated that subsequently Sycamore Land Trust owner of the D-TCFNP requested an amendment to the dedication to change the name of the preserve to Canyon Forest Nature Preserve (CFNP).

Wilson stated she was appointed by the Director of Hearings to be the hearing officer following a request for assistance by the Department, in compliance with Information Bulletin #72. Wilson stated after publication of notice a public hearing was conducted on March 17, 2021 and one written comment was received, which is included in the hearing officer's report.

Wilson stated IC 14-31-1-13 requires an amendment to the articles of dedication include specific findings by the Commission. Wilson noted the Commission must find that the proposed amendments to the Articles of Dedication and the Master Plan for CFNP will not permit an impairment, disturbance, use, or development of the area that is inconsistent with the purposes of the Nature Preserves Chapter.

Wilson recommended to accept the amendments to alter the title of the nature preserve in Greene County originally dedicated as the "Dilcher-Turner Canyon Forest Nature Preserve", to the "Canyon Forest Nature Preserve".

Bruno Pigott moved accept the Hearing Officers report with recommendations to amend Articles of Dedication and amend the master plan for the Dilcher-Turner Canyon Forest Nature Preserve. Noelle Szydlyk seconded the motion. Upon a voice vote, the motion carried.

Consideration of Hearing Officer 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 ratemaking petition; Administrative Cause No. 20-SP-052

Billie Franklin, Hearing Officer, presented this item. Franklin stated the Petition for rate increase by Kent's Harbor and Sagamore Resort's (Kent's Harbor), was filed by Kent Reineking on December 8, 2020 and attached as Exhibit A.

Franklin noted that Reineking filed an affidavit confirming slip holders were notified of the proposed rate increase as required by Information Bulletin #20, no public hearing was requested, one comment was received, and is attached to the hearing officer's report as Exhibit B.

Franklin stated that a comparative review was completed of the rates and amenities provided to determine if the amenities and proposed rates are similar and comparable to other marinas.

Franklin recommended approval of the proposed rate increase 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 D.

Patrick Early 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 14, governing standards for timber buyers, their agents, and timber growers, LSA #21-110(F), Administrative Cause No. 21-FO-003 (Agenda Item #9); 312 IAC 17, governing standards for other petroleum regulation, LSA #21-111(F), Administrative Cause No. 21-OG-005 (Agenda Item #10); 312 IAC 15, governing standards for forest and resource management, LSA #21-112(F), Administrative Cause No. 21-FO-004 (Agenda Item #11)

Franklin also presented these items together. Franklin noted the Director of the Natural Resources Commission approved preliminary adoption on January 5, 2021, Notice of Intent to readopt the rules were published in the Indiana Register on March 17, 2021, and no written request to have a particular section of the rule readopted separately were received. Franklin said the required fiscal analyses were forwarded to the Legislative Council, by email, as required by IC 4-22-2-28(i) on March 17, 2021.

Franklin recommended final readoption of 312 IAC 14, 312 IAC 15, and 312 IAC 17 in its entirety and without amendment.

Patrick Early moved to readopt 312 IAC 14, 312 IAC 17, and 312 IAC 15 without amendment. Phil French seconded the motion. Upon a voice vote, the motion carried.

The meeting was adjourned at approximately 10:59 a.m., ET.