NATURAL RESOURCES COMMISSION  
Meeting Minutes, January 16, 2018

MEMBERS PRESENT

Bryan Poynter, Chair  
Jane Ann Stautz, Vice Chair  
Cameron Clark, Secretary  
Bruno Pigott  
Laura Hilden  
Jeffrey Holland  
John Wright  
Bruce Walkup

NATURAL RESOURCES COMMISSION STAFF PRESENT

Sandra Jensen  
Dawn Wilson  
Scott Allen

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

John Davis  Executive Office  
Chris Smith  Executive Office  
Terry Hyndman  Law Enforcement  
Matthew Rea  Legal  
Justin Paicely  Legal  
Mark Reiter  Fish and Wildlife  
Dan Bortner  State Parks  
Terry Coleman  State Parks  
Ginger Murphy  State Parks  
David Snodgrass  State Parks  
Amanda Hinkel  State Parks  
Jessica Beck  State Parks  
Brian Finch  State Parks  
Brad Kessans  State Parks  
Andy Henry  State Parks  
Nicolas Brown  State Parks  
Gary Christopher  State Parks  
Heather DeLorenzo  State Parks  
Jordan Epp  State Parks  
Kassi Gray  State Parks  
Josh Thompson  State Parks
Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 9:59 a.m., ET, on January 16, 2018 at Fort Harrison State Park, Garrison, 6002 North Post Road, Ballroom, Indianapolis. With the presence of seven members, the Chair observed a quorum. The attendance was amended to eight members upon Bruno Pigott’s arrival.

APPROVAL OF MINUTES

The Chair asked for a motion for the approval of the Commission’s November 14, 2017 minutes.

Cameron Clark moved to approve the minutes of the meeting held on November 14, 2017, as presented. Jane Ann Stautz, seconded the motion. Upon a voice vote, the motion carried.

ELECTION OF OFFICERS

Bruce Walkup made a motion to slate the officers now standing for the 2018 term—Bryan Poynter, as Chair, Jane Ann Stautz, as Vice Chair, and Cameron Clark, as Secretary. John Wright seconded the motion. Upon a voice vote, the motion was unanimously carried.

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

Director Clark provided his report. The Director introduced Tara Wolf as the new Director of Communications and noted that she had previously been employed by Purdue University.

Wolf stated, “I am excited to be here and I appreciate the warm welcome.”
Clark introduced Justin Paicely as the Department’s Deputy General Counsel. He stated that Paicely has been with the Department since November 20, 2017, and noted that Paicely is assisting the Department’s Chief Legal Counsel, Samantha DeWester, on a variety of projects.

Clark stated that the Department’s Omnibus Bill (HB 1292) was introduced by State Representative Eberhart, and stated that he would keep the Commission members updated on the HB 1292’s progress.

Clark stated that proposed legislation has been introduced, that would impact the Division of Forestry’ timber management practices. He explained that the forestry bills include SB 275, filed by State Senator Bassler, and SB 312 and SB 312, filed by State Senator Stoops. Clark said that SB 236 and HB 1186, from the Governor’s Office agenda, designate the Say’s Firefly as the state insect. Clark explained that SB 299 would impact the Division of State Parks, which proposes to direct a portion of revenue to defray costs for local public safety in some counties. He said that SB 299 would authorize counties within which State Parks are located to adopt an ordinance that would require the Department to charge a surcharge. Clark noted that SB 299 would likely be sent to summer study committee.

Clark stated that SB 20 provides some clarification regarding rifle use on Department-properties. Clark said that HB 1159 filed by State Representative Friend would change dam classifications and some other aspects of the current dam regulation.

John Davis, Deputy Director for the Bureau of Lands and Cultural Resources, provided his report. Davis announced that there was a water leak at the Department’s Central Office, which displaced more than 60 staff members. The Divisions impacted were Engineering, State Parks, Forestry, Legal, and Oil and Gas, and staff has been temporarily relocated during repair.

Clark said that the Department’s response to the water leak made him proud of the Department. He noted that some Department staff had personal items affected by the water damage, but staff were focused on the continuation of Department operations. Clark stated that within days of the water leak, records and documents were collected, boxed, stored, and drying out.

The Chair thanked the Department and asked how long until the displaced staff could be back in their respective offices.

Clark explained that clean up and return of staff to their offices could take a month.

Davis stated that 2017 marked the 50th Anniversary of the Division of Nature Preserves and 2018 marks the 40th Anniversary of the Indiana Heritage Database. He stated that the Indiana Heritage Database is part of the Natural Heritage Network, a worldwide system of heritage programs that allow the Department to have primacy. He noted that the Indiana Heritage Database is helpful for identifying any animal and plant species of significant concern, natural ecosystems, and landscape features. Davis explained that the Division of Nature Preserves maintains the Indiana Heritage Database.
Chris Smith, Deputy Director of the Bureau of Water Resource and Regulation, provided the Department’s new organizational chart to the Commission members, and noted the contact numbers on the back of the chart. Smith stated that he and John Davis are available to answer questions and direct people to the right Department staff to answer questions or help with an issue.

Smith stated that the Division of Oil and Gas staff were split up due to the water leak, but the large majority of records were not affected by water damage. He announced that Jack McGriffin, the Assistant Director of Operations for the Division of Reclamation, retired at the end of 2017. Smith explained that McGriffin was hired when the Division of Reclamation was created in the 1980s and he has a lot of knowledge that will be missed.

Smith noted that there were human remains found at the former Icon Property Building site in Terre Haute. Smith said that the Department is working with Indiana State University Archaeology Department on the recovery of the remains and site renovation. Smith noted that in 2017 there were 57 archaeology discoveries during construction in Indiana and that four of those discoveries involved human remains. He explained that when there are discovery of human remains on a site it is a much slower process than if the site had contained artifacts. Smith stated that a private archaeology consultant is developing an archaeological plan, which should be complete in a week, moving forward with construction on the site and continual archaeological monitoring.

Patrick Early, Chair of the Advisory Council, was not present at the meeting, so John Davis provided an update on the activities of the Advisory Council. Davis stated that at the January 9, 2018 Advisory Council meeting there was discussion on proposed amendments to rules governing the use of rifles on public property during deer hunting season; a presentation by the Division of Forestry on the Timber Buyer Licensing Program; and a discussion on adding a definition for “ginseng grower” to IC 14-31-3, as distinguished from a “ginseng dealer”. Davis noted that Item 6 of the Commission’s agenda is the Department’s committee report regarding a citizen’s petition for rule change to add standards governing cultivated ginseng, which was previously presented to the Advisory Council.

**Chair, and Vice Chair**

**Updates on Commission and AOPA Committee**

Jane Ann Stautz, Chair of the Commission’s AOPA Committee, stated that the AOPA Committee met right before today’s Commission meeting. Stautz noted that one of the items on the AOPA Committee’s agenda was the proposed rule package regarding participation or representation in AOPA proceedings. She said the rule package will be moving forward and will be presented for Commission review at a later date. Stautz noted that the next AOPA Committee meeting is February 14, 2018.
Information: Remaining 2018 meeting dates (Fort Harrison State Park–Garrison, Indianapolis)

The Chair noted that the remaining 2018 Commission meeting dates have been scheduled for March 20, May 15, July 17, September 18, and November 13.

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 Calumet Prairie Nature Preserve in Lake County

John Bacone, Director of the Division of Nature Preserves, presented this item. Bacone stated that the Calumet Prairie Nature Preserve is the largest known example of a wet prairie-sedge complex in Indiana. He commented that the Department owns the site, which was purchased from the Toll Road Commission. Bacone explained that the site was most recently a part of a large Great Lakes restoration grant initiative, and noted that a pipeline complex owned by NIPSCO is located between the northern boundary of the nature preserve and the Toll Road. Bacone explained that NIPSCO representatives were with the Department when the endangered spotted turtle was found in the area. He said NIPSCO is a great partner with the Department in the management of the larger natural area, and noted that NIPSCO also signed a matching agreement with the Department to assist with habitat preservation. Bacone then recommended the proposed site be dedicated as a nature preserve.

Jane Ann Stautz moved to approve the dedication of the Calumet Prairie Nature Preserve. Bruce Walkup seconded the motion. Upon a voice vote, the motion carried.

Consideration of the dedication of Outbrook Ravine Nature Preserve in Clark and Scott Counties

Bacone also presented this item. Bacone stated that the proposed nature preserve is “a very significant natural area…what I call ‘Indiana’s mountain range,’ the knobs in Clark State Forest.” Bacone noted that the Knobstone Trail, Indiana’s longest hiking trail, goes through the proposed site, and there are plant species that cannot be found anywhere else in the state. Bacone noted that there is a remnant of the extreme northwestern exposure of native Virginia pine and a core area of stout goldenrod. Bacone stated that the proposed site is owned by the Division of Forestry, and then recommended the proposed site be dedicated as a nature preserve.
The Chair recognized Paul Arlinghaus with the Hoosier Mountain Bike Association (HMBA).

Paul Arlinghaus stated that the HMBA has identified Clark State Forest as having potential for mountain bike trails. He noted that the Outbrook Ravine Nature Preserve is in the center of a very large area of a state forest. Arlinghaus said the HMBA understands that the proposed nature preserve “does allow for a corridor for bike trails through it. Obviously, we won’t try to fill it with trails. We just want to get through so we can connect trails throughout the rest of the state forest. We are in support of the [dedication].”

Arlinghaus stated that often he finds out about the dedication of a nature preserve at the last minute, which does not leave him enough time to research the recreational impacts of dedication. Arlinghaus noted that the Department has a Trails Advisory Board, composed of citizens who are concerned with trail use. Arlinghaus requested that the Commission, or the Department, when considering the dedication of public land that may impact the recreational use of an area, to consider bringing the matter in front of the Trails Advisory Board “so that members of the recreational community can be involved in the process of helping protect our public lands while at the same time allowing for recreation.”

Bacone stated that the articles of dedication for all nature preserves within state forests brought before the Commission within the last year, with the exception of Lucas Hollow Nature Preserve, have a clause included that allows consideration of trail opportunities.

Davis stated that at one time most recreational activity was prohibited inside a nature preserve, but as the Department has evolved by including the possibility of locating a recreational corridor or allowing a particular use into every articles of dedication. He explained that the Division of Forestry analyzes the impacts of recreational activities. Davis noted that the Department has made an attempt to include various recreational activities and to notify interested groups and individuals regarding proposed dedications of nature preserves.

Bruce Walkup moved to approve the dedication of the Outbrook Ravine Nature Preserve. John Wright seconded the motion. Upon a voice vote, the motion carried.

DNR, DIVISION OF LAW ENFORCEMENT

Consideration of the DNR review committee response regarding petition for rule change to add standards governing cultivated ginseng; Administrative Cause No. 17-110N

Terry Hyndman, Lieutenant Colonel with the Division of Law Enforcement, presented this item. Hyndman noted that on January 9, 2018 the Department’s Advisory Council met to discuss adding the definition of “ginseng grower” to IC 14-31-3 as distinguished from a “ginseng dealer”. He stated that in Indiana American ginseng is a regulated commodity that grows wild in many areas of the state.
Hyndman stated that Cary Floyd, of the Division of Nature Preserves, provided data covering the last 20 years of ginseng sales. Hyndman noted that in 20 years ginseng sales have never dropped below $1 million of sales in Indiana.

Hyndman stated that a Charles Anders (Petitioner) filed a petition on October 10, 2017 seeking to amend rules governing ginseng to allow for the harvesting of cultivated ginseng. Hyndman noted that currently there is no prohibition against cultivating ginseng in Indiana, but the rules were specifically designed for wild ginseng and its protections. He indicated that the existing rules governing wild ginseng would be too stringent if applied to cultivated ginseng. Hyndman stated that ginseng is currently protected by state, federal, and international laws, and that international law does not prohibit the sale of ginseng; however, several safeguards are included for the international trade.

Hyndman stated that under current law it is difficult for cultivated ginseng farms to be profitable. He explained that the goals of the Petitioner is requesting to have the ability to harvest the seeds from cultivated ginseng and to be able to sell to other growers; that ginseng be allowed to be sold at a younger plant age than is currently required; and that cultivated ginseng be allowed to be sold outside what is currently the primary season established for wild ginseng.

Hyndman stated that according to 312 IAC 19-1-8 a person may not harvest or possess a ginseng plant unless there are at least three prongs and a flowering fruit stalk or at least four internodes on the rhizome. Hyndman explained that “prong” means a true compound leaf that includes five leaflets and “internode” refers to a section containing a stem scar. He stated that the Department would be able to identify the age of a ginseng plant, if the root has been removed from the stalk, by looking at the growth nodules.

Hyndman explained that a committee was appointed to review the petition. John Bacone and Cary Floyd, from the Division of Nature Preserves, Jack Seifert, from the Division of Forestry, and Megan Abraham, from Entomology and Plant Pathology, and Hyndman made up the Committee. He said the review committee believed the petition was reasonable and would support the rule amendment; however, he said that ginseng is governed by both 312 IAC 19-1 and by IC 14-31-3. He noted that the administrative rule cannot be changed until a statutory change is made. Hyndman noted that the Petitioner had been working with State Senator Brandt Hershman in drafting amendments to IC 14-31-3, but that Senator Hershman resigned on January 2, 2018. Hyndman indicated uncertainty as to whether legislation will move forward, but he noted that David Bausman, the Department’s Legislative Director, has been provided suggestions and other information. Hyndman stated that Department would support a clear statute that would distinguish wild ginseng from cultivated ginseng.

Hyndman stated that currently all ginseng sold is tracked by the Department. He stated that anytime someone wants to sell ginseng, for export outside of Indiana, a Conservation Officer has to certify the ginseng as wild ginseng or cultivated ginseng. Hyndman stated that the officer certifying the ginseng will weigh it and break it down by whether the ginseng is dried or green. Hyndman explained that during the 2016-2017 ginseng harvest it took 301 dried ginseng roots to make one pound. Hyndman stated that the ginseng grower is now required to enclose the
Hyndman observed that to move forward with the petition there would need to be action taken by the General Assembly to define “cultivated ginseng” and also identify a difference in a license that a grower would use to sell cultivated ginseng verses wild ginseng. Hyndman stated that once the statutory objectives are met, then the Department’s goal would be to introduce a rule package for the Commission’s consideration. He noted that any proposed rule change could include allowing cultivated ginseng roots to be sold at a younger plant age; the sale of seeds from cultivated plants; and the sale of potted ginseng plants.

Hyndman stated that cultivated ginseng farms can be profitable and that Wisconsin and Ontario have very large cultivated ginseng farms. He stated that Wisconsin and Ontario allow ginseng roots to be harvested in the 3rd and 4th year of maturity. Hyndman stated that ginseng is susceptible to disease and it is important to adopt regulations to allow for earlier harvesting.

The Chair asked if the Committee’s recommendation was for the Commission to take no action on the petition at this time, with the Department’s intention, once the Indiana Legislature clarifies the ginseng statute, to come back to the Commission to address the Petitioner’s request.

Hyndman answered in the affirmative.

Jeffrey Holland moved to accept the report of the Department’s Review Committee regarding the citizen’s petition for rule change to add standards governing cultivated ginseng. Bruno Pigott seconded the motion. Upon a voice vote, the motion carried.

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DNR, DIVISION OF FISH AND WILDLIFE

*Information Item: Discussion of the Blue Ribbon Panel on Sustaining America’s Diverse Fish and Wildlife Resources’ support for the Recovering America’s Wildlife Act; Administrative Cause No. 17-148D*

Mark Reiter, Director of the Division of Fish and Wildlife, presented this item. Reiter stated that there is a smaller percentage of the U.S. population who are hunters and anglers today than in past years. He said that most fish and wildlife state agencies, including Indiana, receive all of their funding from license sales and funding through a federal match program. Reiter stated that the Division of Fish and Wildlife conducts wildlife management work to improve air and water quality and provide recreation beyond that of hunting and fishing so there are significant benefits to the overall population not only for the hunters and anglers. Reiter noted that wildlife management is something for which only a few people pay, but from which many people benefit.

Reiter stated that another trend that is changing the business of wildlife management is the number of people who are interested in wildlife. He noted that it is not just people who hunt and fish who are interested in wildlife management and who want to have a voice in fish and wildlife management, but also people who are interested in biodiversity, conservation, and the outdoors. Reiter emphasized the importance of engaging a broader audience in wildlife conservation and management and the role that legislation and policy can play in achieving these goals.
resources. Reiter stated that the business is growing with the funding is remaining the same or decreasing.

Reiter explained that the Blue Ribbon Panel (Panel) on Sustaining America’s Diverse Fish and Wildlife Resources’ was formed. He stated that the Blue Ribbon Panelists represent the outdoor recreation retail and manufacturing sector, the energy industry, conservation organizations, and sportsmen’s groups. He said that the Panel identified how much money may be needed to fund fish and wildlife projects in each state as $1.3 billion annually. Reiter commented that the Panel then began looking at funding sources; and subsequently, the Panel identified royalties for mineral explorations on federal land as a possible funding source. He stated that the money for Indiana is earmarked for areas of the state with species having the greatest conservation need. Reiter noted that Indiana mostly uses the list of the endangered species, but that there are species that are in need of conservation for reasons other than their low population.

Reiter stated that the Association of Fish and Wildlife Agencies is an organization that represents all 50 states’ fish and wildlife agencies. He stated that the Association of Fish and Wildlife created the Alliance for America’s Fish and Wildlife, which has asked all the states to support the Recovering America’s Wildlife Act (H.R.4647), a House Resolution pending in the U.S. Congress.

Clark noted that H.R.4647 has been adapted by the Department to reflect Indiana’s conservation vision. He commented that the Department would like to make sure that by supporting H.B.4647 there is no conflict of interest or ethical boundaries crossed. Clark commented that the Panel information was on today’s agenda to provide background to the Commission on funding for fish and wildlife. He said that H.R.4647 may be presented to the Commission on a future agenda as an action item. Clark noted that some support for H.R.4647 could be from the Department’s executive office, but that it was also important to update the Commission on H.R.4647.

Reiter stated that the current formula for federal funding would mean that Indiana could receive $20 million in funding.

**DNR, DIVISION OF STATE PARKS AND RESERVOIRS**

*Information Item: Introduction of new professional staff members*

Dan Bortner, Director of the Division of State Parks, presented this item. Bortner noted that the Division of State Parks does not have a lot of turnover, but recent retirements created vacancies. He noted that most property management positions were filled by promotions from within, and noted that new staff members go through a rigorous hiring process. Bortner then introduced the new staff members present at the meeting:

- Jess Beck, Assistant Property Manager, Spring Mill State Park
- Nick Brown, Assistant Property Manager, Brookville Lake and Whitewater Memorial State Park
- Gary Christopher, Assistant Manager, Indiana State Parks Maintenance Crew.
Bortner noted that two new staff members could not be present at the meeting:

- Jennifer Caldwell, Assistant General Manager, Potawatomi Inn, Pokagon State Park
- Chris Fouke, Assistant General Manager, Abe Martin Lodge, Brown County State Park

NRC DIVISION OF HEARINGS

Consideration of Hearing Officer Analysis with recommendation regarding final adoption of revised amendments to 312 IAC 8-2-8 governing the use of airborne human transportation device or unmanned motor-driven device on a DNR property; LSA Document #17-52(F); Administrative Cause No. 16-078P

Dawn Wilson, Hearing Officer, presented this item. Wilson explained that a proposed rule amendment was previously submitted for final approval during the Commission’s meeting held on July 18, 2017, to amend 312 IAC 8-2-8(i) prohibiting a person from the use of an airborne human transportation or motor-driven airborne device, without a license, unless the activity is conducted in an area designated for that purpose, on DNR Property as defined. Wilson stated that the current designated prohibited activities are to: land, taxi, take off, park, or moor an airborne human transportation or motor-driven airborne device.

Wilson said that the proposed rule amendment to subdivision 312 IAC 8-2-8 (i), originally was proposed to add a prohibition to a person’s knowing operation of an unmanned motor driven airborne device over DNR Property. Wilson noted that prior to submission to the Office of the Attorney General, the Department presented a concern with the proposal to prohibit the operation of unmanned motor driven airborne devices “over” DNR Property. She stated that the revision to 312 IAC 8-2-8 is recommended for approval for the purpose of avoiding any potential conflict with federal law and is designed to eliminate a possible interpretation that the rule attempts to govern subject matter that is under the exclusive jurisdiction of the Federal Aviation Administration.
Wilson noted that the original language in the proposed rule amendment was preliminarily adopted by the Commission at the meeting held September 20, 2016. She also noted that all required approvals have been obtained throughout the process, and the Commission has maintained the appropriate documentation as required by rule and executive order on the Commission’s website.

Wilson stated that the Legislative Service Agency posted the proposed amendment, except for the changes identified today, following the Notice of Intent being published on February 8, 2017. She said that after the publication, no public comments were received on-line or through written correspondence and no member of the public attended a public hearing held on June 30, 2017.

Wilson explained that a revised version of a rule previously published cannot substantially differ from the published version unless the revision is a logical outgrowth of the proposed rule and supported by written comment. Wilson noted that while there were no written comments received within the comment period to support the current proposed rule language; as the Hearing Officer, she determined that the proposed modification does not cause the proposed rule to substantially differ from the rule that was initially published in the Indiana Register.

Wilson explained that the proposed rule amendment for consideration as to final adoption today is found at Exhibit B of the agenda item. She noted that the agenda item also included the formerly proposed version at Exhibit A to the former Hearing Officer Report as presented at the September meeting.

Davis said he has concerns with drone flying over recreational areas in state parks, such as beaches and camping sites. Davis indicated that he understands that the Federal Aviation Administration would have jurisdiction of the airspace over a property, but he does not think it is right for a drone operator to fly a drone over or onto Department property from an adjacent property. Davis stated that his concern is that the possibility exists for a drone to be able to see in through the windows of a camper. He noted that the Dunes State Park would be vulnerable to a drone operator launching from adjacent private property and flying a drone along the beach.

Walkup asked if time should be spent looking into the concerns that John Davis raises with drone use over recreational areas in state parks.

Davis replied that he has confidence in the Hearing Officer Report and the legal analysis that has been done. Davis noted that he supports the final adoption of the revised amendments to 312 IAC 8-2-8. Davis stated that he does not think there is a solution to the concern that he raised regarding drone use over recreational areas.

Walkup stated that he has found drones on his property where the drone has gotten away from the controller. Walkup noted that he believes that drones were being flown over the Crane Naval Base, and noted that Crane Naval Base has a “no fly zone” for all aircraft including drones.

Clark explained that the Federal Aviation Administration sets the classifications for airspace, and noted that federal military installations would have airspace classifications to restrict air operating vehicles but that the Department is not in a position to restrict airspace.
that the federal government will, at some point in the future, address the issue of drones on a broader scale not just over federal properties. Clark stated that the Department is not in a position to do any more than what is being presented in the proposed revised amendments to 312 IAC 8-2-8. He said that the Department has the ability through the proposed rule amendments to tell people on DNR Property they cannot launch from the property.

Cameron Clark moved to accept the recommendation regarding final adoption of revised amendments to 312 IAC 8-2-8 governing the use of airborne human transportation device or unmanned motor-driven device on a DNR Property. John Wright seconded the motion. Upon voice vote, the motion carried.

Adjournment

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