

NATURAL RESOURCES COMMISSION
Minutes - November 21, 1996

MEMBERS PRESENT

Michael Kiley, Chair
Patrick Ralston, Secretary
John Goss
Jerry Miller
Jack Arnett
John Rose
Steve Cecil
Damian Schmelz
Joe Siener
Terri Moore

NATURAL RESOURCES COMMISSION STAFF PRESENT

Steve Lucas	Hearings
Bill Teegarden	Hearings
Cheryl Hampton	Hearings

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Jack Costello	Executive Office
David Herbst	Executive Office
Paul Ehret	Executive Office
Louise Krick	Executive Office
Lori Kaplan	Executive Office
Robert Waltz	Entomology
Jerry Pagac	Parks
Susan Murphy Moster	Outdoor Recreation
Britt Long	Outdoor Recreation
Emily Kress	Outdoor Recreation
Jerry Sears	Outdoor Recreation
Tom Gross	Museums and Historic Sites
Matt Abriani	Water
Mick Rutherford	Law Enforcement
Chuck Shannon	Law Enforcement
John Davis	Land Acquisition

GUESTS PRESENT

Danny Burton	Lee Ann Burton
Marge Graf	Karl Graf
Jo Harber	William Harber
Barbara Micitich	Marion Young
Richard Rupcich	Daniel Lewis

MONTHLY REPORTS

Michael Kiley, Chair, called to order the regular meeting of the natural resources commission at 10:00 a.m., EST on November 21, 1996 in the Indiana State Museum, 202 North Alabama, Indianapolis, Indiana, With the presence of ten members, the chair observed a quorum.

Jerry Miller moved to approve the minutes of the October 24, 1996 meeting. The motion was seconded by Damian Schmelz and approved by voice vote of the commission.

Patrick Ralston presented the Director's Report. He reported on a very well attended dedication at Ft. Benjamin Harrison State Park last month. Ralston also reported on a "very nice celebration of the 80th anniversary of state parks" held at Turkey Run State Park.

The Director attended the Governor's Conference on the Environment which was very successful. He said, "he was looking forward in the following years to working with Governor O'Bannon on the conference."

Ralston reported on the opening of the canal extension on Friday. He also noted the IMAX Theater, which is part of Whiteriver State Park, will be opening on December 16. Jerry Miller, Chairman of the Advisory Council for Lands and Cultural Resources, stated his council will not meet until next month.

Jack Costello, Deputy Director for the Bureau of Lands and Cultural Resources, reported on the deer hunt. He indicated the hunt was held in seven state parks and "went very well," and the hunt will happen again in two weeks for two more days. Costello said after the hunts, the biologist and state park personnel will analyze the hunt and will provide a report.

Joe Siener, Chairman of the Advisory Council for the Bureau of Water and Resource Regulation, reported his council is to meet December 5.

David Herbst, Deputy Director for the Bureau of Water Resource Regulation, reported on the drainage issue. He indicated there was an eleven member task force group. This group consisted of surveyors, environmental community, agriculture community, representatives from IDEM, DNR, army corps of engineers, U.S. fish and wildlife

service, and U.S.D.A. Herbst said the department was given the responsibility of coordinating a drainage handbook. This handbook tells you about construction activities in streams and ditches in Indiana and the various permits and procedures.

Paul Ehret, Deputy Director for the Bureau of Mine Reclamation, noted he attended a national conference on Coal Combustion Disposal at surface coal mines which was held at Southern Illinois University, Carbondale. Ehret said the conference was very well attended and informative.

Ehret distributed a brochure, Citizens Guide to Blasting in Indiana, relating to the coal mining program. He explained that the guide is in simple language for citizens to understand blasting regulations in Indiana.

Ehret reported that the 10th annual Indiana Society of Mining and Reclamation Technology Seminar will be held on December 2 and 3 in Vincennes. He indicated that it will be a very good program and invited everyone to attend.

BUREAU OF LANDS AND CULTURAL RESOURCES PERMANENT APPOINTMENTS AND PERSONNEL INTERVIEWS

Personal Interviews

There were two personnel interviews reported upon for the month of November. Jack Arnett made the presentation and recommended Shannon A. Young for the assistant property manager at Starve Hollow and Martin John Winne for the assistant property manager at Martin State Forest. Arnett reflected that the candidates had previously sought appointments and he urged other candidates who might not be successful on the first effort to remain optimistic.

Jerry Miller moved to approve Shannon A. Young for the assistant property manager at Starve Hollow and Martin John Winne for the assistant property manager at Martin State Forest. The motion was seconded by Steve Cecil. Upon a voice vote, the motion carried.

DIVISION OF LAND ACQUISITION

Discussion and approval of Resolution to accept Limberlost Swamp parcel as requested by Division of Museum and Historic Sites and Museum Trustees and Discussion and approval of easement to USA as part of WRP. Conveyance of this easement was part of IHT #27, the restoration of Limberlost Swamp parcel in Jay County

John Davis, Director of the Division of Land Acquisition, presented these items jointly. He explained that, Lobolly Swamp Wetland Preserve at Limberlost State Historic Site, contains 263 acres being restored to wetlands in Jay County. It is owned by the State of

Indiana, Department of Natural Resources, and is under the administration of the Division of Museums and Historic Sites. Davis noted that the management, custody and use of the wetland preserve will be the responsibility of the Curator of the Limberlost State Historic Sites. The main purpose of the dedication is to restore and preserve natural wetlands area which was once part of the 25,000 acre Limberlost Swamp.

Davis explained the financing of the preserve. He indicated that partial funding is to come from the Wetlands Reserve Program through the department of agriculture. Davis said the department has already moved ahead with the purchasing of the wetland, and the division is asking the commission for approval of the easement and the resolution. Tom Gross of the Division of Museums and Historic Sites was present to answer any questions.

Damian Schmelz moved to approve the resolution and the easement of Loblolly Swamp Wetland Preserve of the Limberlost State Historic Site. The motion was seconded by Joe Siener. Upon voice vote, the motion carried.

DIVISION OF STATE PARKS

Consideration of a request from landowners for an easement through a portion of Spring Mill State Park

Gerald Pagac, Director of the Division of State Parks and Reservoirs, presented this item. He explained that an easement was granted for a parcel owned by Danny and LeeAnn Burton at Station 191 when S.R. 60 was relocated adjacent to Spring Mill State Park. The purpose of the easement was to prevent the parcel from becoming landlocked.

The Burtons have actively pursued use of the easement since 1995. The purpose is to provide access to a new home being built by them and for two other adjacent parcels.

Pagac explained that Station 191 is not the ideal location for an easement, either with regard to traffic patterns or minimizing impacts to the park. Other locations were considered but proved unacceptable. In one instance, the topography made development impracticable. In another instance, land would need to be purchased from an adjoining property owner, and the adjoining property owner was unwilling to sell at the appraised value. Finally, the DNR determined Station 191 was the only realistic choice.

Because negotiations moved slowly, the DNR gave approval to the Burtons to place a temporary roadway along what would become the permanent drive, subject to final approval by the commission. Pagac explained also, however, that a water utility missed the easement and placed a line outside its boundaries.

Pagac said the division of state parks was recommending approval of a 25 foot easement for a permanent roadway at Station 191. The division was also suggesting that the water

utility be required to locate its line within the easement. The recently-placed line would not be removed but would be plugged and not utilized.

Danny Burton said he agreed with the recommendations by Pagac. He said he had discussed the incorrect pipeline location with the water utility, and the company had agreed to relocate the line at its own expense.

Steve Cecil inquired as to traffic safety concerns posed by the easement. The division of state parks responded that the District Engineer for the Indiana Department of Transportation had been consulted, and he expressed satisfaction with the location of the easement.

Damian Schmelz moved to approve the easement at Station 191 for the use of a drive and water line as recommended by Gerald Pagac. The motion was seconded by Jack Arnett.

Jerry Miller asked whether the easement could legally be limited to noncommercial purposes. Chairman Kiley responded that he believed it could and asked for the perspective of Steve Lucas. He also agreed.

Miller then moved to amend the easement to specify that it could be used only to service residences located on the three parcels which would benefit and not for commercial purposes. Jack Arnett seconded the motion to amend.

John Davis, Director of the Division of Land Acquisition, urged that the Burtons have an opportunity to respond. Danny Burton said he had no objection to limiting the easement to noncommercial purposes. Burton said the intent was to development of an easement exclusively to service homes.

The amendment was taken as a friendly amendment to the original motion and incorporated into it. The Chair called the motion, as amended, for a vote. Upon a voice vote, the motion carried.

BUREAU OF WATER AND RESOURCE REGULATIONS DIVISION OF OUTDOOR RECREATION

Recommendation to the Director on the Distribution of Federal Land and Water Conservation Funds (LWCF) and Indiana Waters (IW) for Fiscal Year 1996 to local park boards

Susan Murphy Moster of Outdoor Recreation presented this item. She explained there are two applications for the Land and Water Conservation Fund. The total amount for the land and water conservation fund is \$126,000. The recommendation of the Indiana Waters has been deferred due to further development on the project. She said the division would review recent developments before making a recommendation. Moster asked the

commission for approval on the two applications for the Land and Water Conservation Funds.

Jerry Miller moved to approve the funding on the Land and Water Conservation Funds for the Fiscal Year 1996 to local park boards. The motion was seconded by Jack Arnett. Upon voice vote, the motion carried.

No action was taken with respect to the Indiana Waters Fund.

LEGAL PROCEEDINGS

Consideration of the Report, Findings of Fact, and Nonfinal Order of the Administrative Law Judge in the matter Hoosier Environmental Council v. Department of Natural Resources, and Foertsch Construction Company, Inc.; Administrative Cause Number 95-169R

This item was reported deferred by the Chair.

Consideration of the Report, Findings of Fact, and Nonfinal Order of the Administrative Law Judge in the matter Department of Natural Resources v. Marion and Linda White, d/b/a White Brooke Park; Administrative Cause Numbers 95-094W and 95-096W

This item was reported deferred by the Chair.

Consideration of Motion to Reinstate Special Orders 1353 and 1354 Pursuant to Court Order in the matter of Department of Natural Resources v. Dean Jenkins and Steve Gerber; Administrative Cause Numbers 91-471L and 91-472L

This item was reported deferred by the Chair.

Consideration of Report of Public Hearing and Recommended Determination of the Natural Resources Commission; Proposed Fish Lake Conservancy District, LaPorte County; Administrative Cause No. 96-125C

William Teegarden, Hearing Officer, introduced this item. He explained that for consideration was a proposed conservancy district adjacent to a public freshwater lake in LaPorte County. Originally, the district had been sought for four purposes:

Flood prevention and control.

Improving Drainage.

Preventing loss of topsoil from injurious water erosion.

Promoting water based recreational activities to water quality and quantity issues.

Teeguarden said the petitioners determined not to pursue the purpose of flood prevention and control, however, and that purpose was no longer in issue.

Teeguarden explained that the conservancy district was sought in a petition filed in the LaPorte Circuit Court in 1993, but the petition was not referred to the NRC for action until June 1996. Since that time, conditions adjacent to Fish Lake have improved. A peat mining operation had wound down and was no longer a major contributor of sedimentation. Many farming operations within the watershed had adopted no-till or low-till farming techniques which reduced runoff. Even so, he said there was a demonstrated need for the conservancy district, although the need was not as pressing as it had been a few years ago.

Teeguarden said several elements of the technical findings for evaluating a conservancy district had not been demonstrated. The economic feasibility of the project was not clear. There was no evidence upon which a determination could be made as to whether costs exceeded benefits. The proposed boundaries might include persons who would not benefit or would benefit only marginally from the district. He suggested that the recommendations from the commission to the court specify that, if the district were approved, it should be funded primarily by an exceptional benefits tax on properties near the lake.

Daniel E. Lewis, Jr., attorney for Millbaum Pete Company, urged that his client be removed from the geographic boundaries of the proposed district. He concurred with the concept contained in the hearing officer's recommendations that those adjacent to Upper Fish Lake and Lower Fish Lake be assessed a special benefits tax. He said that if a district were formed, a special benefits tax might address any imbalance in paying for the service the district would provide.

Margie A. Graf spoke in opposition to the formation of a conservancy district. Correspondence sent previously by her to the division of hearings was circulated to the members of the commission, and she offered charts and graphs in support of her arguments. Graf said that the closure of peat mining operations and improved farming techniques meant there was no longer a need for the district. She said local citizens had worked with soil conservation advisors, and regular testing by the LaPorte County Department of Health indicate E. coli counts were no longer a threat to public health. Fish counts reflected a recent decrease in the percentage of shad, and a corresponding increase in more favorable species, also demonstrating improved water quality. Graf also argued that beetles had been introduced to control an infestation of purple loosestrife. Graf asked that the item be deferred unless and until a need for the district was demonstrated.

The commission asked Robert Waltz, Director of the Division of Entomology and Plant Pathology, about the success of efforts to control purple loosestrife on site. Waltz responded that it generally takes three to ten years to determine the success of biological controls on purple loosestrife, and beetles had been introduced at wetlands along Fish Lake only two years previously.

The Chair noted for the record that the proponents for the district were not present. Daniel Lewis reflected upon poor road conditions between LaPorte County and Indianapolis, possibly contributing to this absence.

In response to a question from the commission, Steve Lucas noted that its function with respect to conservancy districts was not to create or decline to create them. That function rested with the local court, in this case the LaPorte Circuit Court. The commission was to make recommended findings for the court as a starting point in its review; these findings were prima facie evidence which could be supplemented or refuted in a civil hearing.

Jack Arnett urged the commission not to try and substitute its judgment for that of the hearing officer, based only upon brief oral arguments. A public hearing had been held by the hearing officer in LaPorte County where all interested persons had an opportunity to participate. He also reflected that another hearing would be held in the LaPorte Circuit Court, when persons who believed the findings were in error could cause their reversal.

Arnett moved to approve the report and recommendations of the hearing officer as the recommendations of the commission to the LaPorte Circuit Court concerning the proposed Fish Lake Conservancy District. The motion was seconded by Patrick Ralston. Upon a voice vote, the motion carried.

At approximately 11:55 a.m., EST, the meeting was adjourned.