

NATURAL RESOURCES COMMISSION  
The Garrison, Ft. Harrison State Park, Lawrence  
Minutes of November 18, 2003

**MEMBERS PRESENT**

Michael Kiley, Chair  
Rick Cockrum, Vice Chair  
John Goss, Secretary  
Damian Schmelz  
Jerry Miller  
Jack Arnett  
Lori Kaplan  
Robert Murphy  
Raymond McCormick, II

**NATURAL RESOURCES COMMISSION STAFF PRESENT**

Stephen Lucas  
Sylvia Wilcox  
Jennifer Kane  
Debra Michaels

**DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT**

|                    |                            |
|--------------------|----------------------------|
| Krystal Wethington | Executive Office           |
| John Davis         | Executive Office           |
| Lennea Petercheff  | Fish and Wildlife          |
| Kenton Turner      | Law Enforcement            |
| Sam Purvis         | Law Enforcement            |
| Lee Casebere       | Nature Preserves           |
| Colleen Baker      | Nature Preserves           |
| Brock Mayes        | Reclamation                |
| Gary Miller        | State Parks and Reservoirs |
| Terri Swoveland    | Water                      |
| Mark Basch         | Water                      |

**GUESTS PRESENT**

|                |                |                   |
|----------------|----------------|-------------------|
| Jeff Bell      | Tom Dustin     | Ted Heemstra      |
| Randy Strebig  | Jim Barrett    | David A. McKeeman |
| Joseph Sweeney | Mary McConnell | Ken Brunswick     |
| Jane Dustin    | Marian Jackson |                   |

## REGULAR REPORTS

Michael J. Kiley, Chair, called to order the regular meeting of the Natural Resources Commission at 10:10 a.m., EST, on November 18, 2003, at the Garrison, Fort Harrison State Park, Lawrence, Indiana. With the presence of nine members, the chair observed a quorum.

Damian Schmelz moved to approve the minutes of September 16, 2003. Rick Cockrum seconded the motion. Upon a voice vote, the motion carried.

John Goss reported the Department “had a good summer with the legislative committees.” He said one recommendation was for the creation of a senior discount-fishing license. In addition, the Division of Fish and Wildlife has concluded that the approximately 40,000 existing lifetime hunting and fishing licenses should be “grandfathered”, and a prospective date should be set to discontinue the sale of lifetime licenses.

Goss said during the last legislative session, the Department tried to obtain authority to set fees at historic sites. This effort was the only DNR legislative request that failed to pass during the last session, and he said a summer study committee is once again recommending the Department establish a fee of \$3 for entry to historic sites

Goss reported the department is “pretty serious” about increasing the penalties for oil and gas violations. He noted discussions concerning this concept have not yet been completed.

Goss said the Indiana State Museum has launched a search for a new Division Director. “Susan Williams has done a great job as Acting Division Director,” but the Museum needs a person devoted full-time to the task. He said the hope is to start interviewing in January 2004 and to hire a new Division Director by early spring.

Director Goss reported that Carrie Doehrmann, previously DNR Chief Legal Counsel, has returned to state government. She is now on the Governor’s staff as Director of Environmental Policy for both IDEM and IDNR.

Goss announced that Carrie Bales, who has been on a leave of absence, decided to stay in Evansville to work for the new mayor, Jonathan Weinzapfel. The position held by Bales would not be filled, but Krystal Wethington would be assigned many of her duties.

Goss reported Governor Joseph Kernon has created a new Cabinet. “I’m happy to say that DNR is one of those twelve departments that is on the Cabinet, along with IDEM, INDOT and other major departments. We have had three or four meetings with the Governor in which we all discussed goals and priorities that were submitted for 2004.”

Goss deferred to Lori Kaplan for an update concerning Indiana wetlands regulation. Kaplan said the Indiana Supreme Court recently decided the *Twin Eagles* case. The case arose near Fort Wayne when a developer asked for a declaratory judgment as to whether IDEM has legal authority to regulate “isolated wetlands”. She said the Indiana Supreme Court determined “isolated wetlands” are within the Indiana statutory definition of “waters of the state”, and IDEM is authorized to regulate some of them. The question remains whether HEA 1798, which would have established a new regulatory structure for wetlands but which was vetoed by Governor O’Bannon, would become law following a veto override by the Indiana General Assembly.

Director Goss reported the DNR has been working on a strategic five-year plan for the Heritage Trust. He said a meeting is scheduled with the Foundation and with the Trust Committee for December 16, 2003.

Goss reported on an “exciting new initiative” along the Indiana shore of Lake Michigan. U. S. Congressman Peter Visclosky, along with Mayors of five major cities along the lake, announced they are pursuing the “Marquette Plan”. He said, “Basically, they’re going back to what Father Marquette saw when he landed along the lakeshore and seeking to restore some of the ‘green space’. It’s actually a very ambitious vision to work with all the commercial business properties and all the city governments to come up with a new green-land along the lakeshore. DNR is contributing to funding with CZM money through the Lake Michigan Coastal Program.” The municipalities are providing matching funds. “We’re happy to be funders and coordinators to get it off the ground, and I think it’s probably one of the most significant things that will happen. We’re excited that we have a Congressman and local government officials who is willing to work with us.”

Jerry Miller, Chair of the Advisory Council for Lands and Cultural Resources, said the Councils met on October 26, 2003 and that all the items on the agenda were approved. He said there was discussion on the proposed hunting and fishing license for senior citizens. One of the video counters for salmon on a South Bend dam was “going bad”, so a counter was borrowed from the State of Michigan. Miller said “the local steelheaders again had offered to flip \$2,000 to replace the one that’s there, but one of our members suggested that I contact the head of the county foundation. They seemed to think we were well qualified, so it looks like we’re going to get some help.” Miller said the idea of combining the two Advisory Councils “has really put an awful lot of talent together. I just think it emphasizes that combining these two committees together has been very positive in helping us all.”

John Davis echoed Miller’s comments concerning the combining of the two Advisory Councils. He commented, “It’s helpful for everybody to know as much as they can about all the issues.” Davis referenced the extra signs posted throughout Fort Harrison State Park, similarly to 19 other state parks, in furtherance of the deer reduction program. The only state parks excluded from the program this year were Falls of the Ohio State Park and Mounds State Park.

Davis reported on a 4,000-acre tract of land in Morgan County owned by the Indianapolis Power and Light Company. Davis said 3,000 acres of the tract are along a wooded hillside, and the other 1,000 acres are agriculture land and the bottomlands. He said IPL acquired the land in order to build a plant, but the utility has now decided to sell the property at public auction on December 15, 2003. Davis said the DNR made efforts over the past several months to purchase the property, but the efforts were unsuccessful. The agency is now trying to encourage IPL to work with it before the auction or to delay the auction in order to compile a package agreement. Davis said, “I’m happy to report that the Governor has taken an interest and supports our efforts in that.”

Davis said DNR has a discount program for park and inn visitors. He deferred to Gary Miller to explain.

Gary Miller, Assistant Director of State Parks and Recreation, said during the winter season from early December through mid-March, the inns would rent two nights for the price of one. This special runs from Sunday nights through Thursday nights every week, with the exception of the holiday ten-day period.

Raymond McCormick, Chair of the Advisory Council for Water and Resource Regulation, said Parks Director, Jerry Pagac, reported on the proposed inn renovation at Clifty Falls State Park. “Clifty Falls has probably one of the Inns that have the most problems with rainfall and the quality of the units. We did enjoy that report and the concept of what the Clifty Falls will look like in the future.”

## **DIVISION OF NATURE PRESERVES**

### **Consideration of the Dedication of Base Line Barrens Nature Preserve, Washington County**

Lee Casebere, Assistant Director of the Division of Nature Preserve, presented this item. He said the Base Line Barrens Nature Preserve includes more than 70 acres in Washington County and is managed by the Division of Nature Preserves. The main reason for purchasing the property was to preserve a natural community type “that we call barrens.” The proposed preserve is part of the largest remaining example of a karst barrens in Indiana. These were once common to Washington and Harrison Counties.

Casebere said the proposed Base Line Barrens Nature Preserve is dominated by prairie grasses and forbs, and the woodlands by post and black oaks. There are also several rare species, including Englemann’s adder’s tongue fern, the rough green snake, and the endangered mottled duskywing skipper. Casebere provided a colored handout, illustrating vegetation growth since the purchase of the land. DNR opened the area to allow more light for growth by the removal of trees and brush. This spring, the Division of Nature Preserves conducted the first prescribed burn on the site. With these efforts, the number and species of flowering plants have improved dramatically. Particular reference was made to yellow lady slippers, gay feathers, and prairie blazing stars. Casebere added, “So what we’re doing is working; we’re headed in the right direction.” He said the Division of Nature Preserves recommended dedication of the Base Line Barrens Nature Preserve.

Rick Cockrum moved to approve the articles of dedication for the Base Line Barrens Nature Preserve in Washington County. Jack Arnett seconded the motion. Upon a voice vote, the motion carried.

### **Consideration of Dedication of Henry Kramer Original Woods Nature Preserve, Spencer County**

Lee Casebere also presented this item. He said the Henry Kramer Original Woods Nature Preserve is a 215-acre property located in Spencer County five miles southwest of Rockport. “It’s a bottomland woods of exceptional quality. It’s an old-growth woods nearly unlike anything else we have in Indiana. There are different experiences that a person can have in the woods. Many of you who are familiar with old-growth woods in Indiana know that Donaldson’s woods in Spring Mill Park is a fine, fine woods. It’s one of the best in the State,” but Henry Kramer Original Woods is as remarkable and yet unique. He said Kramer Woods has a lot of huge trees, but because it is located in moist bottomlands also has nettles and poison ivy.

Casebere added, “Probably no one knows more about Kramer Woods than Father Damian. He has lived near it and lives near it and has for many of years. He has done research there for many years. I’d like Father Damian to comment some about the property.”

Damian Schmelz, Commission Member, reported, “I was doctoral student with Dr. Lindsey back in 1967, when the first census was performed of about 20-acres of the woods. That means including every tree 2” in diameter or larger. That’s a lot of trees but not as many trees as you would find in a woods that’s not as old.” He said he became acquainted with Katherine and Helen Hougland, who were Henry Kramer’s granddaughters. They desired permanent protection of the woods, and Bill Barnes lead them through the procedure “where the preservation of the woods would be unending. The Nature Conservancy was the first step from getting it from private ownership to a nature preserve.” Schmelz added, “It’s a marvelous woods with eight significant oak species, plus sweet gum, and they dominate the area.” The Kramer family owned a lot of farmland, and when the family wanted lumber, they bought it from neighbors rather than cut timber from their own land. “That was in the 1800s. They were very jealous of those woods. For reasons of health, I passed that whole research project on to Brian Abrell in the Division of Nature Preserves, and he almost single handedly did the 2002 study.”

Ray McCormick said The Nature Conservancy “played a significant role in the mechanism by which we were able to step in and protect this area. We certainly appreciate Mary’s involvement and TNC’s involvement. But, also they allowed the Four Rivers North American Waterfowl Management Committee in southwestern Indiana to use the high value of that timber and that property as a match for an application for grant money. So, not only is this property significant in its environmental quality and what it can mean in the future, but also it has meant a lot of dollars that have come to southwestern Indiana to additionally protect and restore other habitat. So, we appreciate what TNC has done in this in allowing us to use that as a match for grant money.”

Rick Cockrum moved to approve the articles of dedication for the Henry Kramer Original Woods Nature Preserve in Spencer County. Jack Arnett seconded the motion. Upon a voice vote, the motion carried.

### **Celebration of Dedication of the 200<sup>th</sup> Nature Preserve**

Casebere addressed the Natural Resources Commission immediately following dedication of the Henry Kramer Original Woods Nature Preserve. “What you just did here was a milestone for the Division of Nature Preserves. You just dedicated the 200<sup>th</sup> Nature Preserve for the Nature Preserve System in Indiana.” He said Division Director, John Bacone, regretted that other obligations prevented his presence at the meeting, but he was also celebrating this important occasion in spirit.

Casebere explained that 1967 legislation established the Nature Preserve Act and the Nature Preserve System. The following year the Division of Nature Preserves was established within the Department of Natural Resources. In February 1968, William D. Barnes became the first Division Director. Barnes “didn’t waste a whole lot of time to establish the program and get areas set aside and protected.” In June 1969, Pine Hills Nature Preserve in Shade State Park became the first dedicated Nature Preserve.

Casebere outlined the purposes of the Nature Preserve Act:

- (1) Authorizes establishment of the Division of Nature Preserves within the Department of Natural Resources.
- (2) Authorizes establishment of the Natural Area Registry, including both private and public lands; that recognizes important natural areas.
- (3) Authorizes the purchase of properties to be protected.

Casebere explained, “The Division of Nature Preserves is a land manager. We own and manage properties, and we oversee the dedicated nature preserves that are owned and managed by other entities. But, most important of all, what the law did was established that areas could be dedicated as Nature Preserves. A lot of times when people think of a dedication, you think of a ceremony. You think of speakers. You think of an audience, and you think of cookies and punch. That’s not what we’re talking about here. Dedication is a legal thing that you can think of as a permanent restrictive easement on the land. Once an area is dedicated, the whole idea is for it to be a dedicated nature preserve from now and on into the future. So, we just wanted to remind you of the important role you play, in this whole effort, and to thank you for the dedicating of the 200<sup>th</sup> Nature Preserve.”

Casebere said some of the Divisions partners and supporters were present to help memorialize this significant occasion. Other notable contributors were not present because to have all speak would not be practicable within time constraints. He emphasized that thanks were owed, however, to countless persons in addition to the speakers. He then recognized several important citizens from the audience. “Either as individuals or as an organization, they all go back to the very beginning.”

Ted Heemstra, Board Member and former President of Acres, Inc. addressed the Commission first. “Acres, of course, has benefited by the Nature Preserve Act. But the direct benefit of the dedication to

our properties, as owners of Nature Preserves, is the protection afforded by this Act. It's the additional layer of protection, that the process gives it validity, and, of course, the final process of dedication is approval by the Commission." He said, "Acres existed in 1960 when we started in northeast Indiana, and we have worked to maintain with these efforts with the Division of Nature Preserves as formed by the Act. A side benefit, as we're a volunteer organization, and many people don't have the professional background that is often needed to determine, 'Is this property worth dedication?' And, so with the Division of Nature Preserves, we are able to counsel with them as to the validity of our request for dedication. And I assure that only properties that meet the standards that they've set can come before you."

Casebere introduced Jim Barrett, a retired attorney who was a partner with Barrett, Barrett & McNagny in Fort Wayne for over 40 years. He said Barrett drafted the language that became the 1967 Nature Preserves Act, and he was a founding member of Acres, Inc. Casebere reflected that Barrett was "very active with the Fort Wayne Chapter of the Izaak Walton League of America. They had a very very strong group up there in that area at the time the Nature Preserve Act was being conceived. Jim was part of that effort, and he is generally considered to be the author of the wording, the language that became the Nature Preserve Act."

Jim Barrett addressed the Commission. "Thank you, Lee. Mr. Chairman and members of the Commission, a 200<sup>th</sup> dedication is overwhelming. It's a real privilege for me to be here and to be able to contribute to the protection of natural areas in Indiana. Actually, the Dustins and I were in the right place at the right time. Al Lindsey and Tom Dustin were at this meeting in Wisconsin in 1966, at which George Fell, who apparently developed the idea in Illinois, would talk about it. We came back and realized it was ideal for Acres. So I studied the Illinois law and the Iowa law and realized that they both needed dedication to governmental units. Well, it was a simple process to add private organizations, which I thought, would be very beneficial at this stage over this period of time. Tom and his group of environmentalists actually got it through the Legislature. All I did was write a draft in the pattern that Tom and I had pretty much worked out. Although Governor Branigan didn't buy everything we provided, we got the basic idea. So, it has been a great privilege to thank the Commission for its support. To thank Lee and John Bacone, particularly Bill Barnes with whom I had a privilege to work with a little bit at the beginning when we needed some help, and John Davis who helped me when I gave the state a conservation easement before the dedication. It's all been a great privilege, Mr. Chairman."

Chairman Kiley responded. "Jim, it has been a privilege and a pleasure for you to be our friend. Because without you and the Dustin's and Ted and folks like you, why this certainly wouldn't have been a reality for sure. We know that. Many of us have been around here for a long time, and you were here long before Father and I. Well, Father was here, but before I was here, and you were laboring in the trenches long before that. So, we thank you as a Commission for your work."

Casebere then asked Tom Dustin to address the Commission. Dustin is an active environmentalist with Indiana Chapter of Izaak Walton League of America; a founding member of Acres, Inc., and was an active supporter of the legislation that became the Nature Preserves Act.

Dustin began. "With your indulgence, I have somewhat of a disability so I will remain seated so I will not be a threat to you."

Kiley joked, "We commented earlier that we missed you and want you to be a threat to us."

Dustin laughed, "I'll try again. The genes of the Nature Preserve Act, it's hard to definitely state where it began. But, certainly the work of Al Lindsey and Father Damian Schmelz in their great volume, *The Natural Areas of Indiana*, was a defining character in the process. Shortly after that Marion Jackson's work as well. There were other scientists and other educators who contributed. But the real mechanics of the Nature Preserve Act began in 1965 when I was elected president of the Indiana Division of the Izaak Walton League, and promptly created what I called the Wilderness and Natural Areas Committee, of

which the key member was Jim Barrett. And Jim Barrett who then would be author of the author of the Nature Preserves Act. Of course, he was lawyer, so he was clever in more than one way. One of the ways he was clever was in coining a phrase that would turn the realty world upside down with good cause. And that was that nature preserves shall be measured financially as the highest and best use of that land. That is the key term that can't be overturned by any force. And Jim Barrett put that in along with other significant unique features that they did not get in the State of Illinois. The key sponsors were State Representative Sam Raid from Fort Wayne, and, in the Senate, my recollection was State Senator Fred C. Bauer who was the Father of Pat Bauer now who is speaker of the House, and he handled it for us in the Senate. This was an age, friends, of innocence, if I can put it that way. This is a time in history in the state in politics and legislation when what one said was accepted as the facts of the matter. So, the Nature Preserves Act was passed in the first year of its introduction, then it was signed by the Governor into law, and the highest and best use was for a nature preserve. What can be said? Bill Barnes, may we also mention at the time, he entered what was then called the Fish and Game Department, and then he stepped over into Nature Preserves. And then we had a flawless extension of splendid outstanding leaders in the Division of Nature Preserves, and leading up to the present time, with John Bacone and his distinguished colleague, Lee Casebere, and others as well. This bill was introduced, as I said, in 1967 and passed. The obvious critics never came forward against the Nature Preserve Act. Who might they have been? They might have been the electric utilities who wanted to put power lines through all these places. It might have been real estate developers who wanted more strong development, and willing to pay a price for it. But not against Jim Barrett's highest and best use as a Nature Preserve. That's all I have to say. Thank you so much for your concern and for all of what you've done over the years."

Chairman Kiley responded, "Thank you for your devoted work, Tom and Jane. Welcome, it's good to see you. John Goss and I were just talking that 1967 was also the hallmark year for this Department and this Commission, because when the Branigan Administration, and Jim you know that, is when this entire organization was reorganized. There was the old Department of Conservation and the Flood Control Commission. Those were exciting times back in 1966 and 1967, for sure."

Jane Dustin, equally active environmentalist with Izaak Walton League of America and a founding member of Acres, Inc. also addressed the Commission. "I would like to say that every opportunity to go through lawmaking, and every opportunity to make an organization such as in Acres, and any time there are gentlemen like behind me here, always needs a secretary. I am a lousy secretary, but I served as a secretary for Acres for almost 35 years and on their Board for 40. But the important thing is that even though I am a bad secretary, I assisted. And, certainly, the enthusiasm for saving natural areas doesn't dim with the 200<sup>th</sup>. We want to say that, and I want to say that, we will be looking for more and more spots that we can put this marvelous protection onto. I want to say, also, that some of the old-timers of the Department were our best guides. One time when I was struggling to find how to say that an area was really vital, and really important that we put a stamp of protection on it, I called an old friend Charlie Scheffe. Maybe some of you remember Charlie Scheffe. I said, 'Charlie, I'm having a terrible time. They're really going to ruin the Elkhart River. Tell me, you know the Elkhart River. You tell me what is the outstanding feature of the Elkhart River so that I can pass it on.' And, Charlie simply said, 'Jane, it's real simple. They're just not making any more of them.' And that's really the secret to saving these areas. They're wonderful, and we thank the Commission for always being ready to take these areas on in our dedication process. Thank you."

Chairman Kiley replied, "Thank you, Jane. Thank you for being a significant partner with us for all these many years in all these various discussions. We miss you. You need to come down and see us more often."

Jane Dustin responded, "We miss you. We're very glad to be here."

Marion Jackson, Ph.D., is a former Professor of Ecology at Indiana State University. Jackson testified before Legislature in favor of Nature Preserve Act in 1967. Casebere reflected, “He was involved from the very beginning, also.”

Jackson began, “Mr. Chairman and members of the Commission, distinguished guests. I firmly believe that the effort to save the bio-diversity of the planet is our highest and finest calling. I’ve tried to convey this to my students over the years, and to be in the same room with people like Jim Barrett, Tom and Jane Dustin, Ted Heemstra, Mary McConnell, and others who have been actively involved in this longer than I have is a distinct privilege. Several peoples’ names have been mentioned that I would like to elaborate on a little bit. One is Dr. Alton Lindsey who conceived of the idea of an inventory of natural areas in the state early on, and this is the first state inventory of this type in the United States. He was a good friend and mentor of Dr. Schmelz and I when we were graduate students at Purdue. He was also a member of the Ecologists Union, which was the founding group of The Nature Conservancy back in the late ‘40s. He may have been the last surviving member. Dr. Lindsey passed away two or three years ago.

Jackson continued, “One of the major outfalls of the *Natural Areas of Indiana* was that the National Park Service went through this volume, and they selected a number of areas that made one of their evaluations for National Natural Landmark status. I was fortunate enough to be chosen to do the Natural Landmark studies and filed the reports on these. I believe there were 23 at the time. This was 30 years ago, and I’ve slept since then, and I may have forgotten, so I’m not sure that’s the exact number. But Kramer Woods was one of these, and was thought to be one of the most outstanding pieces of natural land in the state. It was then, and it still is. So many of these were recommended as National Natural Landmarks. And, at one time, Indiana had more National Natural Landmarks than any State in the Union. I’m thankful it stayed here in the Midwest, with most of it agricultural, and not too much natural land left. But I feel very fortunate to have been a part of that effort, and, also, over the years, to have been a part in protecting natural areas and bio-diversity in the state. I thank you very much for your help that you do in supporting this effort and for the opportunity of speaking to you this morning.”

Chairman Kiley replied, “Thank you very much.”

Casebere introduced the final speaker. “The Nature Conservancy was around at the time and was also very much involved with what was going on with the passing of the Act. They also had purchased Pine Hills, which became the first dedicated nature preserve, and which was eventually turned over to the state and is now part of Shades State Park. Although Mary wasn’t here at the time, Mary McDonnell is going to talk a little bit about the long history that we have and the long relationship with protecting natural areas of Indiana and dedicating the areas as nature preserves.”

Mary McDonnell, State Director of Indiana Chapter of The Nature Conservancy, addressed the Commission. “Thank you. I’m not actually going to talk about that, but I really wanted to share with the Commission the very eloquent language of the Nature Preserves Act. I don’t know if you’ve ever read it before, but it’s probably the most eloquent language of any piece of legislation that I have ever read. I would like to share that language with you. This was approved on March 11, 1967, an Act creating a Division of Nature Preserve, establishing a state system of nature preserves, providing for their acquisition, control, use, management, and protection and making an appropriation. Section 1, which is a beautiful section:”

As part of the continuing growth of the population and the development of the economy of the State of Indiana, it is necessary and desirable that areas of unusual, natural significance be set aside and preserved for the benefit of present and future generations before they have been destroyed. For once destroyed, they can not be wholly restored. Such areas are irreplaceable as laboratories for scientific research; as reservoirs of natural materials, not all of the uses of which are now known; as habitat for plants and animals, species of biotic communities whose diversity enriches the meaning and enjoyment of human life; as living museums where people may observe natural biotic and environmental systems of the earth and the interdependence of all forms of life;



and, as reminders of the vital dependence and health of the human community upon the health of the natural communities of which it is an inseparable part. It is essential to the people to the State of Indiana that they retain the opportunities to maintain close contact with such living communities and environmental systems of the earth and to benefit from the scientific, aesthetic, cultural, and spiritual values they possess. It is, therefore, the public policy of the state of Indiana that a registry of such areas be established and maintained by the department, that such areas be acquired and preserved by the state and that other agencies, organizations, and individuals, both public and private, be encouraged to set aside such areas for the common benefit of the people of present and future generations.

“It’s a beautiful, beautiful written piece of written legislation, and we thank you very much for it. I just wanted to share that with you. It’s been a pleasure to work with all of these projects over the years from the first project of Pine Hills to the 200<sup>th</sup>.”

Chairman Kiley responded, “Thank you so very much.”

Casebere added, “Thank you so much for obliging us in our milestone. Again, we thank you so much for being here and dedicating nature preserves.

Chairman Kiley reflected, “Well, we certainly all recognize how extraordinarily important this truly is to the preservation of our state, our ecology, and our environment. We are really privileged to have folks like you working with us in partnership, our predecessors and our successors in interest. With your work, it will still be in place when we’re all gone, preserving our assets here. We certainly thank you all very, very much.

Director John Goss then spoke. “Mr. Chairman, I would like to propose a standing ovation for the visionaries who created the Indiana Nature Preserves Act.”

[A standing ovation followed.]

Chairman Kiley closed. “Thank you all very very much for coming. It was good to see you again.”

## **DIVISION OF STATE MUSEUMS AND HISTORIC SITES**

### **Consideration of Land Trade Between Harold Hiday Land and Loblolly Marsh Land, Jay County**

Ken Brunswick, Division of State Museums and Historic Sites, presented this item. He said the Loblolly Marsh Preserve was purchased in 1996 and 1997, and restoration proceeded soon afterwards. “In 2000, some beaver started to help us restore the area.” He said the beaver dams caused water to become impounded and to encroach on a neighboring property owned by Harold Hiday. Brunswick said that in 2002, “Every morning, I would spend an hour tearing up the beaver dam that was rebuilt the night before.”

Brunswick explained that The Friends of Limberlost were able to “get Mr. Hiday to rent the property to us, and we guaranteed him earnings off that property. We were able to leave the beaver alone,” and the “beaver really put the water on that we would really like to see there.” Brunswick noted that the DNR had approached Mr. Hiday “several times” to purchase the area, but “He would not sell.” Brunswick noted that eventually Hiday conceived the idea of a land swap. “He was willing to trade the 11.72 acres that we were impacting with our restoration” for the same amount of acreage that otherwise connected to Hiday’s property.

Brunswick said the DNR and the Natural Resources Conservation Service were able to come to terms on the concept. “It was actually the first approval in the State of Indiana for a land trade in order to get the easement to go off the WRP sites and put it on another. The acreage had to be the same.” Brunswick said Hiday is now seemingly in failing health and “not very happy” the land transfer has not already occurred. “We have been at this for a couple of years.”

Damian Schmelz moved to approve the proposed real estate exchange between Harold Hiday and the DNR at Loblolly Marsh Wetland Preserve in Jay County. Jerry Miller seconded the motion. Upon a voice vote, the motion carried.

## **DIVISION OF OIL AND GAS**

### **Consideration of Preliminary Adoption of Amendments to the Rules Governing Oil and Gas Wells to Modify Standards for Plugging, Abandonment, and Mechanical Integrity Tests; Administrative Cause Number 03-152G**

Michael Nickolaus, Director of the Division of Oil and Gas, presented this item. “I’m here today to ask you to protect a natural resource that you can’t see, which is a very vital natural resource in a very vital environment in the State of Indiana, and that’s the underground environment related to groundwater.” He said the Division of Oil and Gas had not revised its rules regarding the closure of wells for oil and gas purposes in more than 19 years. The proper closure of abandoned wells is a critical element for environmental protection.

Nicholas said the proposed amendments provide new specifications for new plugging requirements, for placement of underground plugs, for materials used in plugging, and for the verification and confirmation of the plugging process. “These are very critical elements in making sure the environment is protected.” He recommended preliminary adoption.

Damian Schmelz moved to give preliminary adoption to rule amendments governing oil and gas wells regarding standards for plugging, abandonment, and mechanical integrity tests. Jerry Miller seconded the motion. Upon a voice vote, the motion carried.

## **DIVISION OF ENTOMOLOGY AND PLANT PATHOLOGY**

### **Consideration for Preliminary Adoption of Rule Amendments to 312 IAC 18-3-12 that Adds Union County to the Larger Pine Shoot Beetle Quarantine Area (Administrative Cause Number 03-126E; LSA #03-214)**

Jennifer Kane, NRC Division of Hearings, presented this item. She said the rule proposal would add Union County to the larger pine shoot beetle quarantine area. With this addition, 61 of Indiana’s 92 counties would be quarantined. Kane explained that 312 IAC 18-3-12(c) lists the counties that are exempted from the quarantine area, and the proposed rule would remove Union County from those exempted. Currently, Union County is quarantined under a temporary, emergency rule.

Damian Schmelz moved for preliminary adoption of rule amendments to 312 IAC 18-3-12 to add Union County to the larger pine shoot beetle quarantine area. Lori Kaplan seconded the motion. Upon a voice vote, the motion carried.

## DIVISION OF WATER

### **Consideration of Approval of Nonrule Policy Document Regarding Methods of Measuring the Amount of Water Withdrawn by a Significant Water Withdrawal Facility (Information Bulletin #40); Administrative Cause Number 00-138W**

Mark Basch of the Division of Water presented this item. He said that, since 1983, the Indiana Water Resource Management Act has required the registration and water-use reporting for significant withdrawal facilities. Reports were first submitted in 1985. Basch said now there are approximately 3,500 registered significant water withdrawal facilities in the Indiana. In 2000, there were approximately 3.6 trillion gallons of water used by the registered facilities.

Basch said Information Bulletin #40 provides acceptable methods for reporting water use under the Water Resource Management Act. He added that a document similar to Information Bulletin #40 has been provided to the facility owners since 1985, but the Division of Water was now updating and formalizing these kinds of guidelines as nonrule policy documents. He said the Division of Water recommended approval of Information Bulletin #40 as a nonrule policy document.

Damian Schmelz moved to approve the “Methods of Measuring the Amount of Water Withdrawn by a Significant Water Withdrawal Facility” as a nonrule policy document. Jerry Miller seconded the motion. Upon a voice vote, the motion carried.

## DIVISION OF STATE PARKS AND RESERVOIRS

### **Consideration of the Expansion and Renovation of Clifty Inn, Clifty Falls State Park.**

Gary Miller, Assistant Director of the Division of State Parks and Reservoirs, presented this item. He said the Indiana General Assembly “graciously made available” \$3,800,000 for state park inn refurbishment. “At this time, it’s very important to use that money to finish the renovation of Clifty Inn. Along with that 3.8 million dollars and the last refunding of Recreation Development Commission bond issues, there was money freed up to the tune of 1.6 million dollars that is available for capital projects such as this.” Miller said the renovation of Clifty Falls Inn would cost approximately \$8 million. Under the proposal, the Recreation Development Commission would provide a \$2.5 million bond issue. The Department of Natural Resources would transfer the land on which Clifty Inn is located to the Recreation Development Commission, then the Department would enter a Use of Occupancy Agreement to manage and operate the Inn. Miller used preliminary drawings and sketches to describe the agency’s aspirations but noted the development process was still at a preliminary stage.

Ray McCormick moved to approve the following resolution in furtherance of the proposed expansion and renovation:

Be it resolved by the Natural Resources Commission, the Director of the Department of Natural Resources concurring:

1. The State of Indiana is the owner of certain real estate in Jefferson County, Indiana, consisting of 8.37 acres and more particularly described as Attachment A [to be affixed].
2. The use and possession of said real estate is presently vested in the Department of Natural Resources.
3. The Governor of the State of Indiana is requested to effect a departmental transfer of said real estate, more particularly described in Attachment A to the Recreational Development Commission, so that the Recreational Development Commission may improve said real estate in accordance with a proposed Supplement to the Master Use and Occupancy

Agreement between the Recreational Development Commission and the Department of Natural Resources.

4. This document transfer of real estate is conditioned upon the approval of the transfer by the Recreational Development Commission, the successful completion and execution of the above referenced proposed Supplement to the Master Use and Occupancy Agreement, and the successful completion and closure of a sale of Bonds for the project at Clifty Falls Inn, Clifty Falls State Park. Failure to meet these conditions shall result in this transfer being null and void.

Rick Cockrum seconded the motion. Upon a voice vote, the motion carried.

## **NRC, DIVISION OF HEARINGS**

### **Consideration for Approval of the Recommended Report of the Natural Resources Commission With Respect to the Petition For Creation of the Damon Run Conservancy District; Administrative Cause Number 03-135C**

Jennifer Kane, Hearing Officer, presented this item. She said on July 21, 2003, the Porter Circuit Court, made an Entry, referring the Petition for the Creation of the Damon Run Conservancy District to this Commission. She said the public hearing was held as scheduled on September 22, 2003, in Valparaiso, with approximately ten persons in attendance.

Kane said during the public hearing the Petitioner's attorney withdrew two purposes (Flood Prevention and Control and Providing for Irrigation) of the proposed conservancy district. The report to the Commission includes findings for the following purposes: Improving Drainage; Providing Water Supply, Including Treatment and Distribution, for Domestic, Industrial, and Public Use; Providing for the Collection, Treatment, and Disposal of Sewage and Other Liquid Wastes; Developing Forests, Wildlife Areas, Parks, and Recreational Facilities if Feasible in Management; Preventing the Loss of Topsoil From Injurious Water Erosion; Storage of Water for Augmentation of Stream Flow; Operation, Maintenance, and Improvement of (A) a work of improvement for water based recreational purposes; or (B) other work of improvement that could have been built for any other purpose authorized by this section.

Kane said the Damon Run Development was the impetus for the proposed Damon Run Conservancy District. The Development would encompass 162 homes on approximately 75 acres. She noted that 27% of land in the subdivision would be set aside and maintained as forested wetlands and ponds. The drinking water source for the proposed Damon Run Conservancy District is from Lake Michigan through the Indiana-American Water Company. She said, "It is important to note that the water supplied will originate from Lake Michigan and will be returned to the Lake Michigan Basin. Because the development is located entirely within the Lake Michigan Watershed, it is not considered to be a water diversion or subject to the provisions of the Water Resources Development Act."

Kane said "most" public comments urged the proposed district should also incorporate five mobile home parks in the area that have malfunctioning or failing septic systems. By statute, a conservancy district must have a contiguous boundary. The mobile home parks were not contiguous and could not be considered for inclusion at this time. The Petitioner is, however, meeting with the managers of the mobile home parks for their possible future inclusion in the proposed district. Kane said the Petitioner's attorney provided sufficient evidence to make favorable findings for the purposes of the proposed district.

Kane explained that the Commission is authorized to provide analyses described in IC 14-33-2-12 and IC 14-33-3-33 "but nothing more". The statutory structure does not anticipate the NRC would approve or reject a petition to establish the conservancy district or approve or reject a purpose for which the conservancy district is to be established. The Indiana General Assembly has in IC 14-33-2-26 and IC 14-33-2-27 placed this authority exclusively within the Porter Circuit Court. Kane added that the creation of

the Damon Run Conservancy District by the Porter Circuit Court “does not obviate the need to comply with federal and state regulations.”

Kane said that Porter County had previously installed a standpipe within the forested wetland, but it was vandalized. She said the Damon Run developer has agreed to repair the standpipe in order to maintain water level within the wetland. Kane also noted that the development plans incorporate a buffer zone between the wetland and the housing development boundary. Kane recommended approval of the RECOMMENDED REPORT OF THE NATURAL RESOURCES COMMISSION WITH RESPECT TO THE “PETITION FOR THE CREATION OF THE DAMON RUN CONSERVANCY DISTRICT”.

Damian Schmelz moved to approve the recommendations of the hearing officer as the Commission’s recommendations and report to the Porter Circuit Court with respect to establishment of the Damon Run Conservancy District. Raymond McCormick seconded the motion. Upon a voice vote, the motion carried.

**Consideration of Report of Public Hearing and Public Comment Regarding Final Adoption of Rule Amendments to 312 IAC 9-10-4 Governing Game Breeders (Administrative Cause Number 03-094D; LSA #03-149(F))**

Sylvia Wilcox, Hearing Officer, presented this item. She said the proposal was to amend the rules governing the game breeder importation and release of wild animals. The public hearing was held on October 27, with one person in attendance. Paula Yeager of the Indiana Wildlife Federation spoke in support of the proposal. Wilcox noted that additional comments were provided in the Commission packets. She recommended final adoption of the amendments as proposed.

Jerry Miller moved to give final adoption to the amendments to 312 IAC 9-10-4 as recommended. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

**Consideration of Amendment to 312 IAC 5-6-5 Governing Special Watercraft Restrictions on Lake James Chain of Lakes (Administrative Cause Number 00-021W; LSA #03-92(F))**

Sylvia Wilcox, Hearing Officer, presented this item. She stated that rule amendments regarding watercraft restrictions on Lake James were slated for final adoption. Wilcox indicated that the Commission granted preliminary adoption to the rules on July 22, followed by two public hearings on November 7<sup>th</sup> & 8<sup>th</sup>. There was a total attendance of more than 80 people. Wilcox said an opportunity was also provided for the public to send written and e-mail comments. Several were received, and these are included in the NRC packets.

Based on the public comments, the Division of Law Enforcement suggested several changes to language given preliminary adoption: 1) Apply special watercraft standards only during high traffic seasons. Specifically, the rules should apply only between Memorial Day and Labor Day when lake-use is heaviest. 2) Reduce the size of the restricted area in the narrows separating the Upper and Middle Basins of Lake James and in the narrows separating Lake James and Snow Lake. 3) Correct a technical error on the location of Follett’s Creek. Wilcox recommended final adoption of the amendments to the rules, including the suggested changes from the Division of Law Enforcement, as attached in Exhibit C of the NRC packet.

Sam Purvis addressed the Commission. He provided slides of the areas of concern on Lake James Chain of Lakes. The slides reflected the original proposal, as well as suggested changes based on public comments. He said the rule review process was initiated following a citizen request. Purvis stated that there are four to five accidents on Lake James per year in the areas of concern called “the narrows.” As

boats travel through “the narrows”, the area develops its own wake. Purvis said that the area is multi-directional making steering difficult for some boats, water-skiing dangerous, and tubing very challenging.

Randy Strebis, property owner on Lake James addressed the Commission. He argued there was no data supporting the rules recommended by the Division of Law Enforcement and the NRC’s hearing officer. “We’ve never seen any information about these five accidents. I’m not sure that the data actually supports the necessity to restrict the waterways and make more rules.” Even if rules need to be adopted, they should work for both the Commission and the Lake James residents. “Right now, even with the final proposals, there isn’t a rule adopted for the residents. I’d like to see that if we do this that we do it once and make it right. What we have right now isn’t going to past mustard with the people of Lake James.”

Strebis argued that the “narrows” are very navigable even in times of low water. “It’s pretty much a straight shot through there with a slight arch.” Strebis argued that if the area were made an idle zone, there would be problems with the traffic flow. Boats would be stopping and starting in the area. He said that when in-board and out-board boats come off plain, then back on plain, they go “very high volume”, and visibility is impaired. In addition, a problem would be created with “wake-wash”. Strebis said there are only a few days between Memorial Day and Labor Day when the areas are congested. He said, “The people who spend a lot of time on the lake shouldn’t have to be penalized by having to slow down when we may be the only boat in the area.” Strebis suggested that “keep right” buoys and a 25-mph zone be the alternative requirement to keep traffic moving and provide any needed safety protections.

Chairman Kiley asked for the perspectives of the property owner’s association.

Joe Sweeney, President of the Homeowner’s Association, said the consensus of the property owners was that, if the area was a dangerous zone, “keep right” buoys would be a better solution than an idle zone.

Strebis repeated his belief the “keep right” buoys, and a posted speed limit of 25 miles per hour, would be a better solution. “That’s a rule that you can have in place 24/7, 365 days a year. You can educate people on that rule, and there would be no confusion about when it’s on and when it’s off. And, it’s going to make law enforcement easier as well.”

Chairman Kiley expressed safety and enforcement concerns on problems where problems arise in the absence of an idle speed zone. Jerry Miller and John Davis posed questions concerning the depth of the sand bar area and the distance from the shore when crossing the sand bar. Strebis stated there was at least 200 feet that was legally navigable across the narrows area.

Joe Sweeney spoke to the Commission next. He said if an idle zone were enforced in the area, boats would U-turns from both directions. Boats coming off the idle zone would engage “basically, in a drag race”, that it would “only introduce a hazard that is not there now. The only thing we need to do is organize the traffic, not restrict it, not stop it, not idle speed it. And, the number of days that it’s even an issue are a minor number of days that we need to come up with something that makes sense for every day. And, that’s a tough challenge, a very tough challenge.”

Jeff Bell, a property owner on Lake James, addressed the Commission. He said he “basically agreed” with Sweeney and Strebis, and many of the problems were from boaters visiting the lakes that were unfamiliar with Indiana boating laws. He added, “Now three or four holiday weekends, those narrows will be packed, but it’s not like it’s that way day in and day out. I think education and by making a ‘right only’ pathway, and putting a speed zone in, it might solve that problem.”

David McKeeman said he was also opposed to the “no wake zone.” Even if five accidents occurred through “the narrows”, he did not feel that an idle zone would be the correct action. On the other hand, he felt that the Snow Lake area was “truly a blind area” and that it should have some control. He believed it should be a no-wake zone.”

Jack Arnett moved to approve, as proposed, the final adoption on the amendments to 312 IAC 5-6-5 governing special watercraft restrictions on Lake James to apply to other lakes in the Lakes James Chain of Lakes of the rule amendments. Rick Cockrum seconded the motion.

Jerry Miller, Commission Member, said that he agreed with Strebig in that an idle zone could create more problems with the traffic flow and with wake. He said, "I kind of like the idea of having a 25 mph speed limit."

Chairman Kiley said he had concerns with some of the issues presented, particularly at the narrows between the Upper Basin and Middle Basin of Lake James. In fairness to the parties present, as well as having seen the written public comments for the first time just prior to the meeting, he proposed the proposed amendments be returned to the joint Advisory Councils for further review.

Randy Strebig said he was not opposed to Follett Creek area being an idle-zone. He said, "Everybody thought it was an idle zone anyway. It only makes sense because it's a very narrow waterway." Strebig said he still opposed the recommendation for the proposed zones between the Upper Basin and Middle Basin of Lake James, as well as the recommendation between Lakes James and Snow Lake.

Jack Arnett then withdrew his motion for final adoption. Rick Cockrum withdrew his second.

Damian Schmelz moved to send the proposal to the Advisory Councils for further study during their joint meeting set for December 16, 2003. Jerry Miller seconded the motion. Upon a voice vote, the motion carried.

**Consideration of Report of Public Hearing, Analysis, and Recommendation for Final Adoption of Amendments to 312 IAC 25 Governing Blasting Certification Under the Surface Mining Control and Reclamation Act ("SMCRA") (Administrative Cause Number 03-114R; LSA #03-169(F))**

Jennifer Kane, Hearing Officer, presented this item. She explained that the DNR, Division of Reclamation implements the rules governing blasting during surface mining activities. She said the proposed amendment at 312 IAC 25-6-31 removes the requirement of director approval of revised blasting schedules; however, the publication and distribution requirements for blasting schedules and revised blasting schedules remain unchanged.

Kane said proposed amendments to blaster certifications renewals within 312 IAC 25-9-8 (b) would require an applicant for blaster certification to obtain a "minimum of 15 hours additional training" and to "provide documentation" of the training to the Department. She noted that the preliminary language as published in subsection (b) contained a clerical error. The proposed amendment requires the applicant for to provide documentation of achievement of the 15 training hours. Kane said the language, as published, contains a clerical error and "16" hours should be amended to "fifteen (15)".

Kane said written comment was submitted that suggested department approval of training. She said language was added to 312 IAC 25-9-8(b)(3) to reflect this approval requirement. Kane said departmental oversight of training ensures the integrity of the blaster certification program. She said the proposed language is a logical outgrowth of the proposed rule and is supportable.

Kane explained the amendment to 312 IAC 25-9-5(g) would allow an applicant that has failed the blaster certification examination to retake the examination two more times. And if the applicant failed the exam three times, the applicant must retake the certified blaster training course. She said existing rule requires a certified blaster to obtain certification renewal every three years. Amendments are proposed in 312 IAC 25-9-8(c) that would require blasters to, if certification were not renewed more than one year after

expiration of certification, retake the required examination and demonstrate completion of 15 hours of additional training within the previous 36 months. Added to this subsection is proposed language that states blaster certification would not be renewed if certification has been expired for five years. She recommended that amendments to 312 IAC 25-6 and 312 IAC 25-9 as included in the Commission packet be given final adoption.

Damian Schmelz moved to give final adoption to the amendments to 312 IAC 25 as recommended. Rick Cockrum seconded the motion. Upon a voice vote, the motion carried.

**Consideration of Recommendation for Preliminary Adoption of Technical Amendments to Rules to Update Cross-references, Add Definitions to Clarify Current Practices, and Incorporate Emergency Rules as Permanent Rules (Administrative Cause Number 03-159A)**

Steve Lucas, Director of the NRC's Division of Hearings, presented this item. He explained that references contained in the Commissions rules at 312 IAC should be reviewed to "keep things current". New language is proposed to identify the use of a global positioning system. The amendments would make permanent an emergency rule pertaining to residential reconstruction within a floodway following flood damage. An amendment would be made to the license fee for ginseng dealers reflecting a recent statutory change. Other technical changes are proposed. "The amendments are unrelated, but it is essentially housekeeping to help keep us current with the statutes and the scientific world."

Jerry Miller moved to give preliminary adoption to the amendments as recommended. Ray McCormick seconded the motion. Upon a voice vote, the motion carried.

**ADJOURNMENT**

At approximately 12:40 p.m., the meeting adjourned.

**NEXT MEETING**

January 20, 2003 at 10:00 a.m., EST at Ft. Harrison State Park, Indianapolis (Lawrence)