

**NATURAL RESOURCES COMMISSION**  
Meeting Minutes, January 21, 2020

**MEMBERS PRESENT**

Bryan Poynter, Chair  
Jane Ann Stautz, Vice Chair  
Cameron Clark, Secretary  
Bruno Pigott  
Laura Hilden  
Noelle Szydlyk  
Marc Milne  
Patrick Early  
Bart Herriman  
John Wright

**NATURAL RESOURCES COMMISSION STAFF PRESENT**

Sandra Jensen	Dawn Wilson
Billie Davis	Scott Allen

**DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT**

John Davis	Executive Office
Chris Smith	Executive Office
Mike Smith	Executive Office
Steve Hunter	Law Enforcement
Andy Wuestefeld	Law Enforcement
Libby Gamboa	Legal
Ron Hellmich	Nature Preserves
Teresa Clark	Nature Preserves
Thomas Swinford	Nature Preserves
Amanda Wuestefeld	Fish & Wildlife
Linnea Petercheff	Fish & Wildlife
Rod Edgell	Fish & Wildlife
Angie Haywood	Fish & Wildlife
Sam Whiteleather	Fish & Wildlife
Marty Benson	Communications
Ginger Murphy	Parks
David Smith	Water

## **GUESTS PRESENT**

Alan Hux	Ron Richards	Jade Dodge
Dave Dodge	Brian Welch	Fritz Steck
Perry Seitzinger	Paul Arlinghaus	Amy Matherly
Julie Hollowell	James Hibbard	Otto Krohn

Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 10:02 a.m., ET, on January 21, 2020, at Fort Harrison State Park, Garrison, 6002 North Post Road, Ballroom, Indianapolis. With the presence of ten members, the Chair observed a quorum.

## **APPROVAL OF MINUTES**

The Chair asked for a motion for the approval of the Commission’s September 17, 2019 meeting minutes. Jane Ann Stautz moved to approve the minutes, as presented. Patrick Early seconded the motion. Upon a voice vote, the motion carried.

## **ELECTION OF OFFICERS**

John Wright made a motion to slate the officers now standing for the 2020 term—Bryan Poynter, as Chair, Jane Ann Stautz, as Vice Chair, and Cameron Clark, as Secretary. Bart Herriman 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**

Cameron Clark, Director of the Department of Natural Resources (Department), provided his report. Clark noted that the Division of Fish and Wildlife has new interactive deer harvest data accessible on the Department’s website that breaks down the data by county.

Clark provided a legislative update. He noted proposed changes to the procedures for revoking or denying a license or permit under the Interstate Wildlife Violator Compact. Clark said that a court having jurisdiction of an offense committed in violation of an Indiana law for the protection of wildlife may revoke the license of the offender for a minimum of one year. Clark said other proposed amendments would address the maximum duration of a court ordered license suspension, clarify the definition of a “recreational trail”, and establish restrictions for fishing below dams. Clark stated there is also a pending bill to address the Lake Michigan shoreline for consistency with the Indiana Supreme Court’s decision in *Gunderson v. State*, 90 N.E.3d 1171 (Ind. 2018).

Clark said that the Governor has asked the Department to plant one million trees over the next five years. He noted that Riverscape, a local economic development group in Terre Haute, is celebrating the tenth anniversary of the Healthy Rivers Initiative. Clark also recognized Savanna Vaughn, property manager at Pigeon River Fish and Wildlife Area, who received the “Save the Habitat Award” from the National Wild Turkey Federation, for her work in restoring habitat along the Pigeon River.

John Davis, Deputy Director for the Bureau of Lands and Cultural Resources, provided his report. Davis stated that the Department is working on deferred maintenance projects with the funds that were set aside in the state’s 2019 budget.

Davis noted that the second round of applications, for the Next Level Trails program, have been received and grant awards totaling \$30,000,000 should be announced within the next few months, with \$25 million going toward regional projects and \$5 million in local projects. He noted that there would be one more round of grants to be awarded and recognized the efforts of the Division of Outdoor Recreation.

Davis said that the water level at Lake Michigan has been high, but the historic Indiana Dunes State Park Pavilion, remains on track to open Memorial Day 2020.

Chris Smith, Deputy Director of the Bureau of Water Resource and Regulation, provided his report. Smith said that the Division of Water staff has addressed several applications for emergency work along the Lake Michigan shoreline due to high water. He said that the high water caused high wave runoff and big storm surges that damaged seawalls and shoreline property.

Smith said that the Division of Water is working with the Indiana Department of Environmental Management (IDEM) on the Division’s floodway permits and IDEM’s wetland permits. He explained that applicants often need both permits and the Division and IDEM are looking for a way that the permitting processes can be made more efficient by allowing an applicant to submit one application for both permits.

Smith stated that the Division of Reclamation received an award from the Office of Surface Mining and Reclamation Enforcement for the removal of a hazard at Narrow Lake in the Greene-Sullivan State Forest. He noted that the hazard involved a high wall from an abandoned mine. The Division’s Abandoned Mine Land Program worked closely with the Division of Fish and Wildlife in the design and construction of fish habitat structures in the reconfigured Narrow Lake.

Smith advised that a new Department Communications Director has been selected and is tentatively scheduled to start on January 27, 2020.

Patrick Early, Chair of the Advisory Council, reported that the Advisory Council met on January 14, 2020 where officers were slated and elected.

The Chair praised the Director of Fish and Wildlife, Amanda Wuestefeld, for her remarks as the keynote speaker at the National Wild Turkey Federation banquet.

The Chair recognized Marc Milne as the new Academy of Science appointee to the Commission.

Milne stated that he is the Assistant Professor of Biology at the University of Indianapolis, has a Ph.D. in ecology, and studied biology for 15 years.

## **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 has not met since the last Commission meeting. Stautz complimented Division of Hearings staff for their efforts in conducting a rules adoption training on December 11, 2019.

### **Information: Consideration of 2020 meeting dates:**

The Chair noted that the remaining 2020 Commission meeting dates are March 17, May 19, July 21, September 15 and November 17 and announced that the meetings are currently scheduled to take place at the Fort Harrison State Park Garrison or Inn in Indianapolis.

## **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 Patoka Hills Nature Preserve in Crawford County**

Ron Hellmich, Director of the Division of Nature Preserves, presented this item. Hellmich recognized Ron Richards with the Indiana State Museum to assist in the presentation of the proposed nature preserve.

Hellmich said that the proposed nature preserve is a 27-acre property located by Patoka Lake in Crawford County that is predominantly an upland forest with smaller early successional areas. He said the property features dramatic limestone outcrops and has a small cave. He said that two cave invertebrate animal species and two plant species that are endangered species live within the proposed nature preserve.

Hellmich noted that the tract is owned and managed by the Division of State Parks and that the Division is recommending that the proposed nature preserve be dedicated.

Richards showed a cast of the skulls of a dire wolf and flat-headed peccary found within the proposed nature preserve site.

The Chair Recognized Paul Arlinghaus

Arlinghaus stated that he represents the Hoosier Mountain Bike Association (HMBA) and asked if mountain biking and recreation travel would be permitted on the proposed nature preserve property. Arlinghaus said that the Trails Advisory Board was not consulted and by the time HMBA became aware of the proposed dedication there was not enough time to provide input or ask questions. Arlinghaus said that he would object to the dedication of the proposed nature preserve if it does not allow for recreational vehicle travel.

The Chair noted the objection.

Clark noted there are rare and endangered plant life located on the proposed nature preserve and inquired “is nothing sacred” to HMBA.

Arlinghaus said that the proposed nature preserve could potentially cut off a 4-A trail that loops the lake.

Davis stated that there was a discussion, but he did not recall the existence of an agreement that the Department would vet proposals through the recreation community. Davis said that the request from HMBA is not compatible with the species that are being protected at the proposed nature preserve and even though a mountain biker cannot ride along Patoka Lake he disagreed that the proposed nature preserve would cut off the lake trail.

Herriman asked if there was a reason that the 27-acres property was not contiguous.

Hellmich responded that the areas that are included in the proposed tract are the areas that were identified as nature preserve areas that would protect the rare species, the area of the cave, and the excavation area.

Bruno Pigott moved to approve the dedication of the Patoka Hills Nature Preserve. Cameron Clark seconded the motion. Upon a voice vote, the motion carried.

#### **DNR, DIVISION OF LAW ENFORCEMENT**

**Report to the Natural Resources Commission on citizen petition to amend 312 IAC 5; to create special boating zones on Prairie Creek Reservoir; Administrative Cause No. 19-072W**

Steve Hunter, Director of the Division of Law Enforcement, presented this item. Hunter reported that Prairie Creek Reservoir, located in Muncie, is managed by the Muncie Parks Department. Hunter noted that Muncie has some local ordinances addressing activity on the Reservoir that the Department is unable to enforce. He explained that the Department worked with the city to create the current proposed rule that is consistent with Muncie's existing ordinance. He said the current rule sets a speed limit of 20 mph and a tubing zone on the southernmost portion of the Reservoir. Hunter offered that Muncie sought to amend the rule to include a couple of idle zones on the Reservoir, the Department agrees and requests that the two areas be included as idle zones.

Jane Ann Stautz moved for preliminary adoption of amendments to 312 IAC 5, to create special boating zones on Prairie Creek Reservoir. John Wright seconded the motion. Upon a voice vote, the motion carried.

### **DNR, DIVISION OF FISH AND WILDLIFE**

#### **Report to the Natural Resources Commission on citizen petition to amend 312 IAC 5-6-5.6; Lake Manitou Ecozone; Administrative Cause No. 19-070D**

Rod Edgell, Division of Fish and Wildlife, presented this item. Edgell noted that in 2005 the Lake Manitou Special Boating Zone or "Manitou Ecozone" (Ecozone) was established as a result of a petition by the Lake Manitou Association (Association). Edgell noted the reasons the Association cited were boating safety in shallow water, protection of vegetation, the provision of habitat, and to offer a power-boat free zone.

Edgell stated that Kenny Anderson filed a petition to eliminate the Ecozone on May 20, 2019. Doug Keller with the Division of Fish and Wildlife contacted Anderson, and Anderson revised the petition on August 5, 2019. The amended petition included keeping the Ecozone in a reduced size that would no longer include deeper water between the Ecozone boundary and Wolf Point. Edgell said the Department's review committee examined the amended petition and observed the proposed revision of the Ecozone confined the boating restriction to areas of the current zone that are four feet or shallower and did not include the area across from Wolf Point, which will reduce boat congestion in that area.

Edgell said the review committee recommended an alternative boundary that moved the boundary to address boat congestion in the area near Wolf Point. Edgell noted that Anderson received a copy of the committee report.

The Chair asked if there was a great concern by other citizens living on or recreating on Lake Manitou.

Edgell responded that the Department could not verify that Anderson was authorized to act on behalf of the Association or if members of the Association support any change to the Ecozone. He noted that the committee did not receive any comments either in support of or in opposition to a change to the Ecozone.

Milne noted on page 5 of the report a possible typographical error that says, “The committee therefore supports moving the southwest boundary of the Ecozone.” Edgell confirmed that the reference should have been to the “southeast boundary.”

Hilden asked if there was an attempt to acquire comments from the homeowners in the area of the Ecozone.

Edgell said there was not an opportunity for members of the public to offer comments.

Jensen clarified that if the Commission approves the recommendation of the Department there would be a period where the public could offer comments as part of the rulemaking process.

Cameron Clark moved to accept the Committee’s Report and recommendation regarding the citizen petition to amend 312 IAC 5-6-5.6; Lake Manitou Ecozone. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion was carried.

**Report to the Natural Resources Commission on citizen petition to amend 312 IAC 5-6-11; Simonton Lake Ecozone; Administrative Cause No. 19-135D**

Edgell also presented this item. Edgell explained in 2015 the Simonton Lake Special Boating Zone or “Simonton Ecozone” (“Ecozone”) was established as a result of a petition by the Simonton Lake Homeowners Association (“Association”). Edgell noted the reasons the Association cited were boating safety in shallow water, protection of vegetation, the provision of habitat, and to offer a power-boat free zone. He explained that when the rule was adopted the Association sought the inclusion of a January 1, 2021 sunset clause that would allow for review of the rule.

Edgell stated that on October 22, 2019, the Simonton Lake Ecozone Committee filed a petition with the Commission to modify 312 IAC 5-6-11. The request is that the Ecozone remain the same, but that the sunset clause be removed. He said the Association believes the Ecozone has been positive, provides protection to the lake, and would like for the Ecozone’s existence to continue.

Edgell said that the review committee agreed that protecting the shallow area of Simonton Lake and making it off limits to high-speed boating would benefit the lake’s aquatic habitat and water quality and will provide a safer boating environment. The recommendation of the committee is to remove the sunset clause from the rule.

John Wright moved to accept the Committee’s Reports regarding citizen petition to amend 312 IAC 5-6-1; Simonton Lake Ecozone. Cameron Clark seconded the motion. Upon a voice vote, the motion was carried.

## **Request for preliminary adoption of amendments to 312 IAC 9 related to wildlife and permits; Administrative Cause No. 19-042D**

Jensen explained that the Commission was provided a clean copy of the rule language for this agenda item due to a late discovery of some unusual formatting that might have been caused when scrubbing metadata before the agenda was published.

Linnea Petercheff, Division of Fish and Wildlife, presented this agenda item. Petercheff explained that proposed changes are part of the biennial rule process, where public and Department staff have provided input on fish and wildlife rules.

Petercheff said there is a proposed rule change to allow air rifles and air bows to be used for deer hunting during the deer firearms season. She said that three states already allow the use of air guns for hunting and this would give hunters another option.

Petercheff noted the proposed rule amendments would add the definition of “relaxing snare lock” and “snare lock” to assist trappers in understanding the requirements. She noted the proposed amendment to 312 IAC 9-4-2 specifies the age and license requirements for the youth waterfowl season for the youth hunter and any accompanying adults. She noted that the ruffed grouse will be added to the List of Endangered, Threatened and Rare Species, the proposed amendments will also add the subspecies names for snakes that are found in the state, removes the southeastern chorus frog from the list of native amphibians and adds the boreal chorus frog to the list. Petercheff said there are proposed changes to allow someone to possess box turtles and other turtles under a special turtle possession permit without needing to have a separate permit to use the turtles for education purposes. She also noted the proposed rule eliminates the prohibition for special purpose educational permit holders to use animals commercially and eliminates the continuing education requirement for nuisance wild animal control permit holders that have had a permit for 25 years or more. Petercheff said a property or business owner would not need a state permit when seeking options to mitigate damage caused by some migratory birds.

Davis noted the discussion associated with allowing air rifles and air bows to be used for hunting that occurred on June 25, 2019 at the Advisory Council meeting in representing that because the manufacturers of that equipment do not pay the excise tax under the Pittman-Robertson Act (PR) in the same way firearms and bow manufacturers do. He noted that the PR tax money that is collected by the Internal Revenue Service is given to the states that support the activities of the Division of Fish and Wildlife.

The Chair asked what other states are doing regarding taxing air guns and bows, that he could see this becoming more popular, and would be inclined to oppose a change on something that might impact tax revenue supporting fish and wildlife programs.

Petercheff said that the other states that are allowing the use of air guns and air bows are not taxing them.

Davis said that he would like to look into a potential solution on air rifle and air bow manufacturers paying taxes on those products.



Early added that the Advisory Council discussed a desire to expand hunting opportunities but that it would be important to make sure there is not an impact to the Department in terms of lost PR tax revenue. He said that there was discussion about some states that avoided allowing air guns and air bows.

The Chair asked if someone is hunting with a bow after the firearm season if the hunter orange requirement would apply with the proposed change to 312 IAC 9-3-2 or is it only in the deer reduction zones.

Petercheff clarified that the hunter orange requirement would apply to all hunters after the firearms season begins until January 31 and that it does not matter if a hunter is in a deer reduction zone.

Milne asked why the Department is exempting some migratory birds from the requirement of a landowner to obtain a depredation permit and why the rule amendment language does not specify the exact species.

Petercheff responded that there is already an extensive federal permit requirement for these migratory birds and the state permit is not needed. She said that black vultures are a big problem and can kill a newborn calf. She stated that some of the other migratory birds can kill farm animals and cause damage to property. She offered that the Department's intent is to reduce the additional restriction for property owners since there is a federal program in place.

Herriman asked if the state or the federal government would have a more stringent review in the permitting process.

Petercheff answered that the federal government permitting process has a more stringent review.

Stautz pointed out page 26 of the agenda material where amended rule language adds clarity to the issue of threats to property, people, and animals and that the rule does not relieve someone of requirements prescribed under federal law.

The Chair recognized Perry Seitzinger with the Ruffed Grouse Society

Seitzinger stated he is President of the Indiana Chapter of the Ruffed Grouse Society and there is scientific data that there is a decline in ruffed grouse in Indiana and the Society support best practices for habitat and forest management. He said that the Ruffed Grouse Society and American Woodcock Society support adding ruffed grouse to the list of endangered birds. Seitzinger submitted letters of support.

The Chair requested the Division of Hearings commit to at least two public hearings, in different parts of the state, to allow citizens the opportunity to attend and offer public comments on the proposed fish and wildlife rule amendments.

Jensen answered in the affirmative. She also noted that the Division of Hearings had already taken steps to open the rulemaking docket and the public comment link the next day.

Cameron Clark moved for preliminary adoption of amendments to 312 IAC 9, governing wildlife and permits. Bruno Pigott seconded the motion. Upon a voice vote, the motion carried.

**Request for preliminary adoption of amendments to 312 IAC 9 related to fishing;  
Administrative Cause No. 19-037D**

Jensen explained that the Commission was provided a clean copy of the rule language for this agenda item due to a late discovery of some unusual formatting that might have been caused when scrubbing metadata before the agenda was published.

Petercheff also presented this item. She noted several definitions were proposed to be added to 312 IAC 9-6-1, including definitions for drop line, limb line, free-float line, trotline, setline, throw line, and pink salmon to help fishers understand the regulations guide. She said the cisco and western sand darter are proposed to be added as endangered species of fish and northern brook lamprey is proposed for removal from the list. Petercheff said Glenn Flint Lake in Putnam County is proposed to be added to the list of lakes with a minimum size limit for saugeye. Petercheff stated a size limit for sauger and reduction the daily bag limit and possession limit of sauger, walleye, and saugeye are proposed for sport fishing on the Ohio River. Petercheff noted additional proposed restrictions on black bass on four lakes in Noble County.

Petercheff said that there are no changes to the roe harvester's license, noting that the roe-bearing species matter is still under review by the Department.

Davis added that there was a discussion on the elimination of the commercial harvest of roe-bearing species at the Advisory Council meeting held on April 30, 2019 and June 25, 2019. Davis noted the Department's concern is the long-term viability of roe-bearing fish due to overfishing and the Department is searching for meaningful management.

Milne noted that the northern brook lamprey is being removed from the endangered species list and downgraded to special concern and asked if there was a special concern list.

Petercheff stated that special concern species are not in the Administrative Code but there is a nonrule policy document that lists species of special concern.

Bruno Pigott moved for preliminary adoption of amendments to 312 IAC 9, governing fishing. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

**Consideration of amendments to Information Bulletin #59, Free Sport Fishing Days Non-Rule Policy; Administrative Cause No. 19-137D**

Petercheff also presented this item. Petercheff said that the proposed amendments to the free fishing days include changing the dates to the first Sunday in May to coincide with Visit Indiana Week and to the fourth Saturday of September to coincide with National Hunting and Fishing Day and National Public Lands Day.

John Wright moved to approve amendments to nonrule policy document, Information Bulletin #59, Free Sport Fishing Days Non-Rule Policy, as presented. Bruno Pigott seconded the motion. Upon a voice vote, the motion carried.

**Consideration of amendments to Information Bulletin #2; the Roster of Indiana Animals, Insects, and Plants that are Extirpated, Endangered, Threatened, or Rare (also described as Special Concern); Administrative Cause No. 19-138D**

Petercheff also presented this item. Petercheff said that the Division of Fish and Wildlife and the Division of Nature Preserves are requesting the approval of amendments to Information Bulletin #2 that include the addition of the alligator gar and eight species of mussels to the list of species of special concern as well as changes to the lists of insects and plants. Petercheff explained that the appropriate review committees have reviewed the species recommended to be added to the list.

Petercheff noted the Division of Nature Preserves' efforts in the use of surveys and ranking of insects and their recommendations for changes to the plant list as well.

Cameron Clark moved to approve amendments to nonrule policy document, Information Bulletin #2; the Roster of Indiana Animals, Insects, and Plants that are Extirpated, Endangered, Threatened, or Rare, as presented. Patrick Early seconded the motion. Upon a voice vote, the motion carried.

**NRC, DIVISION OF HEARINGS**

**Consideration of recommended report of the Natural Resources Commission with respect to the Petition for the Establishment of the East Shore Conservancy District; Administrative Cause No. 19-133C**

Sandra Jensen, Hearing Officer, presented this item. Jensen stated that if approved by the Commission the "Recommended Report" would be filed with the Marshall Circuit Court regarding the establishment of the East Shore Conservancy District. She offered that this matter is controlled by IC 14-33, which specifies that the Circuit Court refer the matter to the Commission, which, with the assistance of the Division of Water, acts as a friend to the court providing technical review and analyses of the proposed conservancy district. She said the Commission's review focuses on whether the proposed conservancy district is necessary, as well as the economic and engineering feasibility, the benefits and costs, immediate or prospective benefits to public health, and the appropriateness of the geographic area of the proposed

conservancy district. Also considered is the compatibility of the proposed conservancy district with other water management projects.

Jensen stated that the Marshall Circuit Court referred the East Shore Conservancy District (ESCD) to the Commission on October 10, 2019 noting that the report needs to be filed within 120 days, which is February 7, 2020. Jensen noted that comments were solicited from eleven other state and local agencies that may have an interest in the ESCD, observing that only two responded.

Jensen said there was a statutorily required public hearing conducted on December 10, 2019. David Smith with the Division of Water participated in the public hearing at which the petitioner presented four witnesses, the testimony of whom is summarized in the Recommended Report. She noted that ten members of the public provided oral or written public comments and offered that other written comments were submitted by regular mail or e-mail. Jensen noted that all of the written comments are attached to the Recommended Report.

Jensen highlighted that the East Shore Corporation (ESC) has provided sewer service to 100 customers along the east shore of Lake Maxinkuckee since 2000. She explained that the ESC's treatment system has failed and they are no longer able to provide adequate service because only the collection system is presently working. Jensen said the intent of the ESCD is to connect forced mains and pumping stations to the ESC's existing waste collection system, to then connect to the Town of Culver's sewage treatment infrastructure.

Jensen noted that the Indiana Utility Regulatory Commission (IURC) is required to approve the sale of the ESC's assets to the ESCD. She noted that there are property owners within the boundaries of the ESCD who are not presently being served by the ESC and some of those property owners were concerned about the new imposed costs when they currently have sewer service through privately owned septic systems. Jensen said that some property owners have already filed to have their properties removed from the boundaries of the ESCD and if others seek to be released, the economic feasibility could be impacted by fewer properties being included in the boundary of the ESCD, which would cause an increase in the cost.

The Chair recognized Alan Hux, Counsel for the Petitioners.

Hux said that without the establishment of ESCD, the 100 homeowners presently served by the ESC may not be able to use their homes.

The Chair recognized Fritz Steck.

Steck stated that he is the President of the ESC, Board of Directors and that he supports the Hearing Officer's recommendations.

The Chair recognized Brian Welch and asked if his comments were in support of the establishment of the ESCD.

Welch replied in the affirmative.

The Chair recognized Julie Hollowell.

Hollowell stated that she has a Ph.D. in anthropology from Indiana University and is a long-term resident of Lake Maxinkuckee. She said that they used to have a septic system and in 2015 it cost her \$17,000 to get connected to the ESC sewer system. She said in 2015 there were discussions about a plan to establish a conservancy district and those plans did not move forward. She said she was not aware that the sewer system had failed and was operating over capacity until August 2019 when the Department of Health issued a cease and desist order prohibiting its use. Hollowell said that the ESC members have been assessed emergency fees of almost \$8,000 to pump and haul waste.

Hollowell said she heard that the installation of a new system could cost between \$21,000 to \$40,000 per home and the financial burden is too much. Hollowell inquired if the Commission had reviewed the acquisition of ESC assets valued at \$1,025,000. Specifically, she questioned the quality of the assets proposed to be purchased from the ESC, if there a draft agreement with the Town of Culver, and if alternative on-site treatment has been explored.

Hollowell said that she is not convinced that the ESCD is the best option for the 130 freeholders.

Hux responded that Hollowell had notice of the public hearing and the issues she raised could have been considered had she appeared at the public hearing. Hux said that the issues raised are not issues before the Commission and might be better addressed by the ESCD board if the ESCD is established. Hux stated that an engineer has reviewed the ESCD plans and the ESCD is the only economically feasible option.

The Chair noted that the Commission has a limited advisory role and the Hearing Officer's Recommended Report addresses the required criteria and recommends establishment of a conservancy district.

With respect to Ms. Hollowell's concerns regarding the purchase of infrastructure from the ESC, Jensen noted that a similar concern, expressed in a written comment, is reflected in the Recommended Report for the benefit of the Marshall Circuit Court. Jensen observed that the concern about the existence of a formal agreement between the proposed ESCD and the Town of Culver is addressed in the Recommended Report for the enlightenment of the Marshall Circuit Court. She acknowledged that documentary evidence of an agreement is not in the record, but explained that members of the ESC Board testified under oath to the existence of a preliminary agreement.

Jensen also recognized, for the benefit of Ms. Hollowell and the Commission members, that while there may have been a lack of communication by the ESC, the establishment of the ESCD should alleviate some of those issues. She offered that through statutorily required processes the ESCD will establish and file a district plan, the court will appointment an initial board, and the ESCD will have a management structure that is statutorily controlled.

Herriman asked if someone opposes the establishment of a conservancy district because they might not know all the answers would they be able to file with the circuit court.

Jensen responded that a person could file as a remonstrator in the circuit court and ultimately it is the court that would determine whether a property may be withdrawn from the ESCD boundary.

Pigott asked if once the conservancy district is established would the conservancy district board have the ability to change the plan.

Jensen said the conservancy district is required to follow a district plan. She referred to David Smith.

David Smith, with the Division of Water said that some of the concerns raised are addressed during the district plan process after the conservancy district is established. He noted that the Department's role in the planning process is to look at alternative proposals and make suggestions, but the details of the plan are established within the first 120 days after establishment.

Patrick Early moved to accept the Hearing Officer's Report as the Natural Resources Commission's Report with respect to the Petition for the Establishment of the East Shore Conservancy District. Bart Herriman seconded the motion. Upon voice vote, the motion carried

**Consideration of Hearing Officer Report on rule processing, public hearing, and hearing officer analyses with recommendation regarding final action to amend 312 IAC 5-9-2, adding Juice Box Cove to the list of locations in Geist Reservoir where a person must not operate a boat at greater than idle speed; LSA Document #19-379(F); Administrative Cause No. 19-085L**

Dawn Wilson, Hearing Officer, presented this item. Wilson stated the proposed rule adds the area known as Juice Box Cove to the list of locations on Geist Reservoir where a person must not operate a boat at greater than idle speed.

Wilson stated that on July 16, 2019 the Commission gave preliminary adoption to the proposed amendment. She noted that Juice Box Cove originated with a citizen's petition and the Department followed up with two emergency rules that were effective from July 24, 2017 until July 23, 2019.

Wilson stated that Notice of Intent to adopt the rule amendments was published in the Indiana Register on July 24, 2019, all approvals were obtained, the rule information was published on the Commission's rulemaking docket, and Legislative Service Agency (LSA) published the proposed rule amendment on October 16, 2019. Wilson said there was a public hearing on December 6, 2019 at the Fall Creek Township Office in Fishers. Wilson noted that no public comments were received at the public hearing, through the online rulemaking docket or through written correspondence. Wilson recommended final adoption of the proposed rule amendment.

John Wright moved to give final adoption to amend 312 IAC 5-9-2, adding Juice Box Cove to the list of locations in Geist Reservoir where a person must not operate a boat at greater than idle speed. Patrick Early seconded the motion. Upon a voice vote, the motion carried.

### **Adjournment**

The meeting was adjourned at approximately 11:40 a.m., ET.