

NATURAL RESOURCES COMMISSION

Minutes - December 14, 1999

MEMBERS PRESENT

Michael J. Kiley, Chair
Larry Macklin, Secretary
John Goss
Damian Schmelz
Jane Ann Stautz
Jerry Miller
Jack Arnett

NATURAL RESOURCES COMMISSION STAFF PRESENT

Tim Rider
Sylvia Wilcox
Tawnya Whittington

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Jack Costello	Executive Office
David Vice	Executive Office
Carrie Doehrmann	Executive Office
Brent Shike	Executive Office
Gary Gretter	Forestry
John Friedrich	Forestry
Ihor Boyko	Legal
Col. Larry Allen	Law Enforcement
Tim Janowski	Law Enforcement
Cliff Chapman	Nature Preserves
John Bacone	Nature Preserves
Deborah Lawrence	Special Projects

GUESTS

Nat Noland
Brian Wright
Corinne Finnerty
Ken Layton
Curtis Vosti
Rick Hollenkarp

MONTHLY REPORTS

Michael J. Kiley, Chair, called to order the regular monthly meeting of the Natural Resources Commission at 10:06 a.m., on December 14, 1999 in the Garrison Restaurant at Fort Benjamin Harrison, Indianapolis. With the presence of seven members, the chair observed a quorum.

Jack Arnett moved to approve the minutes of November 16, 1999. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Larry Macklin provided the Director's report. Macklin began by saying that Lori Kaplan and he continued their "environmental road show" with a recent trip to Terre Haute, Indiana, where they met with the editorial board. He believes there is now a better understanding of "what we are and what we do." He said the DNR was proud to have the First Lady, Judy O'Bannon, visit and discuss Hoosiers Helping Hoosiers. "This year the DNR collected a total of 887 items for this worthy cause."

Director Macklin said he was proud of the Division of Historic Preservation and Archaeology and its part in the Hoosier Millennium presentation last week at the rotunda. Later on the afternoon of December 14 there would be interviews conducted for the exhibit fabricators. Macklin went on to say Ralph Appelbaum and Associates are "well on their way," and everything appears to be on schedule with the exhibit designs. He said the "Indiana State Museum is decked out and ready for the holidays." He said that the tearoom has added two more days and, "the staff is very amazing."

Director Macklin reported he would be traveling to Ann Arbor on Wednesday for a Great Lakes Commission meeting.

Jerry Miller, Chairman of the Advisory Council for the Bureau of Lands and Cultural Resources, reported his council met last week and heard a report from Gerry Pagac, Director of State Parks, about the controlled deer reduction. He said there was also a report on Prophetstown, and "everything is progressing great."

Jack Costello, Deputy Director for the Bureau of Lands and Cultural Resources, reported "the recreation season was good," and the data will be available by next month. He also said the controlled deer hunts were conducted without any major problems. "The hunts are pretty well accepted everywhere, except at the Dunes." For Indiana Dunes State Park, there were ten facilitated meetings and an open house for people to voice concerns. Chairman Kiley inquired if there were any picketers or activists at any of the parks and Costello responded there had not been any.

David Vice, Deputy Director for the Bureau of Resource Management, said his advisory council is to meet on January 13, 2000 and will be looking at four informational items. He shared two handouts, Wild Bulletin and Focus on Fish and Wildlife, which can be obtained by visiting the DNR website, www.state.in.us/dnr/fishwild/index.htm. He said the harvest for deer stands at about 85,400. This figure is 2% lower than last year.

Vice reported the Division of Law Enforcement will have 50 new green 4x4 Tahoes in the field soon. He indicated the Division of Fish and Wildlife recently conducted a bobcat study. The study included trapping a five-pound kitten and an adult cat, presumed to be the mother. A P.I.T. tag was inserted into the kitten for tracking and the adult cat was fitted with a collar. Vice also reported the Indiana Society of Mining and Reclamation met last week in Jasper.

Chairman Kiley inquired if any reports had been received from George Parker regarding the recovery of vegetation in Brown County. Jack Costello indicated there had been some vegetation seen that hadn't been seen previously. He also indicated some vegetation only appears in certain seasons, so there would not yet have been an opportunity for this vegetation to be inventoried.

Chairman Kiley reported the matter of Steve Gerber v. DNR would be postponed until a later meeting. He said Gerber filed a motion to table the issue until he was able to attend the meeting. Chairman Kiley granted the motion and indicated the issue would not be on the January agenda, due to the anticipated extensive discussion next month of coal combustion waste disposal.

**BUREAU OF LANDS, RECREATIONAL, AND CULTURAL RESOURCES
DIVISION OF NATURE PRESERVES**

Consideration of the Dedication of Sarah Lewis Guthrie Memorial Woods Nature Preserves, Jennings County

John Bacone presented this item. He said the proposed nature preserve is a 63.5-acre tract of land located in Jennings County. The property is currently owned and managed by The Nature Conservancy. The property was given to the Conservancy several years ago by the Nature Study Club of Indiana, which had in turn received it by gift from William Guthrie in 1927. The woods are "a fine example of an Illinoian till plain flatwoods." The tree composition is an interesting combination of wet site species such as swamp chestnut oak, pin oak, sweet gum, and red maple mixed with dry site species such as white oak and beech. As nearly as can be determined, there have been no trees cut since 1925. Bacone said there are some unusual herbaceous plants present, including purple fringeless orchid, sweet white violet, and dwarf ginseng. He said the Division of Nature Preserves recommends the dedication of this area.

Damian Schmelz moved to approve the Sarah Lewis Guthrie Memorial Woods Nature Preserve for dedication. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

**LEGAL PROCEEDINGS
DIVISION OF HEARINGS**

Consideration of Report, Findings of Fact, and Conclusions of Law with Nonfinal Administrative Judgment of the Administrative Law Judge in the matter of Rose Acre Farms, Inc., v. Jackie Ault and James Curry; Administrative Cause Number 98-026F

Tim Rider, Administrative Law Judge, introduced this item. He said the findings in this case are lengthy, and there are several first-impression issues. Rider said the focus of

objections before the Commission today is whether the landowner, who retained the timber buyer, should be jointly responsible for timber wrongfully cut on a neighbor's property.

Corinne Finnerty, attorney for Rose Acre Farms, Inc., stated there is no dispute regarding the number of trees cut, the property damage, or the amount owed to Rose Acres. Finnerty explained there was a verbal contract and a written contract between Ault (the timber buyer) and Curry. Rose Acres believes Curry had a legal duty to correctly identify the boundary between land owned by him and land owned by Rose Acres. She argued Ault and Curry entered into a joint venture, and both are "liable for the tortious acts of the other committed within the scope of the business of the venture." Finnerty asked that the decision of the Administrative Law Judge be upheld.

Kenneth Layton, attorney for James Curry, said there was a written contract between Ault and Curry, although the contract was altered after Curry signed. Layton agreed there is no dispute about the monetary amount or the damage done. The dispute arises as to whether Curry is linked in liability with Ault. Layton said his client disagrees with the conclusion by the Administrative Law Judge. Layton argued making Curry responsible for the activities of Ault would require an extension of the law in Indiana. Layton asked the Natural Resources Commission to amend the Administrative Law Judge's nonfinal order to find his client is not liable for damages to Rose Acres.

Damian Schmelz asked if the Commission's decision should be influenced by the fact Curry hired an unlicensed, unbonded cutter. Chairman Kiley responded that the findings show that Curry knew Ault was unlicensed. Kiley said in Indiana, by law, a cutter must be licensed and bonded.

Kenneth Layton said his understanding of the timber buyers statute is a cutter must be licensed and bonded. There is no prohibition in Indiana, however, for a person to enter into a contract with an unlicensed cutter. Corrine Finnerty said if there had been a license and bond, Rose Acres could have brought suit against the bond. By knowingly contracting with an unlicensed cutter, Curry placed Rose Acres in jeopardy.

Jack Arnett moved to approve the Findings and Nonfinal Order of the Administrative Law Judge without amendment. Jerry Miller seconded the motion. Upon a voice vote, the motion carried.

Consideration of the Report of Public Hearing and Recommendation for Final Adoption of Rule Package Amending 312 IAC to Make Technical and Clerical Corrections, to Modify Terms and Definitions, to Correct and Update Cross References, and to Make other Adjustments Appropriate to the Recodification of Rules at 310 IAC to 312 IAC, as the Process of Recodification Approaches Midway; Administrative Cause Number 99-098A; LSA #99-100.

Sylvia Wilcox presented this item on behalf of Jennifer Kane, Hearing Officer. Wilcox indicated this rule package is to make adjustments appropriate to the recodification of rules from 310 IAC to 312 IAC, as the process of recodification approaches midway. Wilcox said the hearing officer recommended the amendments for final adoption.

Damian Schmelz moved to approve, for final adoption, the amendments described in the report of the hearing officer. Jack Arnett seconded the motion. Upon a voice vote, the motion carried.

Consideration of Preliminary Adoption of Rule Amendments to Establish a No-Boat Zone Adjacent to "Lake Front Beach" on Lake Michigan, Hammond, Lake County; Administrative Cause Number 99-153L.

Sylvia Wilcox presented this item. She said at issue is the consideration of preliminary adoption of rule amendments to establish a no-boat zone adjacent to a new swimming beach, to be known as "Lake Front Beach," being developed along Lake Michigan in extreme northwestern Lake County.

Curtis Vosti, Administrator for the City of Hammond Department of Parks, said last year "Lake Front Beach" was dedicated, and three years ago Hammond Marina opened a beach for its clientele. Under this proposed rule, there are two proposed no-boat zones where swimmers would be protected from boats coming out of the marina and parking in the swimming area. Vosti also informed the Commission there is a shipwreck about 400-500 feet from the shoreline adjacent to the marina. He said the shipwreck is not in the proposed no-boat zone.

Chairman Kiley asked how long the shipwreck had been there and how deep it was. Vosti answered the shipwreck had been there since the early 1900s, and it was approximately 15 to 20 feet deep. At the present time, the wreckage is underwater and has never been flagged by the Hammond Marina, although the City of Hammond is not opposed to danger buoys being placed at the site. He said there is also a submerged pier that is buoyed in two places. Jerry Miller asked if the "bird sanctuary" is located along this area and whether pedestrians would be entering the beach through the sanctuary. Vosti responded there are entrances to the beach at both ends. This configuration will keep pedestrian traffic to a minimum through the sanctuary.

Chairman Kiley said the Commission has a responsibility to provide a recreational area for people to swim without fear of being hit by wave runners.

Jane Ann Stautz voiced concerns about pedestrian traffic through the bird sanctuary and what the effects will be.

Jerry Miller moved to approve, for preliminary adoption, the Request for No-Boat Zone Adjacent to "Lake Front Beach" in Hammond. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

ADJOURNMENT

The meeting adjourned at 11:20 a.m.