
LEGAL UPDATE

Legal Services Division



Ground Floor, State Capitol Building

Des Moines, Iowa 50319

515.281.3566

NATURAL RESOURCE COMMISSION MEETING — SEPTEMBER 12, 2019

Purpose. *Legal updates are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update is intended to provide legislators, legislative staff, and other persons interested in legislative matters with summaries of recent meetings, court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although an update may identify issues for consideration by the General Assembly, it should not be interpreted as advocating any particular course of action.*

Date and Location. The Natural Resource Commission met on September 12, 2019, at the Lakeview Community Center in Clear Lake, Iowa. On September 11, 2019, commissioners, staff members, and guests gathered to tour lands managed by the Department of Natural Resources (DNR) in Cerro Gordo and Wright counties.

September 11, 2019, Tours.

- **Clear Lake State Park.** Mr. Josh Rembe, Park Ranger, Clear Lake State Park, gave the commissioners an overview of improvements to Clear Lake State Park. One of the projects for the park was roof replacement and general maintenance of the main lodge building, which is commonly rented out for private parties. In the fall of 2018, the park had a logger remove dying bur oak trees. In the spring of 2019, Trees Forever provided a \$5,000 grant to plant 47 new trees throughout the park with schoolchildren serving as volunteers. The park also benefits from the Clear Lake Enhancement and Restoration (CLEAR) Project, which is a coalition of local organizations that work to provide a healthy ecosystem for the lake watershed. One project that the coalition has undertaken is providing cost sharing for the installation of rain barrels at local residences. Mr. Rembe commented that the park has seen a large increase in visitors over the last 16 years, with approximately 38,000 total visitors in 2019 through September 11, 2019, compared to approximately 22,000 total visitors in 2003.
- **McIntosh Woods State Park.** Ms. Tammy Domonoske, Park Manager, McIntosh Woods State Park, discussed maintenance projects at the park. Ms. Domonoske exhibited one of two yurts to the commissioners. The yurts are the only ones operated by the DNR in the state park system. The yurts were installed about 20 years ago and have maintained an 86 percent occupancy rate. The yurts can be rented for \$35 per night and generate about \$10,000 per year. To clean up the park, goats have been used to clear overgrowth and invasive plants in 2016 and 2017 and prescribed burns have followed each grazing. Another issue facing the park is bur oak blight, a disease that kills bur oak trees and therefore makes the dead trees a threat within the campsites. Mr. Greg Heidebrink, DNR District Forester for District Two, explained that the park needs to have the public understand the need to remove the dying trees before selling the trees to loggers. Additionally, Mr. Heidebrink explained the importance of encouraging tree diversity within the park so tree cover will remain if any particular species succumbs to a disease in the future.
- **Ventura Grade (Clear Lake and Ventura Marsh).** Staff members of the DNR Fisheries Bureau discussed water quality improvement projects at the Ventura Grade, the area between Clear Lake to the east and Ventura Marsh to the west. A dredging project was completed in 2009 to increase the depth of the portion of the lake and a fishing jetty has since been installed, thus making the Ventura Grade a popular location for fishing. However, the area has had some problems with anglers hooking carp and putting them in the Ventura Marsh, thus causing water quality problems

in the marsh. A pump between the two waterbodies allows the export of nutrients from the lake to improve the lake's water quality and allows for the flow of water from the marsh to the lake so the marsh can slowly be drained to kill the carp and later be restocked with native fish.

- **Sisters' Prairie Bike Trail.** Ms. Jan Lovell welcomed commissioners to the entrance of the Sisters' Prairie Bike Trail. The trail itself is asphalt and extends for one and one-tenth mile to the Ventura Grade courtesy of an easement from the family that owns the property to Cerro Gordo County. The trail is surrounded by 190 acres of prairie and wetland restoration area. About one-quarter of the prairie is subjected to a prescribed burn each year to maintain a natural ecosystem. The family has also allowed the DNR to use the property for a bat study.
- **Union Hills Waterfowl Production Area.** Mr. Orrin Jones, DNR Waterfowl and Wetlands Program Leader, gave commissioners an overview of the Union Hills Waterfowl Production Area (WPA). The Union Hills WPA was purchased using federal duck stamp funding and is now the largest WPA in Iowa. The WPA provides nesting areas for upland nesting broods and is also open for public hunting. Given that the purchase of the WPA is relatively recent, part of the WPA is still in the process of converting from old farm fields into prairie. Additionally, portions of the WPA remain as food plots. Successes of the WPA include the fact that pesticide testing of one of the wetlands within the WPA showed zero pesticides and the WPA now hosts 2,000 to 5,000 ducks in the fall.

In the evening after the tours concluded, Mr. Jones led a group of commissioners and staff in banding wood ducks. Duck banding occurs statewide and approximately 2,500 wood ducks are banded in Iowa each year. Banding ducks allows the DNR to monitor harvest and survival rates and understand migration patterns, which then allows the DNR to make informed management decisions, which could include setting bag limits and protecting wetlands that the ducks use. Hunters will report the harvest of a banded duck at reportband.gov. While wood ducks banded in Iowa are often harvested in Iowa, hunters also commonly harvest the ducks in Arkansas, Louisiana, and eastern Texas.

- **Morse Lake Wildlife Management Area and Lower Morse Lake Waterfowl Production Area.** Wildlife and fisheries staff members guided the commissioners through a portion of the Lower Morse Lake WPA and the Morse Lake Wildlife Management Area, the latter of which contains Morse Lake. Approximately one-third of the WPA segment is burned each year. Afterward, the DNR leases the land to a local rancher to allow the rancher to graze cattle on the segment. The relationship allows the DNR to improve the wetland while providing a steady food source for the cattle. The success of the leasing program has led other ranchers to reach out to the DNR about entering leases in other parts of the state.

At Morse Lake, which has a natural depth of approximately seven feet, the DNR is slowly draining the lake to kill off unwanted fish and restart the natural ecosystem. The slow draining, meant to simulate a natural drought, allows shoreline vegetation to take root prior to becoming submerged once the water level returns to normal. The DNR staff explained that increased plant diversity and the removal of troublesome fish such as carp will significantly improve the water clarity and quality. The DNR staff hopes the lake will host many fishing events after the restoration is complete.

September 12, 2019, Business Meeting.

- **Consent Agenda.** Multiple contracts, lease approvals, and project approvals were placed on the consent agenda and therefore did not come up for discussion during the meeting. The contract with Pheasants Forever, Inc., for the hiring of Farm Bill biologists was originally on the consent agenda but removed prior to approval of the agenda.
- **Director and Division Administrator Remarks.** Director Kayla Lyon thanked DNR staff members for the tours the day before. Director Lyon updated the commission on various DNR events she has participated in over the prior month as she continues to transition into her role as director.

Conservation and Recreation Division Administrator Dr. Dale Garner discussed the August 2019 roadside survey, which shows that the estimated number of pheasants and other ground-nesting birds is down this year compared to last year. Dr. Garner explained that the decrease in ground-nesting bird population is likely due to harsh winter conditions followed by a cool and wet month

of May. Dr. Garner discussed the increase in reports of epizootic hemorrhagic disease in deer in certain parts of the state. Dr. Garner also promoted the 2019 Iowa Outdoor Recreation Summit, which is an event that is part of the Recruit—Retain—Reactivate (R3) initiative to maintain strong participation rates in outdoor recreation. Forestry staff then updated the commission on the progress of developing state park forest management plans.

Ms. Monica Thelen, DNR Land Management Coordinator, gave a presentation on why certain DNR projects get held up with archaeological investigation. Ms. Thelen explained that the National Historic Preservation Act, 54 U.S.C. §306101 et seq., requires the DNR to account for the effects of its undertakings on historic properties if there is a federal nexus in the project. Such nexus normally includes the use of federal funding, such as through section 319 of the Clean Water Act, 33 U.S.C. §1329, or receiving funds through the Federal Emergency Management Agency. Additionally, Iowa Code section 303.2 requires a state agency that owns, manages, or administers a historical site to enter into an agreement with the Department of Cultural Affairs under Iowa Code chapter 28E to ensure the proper management, maintenance, and development of the site; therefore, projects that do not have a federal nexus could still be subject to further review. The federal Advisory Council on Historic Preservation (ACHP) is afforded the opportunity to comment on federal undertakings on historic properties, but the ACHP delegates such opportunity to the state historic preservation office, which in Iowa is in the Department of Cultural Affairs. In the event that an undertaking does not have a federal nexus, the state historic preservation office may still review certain projects subject to the chapter 28E agreement between the Department of Cultural Affairs and the state agency. The DNR's chapter 28E agreement is currently expired but the DNR still works with the Department of Cultural Affairs when undertaking a project at a historic site.

Mr. Orrin Jones and Mr. Todd Bishop, DNR Wildlife Bureau Chief, presented season structure options for the 2021-2025 waterfowl hunting seasons. Mr. Jones explained outreach efforts to ensure that DNR makes its decisions based on what hunters want, but also presented survey data that showed that hunters generally trust the DNR to select season dates and create zone boundaries.

- **FY 2021 Budget Request.** The commission approved the DNR's budget request for FY 2021, which is based on the adopted budget for FY 2020. The DNR is required to submit its FY 2021 budget to the Department of Management by October 1, 2019.
- **Timber Sale Contract.** The commission approved a timber sale contract for \$291,800 with Weiland & Sons Lumber Company in the Yellow River State Forest. The purpose of the contract is to clear out storm-damaged or overmature trees in the forest in order to improve the overall health of the forest. Moneys from the timber sale contract will be used for resource management.
- **Sandhill Cranes Study Contract.** The commission approved a contract not to exceed \$50,899 with Iowa State University (ISU) to capture and attach Global Positioning System (GPS) telemetry units to sandhill cranes. The contract allows ISU researchers to capture up to 20 sandhill cranes on lands designated by the DNR using a variety of capture methods. ISU researchers will then work with DNR staff to attach a leg band and GPS tracker on eligible adult sandhill cranes and an advanced telemetry system very high frequency transmitter to flightless sandhill crane colts. The project will allow researchers to better understand movement and habitat use by the birds due to their expansion in eastern Iowa from other states.
- **Pheasants Forever, Inc., Farm Bill Biologists Contract.** The commission approved a contract not to exceed \$80,000 with Pheasants Forever, Inc., to support 12 Farm Bill biologists who will provide technical and financial assistance to private landowners regarding the Iowa Habitat and Access Program.
- **Wildlife Habitat Promotion Grants.** Pursuant to Iowa Code section 483A.3 and 571 IAC ch. 23, the DNR is required to use revenue from wildlife habitat fees for the acquisition of land, lease of land, or obtaining an easement from a willing seller for use as wildlife habitat. Accordingly, the department makes grant recommendations to disperse some of the revenue to counties for projects that have a total cost of at least \$4,000. The commission approved the grant requests for projects in Kossuth, Chickasaw, Polk, and Clayton counties.
- **Public Land Acquisition Projects.** The commission approved the acquisition of a 20-acre tract of land in Butler County adjacent to Big Marsh Wildlife Management Area for \$46,000 and a 120-acre tract of land in Warren County adjacent to Heritage Hills Wildlife Management Area for

\$451,000. The Butler County property is adjacent to a significant wood turtle nesting site while the Warren County property provides diverse wildlife habitats, primarily for upland game, and contains timber classified as high-priority forests in the DNR's "Iowa's Forests Today" plan.

- **Economic Impact Study with Iowa State University Center for Agriculture and Rural Development.** The commission approved a contract with the ISU Center for Agriculture and Rural Development to conduct a survey of lake usage and spending. Prior surveys showed how Iowa lake usage and related spending changed from one survey to another and whether Iowans are willing to pay for preservation and continued improvement of water quality. ISU will administer this survey to 5,000 Iowans and 2,000 nonresidents who live in counties across Iowa's borders.
- **Contract with KCL Engineering.** The commission approved an engineering professional services contract with KCL Engineering for \$54,000. The contract allows KCL Engineering to prepare final designs and answer pre-bid questions relating to the following six projects: an office remodel at Lake Ahquabi State Park; a concession building remodel and construction of a check-in gatehouse at Lake Manawa State Park; the installation of a back-up generator at Storm Lake Fish Hatchery; an accessible restroom remodel at the restaurant building at Viking Lake State Park; and two separate phases of cabin remodeling at Dolliver State Park.
- **Construction Projects.** The commission approved the following construction project contracts: cabin renovations at Backbone State Park with Jasper Construction Services, Inc., for \$169,800; installation of a crushed stone access road at White Horse Access Wildlife Management Area with Iowa Technology Solutions LLC DBA ITS Land Improvement for \$81,810; shoreline repair at Viking Lake State Park with JNC Construction, LLC, for \$86,000; campground site preparation at Lake Manawa State Park with J. Pettiecord, Inc., for \$245,115; and road maintenance and culvert installation at Stephens State Forest with Cole Construction Company, Inc., for \$267,943.

Next Meeting. The next meeting will be held on October 10, 2019, at the Henry Wallace Building in Des Moines.

LSA Staff Contact: Joe Simpson, 515.725.2251 or joe.simpson@legis.iowa.gov

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