
LEGAL UPDATE

Legal Services Division



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NATURAL RESOURCE COMMISSION MEETING -- AUGUST 8, 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 August 8, 2019, at the Henry Wallace Building in Des Moines.

Director and Division Administrator Remarks. Department of Natural Resources (DNR) Director Kayla Lyon gave remarks after returning from the opening of the Iowa State Fair. She is looking forward to working with the commissioners and DNR staff and filling vacancies within the department.

Conservation and Recreation Division Director Dr. Dale Garner's remarks included brief staff presentations on Dutch elm disease resistance, the 2018 Iowa angler survey, and chronic wasting disease sampling efforts.

Carter v. Iowa Department of Natural Resources, No. 18-0087, Denial of Review. DNR attorney Tamara McIntosh discussed the Iowa Supreme Court's recent decision to deny further review of an Iowa Court of Appeals decision finding that Iowa Code section 483A.24 does not violate the Iowa Constitution's inalienable rights clause or equal protection clause. The plaintiff specifically argued that Iowa Code section 483A.24, subsections 1 and 2, discriminates against nonresident landowners because such a person is not guaranteed the opportunity to hunt antlered deer on the person's property every year.

Regarding the inalienable rights claim, the Iowa Court of Appeals found that there is no common law right to hunt on one's own property because the Legislature has extinguished any such right by declaring that title and ownership of all wildlife is in the state and by declaring that the purpose of vesting ownership in the state is to conserve the resources of the state. Allowing a landowner to freely hunt wildlife on the landowner's property would conflict with the statutory scheme. Even if there was a common law right to hunt on one's own property, the Legislature has properly used its police powers to regulate hunting in the state in a manner that is not arbitrary, capricious, or unreasonable. In the case of deer, limiting the take of antlered deer preserves a gender balance to maintain herd sizes.

Regarding the equal protection claim, the court stated that "the legislature may make classifications [that] are 'rationally related to a legitimate government interest.'" The court found that classifying between antlered and antlerless deer is rationally related to maintaining a gender balance to maintain herd sizes and classifying between residents and nonresidents is rationally related to the state's interest, "on behalf of its citizens, in conserving and protecting wild animals."

Iowa City Urban Deer Hunt. Representatives of Iowa City presented a five-year deer management plan that the city council had approved based on feedback from the Natural Resource Commission meeting on July 11, 2019. Key changes between the plan that the city submitted in July and the new plan include the following:

- The new plan will allow up to two separate instances of sharpshooting in the 2019-2020 winter.
- Bow hunting seasons within the city for the 2020-2021 through 2023-2024 winters shall last for at least 30 days.
- The use of “if necessary” was removed in order to require bow hunting.
- The target density was increased from less than 10 deer per square mile to less than 25 deer per square mile.
- The city of Iowa City shall prepare an annual report for the Natural Resource Commission relating to deer monitoring within the city.

The commissioners viewed the city’s proposal as a compromise between competing interests and expressed hope that the plan will aid the city’s long-term deer management. The commission approved the city’s request.

Peregrine Falcon Permit Lottery Drawing. The U.S. Fish and Wildlife Service has found that the northern management population of peregrine falcons is sustainable enough to support a limited take and made available 48 peregrine falcon falconry permits to be allocated roughly equally among the 10 member states of the Mississippi Flyway. Accordingly, Iowa received five permits to distribute to eligible persons. Pursuant to administrative rules (571 IAC 101), a person may use a falconry permit to capture, possess, and hunt with certain raptors (a nonresident must obtain a nonresident raptor trapping permit in order to trap). To be eligible for a peregrine falcon falconry permit, applicants must be a resident general or master falconer with five current consecutive years of field experience.

Twelve individuals applied for a peregrine falcon falconry permit and 11 of those individuals qualified for the permit. Commissioners drew seven names of individuals eligible to receive a peregrine falcon falconry permit. The DNR will offer a permit to the first five individuals whose names were drawn with the last two individuals whose names were drawn serving as alternates.

Contract Amendment with Conservation Districts of Iowa. The DNR received additional funds from the Natural Resources Conservation Service to continue a partnership with Conservation Districts of Iowa. The funds are used to retain contract employment of wildlife specialists and wetland easement team technicians who work within the structure of the DNR private lands program. The commission approved the contract amendment.

Contract with Copperhead Environmental Consulting, Inc. The commission voted to award a contract to Copperhead Environmental Consulting, Inc., to continue a multi-year study of northern long-eared bat travel patterns in Iowa. The study is conducted in partnership with MidAmerican Energy Company. DNR staff said this contract was necessary because the prior contractor did not produce satisfactory results.

Request for Permission Regarding Research Buoys. Iowa Code section 462A.32 requires a person to receive permission from the commission in order to maintain a private buoy or other obstruction in waters of the state. Assistant professor Grace Wilkinson, Ph.D., of Iowa State University has requested such permission to place 12 buoys on seven lakes as part of a research project with the department. The buoys will collect data that will allow the DNR to determine how phosphorus is recycled in shallow lakes in Iowa. The commission voted to approve the request.

Public Land Acquisition. The commission voted to acquire a parcel of land in Clarke County adjacent to the Heritage Hills Wildlife Management Area. The parcel is the last piece of an individual property that the Iowa Natural Heritage Foundation had previously acquired. The DNR has acquired all other parcels of that property in prior years. Commissioner Laura Foell expressed a desire to have a departmental policy for future property acquisitions.

Construction Projects. The commissioners approved the awarding of contracts for the following construction projects:

- Seawall and boardwalk replacement at Arnolds Park at West Okoboji Lake.
- Bank grading at Dolliver Memorial State Park.

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- Road maintenance at Red Rock Wildlife Management Area.
 - Seawall replacement at Lake Anita State Park.
 - Replacement of irrigation infrastructure at the State Forest Nursery.
 - Spillway replacement and establishment of sediment ponds at Viking Lake State Park.
 - Vegetation removal and installation of a corrugated metal stop log water control structure for wetland restoration at Lower Morse Lake Wildlife Management Area.

Next Meeting. A field tour will take place on September 11, 2019, in Clear Lake. The next meeting will be held on September 12, 2019, in Clear Lake.

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