

Minutes

THIRD MEETING OF THE RECONSTITUTED TECHNICAL ADVISORY
COMMITTEE FOR THE PROTECTION AND MANAGEMENT OF NATURAL
AREAS IN SOUTHEASTERN WISCONSIN

October 7, 2008

Southeastern Wisconsin Regional Planning Commission
W239 N1812 Rockwood Drive
Waukesha, Wisconsin

Members Present

Dr. Susan E. Lewis, Chairperson	Professor of Biology, Carroll University
Dr. Donald M. Reed, Secretary	Chief Biologist, SEWRPC
Fay U. Amerson	Urban Conservation Specialist, Walworth County
Dr. Philip J. Arnholt	Professor of Science, Biology Dept. Concordia University
Dr. Owen Boyle	Regional Ecologist, Wisconsin Department of Natural Resources
Gerald H. Emmerich, Jr.	Member, Board of Directors, Land Trust of Walworth County
Shawn Graff	Executive Director, The Ozaukee Washington Land Trust
Duane Grimm	Manager, Waukesha County Park System
Andrew A. Holschbach	Director, Planning, Resources, and Land Management Department, Ozaukee County

B. Martinus Johnson	Wildlife Manager, Wisconsin Department of Natural Resources
Marlin P. Johnson	Associate Professor Emeritus, Field Station Manager, Department of Biological Sciences, University of Wisconsin Waukesha Center; Vice President, Waukesha County Land Conservancy
Stephen McCarthy	Milwaukee Metropolitan Sewerage District
Thomas Meyer	Conservation Biologist Wisconsin Department of Natural Resources; Bureau of Endangered Resources
James P. Morrissey	Land/Facilities Supervisor, Wisconsin Department of Natural Resources
Paul E. Mueller	Administrator, Land Use and Parks Department, Washington County
Dr. Patricia Nagai	Horticulture Educator, UW Extension Service, Racine County
Dr. Stephen L. Solheim	Associate Professor, Department of Biological Sciences, University of Wisconsin— Whitewater
Andrew T. Struck	Director, Planning and Parks Dept., Ozaukee County
Marc White	Director, Research—Stewardship— Adult Education, Riveredge Nature Center
Dr. Joy J. Wolf	Associate Professor, Department of Geography, University of Wisconsin—Parkside

SEWRPC Staff

Dr. Lawrence A. Leitner

Principal Biologist

The third meeting of the Southeastern Wisconsin Regional Planning Commission's reconstituted Technical Advisory Committee for the Protection and Management of Natural Areas in Southeastern Wisconsin was called to order by Dr. Susan E. Lewis, Chairman, at 2:04 p.m. Roll call was accomplished by circulating a sign-in sheet and a quorum was declared present.

Review and Approval of the Minutes of the Meeting of 11 August 2008

Dr. Lewis asked the Committee if there were any additions or corrections to the minutes of the meeting of August 11, 2008. Dr. Reed noted that a correction should be made to the minutes: Page 9 should read "Chapter 9, Summary," not "Chapter 8."

Mr. White noted that the Secretary's Note on page 3 included an awkward sentence, "Second, the remaining smaller interior habitat, which typically is less vulnerable to biotic and abiotic edge effects, can lead to serious degradation of protected areas over time." Dr. Nagai suggested breaking it into two sentences, in order to better convey the concept. Drs. Reed and Leitner agreed, stating that the sentence in question will be revised.

[Secretary's Note: The following will replace the sentence in question: "Interior habitat is typically less vulnerable to biotic and abiotic edge effects. However, smaller habitat areas have proportionally greater edge and less interior habitat, which can lead to serious degradation of protected areas over time."]

There being no further changes, on a motion by Mr. Holschbach, seconded by Mr. Mueller, and carried unanimously, the minutes were approved as amended.

Consideration of the Draft Amendment to SEWRPC Planning Report No. 42, A Natural Areas and Critical Species Habitat Protection and Management Plan for Southeastern Wisconsin, Sections 7-8

Dr. Lewis asked that Dr. Reed review Sections 7 and 8 of the Amendment.

Section 7, Changes to Natural Area, Critical Species, and Critical Species Habitat-Related Laws and Policies

Dr. Reed began a review of Section 7 by stating that many rules are inter-related, and that the focus here is on those rules that have changed. This section identified changes to the "existing legal mechanisms" promoting the protection and management of natural areas and critical species habitat areas in the Region since the preparation of Planning Report No. 42. It is organized into three sections: Federal policies and regulations; State policies

and regulations; and local policies and regulations. Section 7 begins with the Federal policies and regulations. Dr. Reed noted that since Planning Report No. 42, two U.S. Supreme Court decisions altered the jurisdiction of the Clean Water Act over the “waters of the United States,” specifically, the SWANCC decision of January 9, 2001, and the Rapanos decision of June 19, 2006. In the first case the Court held that the Clean Water Act authority did not extend to isolated wetlands, and that in the second case it ordered the U.S. Army Corps of Engineers to establish a clear “nexus” regarding the protection of navigable “waters of the United States,” in effect removing isolated waters and other surface waters and their wetlands that do not possess a clear nexus to interstate navigable waters.

Under “Federal Policies and Regulations,” Dr. Reed then reviewed the Advanced Identification (ADID) of Disposal Areas program under the Clean Water Act. He noted that the program is intended as an advisory procedure that 1) adds predictability to the Federal Section 404 permit program, and 2) provides for a better accounting of the impacts of wetland losses resulting from multiple projects within the Region. He further noted that, presently, ADID wetlands in southeastern Wisconsin include those located within the 1980 Primary Environmental Corridors, which are shown on Map 7.

Finally, Dr. Reed noted that the Wildlife Habitat Incentives Program (WHIP) is authorized under the Farm Bill and had been used by many public and private conservation agencies and organizations to help manage natural areas.

Dr. Reed asked the Committee if there were any additions, comments, or corrections to the Federal Policies and Regulations on pages 1-7. There being none, he proceeded to review the “State Policies and Regulations.” Wisconsin Act 6 was passed by the legislature in 2001 as a direct response by the State of Wisconsin to the Supreme Court’s SWANCC and Rapanos decisions. In effect, this act maintains the regulations that heretofore protected all wetlands in Wisconsin in place. However, instead of permits being managed by the Corps of Engineers and the Environmental Protection Agency, they would be handled under the State’s wetland water quality certification program.

Dr. Reed then addressed the issues of the Wisconsin Natural Areas Heritage Program and conservation easements. Mr. Meyer recommended deleting the phrase “under this program the State of Wisconsin may match private contributions and land value dedications with State funds,” noting that while the law does make this statement, the legislature has never funded it. Therefore, the statement is moot.

[Secretary’s Note: This sentence will be deleted from the Plan Amendment.]

Mr. Meyer also expressed concern with the statement on page 9 dealing with mutual agreements and Articles of Dedication. He noted that the Department of Natural Resources views these as being mutually exclusive—a “mutual agreement” to a memorandum of agreement or to something more formal, whereas an article of dedication is a clearly-defined legal instrument. Dr. Reed stated that it was the Commission’s understanding that a mutual agreement was a more formal arrangement

than just a “handshake,” more like a memorandum of agreement. Mr. Morrissey added that a memorandum of agreement can be modified and/or terminated; in fact, there is often a clause that allows one or both parties to back out.

Stating his agreement, Mr. Meyer noted that the Articles of Dedication is legally binding and runs in perpetuity. He added that he will work with the Commission staff to develop some clarifying language. In acknowledging Mr. Meyer’s offer, Dr. Reed stated that such language will be included in the text, and that the Committee will have an opportunity to review that language to be included as a Secretary’s Note in the meeting minutes.

[Secretary’s Note: To date, no insert has been provided by the Department’s staff]

Dr. Reed completed discussion of Section 7 by reviewing “Local Policies and Regulations,” soliciting any further comments, corrections, or additions to the section. There being none, on a motion by Mr. Mueller, seconded by Mr. Graff, and carried unanimously, Section 7 was approved as amended.

Section 8, Recommended Changes to the Regional Natural Areas and Critical Species Habitat Areas Protection and Management Plan

Dr. Reed continued with a discussion of Section 8, noting that this section sets forth the Commission’s amended plan. Dr. Nagai’s memorandum concerning corrections to ownership of certain natural areas was referenced and attached to the minutes (see Exhibit A).

Dr. Wolf asked whether a geological area that was designated as ‘NA-1’ on page 117 was in error, or if it actually was located within a NA-1 quality natural area. Dr. Leitner replied that he would check on this matter.

[Secretary’s Note: The site—Soldier’s Home Reef in Milwaukee County—is actually a critical species habitat area and a GA-1 site; the sentence will be corrected.]

Dr. Reed noted that at the bottom of page 119 one critical species habitat area was partially located within a primary environmental corridor, and that the Commission would amend the corridor boundary map to show it entirely within the corridor. Mr. Emmerich remarked that, therefore, a total of 34 sites would lie entirely within the primary environmental corridor. Dr. Reed replied that was correct and the text would be corrected accordingly.

Referring to protective ownership categories of natural areas, several Committee members noted that the term “or conservation easement” should be added.

[Secretary’s Note: The third paragraph on page 119 will be changed to read: “The second-highest acquisition priority is recommended to be accorded to those natural areas of countywide or regional significance (NA-2 sites) and those

natural areas of local significance (NA-3 sites) which lie within Commission-delineated primary environmental corridors; which support endangered, threatened, or special concern plant or animal species; or which have already been at least partly placed under public or private protective ownership or conservation easement.” The fourth paragraph on page 119 will be changed to read: “The third-highest acquisition priority is recommended to be accorded to those critical species habitat sites which are located wholly or partly outside a designated natural area, but which either are located within a Commission-delineated primary environmental corridor are already at least partly under public or private ownership or conservation easement.”]

A number of Committee members had questions concerning the revised ownership of natural areas proposed in Table 23. Dr. Reed stated that these were generated by the staff of the Department of Natural Resources—Southeast District. Also referring to Table 23, Ms. Amerson asked about the Lake Lawn Sanitary District, stating that she had no knowledge of such an entity. Mr. Morrissey stated that he thought it referred to the Delavan Lake Sanitary District. Ms. Amerson replied that she was under the impression that the Department of Natural Resources was going to continue ownership of that site, to which Mr. Morrissey responded that he will look into the matter.

[Secretary’s Note: In a message to the Commission staff, Mr. Morrissey replied that the site should remain as indicated, i.e., the Delavan Lake Sanitary District, since the Department does not have a project boundary for acquisition, nor does it intend to initiate one in the immediate future. A partnership approach to ownership should be indicated.]

Other questions arose concerning the Milwaukee River Floodplain Forest State Natural Area and proposed Wisconsin Department of Transportation ownership. Again, Mr. Morrissey said he will check on it.

[Secretary’s Note: In a message to the Commission staff, Mr. Morrissey replied that he was unsure where this information originated, but that the site should be within the purview of the DNR, not the DOT. It was his understanding that the DNR owned 130 of the total 135 acres.]

Mr. Graff stated that the Shady Lane Woods ownership should be revised, to indicate joint ownership by the Ozaukee Washington Land Trust and the Town of Trenton. Mr. Meyer thought that the Margis Wildlife Area was owned by Racine County, not the City of Burlington. Dr. Reed replied that this would be checked.

[Secretary’s Note: Research by the Commission staff revealed that this was correct—the Margis Wildlife Area is indeed owned by Racine County.]

Concerning the Nagawicka Lake Bog and Oak Woods (Table 23), Mr. Marlin Johnson stated that he was under the impression that the Department of Natural Resources owned part of the site and planned on retaining it.

[Secretary's Note: In a message to the Commission staff, Mr. Morrissey replied that this NA-2 site contains about 150 total acres of which the Department owns about 25 acres of the woods/wetland, but that it does not intend to actively purchase additional lands at this locale. Instead, the Department would rather support a partnership approach to ownership since the municipalities and the Waukesha Land Conservancy all own portions.]

Mr. Holschbach recommended adding a column to Tables 24 and 25 listing acreages. Dr. Reed replied that this would be done. Mr. Mueller noted several corrections that should be made to Table 24: Colgate Road Swamp is located in Waukesha County, not Washington County; and Washington County should be added as a proposed acquisition agency for Little Oconomowoc River Woods and Wetlands.

Mr. Graff noted that Abbott Woods, a proposed NA-2 natural area in Ozaukee County, was already protected by the Ozaukee Washington Land Trust through a conservation easement, and that this should be reflected in Table 8.

Ms. Amerson asked whether the East Troy Bog should be recommended to be acquired by the Department of Natural Resources, given its proximity to Beulah Bog State Natural Area. Mr. Meyer responded that it was actually too far removed from the State Natural Area project area to be added. Dr. Reed asked if the Bureau of Endangered Resources would consider establishing a separate project area for the East Troy Bog, to which Mr. Meyer replied in the negative, since only areas of NA-1 status would be considered. Ms. Amerson suggested adding the Lake Beulah Management District as the proposed owner, since they have funds earmarked for land acquisition, and this would seem to be appropriate. She also suggested that the Town of Darien should be the proposed acquisition agency of the Voskuil Dry Prairie.

Dr. Boyle noted that the Pretty Lake Tamarack relict is now in the Paradise Valley Unit of the Kettle Moraine State Forest, and that therefore the Department of Natural Resources should be listed as the proposed acquisition agency. Referring to Table 25 on page 122, Mr. Morrissey stated that the proposed ownership of the Carol Beach Oak Woods should be changed from the Department of Natural Resources to private conservation organization.

Dr. Boyle then stated that for those sites where there is no proposed agency for acquisition, indicated by "none" in Table 25, a problem was created for funding. Dr. Reed replied that dashes would replace the word "none" in the appropriate column.

Dr. Wolf discussed Gilbert Lake Disturbed Woods, a critical species habitat area in Washington County, noting that the designation "disturbed" might send the wrong signals. Dr. Leitner replied that this name was a holdover from a previous Commission memorandum report, and adequately describes the woodland in question, but he agreed to change the name to Gilbert Lake Woodland.

[Secretary's Note: The amended Tables 24 and 25, reflecting the Committee's recommended changes and additions, will be included in the final version of the Amendment.]

Dr. Reed remarked that the CTH KD Dry Prairie, a newly identified critical species habitat area, should be deleted from Table 25 because, via field investigation by the Commission staff, suitable habitat on the site has been entirely lost. Mr. Struck inquired whether such areas lost would be documented in the plan amendment. Dr. Boyle recommended that such areas be documented. Dr. Reed stated that these will be put in a table listing sites identified since preparation of Planning Report No. 42, but that have been lost or so seriously degraded that they are no longer considered for inclusion in the amendment.

[Secretary's Note: Table 28 in Section 9 is a preliminary form of this information; an amended version is presented in Table 45 in Section 10.]

Referring to Insert A to page 119, dealing with newly-identified Butler's garter snake sites, Dr. Reed stated that it is recommended that all Tier 3 sites in primary environmental corridors be protected and managed appropriately, such as maintaining a grassland or wetland state. He also noted that a comma should be placed between footnotes 1 and 2 in line five. Mr. Emmerich recommended that an additional introductory or concluding statement be included that further explains why the Butler's garter snake is given so much attention when compared to other critical herptile species, such as Blanding's turtle.

This then led to a discussion among the Committee members for the need for similar detailed studies of other species. Other critical herptile species need detailed analysis, especially concerning nest predators and nesting grounds being disturbed. Dr. Reed replied that a general passage recommending that such studies be included in the amendment would be added. Time was prohibitive for this amendment, however. The Committee concurred.

[Secretary's Note: An introductory discussion will be added to Section 5 or 6]

Mr. White suggested including the actual number of Butler garter snake Tier 3 sites that comprise the 10,800 total acres in primary environmental corridor. Dr. Reed replied that the problem involves determining what exactly constitutes a "site." Some habitat areas are merely divided by a road. Dr. Boyle added that while common garter snakes will travel across roads, Butler's garter snake will not. Dr. Reed agreed, adding that this is supported by the fact that the Commission staff has observed common garter snakes as road kills, but never Butler's garter snake. Dr. Reed then asked the Committee if more-or-less contiguous sites divided by roadways should be separate or combined. Dr. Wolf recommended not dividing habitats. Dr. Boyle agreed, but added that this should be Butler's garter snake-specific.

Dr. Boyle questioned the number of sites needed for protection. Dr. Reed replied that 40 was a base number, with an additional 15 as a safety margin. Dr. Reed said that the Commission staff will try to come up with a revised number. He also added that a table will be added to the Amendment appendix clearly stating the criteria for Tier 1, 2, and 3 sites, to which Dr. Boyle remarked that the criteria may be changing in the future.

[Secretary's Note: Review of the Butler's Gartersnake Stakeholder Workshop Report indicates that 40 Tier 3 Sites are "officially" recommended to be protected at a minimum. And, taking into account Mr. Emmerich's comments concerning an introductory or concluding statement concerning Butler's Gartersnake, Insert A to page 119 is accordingly amended. The amended text is attached to these minutes as Exhibit B.]

Mr. Emmerich then brought up the subject of landscape-scale preserves, specifically asking whether the Committee should recommend enlarging the grassland area at Lulu Lake. Dr. Reed responded that to increase this area to at least 5000 acres seemed perfectly reasonable. Mr. Morrissey added that the Department of Natural Resources will initiate a master plan process which could include a grassland component. Mr. Emmerich stated that the extensive grassland at Bong Recreation Area in Kenosha County should be maintained and expanded, and remarked how successfully the prairie in the Scuppernong area had been increased in size and quality through proper management. Dr. Reed noted that whatever the natural areas plan recommends should be based on sound science, and should be 'do-able.'

Referring to Insert B to page 119, Dr. Reed explained that the primary environmental corridors have changed since 1980 and are presently being updated to 2005. In addition, the Wisconsin Wetland Inventory for the southeastern Wisconsin region has been updated to 2005. Accordingly, there is a need to update ADID wetlands from 1980 to the present. It is recommended that the Plan include affected wetlands located in NA-3 sites, and some NA-2 sites, outside of primary environmental corridors, as ADID wetlands. Such wetlands will then fall under the "special waters" of Wisconsin criteria, indicating that they will be more closely scrutinized. Wetlands must be within natural area boundaries; those portions extending outside will not be included. Dr. Reed noted that this recommendation has been discussed with the Army Corps of Engineers, the Environmental Protection Agency, and the Department of Natural Resources wetland staff, adding that this concept had received agency support. Mr. Holschbach recommended that "ADID" be spelled out in the first sentence.

Dr. Lewis asked why in some instances in the amendment the term "natural area" was capitalized, and sometimes not. Dr. Reed replied that this is an editorial issue which will be corrected in the final document.

Ms. Amerson suggested including all critical species habitat areas located outside of primary environmental corridors as well. Dr. Reed replied that there was a concern by the State and Federal agency staffs that the ADID wetland program not appear to be designating an inordinate amount of wetland acreage as ADID.

Dr. Reed then completed discussion of Section 8 and asked if there were any further comments, corrections, or additions to the section. There being none, on a motion by Mr. Emmerich, seconded by Dr. Solheim, and carried unanimously, Section 8 was approved as amended.

Aquatic Natural Areas Map

Dr. Reed stated that he was responding to a request by Ms. Amerson for an updated version of the Aquatic Natural Areas map as presented in Planning Report No. 42. He had reviewed the original map with the staffs of the Department of Natural Resources and the Commission. They agreed that it was in need of revision to better reflect the most up-to-date criteria for evaluating aquatic areas, but since such a study would involve intensive work, their recommendation was that this be done as a separate study. Dr. Reed then distributed to the Committee a memorandum written by Dr. Thomas Slawski of the Commission staff, "Proposed Modification of the Aquatic Area Assessment Scheme for Streams and Lakes" (see Exhibit C). The Commission staff has, in the past, developed a few site-specific plans, but according to Mr. Philip Evenson, Executive Director of SEWRPC, a separate planning effort for a regional analysis is required, adding that this would not be appropriate for this Amendment. In that regard, the Committee recommended that the Commission undertake an expanded, separate study to amend the Aquatic Natural Areas criteria, using a technical advisory committee of experts in aquatic habitats.

[Secretary's Note: The following will be added to Section 8 pertaining to Aquatic Natural Areas: "Criteria for evaluating aquatic natural areas since the preparation of the original plan have changed substantially. Accordingly, it is recommended that a separate, expanded study to amend the aquatic natural areas be undertaken. A proposed modification of the aquatic area assessment scheme for the Region's lakes and streams is presented in Appendix _____. The refinement and application of the proposed assessment scheme would be conducted by the Commission under the direction of a separate technical advisory committee consisting of experts in aquatic habitats."]

Dr. Reed then completed discussion of the Aquatic Areas map and asked if there were any further comments. There being none, on a motion by Mr. Emmerich, seconded by Dr. Solheim, and carried unanimously, the proposal to conduct a separate aquatic habitat natural areas study as a recommended plan element was approved.

Determination of Next Meeting Date

On a request by Dr. Lewis, Dr. Reed then discussed the date for the next Committee meeting, which is intended to address the Summary (Section 9), contending that it should be held subsequent to the public hearings. He asked the Committee for recommendations about the number of hearings to be held, pointing out that for Planning Report No. 42, four were held—at Riveredge Nature Center in Ozaukee County; at the Milwaukee

County Zoo; at the Racine County offices in Ives Grove; and at the Walworth County Administration Building near Elkhorn. However, he added, the Commission is open to taking into consideration the number that the county staffs feel would be adequate, even one per county if deemed necessary.

Mr. Holschbach suggested the same plan as before—four hearings—with a joint Ozaukee County/Washington County hearing at Riveredge Nature Center. Ms. Amerson, noting that relatively few changes in the amendment pertained to Walworth County, suggested that a public hearing be held near the Walworth County—Waukesha County border. Several members suggested Carroll University or Retzer Nature Center as sites, but Dr. Reed noted that the Eagle area in southwest Waukesha County would be closer to the Walworth County line.

Dr. Nagai pointed out that the Racine County facilities at Ives Grove were relatively small, suggesting that the Kenosha County offices at State Highways 45 and 50 might be more suitable. She also suggested that the Boerner Botanical Gardens might be appropriate for the Milwaukee County hearing. Dr. Reed stated that the Milwaukee County hearing will be coordinated with Sue Black, a Committee member.

Dr. Reed then discussed the format of the hearings, which could range from a formal informational presentation and recorded testimony to an “open house.” He noted that a benefit of the former was that it provided a formal hearing record that is published, adding that formal testimony would likely be required because of the ADID wetlands map update.

Ms. Amerson suggested that something similar to the public hearing concerning the Paradise Valley Unit of the Kettle Moraine State Forest be considered. In that regard, Dr. Boyle offered to send a copy of the feasibility study questionnaire that was collected at the conclusion of that hearing.

[Secretary’s Note: The questionnaire provided by Dr. Boyle is attached as Exhibit D]

The general consensus of the Committee was that the next meeting should be held subsequent to the public hearings, on a date yet to be determined. In that regard, Dr. Lewis noted that she would be on sabbatical leave in the United Kingdom from January 18 through March 28, 2009.

Adjournment

There being no further business, the meeting was adjourned at 4:13 p.m. on a motion by Dr. Nagai, seconded by Mr. Holschbach, and carried unanimously.

Respectively submitted,

Dr. Donald M. Reed, Secretary