

**MINUTES**  
**STATE PRESERVES ADVISORY BOARD**  
**August 24, 2001**

**BOARD MEMBERS PRESENT**

Neil Bernstein  
Robin Fortney  
Kathy Gourley  
Laura Jackson  
Gary Phillips, Chairperson

**BOARD MEMBERS ABSENT**

Timothy Sproul  
Jeff Vonk

**ADVISORS PRESENT**

Diane Ford-Shivvers  
Robert McKay

**ADVISORS ABSENT**

Dorothy Baringer  
Rebecca Conard  
Jan Nash  
Shirley Schermer  
Daryl Smith

**STAFF PRESENT**

Deputy Director Larry Wilson  
Al Farris  
John Pearson  
Daryl Howell

**CALL TO ORDER**

Chairperson Gary Phillips called the meeting to order at 1:00 p.m.

**APPROVE AGENDA**

The following changes were made to the agenda

Add: A report on the Iowa River Trip  
Add: A report on the Fort Atkinson Field School

***Motion was made by Neil Bernstein to approve the agenda as amended. Seconded by Robin Fortney. Motion carried unanimously.***

### **OATH OF OFFICE**

Chairperson Gary Phillips administered the Oath of Office to new board member Laura Jackson and welcomed her to the board.

### **APPROVE MINUTES**

The following amendment was made to the minutes of the May 2001 State Preserves Advisory Board meeting:  
Under the heading, General Discussion, forth line down the word Civil should be changed to Silver.

***Motion was made by Kathy Gourley to approve the minutes of the May meeting as amended. Seconded by Robin Fortney. Motion carried unanimously.***

### **REPORT ON THE IOWA RIVER TRIP**

Robin Fortney gave a report on the canoe trip down the Iowa River that was held in July of 2001. She suggested that the Preserves Board discuss potential preserve sites.

### **REPORT ON FORT ATKINSON FIELD SCHOOL**

Kathy Gourley said the Fort Atkinson Cultural Resources Field School was held in June of 2001. There were 17 participants, 15 of which were students and 2 Americorp volunteers. She said it was an overwhelming success in terms of the experiences gained by the field school participants as well as the information that was gathered about the Fort Atkinson preserve. She said the people involved in coordinating this program would like to see it continue in the coming years.

### **ADMINISTRATIVE RULE CHANGES**

Daryl Howell said the notice of intended action to amend Chapter 1 and 2 was published on 5/30/01. The rules were changed to reflect suggestions made by the board during the May meeting and there were no comments received during the public comment period.

***Motion was made by Neil Bernstein to approve the final rule as presented. Seconded by Kathy Gourley. Approved as presented.***

### **HIGHWAY 100 PROJECT**

Gary Phillips said there were a number of people who would like to address the board on this issue.

Dick Heft, current Chairman of Linn County Conservation Board said he appreciated the past support of the State Preserves Advisory Board but it is now time for the next level. He distributed a copy of a Guest Editorial that he had written. He said recently there had been talk about the byssus skipper but that is not the only issue. The Linn County Conservation Board is also concerned about the wetlands, a rare and sensitive sand prairie, one threatened and two special concern species of butterflies and four rare plant species that have been found on this preserve. He said they believe that Iowa Department of Transportation was very lax in doing the Environmental Impact Study. He asked the Preserve Board to go to the next level and submit a resolution to the Governor and the Department of Natural Resources opposing the construction of this highway as it exists on paper today.

Dan Biechler, Director for the Linn County Conservation Board said he would like to thank the Preserve Board's for their past and continued support of the position taken by the Linn County Conservation Board with regard to the Rock Island Preserve. He distributed a copy of highlights from the Draft Supplemental Environmental Impact Study to the board members. He said in the Draft Supplemental Environmental Impact Study makes reference to a 1979 Final Environmental Impact Study for this project. However it fails to mention that the the original study was rated inadequate because it contained significant environmental deficiencies. He said the information provided in the portion of the Draft Supplemental Environmental Impact Study entitled "Rock Island Preserve" dismisses the status of the preserve and its need for protection and indicates that there was no master plan prepared for this preserve. Management of this preserve has been under the guidance of the articles of dedication and the management plan, which was developed when it was put into the preserves system in 1978. The "Environmental Consequences" section of the report contains uncertain and vague discussion about what the impacts might be. Because of this a lot of the studies that should have been required were not done, therefore it would be difficult for the Department of Transportation to make an adequate determination of what the environmental impacts would be. He said the section titled "Public Use Lands," if read carefully, predicts an uncertain and dire view of the future of Rock Island Preserve. One of the more striking statements made in this document is that FHWA has determined that Rock Island Preserve is not a section 4(f) property. This is contrary to the 1979 Environmental Impact Study where they referred to it as a recreation area near the proposed highway project. This statement indicates that at that time it was considered a 4(f) property. He said under the heading "Wildlife Effects" it refers to a very small parcel of land that is adjacent to Rock Island Preserve which is city owned as a potential mitigation site. The Linn County Conservation Board does not feel it would be suitable habitat for the byssus skipper, because the property is heavily timbered with heavy brush cover and would not be considered

a good prairie habitat, which is what the byssus skipper needs. He said Frank Olsen; a local expert in terms of butterfly skippers in the Cedar Rapids area has looked at this situation and has submitted an affidavit for the Board's consideration. Mr. Biechler distributed copies of the affidavit. He said the byssus skipper was discovered a year ago on the Rock Island Preserve and more recently on a small two to three acre prairie area north and west of Rock Island Preserve. However the Draft Supplemental Environmental Impact Study insinuates that the butterfly may or may not live in this area. He distributed a copy of a letter from Diana Horton, Associate Professor of Biological Sciences for the University of Iowa which expresses her concerns related to Draft Supplemental Environmental Impact Study and the situation at Rock Island Preserve. He said one of the reports Diana refers to, is a study of roads and their major ecological effects on the environment, which the Preserves Board should already have a copy of.

Al Farris, Administrator of the Fish and Wildlife Division and Interim Administrator of the Parks, Recreation, and Preserves Division said he would like to point out some areas of concern that the Department has in reference to the Draft Supplemental Environmental Impact Study. The issue of whether or not this property qualifies for 4(f) status could have ramifications on a lot of other projects that will be dealt with in the future. Because of this the Department is considering contacting the Federal Highway Commission to ask for a review and clarification of this decision. In November of 2000, with the help of the Department's Internal Highway Review Team, he sent a letter to Jim Ross at the Iowa Department of Transportation pointing out the Department's concerns over the possible occurrence of the byssus skipper on the prairie remnant to the west of the Rock Island Preserve, which had not been adequately investigated. He said he felt as though the determination made by the Iowa Department of Transportation was that it probably was present and they would ask for a takings permit. Permits for the taking of threatened and endangered species is a determination of the Director of the Department of Natural Resources and is not something that the DNR engages in lightly. The traditional method of operation between the DNR and Iowa Department of Transportation is an internal team of people from various divisions of the DNR reviews all highway projects and then meets with staff from the Iowa Department of Transportation when there are concerns. This team has not yet met with Iowa Department of Transportation staff since receiving the Draft Supplemental Environmental Impact Study. The Department is also concerned with the noise issue and the classification for noise level and would like to look into it a little further. He said it appears as though the decision for the preferred alternative was made in 1979, which kept other alternatives from being explored more fully.

Mike Smith from the Attorney General's office distributed a copy of Title 49 US Code, Section 303, which is also known as section 4(f) of the Transportation Act. He quoted paragraph A and C of the handout which states, "It is the policy of the United States Government that special effort be made to preserve the natural

beauty of the countryside and public park and recreational lands, wildlife and waterfowl refuges, and historic sites.” “The Secretary may approve a transportation program or project...requiring use of public owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance, or land of an historic site...only if (1) there is not prudent and feasible alternative to using that land, and (2) the program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use.” He said the Draft Supplemental Environmental Impact Study is not just an Iowa Department of Transportation document it is a Federal Highway Administration document and the Federal Highway Administration is responsible for having an accurate and correct Environmental Impact Study. This Environmental Impact Study is premised on a decision by the Federal Highway Administration that Rock Island Preserve is not a Section 4(f) property. He said he is mystified as to how the Federal Highway Administration could conclude that and he suspects that the person who made that decision does not understand the significance of the dedication of a preserve under Iowa law. He said believes it is the Board's duty to inform the Federal Highway Administration of what that significance is. He suggested that they authorize a staff person to submit comments on the Draft Supplemental Environmental Impact Study pointing out the State Preserves Advisory Board disagrees with the determination that this property is not 4(f). He also suggested they include a copy of Chapter 465C.11 of the Iowa Code which provides that areas of dedicated preserves has the highest level of protection that can be given under State Law as well as any other materials that discusses the significance of the dedication to State Preserves in Iowa. If the Federal Highway Administration had determined that this was a 4(f) property then the next determination that would have to be made in the Environmental Impact Study process is whether or not this project would use the preserve. That gets into the question of constructive use, which is defined in the Federal Transportation Regulations. According to that definition noise impact is one way that a highway project can constructively use public property and therefore trigger the 4(f) statute. He said they essentially ignored the issue of noise impact on the preserve by saying that it was not a 4(f) property. He said he believes they were wrong in the determination and that it could be challenged.

Neil Bernstein asked what their alternatives would be if the Federal Highway Administration chose not to listen to their comments.

Mike Smith said if the Board submitted comments and they disregard or refuse to change their mind in this matter, then the final Environmental Impact Study, which would come out at the end of the comment period, would then be subject to challenge.

Dick Heft said he would like to make a couple of additional comments. He said the entire document appears to have been prepared to support the construction of the highway. He said the studies that are required for environmental impact

should have been done a long time ago. He said the council for Linn County Conservation Board advised them to try to get engineers to make an evaluation on the traffic flow and things like that. However it has been very difficult to get a civil engineer to give expert testimony on this matter because they either already have contracts with Iowa Department of Transportation or they are hoping to get one. Therefore there is a conflict of interest.

Dennis Goemaat with Linn County Conservation said he would like to speak to the board briefly as a private citizen. He said he reads about the State of Iowa being the most impacted State in the nation, having lost most of their natural areas and then he thinks about putting the best of the best into the State Preserve System. It seems odd to him that as a society we are not able to protect the best of the best in this state. He said we now have an opportunity and we need to do it.

Gary Phillips concluded the public comment portion of the meeting. He as an Advisory Board, appointed by the Governor, any decision they make in terms of a resolution would be in an advisory capacity and would have no binding legal basis.

Mike Smith said the Environmental Impact Study process is a federal process so the fact they are an advisory board would not limit their ability to make comments. By virtue of their duties to implement 465C and particularly 465C.11 gives them a fiduciary duty to comment to the Iowa Department of Transportation and the Federal Highway Administration on this Environmental Impact Study process.

Gary Phillips said there needs to be two tasks done, one is to make comment on the Environmental Impact Study and the other is to provide a letter of resolution to the Natural Resource Commission.

Neil Bernstein said he appreciated the comments Al Farris and Mike Smith made on the 4(f) issue because he believes that it is at the heart of the major problems. He said while doing an Alexander paper he found the level of noise that would impact bird and grassland species, such as those found at the Rock Island Preserve, as 48 decibels, roughly what the background level is now with out the highway. Impact noise levels for woodland birds are even lower which involves the woodland component of Rock Island Preserve and Hanging Bog Preserve. Hanging Bog Preserve was not assessed for the noise level impacts. He said he wanted to stress that this road would impact both preserves, Hanging Bog Preserve, by virtue of the data contained in the Draft Supplemental Environmental Study would be impacted not only by the road but also by any accessory development along the road.

Laura Jackson said she did not feel as though there had been a lot of thought put into the other alternatives.

Kathy Gourley said the law requires that all alternatives be looked at equally, which was not done.

Neil Bernstein said regarding the threatened and endangered species and the byssus skipper as a Board, they are not directly responsible for that particular section of the code. However the Board is responsible for keeping the integrity of communities together. He said with the byssus skipper being on this preserve as well as all the other species there is a relatively good biological community existing there. Anything that would disturb the integrity of that community would impact the Board concerns. He said even though the wetland is mostly low lying floodplain forest it is supporting a pretty diverse community of amphibians, and there are woodcock nests there as well as other birds. He said the one thing he is really concerned about, with the proximity to Rock Island Preserve is the risk of invasive species getting into this area. He said he felt that moving a prairie was not a viable option.

Gary Phillips asked Neil Bernstein if he was aware of any additional sand prairies in the Cedar Rapids area.

Neil Bernstein said there is one area that used to have a savanna community that is over grown at this time. There is another area near Toddville that has heavy agricultural use. This was a rare community to begin with and even rarer now after development.

Laura Jackson said among the other things that will invade these communities is nitrogen deposition, which is being studied in California in relation to highways. Nitrous oxides are emitted by autos and end up coming down either in rainfall or dry fall fairly close to their sources. As little as a third of a hectare of excess nitrogen added to prairies will reduce species diversity.

Gary Phillips said the Board has two things to do, one is to prepare a letter to submit for public comment on the Draft Supplemental Environmental Impact Study which addresses four concerns, the 4(f) designation, concern about endangered species, noise level and the wetland issues.

Larry Wilson asked if anyone would be presenting the comments at the public hearing.

Gary Phillips asked Neil Bernstein if he would be willing to present the comments in Cedar Rapids on September 12, 2001.

Neil Bernstein said he would be pleased to do it.

Gary Phillips asked the Board if this was something they wanted to turn over to the staff or draft it themselves.

It was decided that Gary Phillips would draft the letter to that Neil Bernstein would present at the public hearing.

Larry Wilson suggested that they should do a separate document on the 4(f) issue, which should include the definition of a preserve.

Al Farris offered Mike Smith's services to draft a separate letter on that issue.

Gary Phillips said the second thing the Board needed to do was to draft a letter of recommendation to the NRC. He said the Board members should have received in their packet the resolution that Linn County submitted to the Natural Resource Commission during the June meeting. The request was made for the Natural Resource Commission to approve the resolution that the Linn County Conservation Board had prepared. At that time the Draft Supplemental Environmental Impact Statement had not yet been published and the issue was tabled. He said the Board could move to approve the resolution as prepared by Linn County.

Neil Bernstein said he would rather draft a resolution from the Board because Linn County does not address Hanging Bog Preserve nor does it detail other concerns that have been raised.

Lengthy discussion followed to develop a letter of resolution to give to the Natural Resource Commission.

The following position statement was developed for presentation at the September 5, 2001 Natural Resource Commission meeting.

### **Iowa State Preserves Advisory Board**

#### Position Statement

### **Iowa Highway 100 Extension Draft Supplemental Environmental Impact Statement**

The Iowa State Preserves Advisory Board is a public body formed pursuant to the Code of Iowa 465C. The role of the Preserves Board is to serve as an advocate for preserves and to establish direction and policies for the preserves system in Iowa.

The Iowa State Preserves Advisory Board opposes all of the alternatives for the proposed extension of Highway 100 in Linn County because of the scientific evidence that two state preserves, Hanging Bog and Rock Island Botanical Preserve will be impacted.

Specifically, noise levels will impact animal communities, the potential use by educational organizations, and the natural serenity of the preserves. Other potential impacts to the preserve include invasion by exotic organisms during and after construction that will alter the native plant and animal communities.

These issues are further complicated by subsequent highway-related development in the roadway corridor and beyond. A further concern is that the movement of the byssus skipper, a state-threatened species will be disrupted between the Rock Island Botanical Preserve and adjacent natural areas.

The Federal Highway Administration decided the Rock Island Preserve was not a 4(f) property. The State Preserves Advisory Board disagrees and believes that the Rock Island Botanical Preserve meets the qualifications for 4(f) status.

It is our opinion that the draft supplemental EIS has been written to support alternative one without adequate study and consideration of the other alternatives including non-highway alternatives. Given development in the proposed area, we suggest that a thorough environmental impact study is necessary rather than supplementing an EIS that is over 20 years old.

These comments are being made by the State Preserves Advisory Board after review and extensive discussion of the draft supplemental EIS. It is the sworn duty of the members of the State Preserves Advisory Board to protect those lands within in the Iowa preserves system.

It is the opinion of the State Preserves Advisory Board that the recommended alternative would significantly impact the Rock Island Botanical Preserve and the Hanging Bog Preserve and inadequate data make evaluation of the other alternatives impossible at this time.

We respectfully request the Commission consider our position and comments and convey a similar position with comments to the Iowa Department of Transportation and Federal Highway Administration.

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Gary Phillips, Chair  
Iowa State Preserves Advisory Board

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Date

***Motion was made by Laura Jackson to adopt the position statement as drafted. Seconded by Robin Fortney. Motion carried unanimously.***

**NEXT MEETING**

The next meeting will be held on November 16, 2001 in Des Moines at 1:00, the location to be announced.

## ADJOURNMENT

With no further business to come before the State Preserves Advisory Board, Chairperson Gary Phillips adjourned the meeting at 4:30, Tuesday, August 24, 2001.

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