Hoosier Environmental Council

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William Ditzler

Chairman, Indiana Wetland Task Force

Dear Chairman Ditzler,

I am writing on behalf of the Hoosier Environmental Council to offer our thanks for the diligent work you and the Indiana Wetlands Task Force are doing and to offer our thoughts on the future for Indiana wetlands. We sincerely appreciate your taking the comments here into consideration.

Founded in 1983 as an Indiana not-for-profit organization, the Hoosier Environmental Council (HEC) works for a healthy environment and sustainable economy for our state. Wetlands have long been a part of HEC's work, and wetland policy has been a major HEC initiative in the last few years.

The Importance of wetlands

Indiana needs to have a balance between drainage and wetlands. That need for balance stems from a long history. Prior to the arrival of European settlers, the Indiana Department of Natural Resources (DNR) tells us that 24% of Indiana's land was wetland. Those original wetlands were drained to make way for towns, roads, and farms. In the 1980s, the DNR estimated that 85% of Indiana's original wetlands had been drained[1]. If left to its own, that land would revert back to wetland.

Over time, society came to learn that wetlands aren't just a nuisance; they are essential. Wetlands can hold between 1 and 1.5 million gallons of water per acre. While a wetland holds that water, the water is soaking into the ground and recharging the aquifer. By storing water, wetlands slow stormwater, which reduces flooding downstream. Wetlands also provide water filtration and purification as well as essential habitat for many species[2].

[1] Indiana DNR (1996). *Indiana Wetlands Conservation Plan.* Pg 16, https://www.in.gov/dnr/fish-and-wildlife/about-us/indiana-wetlands-conservation-plan/

[2] EPA. (2001). *Functions and Values of Wetlands.* https://www.epa.gov/sites/production/files/2016-02/documents/functionsvaluesofwetlands.pdf

We need stormwater storage from wetlands and meandering streams more than ever. As the Task Force has heard, climate data compiled at Purdue University show that Indiana is receiving an average of 5.6 inches more precipitation per year now than it did in the 1890s and more of that precipitation is arriving in extreme storms. Climate models project that Indiana's annual precipitation will continue to increase[3].

The wetlands that remain provide an economic benefit to Indiana. If we lose wetlands, we incur costs as a society. An EPA estimate found that the water purification provided by a wetland in South Carolina was equivalent to a water treatment plant that would have cost $5 million in 2006 dollars[4]. On the water storage function, EPA data show that if Indiana were to build retention or detention basins to store stormwater instead of letting wetlands do it, it would cost around $69,000 per acre of wetland replaced. This is the cost of construction and does not include land acquisition, design, or maintenance costs[5]. Wetlands absorb sediment so they reduce the dredging needed in our lakes, and dredging projects cost tens of thousands and sometimes hundreds of thousands of dollars.

The Indiana DNR estimates that one acre of wetland annually provides[6]

- $248 in water purification benefiting drinking water
- $2,270 in water storage
- $1,055 in erosion prevention, and
- nitrate removal equivalent to that found in runoff from 100 acres of cropland.

The overall economic development potential of a given state or region is dependent on its water supplies. Wetlands help ensure a clean and plentiful water supply, which are necessary for Indiana to keep growing and luring businesses. Indiana's water supply is a competitive advantage over some western and sunbelt states. The trend across the country is that companies are making investment decisions based on ESG (environmental, social and governance) factors, like healthy and sustainable water supplies.

As we lose wetlands, we are also losing the many plant and animal species that are dependent on them. According to the DNR, Indiana's wetlands "provide habitat for 50% of species with small or declining populations" in Indiana[7]. EPA states that, "Wetlands provide an essential link in the life cycle of 75

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[3] Widhalm, M., et. al. (2018). *Indiana's Past & Future Climate: A Report from the Indiana Climate Change Impacts Assessment*. Purdue Climate Change Research Center, Purdue University. West Lafayette, Indiana. https://bit.ly/2KDsaga

[4] EPA (2006). *Economic Benefits of Wetlands.* https://www.epa.gov/sites/default/files/2021-01/documents/economic_benefits_of_wetlands.pdf

[5] EPA (1999). Preliminary Data Summary of Urban Storm Water Best Management Practices. Costs adjusted to 2021 dollars. https://www.epa.gov/sites/default/files/2015-11/documents/urban-stormwater-bmps_preliminary-study_1999.pdf

[6] Indiana DNR (2021). *Connecting Wetlands, Wildlife, and You.* https://www.hecweb.org/wp-content/uploads/2021/04/DNR-2021-Wetlands_Infosheet-Final.pdf

[7] Ibid.

percent of the fish and shellfish commercially harvested in the U.S., and up to 90 percent of the recreational fish catch."[8] Wetland scientist Neal Bennett expressed wetland's role as habitat well:

> "They provide numerous ecological functions that provide free economic services to us. . . , they are the most biologically important habitat for wildlife in Indiana. They provide the breeding grounds for numerous species of birds, foraging grounds for most of the mammals present in our state, and resting grounds for the great migratory bird movements in this part of the country including the sand hill crane." Wetlands Scientist, Neal Bennett

For some species, the small wetlands play an outsized role. The DNR describes how "ten 1-acre wetlands support three times as many ducks as one 10-acre pond" and that a wetland less than an acre can produce thousands of the endangered crawfish frog[9]. Those small wetlands are left unprotected by the current laws. Wetland losses are contributing to significant species loss in Indiana, and it is not possible to put a price on species extinction.

Indiana has lost far too many wetlands

Bob Barr made it very clear in his presentation to the Task Force on March 23 that Indiana has gone beyond the point of draining too many of our wetlands. Our state has lost 85% or more of its original wetlands, as illustrated in the numbers the DNR published in the *Indiana Wetlands Conservation Plan*[10]*:*

Indiana land area	23,226,240 acres
Wetlands circa 1780	5,600,000 acres (24.1%)
Wetlands circa 1996	813,000 acres (3.5%)
Wetland loss	85%

More recent inventories of Indiana wetland acreage are not available. Both the *Indiana Wetlands Conservation Plan* in 1996 and the *Indiana Wetlands Program Plan*[11] in 2015 called for improved tracking of Indiana wetlands, we do not have updated estimates of Indiana's wetland losses.

Despite loss of the majority of Indiana's wetlands, the state and Army Corps continue to issue permits for more wetland destruction. Some of those permits require construction of replacement wetlands to serve as mitigation, but there is evidence of limited success and function of wetland mitigation projects.

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[8] EPA (2006). *Economic Benefits of Wetlands.* https://www.epa.gov/sites/default/files/2021-01/documents/economic_benefits_of_wetlands.pdf

[9] Indiana DNR (2021). *Connecting Wetlands, Wildlife, and You.* https://www.hecweb.org/wp-content/uploads/2021/04/DNR-2021-Wetlands_Infosheet-Final.pdf

[10] Indiana DNR (1996). *Indiana Wetlands Conservation Plan.* https://www.in.gov/dnr/fish-and-wildlife/about-us/indiana-wetlands-conservation-plan/

[11] IDEM (2015). *Indiana Wetland Program Plan.* https://www.epa.gov/sites/default/files/2018-01/documents/indiana.pdf

A review by James Robb in 2000 found that out of 10 years of wetland mitigation in Indiana including 345 projects, more than 30% were never built or were incompletely built[12]. In studying a randomly selected 31 of the sites, Robb further found that of the 84.7 acres of compensatory wetland required only 37.6 acres (44%) of wetland or other waters had been established with failure rates of over 70% in attempts to establish forested wetlands and wet meadows[13]. It would be very interesting to know if more recent data on wetland mitigation success and function were available.

Even when constructed correctly, mitigation projects take time to get established and begin to function. Further, mitigation projects are often built far enough away that they could not replace the function of the wetland that was destroyed. The wetland mitigation that is meant to replace the destroyed wetlands is far from perfect, so we still suffer a net loss in wetland function even when there is mitigation.

It has been suggested that wetland loss is necessary to help Indiana deal with a housing shortage. Since 96.5% or more of Indiana's land is not wetland, there appears to be ample space for construction on ground that is not wetland. Also, construction in wetlands is discouraged since it leads to cracked foundations and problems with seepage and mold[14].

There are many factors tied to housing shortages, like supply chains, local job markets, interest rates, tax rates, the capacities of local infrastructure, etc. Deregulation of wetlands does not address these issues. While environmental deregulation may provide short-term savings to a particular developer on a particular site, it could also create more widespread negative impacts. Loss of wetlands increases the risk of flooding downstream, which hurts the overall economy of the state, as well as hurting the housing supply through flood damage.

Problems with Current Indiana policy

The realization that wetlands are essential led to laws at both the state and federal levels to help preserve some of the remaining wetlands. Those laws try to strike a balance between the need for agricultural drainage and the need for wetlands. If we go too far in one direction, we won't have adequate farm land. If we go too far in the other direction and drain too much wetland or channelize too many streams, we will have increased flooding, increased bank erosion in streams, more polluted waters, loss of groundwater, and species extinction. The Hoosier Environmental Council agrees with Bob Barr's assertion to the Wetland Task Force that Indiana has already gone too far in the direction of wetland destruction.

SEA 389 in 2021 accelerated Indiana's loss of wetlands by exempting many state jurisdictional wetlands from permitting requirements and by reducing mitigation ratios. At the February Task Force meeting,

[12] Robb, J.T. (2000). Indiana Wetland Compensatory Mitigation: Inventory. Prepared for USEPA Region 5 under EPA Grant #CD985482-010-0.
[13] Robb, J.T. (2001). Indiana Wetland Compensatory Mitigation: Area Analysis. Prepared for USEPA Region 5 under EPA Grant #CD985482-010-0
[14] LandCentral (2019). *Wetlands 101: The Truth About Building.* https://blog.landcentral.com/land-university-blog/wetlands-101-the-truth-about-building/#.YppNkHbMJPY

Brian Wolff provided data on the impact of the new law. In the first 7-months after the law took effect, 100 acres of wetlands were filled, and of those, mitigation was only required for 17 acres.

Despite the extensive wetland loss to date, Indiana continues to issue permits allowing wetland destruction. Permits allowing wetland impact should be rare, either state permits under Indiana's Isolated Wetlands Law or 401 Water Quality Certifications for federal wetland permits. This might be accomplished with a more vigorous application of the federal and state law's requirement to first avoid wetland impact. A 401 certification is a statement by the state that the proposed federal wetland permit will not hurt water quality, so 401 Certifications for federal wetland permits could be denied based on the well-established fact that wetlands improve water quality[15]. Their loss means a loss of water quality.

Another policy hurdle for Indiana's wetlands is the fact that Indiana's Department of Environmental Management (IDEM) is underfunded. IDEM is responsible for protecting Indiana's environmental conditions broadly and is specifically responsible for wetland protection and permitting. IDEM staff shared with HEC that the department receives more than 100 complaints per year about illegal wetland destruction, but it struggles to investigate them. In fact, HEC has had experience with incidents of illegal wetland destruction that IDEM was unable to respond to adequately. IDEM's ability to protect wetlands is not helped by its low budget. IDEM's annual budget is down 33% in the last 15 years, when corrected for inflation. In 2006, IDEM's actual expenditures were $130 million ($183 million in Dec 2021 dollars). For 2022, IDEM's budget is $123 million[16].

Until SEA 389 passed in 2021, Indiana was attempting a "no net loss" policy for wetlands. No net loss was originally promoted by President George H.W. Bush in 1989[17]. With the implementation of SEA 389, the illegal wetland destruction, and the limited value of wetland mitigation, Indiana is now firmly in the "net loss" category.

The policy context gives the matter urgency

The wetland discussion in Indiana is operating in the context of recent and ongoing water policy efforts in the state. In particular, the following bills reducing protection of Indiana waterways have passed in recent years:

2019 – HEA 1266 reduced local authority regarding construction runoff

[15] EPA. (2001). *Functions and Values of Wetlands.* https://www.epa.gov/sites/production/files/2016-02/documents/functionsvaluesofwetlands.pdf

[16] Indiana Budget Reports at https://www.in.gov/sba/2364.htm and the U.S. and the Bureau of Labor Statistics' calculator for inflation adjustment: https://data.bls.gov/cgi-bin/cpicalc.pl

[17] Natural Resources Conservation Service (n.d.). *Wetlands.* https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/water/wetlands/#:~:text=Then%2C%20in%201989%20President%20George,does%20not%20mean%20no%2Dloss.

2020 – SEA 229 added a new exemption from wetland permits for drain reconstruction

2020 SEA 433 new exemptions to the Flood Control Act and construction in the floodway

2021 – SEA 389 reduced wetland protection

2021 HEA 1436 new exemptions to the Flood Control Act and construction in the floodway

2022 HEA 1103 new exemptions to the Flood Control Act and construction in the floodway

2022 SEA 342 new exemptions to the Flood Control Act and construction in the floodway

In 2022 the legislature created the Drainage Task Force and tasked it with determining "the extent to which the objective inherent in the drainage law, that of simply draining agricultural land, is yielding to conservation and pollution control objectives;" (SEA 85). The phrase "simply draining" implies that drainage has benefits, but it does not acknowledge the drawbacks and damage done by drainage and loss of wetland. The combination of this charge to the Drainage Task Force along with the bills in the last several years are part of a policy context leading to loss of water resource protection for our state.

The public supports wetland protection.

In contrast to the prevailing sentiment at the Indiana Statehouse, the Indiana public strongly favors wetland protection. During the debate over SEA 389, more than 100 organizations of all types from around the state – environmental, conservation, wildlife, hunting, fishing, faith, civic, and professional organizations – urged the Governor to veto the bill[18]. A 2021 poll conducted by Public Opinion Strategies of 600 Hoosier voters from around the state found overwhelming support for wetland preservation regardless of party affiliation[19]. The results show 94% want wetland protections maintained or strengthened and 72% would have a less favorable opinion of a legislator who voted to reduce wetland protection. A poll of Hoosiers in 2020 conducted by the Morrison Institute for Public Policy had similar findings: 78% said that protecting the environment should be a priority, even at the risk of slowing economic growth[20].

Yet, since 2019, our legislators have passed 7 bills reducing protection for Indiana's waterways. It's time for that trend to be reversed so that we can achieve healthy rivers, streams, and wetlands in our state, resources that are shared by all Hoosiers.

[18] Multi-organization letter to Governor Holcomb (2021). https://www.hecweb.org/wp-content/uploads/2021/04/Request-for-veto-on-SEA-389-with-signatories.pdf

[19] https://gl.audubon.org/news/indiana-poll-reveals-strong-bipartisan-support-protecting-wetlands

[20] https://www.ninapulliamtrust.org/environmental-polls/

Potential solutions

The solutions are simple enough to state, but complicated to implement: preserve and restore more wetlands and stop the destruction of the existing wetlands. HEC offers the solutions that follow for the Task Force's consideration and, we hope, inclusion in its final report.

Preserve more wetlands

- Tax incentives for wetland preservation[21].
- Improve the state budget for conservation through the Benjamin Harrison Conservation Trust Fund (IC 14-21-2-25)
- Reduce or eliminate drain fees in proportion to the acreage of wetland on a property since the wetland stores water and reduces the need for drainage.
- Reduce or eliminate stormwater fees in proportion to the acreage of wetland on a property since the wetland stores water and reduces the need for stormwater management.

Restore more wetlands

- Increase the state budget to broaden the "Healthy Rivers Initiative" to more rivers
- Increase the state budget for the Indiana Lake and River Enhancement Fund (IC 14-22-3.5-1) and the Indiana Conservation Reserve Enhancement Program
- Implement a Smart Wetlands Program[22] similar to the one in Illinois

Stop destroying wetlands

- Strengthen IDEM's implementation of the state law's requirement to first avoid wetland destruction.
- Reduce IDEM's granting of 401 Water Quality Certifications for Army Corps wetland permits since wetland destruction has been proven to reduce water quality.
- Encourage builders to avoid wetland destruction by offering higher density development in exchange
- Increase IDEM's budget so it can respond to reports of illegal wetland destruction.

HEC also encourages the Wetland Task Force to address the upcoming Drainage Task Force in its report. The Drainage Task Force created in 2022 by SEA 85 should take into account and build on the work of the Indiana Wetland Task Force so that Indiana can arrive at the appropriate balance between the need

[21] Please see attached document "AM038917 tax incentive" for draft language.
[22] https://www.smartwetlands.farm/

for drainage and the need for wetlands. It is only by achieving a healthy balance that the state will be able to maintain a healthy hydrologic system.

Conclusion

The Hoosier Environmental Council sincerely appreciates the work of the Indiana Wetland Task Force and its consideration of these comments. We encourage the Task Force to do all it can to stop the loss of wetlands in Indiana and promote wetland restoration.

Sincerely yours,

Indra N. Frank

Director of Environmental Health and Water Policy

PROPOSED AMENDMENT

SB 389 # 17

DIGEST

Taxation of certain wetlands as wildlands. Provides that, when certain requirements are met, isolated wetlands shall be classified and assessed as wildlands.

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 6-1.1-49.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]:

Chapter 49.5. Taxation of Certain Wetlands as Wildlands

Sec. 1. As used in this chapter, "isolated wetland" means a wetland that is not subject to regulation under Section 404(a) of the federal Clean Water Act.

Sec. 2. Lands meeting the definition of isolated wetlands under section 1 of this chapter shall be classified as wildlands under IC 6-1.1-6-2.5.

Sec. 3. (a) Except as provided in subsections (b) and (c), a person who:

(1) wishes to have a parcel of land classified as wildlands under this chapter; or

(2) submits a revised application due to:

(A) the partial withdrawal of existing classified land;

(B) the division of the parcel related to a conveyance; or

(C) the combination of contiguous lands;

must have the parcel described by a professional surveyor certified in wetland delineation. The parcel must be described by metes and bounds or other professionally accepted practices and must locate the parcel with reference to an established corner. In addition, the description must identify the parcel by section, township, range, and county references. The professional surveyor shall prepare plats of the parcel in ink, and the professional surveyor shall

prepare the plats on the scale, and in the number, prescribed by the department of natural resources.

(b) The professional surveyor certified in wetland delineation may use a geo-referenced aerial photograph in order to prepare a description of the parcel. However, the professional surveyor's description must be accurate and if a geo-referenced aerial photograph is used, that fact shall be noted on the application referred to in section 4 of this chapter.

(c) The natural resources commission may adopt rules to allow other means of depicting and identifying parcels classified as wildlands under this chapter provided that the means do not result in a real property description of the parcel.

Sec. 4. A person who wishes to have a parcel of land classified as wildlands under this chapter must file an application in duplicate with the state forester on the forms prescribed by the state forester. The application must include the signature of the owner, the professional surveyor certified in wetland delineation or other person described in rules adopted under section 3(c) of this chapter, the state forester, and the county assessor.

Sec. 5. If in the state forester's opinion an application filed under section 4 of this chapter and the land to be classified comply with the provisions of this chapter, the state forester shall approve the application. In addition, the state forester shall notify the assessor of the county in which the land is located that the application has been approved and return one (1) approved application form to the applicant.

Sec. 6. If an application filed under section 4 of this chapter is approved, the applicant shall record the approved application in the applicant's name. However, if the applicant is a partnership, corporation, limited liability company, or association, the applicant shall record the approved application in the name of the partnership, corporation, limited liability company, or association. When an approved application is properly recorded, the county assessor shall enter the land for taxation at an assessed value determined under section 7 of this chapter.

Sec. 7. Land that is classified under this chapter as wildlands shall be assessed as follows:

(1) For the January 1, 2022, assessment date, at the same rate that land classified as wildlands under IC 6-1.1-14 is assessed for the January 1, 2022, assessment date.

(2) For an assessment date after January 1, 2022, at the amount per acre determined in the following STEPS for general property taxation purposes:

STEP ONE: Determine the amount per acre under this section for the immediately preceding assessment date.

STEP TWO: Multiply the STEP ONE amount by the result of:

(A) one (1); plus

(B) the annual percentage change in the Consumer Price Index for All Urban Consumers published by the federal Bureau of Labor Statistics for the calendar year preceding the calendar year before the assessment date.".

Page 9, after line 27, begin a new paragraph and insert:

"SECTION 2. [EFFECTIVE JULY 1, 2021] **(a) IC 6-1.1-49.5-7, as added by this act, applies to taxable years beginning after December 31, 2021.**

(b) This SECTION expires June 30, 2024.".

Renumber all SECTIONS consecutively.

(Reference is to SB 389 as printed January 27, 2021.)