

**Kentucky Recreational Trails Authority Meeting Minutes**  
**Thursday, September 28, 2006 – 11:00 a.m.**  
**Location: Frankfort Convention and Civic Center**

**Members Present:** Kristen Branscum (Chair), Sandy Runyon, Mike Caudill, David McChesney (proxy for Mark Cramer), Malcom Winsper, Jerry Hancock, Dan Barnett (proxy for Tim Hazlette), Ron Cardwell, and Alvin Cox.

**Members Absent:** Judy Piazza, Jeff Hancock and Preston McClain

**Guests:** Pat Collins (KY Mt. Bike Assoc.), Tracy Bertrum (Dept. of Insurance), John English (Rec Resources, Inc), Henry Curtis (Commerce Cabinet Legal Staff), Carey Tichenor (KY State Parks), Duke Ford (Big Rock ATV Park), and Gene Clabes (K.E.E.P).

**Staff Present:** Kristi Amburgey; Regina Wood; Danielle Landolt and Melissa Ludka.

**I. Call To Order**

The meeting was called to order at 11:05am by Kristen Branscum, Chair.

**II. Roll Call**

- a. Nine appointed members were present, which meets the seven needed for quorum.
- b. Dan Barnett was in attendance to represent Tim Hazlette from KYTC
- c. David McChesney was in attendance for Mark Cramer, KDFWR
- d. After roll call, the board was notified that Pat Collins had been designated by the KY Mountain Bike Association as their official representative. Collins' application has been sent to the Governor's Office for review and pending appointment.

**III. Approval of 8/31/06 Meeting Minutes**

There were no comments or edits on the August 31<sup>st</sup> meeting minutes. A motion for approval was made by Alvin Cox and a second by Malcolm Winsper. The minutes were passed with unanimous approval, no nays or abstentions.

**IV. Adoption of 9/28/06 Agenda**

Kristen Branscum made two changes to the agenda; (1.) remove Judy Piazza from the action items and (2.) add Tracy Bertram to the agenda for a presentation. A motion to adopt the agenda with these two changes was made by Ron Cardwell and seconded by Alvin Cox. The agenda was passed with unanimous approval, no nays or abstentions.

**V. Welcome and Introductions**

Pat Collins from KyMBA was formally introduced and all guests in attendance introduced themselves.

**VI. Agenda Item: Action Item Reports**

Board members were to report back on items of discussion from the August 31<sup>st</sup> meeting.

- a. Kristen Branscum
  - i. Invited representatives from the Departments of Commerce Legal and Parks to be present for the meeting.
  - ii. Brought in John English from Rec- Resources, Inc. to speak about the Hatfield-McCoy Recreational Trails in West Virginia.
  - iii. Updated the board on the new page created for KRTA on the Ky. Department of Tourism website ([www.kentuckytourism.com/kрта](http://www.kentuckytourism.com/kрта)). A screen shot of the page was

included and if any group would like to include information on the page, please forward the suggested link to Branscum.

- iv. Regina Wood from the Department of Tourism presented information on pending legislation and referred members to a handout outlining this information. She also stated that she is active on several bill watches and would update members as to forthcoming developments.
- b. Alvin Cox
  - i. Contacted the Kentucky Mountain Bike Association to appoint a representative and Pat Collins was present to represent the organization.
- c. Ron Cardwell & Jerry Hancock had no items to report on for the group
- d. Mike Caudill brought up a conversation that he had with a land company. The company mentioned that it had no problems with equestrian or hiking on its property. However, they were not interested in any types of motorized use. Their stance on mountain bikes was not addressed. Caudill related that the landowners know that no matter what, they can still be sued.
  - i. John English with Rec-Resources was asked if this was a common perception and problem that the Hatfield-McCoy trail system encountered. English related the following points:
    1. Regarding liability, the perception is that it is a big issue
    2. In reality, insurance and the ability to hold the landowner harmless is the really the item that sells the concept of recreational use on their land. In WVA, the landowner is held harmless if they enter into an agreement with the Hatfield-McCoy Trail Authority.
    3. There is no tax benefit given to the landowner in WVA and they do not use easements, but rather a license with a map that shows where the trail is on the property.
    4. Other benefits to the WVA landowners are: new businesses that are created by the trail diversifies the tax base; there are positive public relations aspect for being a partner; and the trail increases the future value of the land for other recreation, etc. like golf courses.

## **VII. Agenda Item: Presentation by Tracy Bertram, Department of Insurance**

**Discussion:** Bertram presented an overview of liability insurance issues to discuss possible liability exposures of landowners allowing use of their land for recreational trails, to include both motorized & non-motorized use.

### **Key Points**

- a. Overviews of negligence, ownership, exposure issues, and KY Laws. Particular attention was paid to KRS 44.072 which addresses sovereign immunity in negligence claims.
- b. Overviews of other states' recreational use statutes. Especially West Virginia and Maine where plaintiffs must pay legal fees & court costs.
- c. The point was stressed that no matter the precautions, laws, and statutes, nothing can prevent someone from suing.
- d. Bertram made recommendations to the group based on the assumption that there is no fee involved: maintenance agreements & easements; certificate of insurance requirements; state coverage acquired via RFP; statue change to add legal fees & courts costs requirement; statue change to further define recreation use & willful or malicious failure (Georgia was cited as an example of high standards); statue change to require insurers to waive defense; statue change to prohibit declination or termination solely because of recreation use
- e. John English was asked to comment on how West Virginia's structure matched with Kentucky's. He said that the Hatfield-McCoy Trail Authority, which is a state agency, has two main forms of insurance which allows the Authority to hold its land owners harmless. One is the use of West Virginia's state risk pool and two is a private insurance policy for \$10 million. Kentucky's state risk pool is primarily for land damage to state properties and not for liability. The closest thing that KY has would be the Board of Claims which decides claims filed

against the state by citizens who believe their person or property has been damaged through negligent acts on the part of the state.

- f. The KRTA has not been given authority through legislation to operate as an entity that can enter into agreements with private landowners for any type of recreational easements. If this is the path that the KRTA takes and it is given this authority like the Hatfield-McCoy Trail Authority, then the use of the Board of Claims can be discussed as a means to rectify the liability issues and to hold recreational landowners harmless.

### **VIII. Agenda Item: Legislative Update**

#### **Discussion:**

- a. The 2007 Legislative Calendar was passed out in all of the board member packets.
- b. Branscum reiterated to the group that this is a short session in the middle of the biennium and to keep that in mind as they move forward with any type of legislative agenda. And to also keep in mind that the November election would change the composition of the legislator.
- c. Branscum asked the board to keep in mind & to have their respective organizations that they represent to look at SB 241 from the 2006 session. The language and purpose of this proposed bill should be looked at and used as a model for future legislation if possible.

### **IX. Agenda Item: Hatfield-McCoy & sKYward Trails, John English**

**Discussion:** John English gave a power point presentation to the board which discussed the multi-county Eastern KY initiative, sKYward Trails. The model of implementation is based on the Hatfield-McCoy trail system in West Virginia. English discussed the process & organization of sKYward Trails in two stages and what the needs are for the group to thrive.

The four main needs for implementation are: (1.) Creation of the operating entity; (2.) Resolution of liability issues, which English said are important but not determinative; (3.) Resolution of insurance issues; (4.) Start-up funding.

There was discussion of how the KRTA can help with these issues & how the KRTA will fit with regional groups such as the sKYward Trails initiative. The point was made that if multi-county trail systems are created, then they must be managed locally but the managing entity must be a state agency. One suggestion was that the powers be granted to the KRTA and that those powers would also transcend to regional trail authorities so they could operate their trail systems locally, but if another multi-county trail system started to be developed in another part of the state, then this group could inherit those powers without having to go through additional legislation, etc. Other points were brought up on this subject and the general consensus was that this would be a highly intricate working and would need to be thought out and planned carefully.

Branscum asked the board their thoughts about breaking up into sub-committees such as the authority's powers, insurance & liability, and safety. Since these were three major issues that the KRTA seemed to be involved with, then these committees could concentrate on certain areas and report back to the whole board. This would allow members to really be involved in areas of their expertise and interest. However, the board felt that they wanted to take immediate action on the liability & insurance matters, so the proposed committees were disregarded for the present time.

#### **Action Taken:**

After additional discussion by the board members on what route to take, Mike Caudill made the motion for Branscum to contact a LRC staff member, the Department of Insurance, and other relevant groups such as KACO, and to hold a meeting/brainstorming session with these parties and ask them to: formulate a rough draft of legislation, based on the West Virginia model, that would address landowner liability, land usage and the ability to hold the landowner harmless in recreational situations in Kentucky. One additional point to be addressed would be the charging of fees versus no fees for usage. The motion was seconded by Ron Cardwell. The motion was passed with unanimous approval, no nays or abstentions.

Branscum will notify the board of when this meeting will take place and any of the board members that are interested can attend. Also, the information that comes from this meeting will be distributed to the board one week prior to the next board meeting.

**X. Agenda Item: ATV Training Report**

Ron Cardwell gave an update to the group regarding ATV training and his discussions with Honda's safety coordinators. The Specialty Vehicle Institute of America has the ATV Safety Institute which can craft safety standards to each individual state's needs. They just finished creating and implementing a program for New Mexico.

- a. A representative has offered to present at a future meeting and to give the board a demonstration of the safety program.

**Action Taken:** The board agreed that Cardwell should continue to keep up relations with the SVIA and other safety groups and that they are incredibly interested in the demonstration & presentation and the future. However, the board agreed that this would wait until the Spring due to the legislative session and the issues it has before it such as liability, insurance, and the authority of the KRTA.

**XI. New Business:**

Branscum mentioned the Commonwealth Connection and that Parks are tentatively looking at extending those rates to members of the various boards that are attached to state agencies. Branscum will notify the board members when this becomes official.

There was no other new business.

**XII. Set speakers, agenda items & time for next meeting**

The next meeting is scheduled for Thursday, November 9 at 11:00 in Frankfort, location TBD.

**XIII. Adjournment**

Kristen Branscum made a motion to adjourn the meeting. The motion was seconded by several members.

The meeting was adjourned at 3:05 p.m.