

ADVISORY COUNCIL
Meeting Minutes of February 13, 2013

ADVISORY COUNCIL MEMBERS PRESENT

Patrick Early, Chair
AmyMarie Travis Lucas, Vice Chair
Hon. Thomas Johnson
John Bart Herriman
John Hastings
Bill Freeman

NATURAL RESOURCES COMMISSION STAFF PRESENT

Jennifer Kane

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Ron McAhron	Executive Office
John Davis	Executive Office
Chris Smith	Executive Office
Cheryl Hampton	Executive Office
Cameron Clark	Executive Office
Scotty Wilson	Law Enforcement
Steve Hunter	Law Enforcement
Mark Reiter	Fish and Wildlife
Linnea Petercheff	Fish and Wildlife
Mike Molnar	Lake Michigan Coastal Program
Phil Bloom	Communications

GUESTS PRESENT

Jack Corpuz	John Goss
Barb Simpson	Don Gorney
Herb Higgins	

Call to order

Patrick Early called the meeting to order at 10:16 a.m., EST, at the Fort Harrison State Park Inn, 5830 North Post Road, Theodore Room, Indianapolis, Indiana. With the presence of six members, a quorum was recognized. Advisory Council members made brief introductions.

Thomas Hastings, attorney, stated that he practices law in Indianapolis.

John Bart Herriman, Indianapolis attorney, stated, "I look forward to serving on the Advisory Council."

AmyMarie Travis Lucas said she is the Prosecuting Attorney for Jackson County.

Patrick Early said he is Certified Public Accountant. "I have been on this Advisory Council for about the last four or five years...and I have been serving as Chairman".

Hon. Thomas Johnson stated that he is a retired Judge from Sullivan County.

Bill Freeman said he lives in Brown County and has served on the Advisory Council for four years. He is semi-retired from the construction industry in Indianapolis, and manages an 850-acre camp located in Brown County. "I'm trying to develop it for better wildlife habitat and forest management."

Patrick Early then asked Department of Natural Resources staff members present to introduce themselves. Each member made a brief self-introduction.

Early summarized Advisory Council's functions, including the Council's relationship with the Natural Resources Commission. He explained the Commission is an autonomous twelve member board. The Governor appoints six citizen members. The Commissioners of the Indiana Department of Environmental Management and the Indiana Department of Transportation, Tourism, Indiana Academy of Science appointee, the Director of the Department of Natural Resources, and the Chair of the Advisory Council are the remaining members. The Commission adopts permanent rules for the DNR. These govern fishing, hunting, coal mining, lakes, reservoirs, state parks, historic preservation, and other subject matters.

Early said the Advisory Council's "main focus has been over the years... is to kind of act as that first line of defense on topics that are going to come before the Commission." He noted the Advisory Council has held public hearings in some instances, such as when the fish and wildlife rules, under 312 IAC 9, were comprehensively redrafted. Senior Department staff attends Advisory Council meetings in order to provide technical and scientific information. The Advisory Council "serves a purpose that is important in the process". The Advisory Council reviews and suggests amendments to policies and rule proposals that are later presented to the Commission for action.

Early said he has served as Chair of the Advisory Council for the past four to five years. As Council Chair, he was also a member of the Commission. Early said he had the opportunity to convey to the Commission the feedback from Advisory Council members and the public regarding certain proposals.

Election of Officers

Patrick Early explained that the Advisory Council officers have not been seated for approximately six months. “I don’t know what the protocol is, but I and AmyMarie [Travis Lucas] have served as the Chair and Vice Chair”, respectively. He called for a motion to slate the officers.

Bart Herriman moved to nominate Patrick Early as Chair and AmyMarie Travis Lucas as Vice Chair. John Hastings seconded the motion. No other nominations were offered. Upon a voice vote, Early was elected Chair and Travis Lucas was elected Vice Chair.

Approval of minutes of meetings held on December 14, 2011, February 15, 2012, and April 18, 2012

Vice Chair AmyMarie Travis Lucas moved to approve the minutes of meetings held on December 14, 2011, February 15, 2012, and April 18, 2012. Hon. Thomas Johnson seconded the motion. Upon a voice vote, the motion carried. Bart Herriman abstained.

Information Item: Overview of the Department of Natural Resources

John Davis, Deputy Director of the Bureau of Lands and Cultural Resources, explained the Department of Natural Resources has two bureaus. Davis said his bureau includes the land-holding divisions: the Division of State Parks and Reservoirs, the Division of Fish and Wildlife, the Division of Forestry, the Division of Nature Preserves, and the Division of Outdoor Recreation. He explained that the Division of Outdoor Recreation functions as a title holder for trails, and also funnels Federal dollars to towns and cities. One function within the Division of Nature Preserves is for Lake Michigan Coastal Zone Management. In addition to the land-holding divisions, the Division of Engineering and the Division of Land Acquisition provide support for the land-holding divisions and other divisions in the Department.

Ron McAhron, Deputy Director of the Bureau of Resource Regulation, added that the Commission serves as the Department’s “ultimate authority” for administrative reviews under IC 4-21.5 (commonly called the “Administrative Orders and Procedures Act” or “AOPA”). The Commission’s AOPA Committee is made up of five Commission members, who are appointed by the Commission Chair, and that review nonfinal administrative orders.

McAhron said five divisions are under his Bureau of Resources Regulation. Indiana has significant coal mining presence in the southwestern Indiana, with production of approximately 35 million tons per year, which is gradually shifting from predominantly large surface mines to underground mines. “Most of that production is used in Indiana for electricity.” The Division of Reclamation regulates coal mining activities.

McAhron said the agency also regulates oil and gas production through its Division Oil and Gas. Last year, Indiana had a gross value of approximately \$20 million worth of oil

production and a little under \$10 million for natural gas production. Indiana “is starting to see hydraulic fracturing,” which is a method to “enhance and recover some marginal oil and gas reserves. We have legislation and rule packages that deal with those.”

McAhron said the Division of Entomology and Plant Pathology deals with invasive species primarily in forest products and shipments of agriculture and silviculture products out of State. Gypsy moth and emerald ash borer infestations are two of the most prominent forest pests the Division is currently addressing.

He said the Division of Water provides floodplain management. “We are just about to finish making digital flood hazard maps for the entire State”. The Division has also completed a groundwater inventory, the availability of water in surficial aquifers and deep bedrock aquifers for all Indiana counties. The division “conducts a significant amount of regulatory activities on Indiana’s “public freshwater lakes”.

McAhron added the Division of Historic Preservation and Archaeology administers a large Federal grant program for the enhancement and repair of existing structures with local fund matches. The Division also administers a quasi-regulatory program for Federal licensure or Federal funding that comes into the State “and has to be cleared to see if there are no adverse effects on cultural resources, be they buildings, or archaeological resources.”

McAhron concluded by saying additional information regarding the Department of Natural Resources can be found on the agency’s website at www.in.gov/dnr/.

Davis noted that the Department proposes “pretty complex rules about things that matter to people in development, such as management in the floodplains and impacts on fish and wildlife.” The Department also proposes rules that suspend limits on taking of fish during a lake renovation. The Department regulates activities regarding deer reduction and nuisance wild animals. “You won’t see a lot of those things, but you will probably see more things that people want to talk about.”

Early said the Department is staffed with experts who provide biological and scientific information to the Advisory Council. “We have really good people on staff... We’re really kind of looking out for the public good, if you will. We are supposed to make sure that the public policy is being followed, and this is fair and reasonable to everybody.”

Information Item: Discussion regarding current Division of Fish and Wildlife fee structure, future revenue projections and related public involvement

Mark Reiter, Director of the Division of Fish and Wildlife, presented this item. He said the total annual sales of hunting and fishing licenses is approximately \$19 million. By law, the sales proceeds are to be used for the operations of the Division of Fish and Wildlife and the Division of Law Enforcement. Of the \$19 million, about \$8 million funds the Division of Fish and Wildlife, which is coupled with Federal funding. The Division’s annual operating budget is approximately \$18 million. Reiter noted that the

remaining \$11 million in sales proceeds provides a portion of the Division of Law Enforcement's operating budget, which is also coupled with other funding. The Division of Law Enforcement's annual operating budget is approximately \$21 million.

Reiter said that the Division of Fish and Wildlife requires the \$19 million to continue its operation. "Right now, we are falling short by about \$3.5 million of being able to keep our regular programming going. We need to figure out a way to make that up." He said that a presentation would be made to the Commission regarding fee increases. The Department has been discussing fee increases with the Fish and Wildlife Conservation Council (the "FWCC"). The FWCC is made up of representatives from Indiana conservation organizations, such as Pheasants Forever, Indiana Bow Hunters Association, Indiana Deer Hunters Association, and Indiana Wildlife Federation. "We use [the FWCC] as kind of a sounding board." He said, "Nobody likes to pay anymore for the same thing, but the FWCC understands that prices have gone up, and it takes a little more money to operate."

John Davis said the purpose of this discussion is to inform the Advisory Council of the budget situation. "As part of that outreach to the public that we started with the FWCC..., we are going to estimate about \$5 to \$10 increase depending on the license." He reported some fee increases occurred in 2005, but other fees have not been increased for 20 years. Currently, there is no proposal before the Advisory Council. "We are not sure that we are even going to ask for a fee increase."

Reiter said the increase that may be requested does not increase the Department's level of programming, but funds would be used for the Division of Law Enforcement and Division of Fish and Wildlife to keep their current level of programming. "Over the last couple of years in order for us to meet our budget, because of the shortfall in fish and wildlife fund, we've managed in Division of Fish and Wildlife 35 vacancies and in Division of Law Enforcement 30 vacancies. We've delayed buying equipment, replacing trucks, and all that stuff to stay within our budget. ... We have been asking people over the years to do two jobs. You can only ask people to do that for so long.... We are at the breaking point. We need to do something to improve our financial situation."

Bart Herriman asked whether the Department could provide a chart showing historical fee increases. Reiter indicated that the Division of Fish and Wildlife does not have a historical chart tracking fee increases.

Col. Scotty Wilson of the Division of Law Enforcement made a presentation. He said the Division of Law Enforcement is "somewhat unique from other States," which may have a separate enforcement agency for each natural resource division. Indiana conservation officers enforce all fish and wildlife laws, and the Division of Law Enforcement is the criminal enforcement branch for the other Department divisions. The Division of Law Enforcement is not looking to expand programming. The Division's budget for fiscal year 2009-2010 was \$23,310,000, and for fiscal year 2012-2013 the budget is \$20,913,000. There were 35 vacancies in 2011 due to a hiring freeze and retirements.

Currently, there are twelve vacancies. “We anticipate eight to ten vacancies reoccurring just from normal attrition.” His division was able to function within its budget due to vacancies and prolonging vehicle replacement from 75,000 to 140,000 miles. 15 vehicles will be replaced this year, and he anticipates 35 vehicles will be replaced in 2014. Conservation officers are able to use their vehicles for personal use, but they must reimburse the State for fuel costs, “which was not required in the past. That is sort of unprecedented in law enforcement, but it was something we had to do to meet budget,” which resulted in a savings of about \$500,000.

Col. Wilson said costs for equipment and fuel have increased. In 2008, the Division of Law Enforcement spent \$740,893 on fuel, and in 2012 fuel costs were \$1,422,497. Mileage in 2008 was 320,000, and in 2012 323,000 miles were traveled. Fuel costs and mileage are unknown budget items. Health insurance premiums have also increased 27% since 2008.

Col. Wilson said the Division of Law Enforcement receives approximately between \$11 to \$12 million through the Fish and Wildlife Fund, with \$8,340,000 coming from the General Fund. He noted his division receives funds through a boating grant, which averages about \$2 million annually. These funds reimburse costs associated with marine enforcement and covers costs for boating equipment.

Col. Wilson said the Division of Law Enforcement would have 214 sworn conservation officers if fully staffed, with approximately 45 civilians serving as support staff. Many counties have one conservation officer assigned. “Right now in the one-man counties we are just trying to make sure we have those covered.”

Bill Freeman asked about the impacts to maintenance costs as a result of increasing the mileage for vehicle replacement. The Colonel responded there was more maintenance on older vehicles, but the costs have not been catastrophic. “The vehicles we get today should last longer.” His division’s vehicles require more maintenance than most “due to traveling on unpaved roads and hauling boats and other equipment.”

Freeman then asked, “How did the officers respond to the fact that you effectively gave them a salary decrease by taking away the benefit of making them pay for their own fuel?” Col. Wilson answered, “The officers were not happy. It was not a popular decision.”

Reiter explained any license fee increase would allow the Division of Fish and Wildlife and the Division of Law Enforcement to maintain their current programming.

The Vice Chair noted conservation officers have full law enforcement authority in the State of Indiana. “Not only are they doing a yeoman’s work in trying to patrol all of the rivers, lakes, and do all that, they are also backing up other officers.... It may not sound like a lot to have ten or twelve vacancies statewide, but it is huge for them. The officers have really taken it on the chin as far as not being allowed use of vehicles for any

personal use without paying for their gas themselves, and health insurance costs have gone up.”

John Davis circulated an information sheet that listed historical fees increase associated with the Division of State Parks and Reservoirs. The fees were within a Commission-approved fee range. He said a similar chart would be prepared for any proposed fish and wildlife fees increase and would be provided to the Advisory Council and the Commission before action.

Hon. Johnson inquired of conservation officer salaries. Col. Wilson responded a new conservation officer (probationary officer) receives an annual salary of \$38,000. An officer with 20-years of service “tops out the salary matrix at \$60,000.” The Division of Law Enforcement uses the same salary matrix as the Indiana State Police and the State Excise Police. The Indiana General Assembly enacts the salary matrix, but Commission approval is also required.

The Vice Chair noted Indiana’s salary matrix is substantially lower than in Illinois, Michigan, and Ohio. The Colonel added Indiana’s salary matrix was adopted in the late 1990s.

Information Item: Identification of the Indiana Coastal Zone and overview of development for implementation of “Federal Consistency” under the Coastal Zone Management Act, with possible future amendments to Commission Information Bulletin #43

Mike Molnar, Coordinator of the Lake Michigan Coastal Zone Program (the “LMCP”), presented this item. He said Indiana has 45 miles of the most diverse shoreline of Lake Michigan. “It is a unique place where you have a national park bounded on either side by steel mills.” The area has industry and a tremendous amount of biodiversity. The LMCP was approved approximately ten years ago. The LMCP was developed over a course of a 30-year period, and the program is a Federal–State partnership. The Department of Commerce, National Oceanic Atmospheric Administration provides Indiana with approximately \$1 million annually, which Indiana matches. Molnar circulated a handout, which provided an overview of “the Federal Consistency review process.”

Molnar said “Federal Consistency” is a Federal law that requires Federal agencies to consult with State programs to make sure that any Federal activities are consistent to the maximum extent practicable with State law. “It’s a State rights issue.” An LMCP review process requires consultation with a Federal agency for any Federal funding, permitting or licensure action within the boundary of the Indiana’s Lake Michigan Coastal Zone to seek consistency with Indiana law. “Right now it is a networked process.” The DNR coordinates with Indiana Department of Environmental Management and Indiana State Department of Health to administer the Indiana coastal program.

Molnar said Indiana’s Coastal Zone includes the northern half of Lake and Porter Counties and the northern third of LaPorte County. He said the coastal zone includes 250

square miles of Lake Michigan and 300 square miles on the land side. Molnar said Federal Consistency is a quasi-regulatory function with a variety of processes and is basically an early coordination mechanism for Indiana. Federal consistency reviews are now conducted by staff in the Division of Nature Preserves. A change to the review process is proposed in order to streamline the environmental review process.

Molnar explained that there are three events that trigger a Federal consistency review: (1) Federal agency action; (2) Federal licensure action; and (3) Federal funding. A consistency review of Federal agency action and Federal funding action would be combined in the same process. The review process of a Federal licensure action has a different timeframe. For Federal agency action, it is up to the Federal agency to consult Indiana when the Federal agency determines that there is a coastal impact, such as management plans of federal property. Molnar said the LMCP receives approximately a dozen requests annually for Federal Consistency review.

Linnea Petercheff, Staff Specialist with the Division of Fish and Wildlife, stated that she coordinates the Division's Environmental Unit on reviews projects for construction in a floodway and other building and road construction projects that involve Federal and State money. A proposed change to the LMCP program would incorporate the Division of Fish and Wildlife's Environmental Unit into the Federal Consistency review process. She noted that the National Environmental Policy Act requires an environmental review for impacts to natural resources for construction projects that use Federal funds to determine whether or not there will be a significant environmental impact as a result of the project. Projects that involve State Revolving Fund money also require an environmental review.

Petercheff said the Environmental Unit already conducts approximately 700 environmental reviews annually. The reviews include determinations by the Department's Division of Water as to whether a Department permit is required; whether an endangered or other rare species are present at or ½ mile from a project site; and to review impacts to fish, wildlife, and botanical resources. The results of a review are compiled and forwarded to the applicant to notify the applicant of the potential environmental impact and recommendations to minimize those impacts. She said the review process already incorporates multiple Department divisions, and the Federal Consistency review process would be added to the Environmental Unit's responsibilities. "We are trying to incorporate [the Federal Consistency] review, and streamline it into one process." A Federal grant covers the costs of conducting a Federal Consistency reviews. The Environmental Unit has a Federal grant that covers 75% of costs. "So we would be just changing grants for time spent doing this other review for Federal Consistency."

Petercheff said the Commission approved nonrule policy document Information Bulletin #43, which summarizes implementation of "Federal Consistency" by LMCP. The nonrule policy document would be amended to reflect the proposed change and streamline the Federal Consistency review process. The streamlined review process would save Indiana money and time. Petercheff said the amended nonrule policy document would then be presented to the Commission for its approval.

The Chair asked Petercheff to explain the difference between a nonrule policy document and a rule.

Petercheff explained that a nonrule policy provides guidelines that the Department follows. “It’s not law, but it is a guideline or procedure for Department staff to follow or guidelines for an applicant for a particular kind of permit to follow.... In [Information Bulletin #34], the process is outlined how a person communicates with the Department to do a Federal Consistency review and what is included in that review.”

Bill Freeman asked whether adding the Federal Consistency review to the Environmental Unit’s responsibilities would be adding another burden on all the applications that do not require this review.

Petercheff said the proposed streamlining of the Federal Consistency review would not add a burden to other applications. The Environmental Unit already has a review mechanism to determine whether a Federal Consistency review is required for applications for activity within the Indiana Lake Michigan Coastal Zone. She explained the change would require persons to file permits applications for activity within the Coastal Zone directly with the Environmental Unit.

John Davis said the existing environmental review system is a multi-person, multi-division review of an action. “We think that the actions that require this review for the coastal folks, it is the same kinds of actions that affect floodways or affect different things that the [Divisions] review.” He said Petercheff coordinates the Department’s environmental review process.

Ron McAhrn asked Molnar to provide additional information regarding the jurisdictional boundary of the Lake Michigan Coastal Zone. Molnar said the boundary encompasses the Little Calumet River–Galien River Watershed in the northern half of the Lake and Porter Counties and the northern third of LaPorte County.¹ “What we are currently doing right now is we have parallel processes, so in combining these reviews it is going to streamline things and it is going to make it easier for the applicants and staff. It is an efficiency issue, and Linnea [Petercheff’s] section has staff expertise dealing with regulatory issues. It’s a real benefit.”

Davis said, “It’s an efficiency issue and it is also a small example of what we are trying to do with some other permits where we have electronic base-touching between us and IDEM.... We want to be coordinated in the back of the house so that the customer has a better experience no matter what it is they are doing.”

Adjournment

The meeting adjourned at 11:35 a.m., EST.

¹ To provide further clarity to the Advisory Council, a map depicting the Lake Michigan Coastal Zone is attached.

Lake Michigan Coastal Program Area

