

**ADVISORY COUNCIL**  
Meeting Minutes of January 14, 2015

**ADVISORY COUNCIL MEMBERS PRESENT**

Patrick Early, Chair  
AmyMarie Travis Lucas, Vice Chair  
Bart Herriman  
Ross Williams

**NATURAL RESOURCES COMMISSION STAFF PRESENT**

Sandra Jensen  
Jennifer Kane

**DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT**

Cameron Clark	Executive Office
Chris Smith	Executive Office
John Davis	Executive Office
Joe Hoage	Executive Office
Cheryl Hampton	Land Acquisition
Danny East	Law Enforcement
Steve Hunter	Law Enforcement
Mark Reiter	Fish and Wildlife
Linnea Petercheff	Fish and Wildlife

**GUESTS PRESENT**

Greg Hopper                      Bill Herring  
Doug Allman

Patrick Early called the meeting to order at 10:10 a.m., EST, at the Fort Harrison State Park, Garrison, 6002 North Post Road, Ballroom, Indianapolis, Indiana. With the presence of four members, the Chair recognized a quorum.

The Chair explained that future meetings will be scheduled as agenda items are presented. He noted he was advised that the Department's Division of Water would have an item ready for review in the next couple months, and stated the Advisory Council's next meeting would be scheduled for April 8, 2015. Advisory Council members approved the scheduled meeting date.

## **Election of Officers**

Patrick Early called for a motion to slate officers for 2015.

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

## **Reports of Deputies Director**

Chris Smith, Deputy Director of the Bureau of Resource Regulation, reported that there was a staff turnover due to retirements. Paul Diebold accepted the position of Assistant Director of Historic Preservation and Archaeology to manage the Preservation Services Section. He noted that Diebold is a long-term employee and formerly served as the Section's team leader "so he has a broad base of knowledge." Smith also noted that Marvin Ellis has been promoted to Assistant Director for Abandoned Mine Lands within the Division of Reclamation. He noted that Ellis, also a long-term employee, was most recently the Field Operations Coordinator.

Smith stated that the Division of Reclamation was awarded the 2014 National Abandoned Mine Lands Reclamation Award from the Federal Office of Surface Mining. He explained the project was completed in cooperation with Triad Mining to eliminate an "extremely dangerous high wall...a very steep, vertical wall that was left over from the pre-reclamation days of mining." The Division worked with Triad Mining, who was actively mining in the area, instead of having to mobilize an entire new construction crew. Smith said the project, without coordination with Triad, would have cost approximately \$5 million; however, the project was completed for a little over \$300,000.

Smith said the Division of Oil and Gas is completing its review of the administrative rules governing oil and gas production. He said the rules have not had a comprehensive review over 30 years. "The industry has changed a little bit in that time." Smith said the rule package would be presented for Advisory Council review in 2015. He also noted that the Division of Entomology and Plant Pathology is reviewing the repeal of 312 IAC 18-3-18 governing the control of emerald ash borer ("EAB"). The repeal would remove the state quarantine causing the federal quarantine to be in effect. Smith noted that the last EAB survey showed that all but four counties (Posey, Knox, Vanderburgh, and Gibson) were infested, but the adjoining Indiana counties and areas of Illinois are infested.

Smith reported that the General Assembly convened last week noting that Samuel Hyer is the Department's Legislative Liaison. He also noted that the bill filing deadline is today and tomorrow for the House and Senate. "We should have a pretty good grasp on what's out there by the end of the week."

John Davis, Deputy Director of the Bureau of Lands and Cultural Resources, reported that the Governor's Budget Bill was presented last week, which included a mention and some funding

for what is termed the “Indiana Bicentennial State Park Inn” at Potato Creek near South Bend. He said the Department has issued a Request for Proposals. “We’re anxious to see what the public reaction is.” Davis said the Bicentennial Nature Trust (BNT) and Healthy Rivers Initiative continue land acquisition in various places around the state. The BNT has spent in excess of \$25 million. “We should have a lot of good Bicentennial projects coming online for 2016.”

Davis said the Department continues to work with the U.S. Army Corps of Engineers regarding the in lieu fee, which allows permittees to pay a fee instead of searching for proper mitigation sites and completing mitigation. The fee would be used to pay for the mitigation completed by the Department. “We hope that that would end up with bigger and more meaningful projects instead of a lot of spread out tiny, little projects.” Davis also noted that the November-December deer reduction program at 20 state parks was completed. The reduction program was successful, including at Fort Harrison State Park, where 30 to 40 deer were taken. Davis also reported that the City of Indianapolis has initiated a deer reduction at Eagle Creek Park. He said the deer population has impacted the Eagle Creek Nature Preserve, which is owned by the City of Indianapolis, but is a dedicated nature preserve managed by the Department.

#### **Approval of minutes of meetings held on January 15, 2014 and June 11, 2014**

AmyMarie Travis Lucas moved to approve the minutes of the meetings held on January 15, 2014 and June 11, 2014. Bart Herriman seconded the motion. Upon a voice vote, the motion carried.

#### **Review of public input regarding proposed amendments to 312 IAC 9-3-3(d)(4) governing the use of rifle cartridges during the deer firearms seasons; LSA Document #14-453; Administrative Cause No. 14-095D**

The Chair explained that this agenda item is for the purpose of reviewing the public input submitted on the proposed rule, 312 IAC 9-3-3(d)(4), which would expand the use of rifle cartridges for deer hunting during firearm seasons. He noted that the Natural Resources Commission (the “Commission”) gave preliminary adoption to the rule amendment (among various other amendments to the fish and wildlife rules) at its September 2014 meeting. The proposal is in the early stages of rule adoption, and the impacts to biology, fiscal, and public safety would be considered prior to the Commission giving final adoption. He noted that there were approximately 1,900 comments submitted through the online comment form as of January 7, 2015. The Chair then asked staff from the Division of Fish and Wildlife to provide a brief presentation regarding the rule proposal.

Linnea Petercheff, Staff Specialist, explained that the Commission received two citizen petitions requesting to change the administrative rule governing the use of rifles for deer hunting that would allow .223, .243, 30-30, 45-70, and several other calibers. She also noted that over the years numerous requests have been received from Legislators and the public about adding rifle cartridges, particularly those that are legal in other states for deer hunting. Petercheff said the citizen petitions were reviewed by the Department and the Commission gave preliminary

adoption in September 2014. She explained that the rifle cartridge would have to fire a bullet that is .243 inch in diameter or larger, and have a minimum case length of 1.16 inches. She noted that there would no longer be a maximum cartridge case length but full metal jacketed bullets would not be legal.

Petercheff said the Commission and the Department have been receiving comments both in support of the rule proposal and in opposition. The comments submitted in opposition state concerns about safety, increased deer harvest with the use of more efficient equipment, concerns that landowners would further restrict access due to safety, and that there is adequate equipment to take deer available under existing rules. She said comments in support of the rule proposal cite the lack of limits on the use of rifles on the taking other species, such as coyotes and foxes. Existing rules limit the use of rifles for taking migratory birds, deer, and wild turkey. Petercheff noted that muzzleloaders have evolved to the point, with smokeless powder, that they are essentially functioning as a high powered rifle with 500-yard accuracy. She said Kentucky, Pennsylvania, and Michigan (in northern part only) allow the use of rifles and have not experienced an increase in hunting-related accidents. Petercheff said the Division of Law Enforcement also canvassed other states that allow the use of the calibers proposed and there has not been an increase in hunting-related accidents in those states as well. “We also don’t believe there is a need to limit the equipment that can be used to take a deer as a means of managing the herd, since [the Department] manages it through other regulations.” She said the Department also believes that the .243 size bullet and larger would humanely and safely kill a deer.

Bill Herring, a lifetime resident of Indiana stated that he has hunted in Indiana for about 40 years. He said the proposal uses a term “‘high-powered rifle.’ For some people, that can be a hot-button issue automatically.” He requested the Advisory Council to review the rule proposal in a “very objective manner taking into consideration the past history of deer hunting in Indiana and the gradual evolution in the type of firearms, ammunition that have been used in the past, and safety record. As far as I can see, with the evolution of the firearms and the ammunition, Indiana has an admirable safety record. I think that would likely continue if the so called ‘high-powered’ rifle rule were adopted, because we already have high-powered handguns and high-powered muzzleloaders with rifle barrels. We have high-powered shotguns with rifled barrels.” He noted that technology has advance in the firearms and archery fields tremendously in the last 20 years. Herring said the bag limits and limits on the sex of deer taken are effective tools in managing Indiana’s deer herd.

Doug Allman, from Fishers, Indiana, stated that the Department has adopted rules in the past that incorporate new firearm technology, such as smokeless powder muzzleloader, and “it shoots a lot farther and I think that was a mistake. We haven’t kept that in check.” He said a recent rule adoption allowed the use of pistol caliber rifle. “At that time, we still said we were going to be a short to medium range state. ...Several times I’ve been involved in issues where a local county commissioner has wanted to ban gun hunting within so many yards of a dwelling...And there have been several times I’ve travelled to Hancock County or Hamilton County, or some of the other counties in an effort to try to calm people down and tell them that we are still a very safe state and we are not using high-powered rifles. Now, this is a step towards that.”

Allman said that he has spoken to politicians, landowners, and government officials who are not in support of the rule proposal. He noted that a member of the Marion County Council wants to ban hunting in Marion County. “We’re really increasing the length that a bullet can travel...and we are a flat state. We’re a state of population and we kill deer pretty fine with the weapons we have...I don’t believe we need another tool to kill a deer...I think this is just a push to make things farther, farther. I mean, you see a deer 400 yards away, that wasn’t a shot that you took in the past...The farther you get away, the more you have problems with the misidentification.” Allman said, “I don’t think it’s necessary. I think it is really going to hurt with access. I think there will be things that will be shut off. I think municipalities will react to it. I’ve talked to sheriffs. I’ve talked to Commissioners. They’re not enthused about it.” He said that hunting is safe and “will probably remain safe, but the perception and an incident to take place” will have a negative impact.

Allman noted that the proposal has pitted hunters against hunters. “I think we have bigger items to fight.” The rule proposal has caused animosity between sportsmen, and “it’s not what I want to see for so little gain, if there is a gain at all. In fact, I think it would be a negative gain...We are just asking for something we don’t need. We do a pretty good job now of harvesting animals.” He also stated that existing rules should be rolled back, such as allowing smokeless powder muzzleloader. Allman said Wisconsin allows the use of rifles in the northern part of the state and shotguns in the southern portion, but Ohio and Illinois do not allow the use of rifles. He said Kentucky’s terrain allows for the use of rifles.

Bart Herriman asked whether Allman was representing himself or a group.

Allman stated, “I’m here representing Indiana Deer Hunters, but I will tell you that this is mostly my opinion talking with sportsmen and getting calls.”

Herriman asked whether the Indiana Deer Hunters Association has voted on the issue.

Allman said the Association has not voted on the issue, but there will be members in support of the rule proposal and some against.

The Chair said that in reviewing the public comments “there is no question that it is very sharply divided.” He noted that the Department is charged with managing the resource for everyone. “Trying to have some kind of consensus is certainly important...You don’t want people divided and fighting...Hopefully, the result of this process will be to come to a logical conclusion that is in the best interest of everybody involved and certainly in the best interest of the sportsmen.”

Allman noted that if the rule proposal was to go forward, “I have not seen any language that accommodates blaze orange requirements. When you make comparisons to the states that allow rifles, [there are] tons more blaze orange requirement...If we are going to be consistent with lots of other states that allow high-powered rifles, you’ve got a blaze jacket, some are head to toe. I mean, Minnesota is head to toe blaze orange.”

The Chair noted that written comment may support a modification to the proposed rule even after publication.

Petercheff noted that the hunter orange requirement is also in statute, and any statutory change would need to be done through the Legislature.

AmyMarie Travis Lucas asked the Division of Fish and Wildlife staff to provide equipment capability information, such as feet/second muzzle velocity and distance travelled of a projectile for the types of equipment currently allowed for use during the firearms season. Travis Lucas noted that as a prosecuting attorney she uses this type of data every day in making decisions. “I deal with issues of where bullets travelled and whether someone made a shot intentionally or unintentionally.” She said that there is not a lot of scientific information regarding what Indiana allows currently and what is proposed. “Everyone keeps saying, ‘Oh, these projectiles travel much farther,’ but I would like to know that for sure scientifically.” Travis Lucas asked whether the Division of Law Enforcement had an opinion of the proposed rule as to enforceability. “We put our conservation officers on the frontline to deal with whatever we decide to do...I always like to hear from them about how they feel this change would affect them positively, negatively.” She also asked for information regarding how other states’ conservation officers deal with equipment allowed in their states similar to the equipment in the proposed rule. Travis Lucas said she was also interested in scientific opinion regarding the capacity of magazines that would be allowed for the proposed equipment. “Is this something where...we have a concern maybe of somebody...trying to take five, six, seven shots at a deer that they are not hitting? That concerns me.”

Travis Lucas reflected that she studied this issue in preparation for today’s meeting. She said the states that allow the use of the types of equipment proposed allow the use in areas that are “extremely hilly, cliffs, ravines verging on almost mini-mountains,” but do not allow the use of those types of equipment in flat areas. Travis Lucas said that the topography from Indianapolis and north is similar to southern Michigan and southern Wisconsin where the use of the proposed equipment is prohibited. She noted that the Department, Advisory Council and the Commission spend a lot of time dealing with the public opinion issues on hunting. She noted that those involved in hunting “try to do a lot of things to improve public opinion,” but “are we creating a situation where we are potentially going to have more and more people take shots that they just shouldn’t be taking?”

Ross Williams stated, “I kind of feel the same way. It’s tough to have hunters competing against hunters.”

Bart Herriman stated that he shares many of the concerns raised. “I don’t want someone necessarily with an AR-15 with 30 rounds possibly shooting a deer. It seems like the .243 might have three in a clip and one in the chamber and that’s it. A muzzleloader is one, and a shotgun is one or two.” He also reflected that he shares the concerns as to Indiana’s topography. Herriman asked regarding the intent in allowing use of high-powered rifles for taking a coyote or fox.

John Davis stated the Department knows how to manage the deer herd, but the more difficult part is considering the social concerns and perceptions of hunting.

Mark Reiter said that the Department has not limited the equipment use for most species. He said that the hunting of predators, coyote and fox, occurs mostly at night and there are not many people in the woods.

Herriman asked whether further rule amendments should be made to limit certain other rounds that may not be an efficient manner to take a deer.

Reiter explained that the rule proposal provides the minimum size limitations.

Sandra Jensen, Director of the Commission's Division of Hearings, explained that amending the proposed language prior to publication in the Indiana REGISTER is easier, but noted amending language after publication can be accomplished if the amendments comply with certain statutory requirements.

Travis Lucas asked whether the Commission would be time restricted to propose a new rule amendment if the instant rule proposal did not go forward. Jensen answered that there would be no time restriction in which to propose a new rule amendment of the same subject matter.

The Chair reflected that the rule proposal is not a deer management tool, but "this is a rule that I think needs a lot of public input and we are going to have to be very receptive the way this works...Public input is going to be very important."

Reiter said the Department does not have a stand on the rule proposal. "[The proposal] doesn't do anything to affect our management of the deer herd. To [the Department] it's strictly a social issue."

Petercheff noted that written comments have been submitted, which would support modifications to the proposal to address concerns such as Indiana's topography, elevated stands, and round limitations.

Herriman asked what action is required by the Advisory Council as a result of today's discussion.

The Chair said that today's discussion has provided the Department with additional information, which may result in further modification of the rule proposal. The Chair said he would report to the Commission at its January 20 meeting regarding the Advisory Council's concerns. He noted that the Commission's agenda has a standing agenda item allowing for the Advisory Council report. The Chair said the Advisory Council is not required to take any action today.

Herriman stated, "I have very serious concerns about this rule as drafted and going forward in any form like that right now."

Travis Lucas stated, "I agree with that."

Ross Williams stated, "I agree also."

The Chair said, “Well, I would be the fourth to say, ‘I agree.’”

Travis Lucas said, “I would say that I read every single public comment that was [available through the agenda link], and I talked to everybody that I could possible talk to that I knew that hunted or that I knew that would be interested in this, and every conservation officer that I could find or that drifted into my office...and the opinion that I’m stating, that I have grave concern on it, is not my own, which is to say...I started completely neutral on the issue.”

### **Consideration of the Department of Natural Resources, Division of Forestry’s Classified Forest & Wildlands Program Policy Document; Administrative Cause No. 15-013F**

John Seifert, Director of the Division of Forestry, provided Advisory Council members with a modified policy document. The Classified Forest and Classified Wildlands Program has been in existence since the early 1920s, and was statutorily created to assist landowners who hold forest land. He noted that over time the Program has grown significantly, with 750,000 acres classified. Seifert said Division staff inspects approximately 150,000 acres each year, but the Division’s goal is to re-inspect the parcels with a matching fund every five years.

Seifert said that landowners are now incorporating other activities on the classified lands, and the Division has received questions from landowners regarding what activities would be approved within a classified parcel. He said the Division has always taken the “opinion that as long as [the activity] is not detrimental to the forest, detrimental to the wildlife, or the soils or water quality, we’ve been really supportive of other uses in the forest.” He explained that the program policy before the Advisory Council lists the Division’s operating procedures. He also noted that every county is covered by a district forester. Seifert said the Division has approved the use of zip lines, motorcycle races, and bike races. He said the policy document may evolve into a Commission nonrule policy document. “We would like the other uses in the forest to be accepted into our program.”

Davis explained that the Classified Forestry Act was enacted in 1921, and it was the first tax abatement for conservation purposes in America. “Our pioneer, Charles Deam, and the folks back then were trying to counter the fact that forests had been cleared and then crops planted, and erosion ensued, and we have tremendous soil loss and very few trees. People thought that was the only economically viable thing you could do.” In the 1960s, a companion act was enacted for wildlife habitat, but in the last five years the two programs were combined. Davis said the property within the program is assessed at \$1 an acre (40 acres assessed at \$40). “It’s almost zero taxes.” He said that in the last few years counties are experiencing budget pressures and are trying to find ways to make up for the budget shortfall. He said counties are attempting to reclassify forested land as “residential in waiting.” Davis said some are questioning whether the conduct of a business should be allowed on a “piece of ground that’s paying \$6 a year in property tax, and all things property taxes support.” He noted that there may be Legislature interest in the subject matter. “We certainly don’t want to lose the Classified Forest Program. It is very important.”



Seifert said that 20,000 acres are added every year because of the tax abatements. He noted that county assessors are qualifying forest land as excess residential. “The assessor’s view is almost every piece of land in Indiana is potential for a house lot. It’s inevitable.” Seifert said there are bills filed for consideration to prohibit the reclassification of forested land as excess residential at the county level. He said the Division of Forestry tries to protect the integrity of the Program as well as the natural resources.

The Chair commented that the Classified Forest & Wildlife Program “is a great program. I think a lot of times people just look at it from a tax standpoint, but the intent of [the Program] is to be able to conserve some of these...places that otherwise would be cut down and burned over.” Bart Herriman asked whether the Commission has adopted rules to regulate the Program.

Seifert said there are statutory requirements, but there are no rules regulating the Program. The nonrule policy document would be the first step in reviewing whether to adopt rules in the future. He said there are rules, however, governing management plans and the use of GIS to describe land parcels. Seifert explained that the district foresters were asked to provide input regarding allowable activities that would not negatively impact or degrade the resource, and those are listed in the policy document.

## **Adjournment**

The meeting adjourned at 11:40 a.m., EST.