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June 25, 2020

Ms. Jennifer Jones
Executive Director
Sunset Advisory Commission
P.O. Box 13066
Austin, Texas 78711

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Re: Sunset Review of Texas Parks and Wildlife Department

Dear Ms. Jones:

Thank you for the opportunity to respond to the *Sunset Advisory Commission Staff Report (the report) on the Texas Parks and Wildlife Department (TPWD)*. TPWD welcomes constructive feedback and takes very seriously the opportunity the Sunset Process provides to improve TPWD's existing policies, procedures, and practices so that we may better carry out our mission for all of Texas.

With respect to the report itself, you and your team have identified a number of important recommendations inside TPWD that you believe warrant improvement. As we have discussed extensively, many of those areas encompass ideas with which we agree, while still others we believe warrant additional clarification and/or dialogue. While we do not by any means attempt to address all of those issues in this letter, TPWD respectfully offers the following comments for your consideration:

Issue 1: The State Has a Continuing Need for the Texas Parks and Wildlife Department.

Recommendations

- **Recommendation 1.1. Continue the Texas Parks and Wildlife Department for 12 years. (Change in Statute)**
TPWD concurs with this recommendation.
- **Recommendation 1.2. Apply the standard across-the-board requirements regarding commission member training and maintaining a system for receiving and acting on complaints. (Change in Statute)**
TPWD concurs with this recommendation.
- **Recommendation 1.3. Update TPWD's statute to reflect the requirements of the person-first respectful language initiative. (Change in Statute)**
TPWD concurs with this recommendation.

- **Recommendation 1.4. Direct TPWD to actively monitor its efforts to increase workforce diversity and report success measures to the Texas Parks and Wildlife Commission. (Management Action)**

TPWD concurs with these recommendations. Establishing, and/or strengthening, processes to better support our important diversity and inclusion efforts inside and outside TPWD are essential to the agency's success and its service to all of the people of Texas.

Fiscal Implication

TPWD agrees that these recommendations can be implemented without the need for additional resources.

Issue 2: Some Elements of TPWD's Licensing and Enforcement Functions Are Inconsistent and Lack Transparency.

While TPWD agrees that its processes can be formalized and expanded, there are several matters related to Issue 2 that TPWD would like to address and/or clarify.

Enforcement Guidelines

TPWD recommends additional clarification regarding the findings and recommendations concerning denial of a permit. Currently, the legal options available to administratively address permittees who have violated the requirements associated with a permit are (1) nonrenewal of a permit upon its expiration, or (2) revocation or suspension of a permit.¹ The Parks and Wildlife Code also provides for assessment of an administrative penalty in lieu of suspension of a permit.² The reasons that a permit may be revoked or suspended after a hearing are currently spelled out in the Parks and Wildlife Code.³

As the report notes, since most TPWD permits are effective for only one year, TPWD has historically relied on the nonrenewal option. However, TPWD acknowledges that a situation could arise in which revocation or suspension would

¹ TEX. PARKS & WILD. CODE §12.501.

² TEX. PARKS & WILD. CODE §12.507.

³ A permit may be revoked or suspended after notice and hearing based on a final conviction for a violation of TPW Code or TPWD regulation relating to the permit; a violation of TPW Code or TPWD regulation relating to the permit; a false or misleading statement in connection with the permittee's application; debt to the state for taxes, fees, or penalties imposed by the TPW Code or rule relating to a permit or license to be suspended or revoked; or liable for civil restitution under TPW Code §12.301. See, TEX. PARKS & WILD. CODE §12.501(b).

be appropriate. For example, some TPWD permits may extend for several years.⁴ If a permittee with a multi-year permit engaged in conduct for which revocation or suspension would be warranted, TPWD would likely consider pursuing revocation or suspension of the permit, although such a situation has not occurred in recent history.

Under current state law, in most situations, the revocation or suspension of a permit would require that TPWD invoke the administrative hearing process set out in the Texas Administrative Procedure Act (the APA).⁵ The hearing required for revocation or suspension would be conducted by the State Office of Administrative Hearings (SOAH).⁶ Under the APA, a permittee is allowed to continue to operate under the permit while the hearing is pending.⁷ As a result, in those situations, use of the revocation or suspension process would not result in the immediate revocation or suspension of a permit. While some hearing processes may conclude within a relatively short period of time, others can extend over several months, or even years.⁸ Therefore, revocation or suspension would not necessarily be a more expeditious process.

With regard to permit denial, TPWD also recognizes the value of guidelines detailing the types of conduct that may result in license denial. As a result, the Texas Parks and Wildlife Commission (the TPW Commission) has enacted a number of rules to address the types of criminal actions that may result in nonrenewal of a permit.⁹ Further, in enacting these provisions, TPWD has repeatedly stated that such offenses would not automatically result in permit denial, and lists the mitigating and aggravating factors that would be considered in making such decisions.¹⁰ TPWD staff currently considers those factors in deciding to deny

⁴ See, TEX. PARKS & WILD. CODE §43.352(b) (regarding certain deer breeder permits); 31 Tex. Admin. Code §58.353(e), approved by TPW Commission May 21, 2020 (regarding mariculture permits).

⁵ TEX. PARKS & WILD. CODE §§12.502-12.508; TEX. GOV'T CODE CHAPTER 2001.

⁶ See, TEX. GOV'T CODE §2003.021.

⁷ See, TEX. GOV'T CODE §2001.054(d).

⁸ See, SOAH's Hearings Activity Report (HARP) for September 1, 2019 – February 29, 2020.

⁹ See, 31 Tex. Admin. Code §§53.113, 55.208, 55.404, 57.122, 57.253, 57.384, 57.399, 65.154, 65.266, 65.329, 65.363, 65.376, 65.703-65.704, 69.6, 69.47, 69.303.

¹⁰ Those factors include the following: the number of final convictions or administrative violations; the seriousness of the conduct on which the final conviction or administrative violation is based; the existence, number and seriousness of offenses or administrative violations other than offenses or violations that resulted in a final conviction; the length of time between the most recent final conviction or administrative violation and the application for licensure or renewal; whether the final conviction, administrative violation, or other offenses or violations were the result of negligence or intentional conduct; whether the final conviction or administrative violation resulted from the conduct committed or omitted by the applicant, an agent of the applicant, or both; the accuracy of information provided by the applicant; whether the applicant agreed to any special provisions recommended; and, other mitigating factors. See, e.g., 44 Tex. Reg 5101 (September

permit renewal. Nonetheless, TPWD recognizes the benefit of ensuring that such regulatory guidance is applicable to all permits administered by TPWD for which another statutory or regulatory process is not provided.¹¹

Review Panel Access

Although nonrenewal of a permit does not implicate the due process provisions associated with revocation or suspension, described above, TPWD has implemented a review panel process in which permittees who have been notified of permit nonrenewal may seek an objective informal review of the decision.¹² TPWD's experience has shown that it is not uncommon for a review panel, after considering the aggravating and mitigating factors, to decide in favor of the permittee. This process has proven to be a fair, cost-effective, and efficient process for both TPWD and the permittee. As a result, TPWD appreciates the value of ensuring that TPWD regulations consistently provide for the availability of review panels for those permitting decisions for which another process is not currently set forth in statute or regulation.

Recommendations

- **Recommendation 2.1. Require TPWD to provide an opportunity to access an informal review process for nonrecreational license and permit types. (Change in Statute)**

TPWD agrees that there is value in having the review panel process clearly available to all permittees. TPWD also agrees that the permit denial process could be enhanced by notifying a permittee of likely permit nonrenewal in advance of the permittee submitting a renewal application.

On the other hand, the portion of the recommendation regarding suspension and revocation appears to be more challenging and therefore, warrants clarification. Specifically, this recommendation provides that TPWD could revoke or suspend a permit, then provide an opportunity for an informal review of the decision. The recommendation goes on to suggest that such a process would avoid the time and expense of a contested case hearing at SOAH. However, as written, this portion of this recommendation is inconsistent with TPWD's understanding of the revocation and suspension process of the APA.

20, 2019)); 39 Tex. Reg. 3987 (May 23, 2014); *see, also*, TEX. PARKS & WILD. CODE §12.604(b); *see, also, id.*

¹¹ The report refers to the shell dredging permit as an example of a permit program with clear guidance regarding impacts of certain conduct. It should be noted, however, that TPWD has not issued any of those permits in recent history. As a result, it is difficult to evaluate the strengths or weaknesses of such an approach to permitting decisions.

¹² *See, footnote 2, above.*

As a result of the due process requirements of the APA described above, in most instances TPWD could not legally revoke or suspend a permit without complying with the APA's notice and hearing requirements. Therefore, providing an informal review process after a permit was revoked or suspended would be inefficient and duplicative since such revocation or suspension would have required a hearing under the APA. Therefore, TPWD recommends that this recommendation be modified to clarify that the review panel process would occur prior to revocation or suspension. TPWD would also recommend that any legislation resulting from this recommendation authorize the TPW Commission to enact regulations to implement the recommendation. Such rulemaking authority would provide the necessary flexibility to address the variety and number of permits administered by TPWD and adjust regulations as needed.

- **Recommendation 2.2. Require TPWD to establish a risk-based approach to inspections. (Change in Statute)**

TPWD recognizes the benefits of a more formalized risk-based approach to inspections. However, given that the recommendation concerns policy, TPWD believes that adoption of this recommendation should be more appropriately classified as a Management Action.

- **Recommendation 2.3. Direct the agency to adopt policies for using its full range of existing enforcement authority, including revocation and suspension in appropriate cases. (Management Action)**

TPWD concurs with this recommendation. As noted above, the TPW Commission has enacted a number of permit regulations spelling out the offenses that may result in permit denial. In many cases, those regulations also list the aggravating and mitigating factors that would be considered in making permit denial decisions. TPWD agrees that similar rulemaking actions could address permits for which such offenses and factors are not provided or are not otherwise addressed in statute.¹³ TPWD also agrees that providing informational materials about this process would be beneficial.

- **Recommendation 2.4. Direct TPWD to clearly and actively communicate enforcement processes and outcomes to licensees. (Management Action)**

As noted above, TPWD concurs with this recommendation.

- **Recommendation 2.5. Direct TPWD to standardize administration of its regulatory programs to the extent possible. (Management Action)**

TPWD agrees that standardization is valuable when and where appropriate. In fact, TPWD is already in the process of implementing a project to provide for

¹³ See, e.g., TEX. PARKS & WILD. CODE §77.112 (commercial bay and bait shrimp boat license).

electronic submission and payment for four (4) of the agency's largest permit types. Recognizing, however, that given the unique and varied nature of the portfolio of TPWD permits, complete standardization of all permits is likely not entirely feasible. Also, while a more comprehensive electronic permitting system might be ideal, implementation of such a system would involve substantial costs, especially in light of the number, variety, and unique nature of many of TPWD's permits. Such costs include, but are not limited to, costs associated with contractors, credit card processing, servers, data retention, cyber security, system upgrades, and staff to manage the system's administrative functions.

While TPWD wholly concurs with the underpinnings of this recommendation, namely improving the consistency, efficiency, fairness, and transparency of all of our permits, TPWD asks that this recommendation be modified to apply only to the extent feasible and appropriate. Such a modification is especially crucial now as TPWD, like other state agencies, works to implement and plan for likely future budget reductions.

- **Recommendation 2.6. Direct TPWD to review and update all reporting deadlines and timeframes for licenses. (Management Action)**
TPWD concurs with this recommendation.

Fiscal Implication

As noted above, the cost of implementation, primarily the development of a more comprehensive electronic permitting system, would be substantial. In addition, staff would still be required and needed to process and verify applications and maintain and support the review and processing of permits.

Issue 3: TPWD Needs to Improve Strategic Management Processes to Ensure It Can Best Meet the Future Needs of Texans.

TPWD values the feedback on how to improve the agency's strategic planning processes and believes it can accomplish that objective. However, there are several matters related to the intent, purpose, application, and interactions between the Land and Water Plan and the *Natural Agenda* in Issue 3 that TPWD would like to address and/or clarify.

The *Natural Agenda* serves as the agency's legislatively directed strategic plan, and the *Land and Water Resources Conservation and Recreation Plan* (Land and Water Plan) serves as the strategic visionary document to guide TPWD in achieving its

mission to conserve the state's vast and varied land and water resources and to provide outdoor recreation opportunities for all Texans.

Land and Water Resources Conservation and Recreation Plan

TPWD concurs that it has expanded the basis of the Land and Water Plan and understands the need to realign the Plan to be clearer and more consistent with its statutorily based requirements. As noted above, the Land and Water Plan is used primarily as a visionary document that is more aspirational than prescriptive and more qualitative than quantitative. The Land and Water Plan's goals and priorities are the guiding goals for the agency, which is why TPWD incorporates those goals and objectives into the *Natural Agenda* and structures discussions about agency issues, challenges, and priorities around those goals, both in the *Natural Agenda* and in other settings, such as TPW Commission meetings.

Natural Agenda

The strategic planning process that results in the *Natural Agenda*, as well as specific contents of the plan, are dictated by statute and specific instructions issued jointly by the Legislative Budget Board (LBB) and Governor's Office. While TPWD has and continues to comply with the requirements of the LBB and the Governor's Office, TPWD agrees that there are opportunities to enhance elements of this document, so long as such enhancements are consistent with strategic planning requirements and instructions as set forth and directed by the Legislative Budget Board (LBB) and the Governor's Office.

Specific to the recommendation to develop more specific, time-based and quantifiable objectives to gauge progress towards attainment of goals, TPWD would like to note that the "Agency Goals and Action Plans" section of the *Natural Agenda* includes several quantifiable and time-based action items related to each of its operational goals. This is the portion of the strategic plan (referenced in Recommendation 3.3) that affords agencies more flexibility to determine content. The objectives that comprise the official agency budget structure and are not currently quantified are not as easily modified, as changes to these specific objectives would need to be officially proposed to and approved by the LBB and Governor's Office as part of the formal budget structure process that occurs every two years.

Regarding the finding that additional and more effective outcome measures should be adopted, TPWD certainly recognizes the importance of and strives to maintain an effective measurement system and is open to additional measures, but if these are intended to track progress towards official objectives, they would more than likely require LBB and Governor's Office approval.

Recommendations

- **Recommendation 3.1. Require TPWD to measure the effectiveness of the Land and Water Plan and refine its scope. (Change in Statute)**

TPWD concurs that refocusing and enhancing the Land and Water Plan is important. TPWD disagrees in part with Sunset's staff's perspective that other agency-wide objectives and support functions that contribute to the primary focus of the Land and Water Plan are independent and mutually exclusive of the conservation and recreation oriented goals and objectives to be highlighted in the Land and Water Plan.

- **Recommendation 3.2. Direct the Texas Parks and Wildlife Commission to establish a conservation and recreation planning subcommittee. (Management Action)**

TPWD concurs and will work with the Chairman and TPW Commission regarding implementation of this recommendation.

- **Recommendation 3.3. Direct TPWD to improve and use the *Natural Agenda* as the agency's sole, agencywide strategic plan. (Management Action)**

While TPWD agrees that improvements can be made to the *Natural Agenda*, and is committed to the underpinnings behind this recommendation, it is important to note that TPWD must continue to comply with the overarching direction and guidance from the Legislative Budget Board and Governor's Office in preparing and submitting this plan.

- **Recommendation 3.4. Direct TPWD to institute processes to better ensure consistent, actionable policies and practices across the agency's divisions. (Management Action)**

TPWD concurs with this recommendation and respectfully notes that TPWD specifically created the Support Resources Division in January 2018 in no small part to help accomplish this objective.

Fiscal Implication

While TPWD agrees that there would not be a substantial fiscal impact, it is unlikely that there would be sufficient efficiencies realized to address other agency needs in a meaningful way.

Issue 4: TPWD's Internal Auditing Program Does Not Identify or Address All the Agency's Risks, Limiting Its Effectiveness.

TPWD recognizes the criticality of a strong internal audit program and its importance in ensuring the proper stewardship of TPWD's financial resources and operations.

Focus of Audits

TPWD also appreciates the importance of a diversified internal audit program that considers the entire audit universe and takes into account external audits such as those conducted by the State Auditor's Office, the Texas Comptroller of Public Accounts, and the United States Department of the Interior. As a result, TPWD looks forward to enhancing the documentation of its risk assessment process. With regard to fiscal control audits, TPWD appreciates Sunset staff's attention to that issue, since TPWD has made a concerted effort over the last decade to enhance its fiscal control processes.¹⁴ TPWD welcomes the opportunity to expand the scope of its internal audits, while ensuring that fiscal controls remain strong.

Commission Oversight

TPWD has benefited from attention to the internal audit function by members of the TPW Commission and recognizes the value of formalizing the TPW Commission's oversight of the internal audit program.

Audit Follow-Up

As noted in the report, TPWD's current internal auditor has further strengthened the follow-up process to assist TPWD management in ensuring that audit findings are addressed. Such a process will also help ensure that immediate risks identified in an audit are addressed, while longer-term processes, policies, and procedures are developed.

Recommendations

- **Recommendation 4.1. Direct the Texas Parks and Wildlife Commission to formally establish an internal audit subcommittee. (Management Action)**
As noted above, TPWD recognizes the central role and governance of the TPW Commission in the internal audit function. TPWD staff will work with the TPW

¹⁴ See, SAO Audit Report 07-021, An Audit Report on Financial Processes at the Parks and Wildlife Department, March 2007; HB 1, 2008-2009 General Appropriations Act, TPWD Bill Patter, Rider 29, p. VI-38 (2007).

Chairman and Commission regarding implementation of this recommendation, which will in large part, simply formalize what has already been done in practice.

- **Recommendation 4.2. Direct TPWD to fully identify and prioritize the risks of all of the agency's activities in its risk assessment process. (Management Action)**

TPWD concurs with this recommendation. As noted above, TPWD agrees that a well-documented comprehensive risk assessment process is an important component of the internal audit process. TPWD's Internal Audit Director is working to develop and document a comprehensive risk assessment process, beginning with the development of the FY 2021 Audit Plan. It should be noted, however, that the Sunset staff's emphasis on using the State Auditor's Office "Small Agency Risk Assessment Instructions" should be considered, but would be better served if supplemented with a risk assessment methodology and analysis more applicable to a large state agency.

- **Recommendation 4.3. Direct TPWD to develop a more complete and diversified internal audit plan. (Management Action)**

TPWD concurs with this recommendation. TPWD's Internal Audit Director will work with the TPW Chairman, Commission, and executive staff to ensure that the FY 2021 Audit Plan is appropriately diversified.

- **Recommendation 4.4. Direct TPWD to use its newly developed quarterly audit status report to provide more information about the status and implementation of audit recommendations. (Management Action)**

TPWD concurs with this recommendation. As of March 3, 2020, TPWD implemented this management recommendation to develop quarterly audit status reports to inform the executive director, chief operating officer, and TPW Commissioners on changes to the audit processes and updates on audits and recommendations. The first quarterly report was released in June for the FY2020 3rd quarter.

Fiscal Implication

TPWD agrees that these recommendations can be implemented without the need for additional resources.

Ms. Jennifer Jones
Page 11 of 11
June 25, 2020

We want to thank you again for this opportunity to provide comments on the *Sunset Advisory Commission Staff Report on the Texas Parks and Wildlife Department*. TPWD looks forward to working with you and your team, the Sunset Advisory Commission, and the Texas Legislature throughout this process. Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "S. Reed Morian".

S. Reed Morian
Chairman

A handwritten signature in blue ink that reads "Carter Smith".

Carter Smith
Executive Director

CS:AW:dh

cc: Ms. Ann Bright, Chief Operating Officer
Ms. Allison Winney, Intergovernmental Affairs & Sunset Liaison
Mr. David Eichler, Intergovernmental Affairs