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February 2, 2022

Via First Class Mail

Arizona Game & Fish Department
Attn: Mr. James Odenkirk, Legal Counsel
5000 W. Carefree Highway
Phoenix, AZ 85086

Re: Findings and Conclusion: Open Meeting Law Complaint – AZ Game and Fish Department, Habitat Partnership Committee

Dear Mr. Odenkirk:

I am in receipt of your letter, dated January 19, 2022 in which you respond to my request for information. Thank you for your timely response.

All meetings of any public body shall be public meetings. A.R.S. § 38-431.01. The term “Public Body” for purposes of the Open Meeting Law is defined as:

The legislature, all boards and commissions of this state or political subdivisions, all multimember governing bodies of departments, agencies, institutions and instrumentalities of this state or political subdivisions, including without limitation all corporations and other instrumentalities whose boards of directors are appointed or elected by this state or a political subdivision. Public body includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, the public body.” A.R.S. § 38-431.01(6).

The Open Meeting law also defines “Advisory committee” and “subcommittee” as, “any entity, however designated, that is officially established, on motion and order of a public body or by the presiding officer of the public body, and whose members have been appointed for the specific purpose of making a recommendation concerning a decision to be made or considered or a course of conduct to be taken or considered by the public body.”

In your response, you stated that the Payson Natural Resource Committee is not a public body. It was never established by an official action of the public body, and the Department Director, not the Commission, makes the ultimate decision for the awarding of Habitat Partnership grants.

I reviewed the Arizona Habitat Partnership Committee Charter (“Charter”), a copy of which is enclosed with this letter. According to the Charter, the local Habitat Partnership Committees (LHPCs) are informally organized, local collaborative groups who help develop, prioritize, and implement project funding through the HPC program. Additionally, the LHPCs are not appointed by a public body. Finally, the Charter explains that “Project funding recommendations will then be made to the Director and project selection will be shared with the AGFC at the next scheduled AGFC meeting.”

I reviewed the Arizona Game and Fish Commission Agenda for its February 8, 2021 meeting. Item 9 on the Agenda provided for a Habitat Partnership Committee (HPC) annual update. According the Agenda item, the Habitat Partnership Committee Coordinator was scheduled to provide a presentation on the status of projects funded with Special Big Game License Tag Money allocated through the HPC program. Notably, the Agenda did not provide for the Commission to vote on the awarding of grants.

Based upon my review of the Charter, the Commission Agenda, the Department’s website, and your Response, I make the following findings and conclusions:

- The Payson Natural Resource Committee is a local Habitat Partnership Committee. It was created by the Arizona Game and Fish Department. The Committee was not appointed by the Commission.
- The Arizona Game and Fish Commission, a public body, does not make the final decision regarding the selection of HPC grant awards.
- Because the Payson Natural Resource Committee was not appointed by the Arizona Game and Fish Commission, it is not a “public body” for purposes of the Open Meeting Law, and therefore the Open Meeting Laws do not apply to the Committee.

The November 11, 2021 complaint further alleges that Arizona Game and Fish Commissioner Bill Braker is a part owner of two ranches in the PRNC’s region, and any HPC grants that might be proposed for these ranches would be a conflict of interest. This Office was only assigned to investigate allegations related to the Open Meeting Laws. This letter does not opine about any alleged Conflict of Interest.

Finally, the November 23, 2021 complaint alleges that the Department failed to comply with a Public Records Request. Again, this Office was only assigned to investigate allegations related to the Open Meeting Laws, not public records request. This letter does not opine about the validity of any claims involving Public Records requests.

Although the Open Meeting Laws do not apply to the Payson Natural Resource Committee, I nonetheless encourage the Committee to act in a manner that is open to public. Timely Agendas, the taking of detailed minutes, and allowing the public to observe the meetings are good practices that aligns with the spirit and purpose of the Open Meeting Laws.

Having found no violation of the Open Meeting Law, I am closing this matter.

/s/

Ryan H. Esplin
Chief Civil Deputy County Attorney
Mohave County Attorney's Office