

NATURAL RESOURCES COMMISSION
Meeting Minutes, January 15, 2019

MEMBERS PRESENT

Bryan Poynter, Chair
Jane Ann Stautz, Vice Chair
Cameron Clark, Secretary
Bruno Pigott
Laura Hilden
Noelle Szydlyk
Jeffrey Holland
Phil French
Patrick Early
Bart Herriman
John Wright
Bruce Walkup

NATURAL RESOURCES COMMISSION STAFF PRESENT

Sandra Jensen
Dawn Wilson
Scott Allen

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

John Davis	Executive Office
Chris Smith	Executive Office
Steve Hunter	Law Enforcement
Libby Gamboa	Legal
John Bacone	Nature Preserve
Matt Buffington	Fish and Wildlife
Phil Marshall	Forestry
Jamie Miller	Water
Marty Benson	Communications

GUESTS PRESENT

Paul Arlinghaus	Jeff Healy
Alan Hux	Ruth Ann Ingraham
Mary Hollingsworth	Ellen Jacquart
Myrna Nugent	Dawn Slack

Kris Krouse
Ed Tucker
Laurie J. Harris
Mark Whittier
Jane & David Savage

Lanae Singleton
Eric Bird
Emily Wood
Ellen Howard

Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 10:00 a.m., ET, on January 15, 2019 at Fort Harrison State Park, Garrison, 6002 North Post Road, Ballroom, Indianapolis. With the presence of twelve members, the Chair observed a quorum.

APPROVAL OF MINUTES

The Chair asked for a motion for the approval of the Commission's November 13, 2018 minutes.

Patrick Early moved to approve the minutes of the meeting held on November 13, 2018, as presented. Jane Ann Stautz, seconded the motion. Upon a voice vote, the motion carried.

ELECTION OF OFFICERS

John Wright made a motion to slate the officers now standing for the 2019 term—Bryan Poynter, as Chair, Jane Ann Stautz, as Vice Chair, and Cameron Clark, as Secretary. Patrick Early seconded the motion. Upon a voice vote, the motion was unanimously carried.

REPORTS OF THE DNR DIRECTOR, DEPUTIES DIRECTOR, AND THE CHAIR OF THE ADVISORY COUNCIL

Director Clark provided his report. The Director noted that the legislative session has started and the Department would be following the budget as it relates to the Department's funding. He stated that many bills that he anticipates will impact the Department have not yet been filed. The Director noted that the Department's Legislative Director was unable to be present and there would be more to report at the next Commission meeting.

Clark stated that the Division of Outdoor Recreation has put together the Next Level Trails program that is open to receive grant applications until February 15, 2019. Clark stated that the Indiana Office of Tourism Development has a list on their website of "The Best Instagrammable Places" in Indiana and Department properties were the top four with a total of seven properties making the top ten list.

Clark announced that the Director of the Division of Nature Preserves, John Bacone, is retiring at the end of January 2019. He added that Bacone has been with the Department for more than 43 years and will be missed. Clark thanked Bacone for his service noting the big impact he has had on the history of nature preserves in Indiana.

John Davis, Deputy Director for the Bureau of Lands and Cultural Resources, provided his report. Davis said that Bacone would be missed. Davis announced that “Golf Advisor” published and named The Fort Golf Resort as the best layout in the United States.

Davis noted that there are organized eagle watch events occurring at many of the state park properties in the state. He said that there was a first day hike that occurred on January 1, 2019 that brought 4,200 people to the state parks to hike. Davis noted that 500 people participated in the hike at Indiana Dunes State Park.

Chris Smith, Deputy Director of the Bureau of Water Resource and Regulation, provided his report. Smith stated that the Division of Historic Preservation and Archaeology is offering a Historic Preservation Month Photo Contest until the end of January 2019. He noted that the Historic Preservation Review Board meets on January 16, 2019 at the Fort Harrison State Park Inn and Conference Center. Smith said that there are 15 nominations for National Register of Historic Places that will be considered.

Smith stated that the Division of Communications is finishing the final review of the fishing guide and the recreation guide that will be out before the Indianapolis Boat, Sport, and Travel Show. Smith noted that Tara Wolfe, Director of Communications, comes back from leave on January 22, 2019.

Smith said that the Division of Reclamation tech services staff are reviewing an increased number of permit requests involving 6,000 surface mines and 23,000 underground mines on 30,000 acres of land. Smith said that currently the state has over 160,000 acres in surface mines and over 200,000 acres in underground mines. Smith stated that tech services review looks at the proposal and the reclamation plans to ensure that they meet federal and state requirements for returning the ground to its original use after mining is complete.

Patrick Early, Chair of the Advisory Council, stated that the Advisory council would be meeting on January 22, 2019.

The Chair asked Noelle Szydlyk from the Indiana Office of Tourism Development to provide an update on the open director’s position.

Szydlyk stated that Misty Weisensteiner has just been named the Director for the Indiana Office of Tourism Development. Szydlyk noted that Weisensteiner comes from Orange County Indiana and has a background in economic development and the tourism industry.

The Chair thanked John Bacone for his dedication to the Division of Nature Preserves.

CHAIR, AND VICE CHAIR

Updates on Commission and AOPA Committee

Jane Ann Stautz, Chair of the Commission's AOPA Committee, stated that the AOPA Committees next scheduled meeting is January 30, 2019.

Information: Remaining 2019 meeting dates (Fort Harrison State Park–Garrison, Indianapolis)

The Chair noted that the remaining 2019 Commission meeting dates have been scheduled for March 19, May 21, July 16, September 17, and November 19.

DNR, EXECUTIVE OFFICE

Consideration and identification of any topic appropriate for referral to the Advisory Council

No items were identified for referral to the Advisory Council.

DNR, DIVISION OF NATURE PRESERVES

Consideration of the dedication of the Lydick Bog Nature Preserve in St. Joseph County

John Bacone, Director of the Division of Nature Preserves, presented this item. Bacone stated that the Lydick Bog Nature Preserve includes 176 acres upon which is one of the few remaining natural bogs in Indiana, along with a complex of several wetland types and an upland forest. He said that the proposed nature preserve was acquired and managed by the Shirley Heinze Land Trust. Bacone stated that the Division is recommending that the proposed nature preserve be dedicated.

The Chair recognized Kris Krouse, Executive Director, of the Shirley Heinze Land Trust.

Krouse expressed pleasure that the state is considering dedication of the proposed nature preserve, which he described as a great habitat located in St. Joseph County. He stated that the Shirley Heinze Land Trust takes great pride in the dedication and is thankful to the state and the Division of Nature Preserves. Krouse thanked John Bacone for his leadership, mentorship, and for protecting nature through the years.

Clark asked Krouse to give a history and overview of the Shirley Heinze Land Trust.

Krouse stated that Shirley Heinze Land Trust (Land Trust) started as the Shirley Heinze Environmental Fund in 1981 in memory of Shirley Heinze who had passed away of Lymphoma. He said that Land Trust was originally run by volunteers, such as Myrna Nugent, who would attend property tax sales in the early 80's to acquire properties. Krouse stated that the Land Trust has acquired parcels of land across from the Indiana Dunes National Lakeshore. He stated that in the mid 90's the Land Trust was able to hire staff and acquired properties that would later be dedicated as nature preserves such as Seidner Dune and Swale Nature Preserve, Cressmoor Prairie Nature Preserve, Ambler Flatwoods Nature Preserve, and Barker Woods Nature Preserve. Krouse noted that the Land Trust Stewardship Program has grown to keep pace with the 2,402 acres of land that have been acquired and is being protected in northwest Indiana.

Krouse stated that in October 2018 the Shirley Heinze Land Trust received a National Excellence Award from the Land Trust Alliance, a national land conservation organization that represents more than a thousand land trusts nationwide. Krouse noted that the Land Trust credits much of its growth to the support and partnership with the state and the Division of Nature Preserves.

Davis asked how long Krouse had been with the Land Trust.

Krouse stated that he started with the Land Trust in 2005.

Bart Herriman moved to approve the dedication of the Lydick Bog Nature Preserve. Phil French seconded the motion. Upon a voice vote, the motion carried.

The Chair asked Bacone the total number of acres dedicated in nature preserves since he has been at the Division and what the future holds for the dedication of nature preserves.

Bacone stated that when he started with the Division they were dedicating the 47th nature preserve, Hoosier Prairie Nature Preserve, and that Lydick Bog Nature Preserve is the 288th dedication. Bacone stated that the 1967 Nature Preserves Act allows land trusts to find, purchase, and care for the nature preserves. He noted that the Department could not protect the nature preserves without the help of the land trusts that are currently working to secure properties around the state. Bacone said that President Benjamin Harrison Conservation Trust Fund has been instrumental in driving growth for nature preserves in the state.

DNR, DIVISION OF WATER

Consideration of amendments to nonrule policy document, Information Bulletin #17, which provides guidance for the assessment and determination of compensatory mitigation associated with an application to the DNR; Administrative Cause No. 18-102D

The Chair noted that Commission member, Laura Hilden, would abstain from the discussion and vote due to an agency restriction.

Matt Buffington, Environmental Supervisor of the Division of Fish and Wildlife, presented this item. Buffington stated that originally the Department was only looking at updating broken web

links and obsolete references in Information Bulletin #17. However, he observed that the effort became a full review of the guidelines for the assessment and determination of compensatory mitigation. He said that Information Bulletin #17 was originally published on September 1, 1997 with amendments being approved on July 17, 2012 and on July 15, 2014.

Buffington said that mitigation ratios are very important to the mitigation process and that the proposed amendments clarify that the ratios and guidelines are minimum standards. He said that the amendments emphasize the preservation ratio instead of assigning a specific number with potential mitigation ratio increases. Buffington noted that impacts to mitigation sites and noncompliance with permits and other regulations do not fit neatly into normal processes and are becoming a more frequent issue.

Buffington said that the amendments improve the language that addresses urban mitigation. He noted that current guidelines require mitigation of under an acre of land to replace large trees that were removed by planting five trees. Buffington said that the planting plan works for a park setting, but that the Department was seeing forests in urban areas being impacted more. He said that the amendments use area based mitigation when the impacts are to a forest instead of a park like setting.

Buffington stated that the amendments include taking out the term “planting plan”. The original idea was if there was going to be minimal impact then a full mitigation plan would not be needed, but that it was not working. Buffington stated that the amendments to the guidelines clarify that if there is an impact a mitigation plan is needed. He said that if the impact is minimal it can be addressed in the permitting process.

Herriman asked how the amendment to Information Bulletin #17 affects noncompliance.

Buffington responded that sometimes the person who receives a permit that requires mitigation is not completing the mitigation. He said that the permit often does not do a good job of letting the person know what happens if the mitigation is not completed. Buffington observed that the, Information Bulletin, as amended, emphasizes that if mitigation required by the permit is not completed, the person may be required to do even more mitigation than what the permit originally required. Buffington stated that the Division of Water’s Compliance Section takes the steps to enforce the mitigation.

Smith added that the mitigation process is applicable when, for instance, a construction in a floodway permit is submitted to the Department. The Division of Water reviews the permit for adverse impact to the floodway such as impacts to fish, wildlife, and botanical resources, and the recommendations are made. He explained that if there are impacts then a permit condition may be added to the permit requiring mitigation. If the Department finds that the permit holder is not complying with that permit condition by completing their mitigation the Department issues a warning letter and then a Notice of Violation (NOV), if the mitigation remains incomplete. Smith offered that an NOV could then go to the Commission’s Division of Hearings, and later the matter could go to judicial review. Smith concluded that the amendments to the Information Bulletin are to more clearly advise permit holders what is expected of them.

John Wright moved to approve amendments to nonrule policy document, Information Bulletin #17, that provides guidance for the assessment and determination of compensatory mitigation associated with an application as presented. Phil French seconded the motion. Upon a voice vote, the motion carried.

The Chair confirmed for the record that Laura Hilden abstained from the vote due to an agency restriction.

NRC DIVISION OF HEARINGS

Consideration of Hearing Officer Report on rule processing, public hearing, and hearing officer analyses with recommendation regarding final action adding 312 IAC 18-3-25, governing prohibited invasive terrestrial plants; LSA Document #18-316(F); Administrative Cause No. 17-114E

Dawn Wilson, Hearing Officer, presented this item. Wilson explained that the proposed new rule adds 312 IAC 18-3-25 to designate as pests or pathogens certain invasive terrestrial plants and to prohibit and restrict the sale, distribution and transport of these invasive terrestrial plants.

Wilson stated that the proposed rule was determined by Office of Management and Budget (OMB) to qualify for an exception to the prohibition against rulemaking on May 4, 2018 and was preliminarily adopted by the Commission on July 17, 2018. Wilson said the Notice of Intent was published in the Indiana Register on July 18, 2018.

Wilson noted that all the required approvals were obtained and the Division of Hearings maintained all the documentation as required by rule and executive order on the Commission's online rulemaking docket. She said the Legislative Service Agency (LSA) posted the proposed rule on November 21, 2018. Wilson stated that the Economic Impact Statement prepared by the Department was sent to the Indiana Economic Development Corporation Small Business Ombudsman, as required under IC 4-22-2.1-5, and on November 21, 2018, the Ombudsman concluded that the proposed rule would not have a negative economic impact.

Wilson stated that LSA's review of the proposed rule questioned the spelling of a specific species. She noted that on November 26, 2018 Megan Abraham, Director of the Department's Division of Entomology and Plant Pathology and the Small Business Regulatory Coordinator (SBRC) confirmed that the spelling of "Loneicera maacki" should be changed in 312 IAC 18-3-25(a)(29) to "Loneicera maackii."

Wilson said that on December 19, 2018, a public hearing was held in the offices of the Division of Hearings and that Abraham and members of the public attended. She noted that summaries of the oral comments presented during the public hearing, 500 public comments received through the online rulemaking docket, and the two comments submitted by regular mail were included in the hearing officer report. Wilson stated that copies of comments submitted were forwarded to the Department and that Chris Smith's response includes consideration of the reoccurring public

suggestion to include additional species to the currently proposed list but that no change in the proposed rule language was recommended.

Wilson noted a typographical error on page 6 of the hearing officer report where Ms. Slaughterbeck's affiliation was typed as "SICUM" and should have been "SICIM".

Wilson stated that she recommended, as the hearing officer, the alteration to the spelling of "Loneicera maackii" in the proposed rule language and that the proposed rule attached to the Hearing Officer's Report as "Exhibit A" be considered for final adoption.

The Chair noted that he had received correspondence not the word you want from the Indiana Wildlife Federation in favor of adding 312 IAC 18-3-25, governing prohibited invasive terrestrial plants.

Jane Ann Stautz moved to approve for final adoption adding 312 IAC 18-3-25, governing prohibited invasive terrestrial plants. Bruce Walkup seconded the motion. Upon a voice vote, the motion carried.

Consideration of recommended report of the Natural Resources Commission with respect to the Petition for the Establishment of the Tall Oaks Lake Conservancy District; Administrative Cause No. 18-109C

Wilson also presented this item. Wilson stated that on October 2, 2018 the Morgan Circuit Court ordered the "Petition for the Establishment of the Tall Oaks Lake Conservancy District" (TOLCD), to be referred to the Commission for review in accordance with IC 14-33-2-17. Wilson said that the establishment of a conservancy district is within the jurisdiction of the Circuit Court, and the Commission, in coordination with the Department's Division of Water, acts as a friend of the court.

Wilson stated that the Division of Hearings requested comments on the establishment of the TOLCD from state and local government entities and three responses were received, from the Indiana Utility Regulatory Commission (IURC), Indiana Department of Environmental Management (IDEM), and from the Department's Division of Water. She noted that the responses were attachments A and B of the hearing officer's proposed report submitted for the Commission's approval. Wilson stated that she held a public hearing on the establishment of the TOLCD, on December 12, 2018, as required by IC 14-33-2-19. She said that the testimony and evidence presented were considered and summarized in the recommended report.

Wilson said that the TOLCD proposed fact finding report stated three proposed purposes in its Petition. A determination was made in the report that the purposes proposed are allowed purposes under IC 14-33-1-1(a)(4), (6) and (9). Wilson identified the three specific purposes as:

1. Developing forests, wildlife areas, parks and recreational facilities in connection with beneficial water management,
2. Providing water supply, including treatment and distribution, for domestic, industrial and public use, and

3. Operation, maintenance and improvement of works of improvement including, but not limited to Tall Oaks Lake and Tall Oaks Lake Dam, and Tall Oaks Lake Water Supply and Distribution System.

Wilson said that the hearing officer report provides an analysis of the five inquiries required by IC 14-33.

The first inquiry addressed by Wilson was if the proposed district appeared to be necessary. Wilson said that approximately 60 years ago, an unpermitted dam was constructed and a subdivision was platted. She noted that in the 1980's construction was approved to bring the dam into compliance but the work was not completed. Wilson said that the Department reported that the Tall Oaks Lake Dam was inspected in 2015, determined to be "conditionally poor", and, the dam owner, Tall Oaks Lake Corporation hired an engineer to prepare a preliminary report in which reconstruction was identified that was designed to correct safety deficiencies.

Wilson said that the Petitioner's engineer also recommended construction of a new access road to several homes that now require access over the dam's crest. In addition, heavy vehicle traffic traversing over the dam was a concern to geotechnical engineers, and there was no objection by the Department.

Wilson stated that the sole source of drinking water for the area has been Tall Oaks Lake since the area was developed and, according to the comment submitted by IURC "has existed as a water utility and public community water system since 1959 without the statutorily required regulation by state agencies." She said that IURC has never approved Tall Oaks Lake's rates and charges and Tall Oaks Lake was not registered with IDEM as a public water supply. She said that IURC and IDEM do not object to the establishment of the TOLCD. Wilson noted that IDEM would be "working with responsible parties to achieve compliance" with all Indiana rules to ensure a safe drinking water supply. Wilson stated that the proposed TOLCD appeared to be necessary.

The second inquiry is if the conservancy district holds the promise of economic and engineering feasibility. Wilson stated that a draft preliminary report prepared by Banning Engineering for the Tall Oaks Lake Corporation recommended three construction components to cure the outstanding deficiencies. She noted that the three components were to rehabilitate the dam stability, construct an alternate access road, and to connect the existing water supply to an existing nearby public water supply and reconstruct all supply mains within the district.

Wilson said that Banning Engineering provided an estimated cost of construction for the TOLCD and that the construction of the proposed TOLCD appear to hold the promise of economic and engineering feasibility.

For the third inquiry, for a purpose that does not include a water supply, an analysis to determine if the conservancy district seems to offer benefits in excess of costs and damages must be analyzed. Wilson stated that a realtor who resides within the proposed TOLCD, testified that the total value of the proposed district would be approximately \$4 million and estimated that without potable water, the home values would be \$0 due to ineligibility for mortgages. Wilson said that

the realtor estimated the home values would be 50% of their current value or less if the lake were to be lost but there was a continued source of potable water.

Wilson said that the current value of the homes exceed the estimated capital costs and O&M (operation and maintenance) costs submitted making the benefits exceed the costs and damages for the proposed for the TOLCD.

The third inquiry, for a purpose involving a water supply is if the public health would be served by the conservancy district, immediately or prospectively. Wilson stated that testimony at the public hearing indicated that no water is available in the area through wells and that the only sources of potable water would be use of the Tall Oaks Lake or connection to a nearby public water utility. Wilson said that the Petitioner's engineer recommends connection to a current utility such as Citizens for the current aging system and stated that "IDEM has recently classified the water system as a community public water system that requires operations and testing beyond current operations and capacity." She noted that IURC's comment strongly recommended connection to an established water utility.

Wilson said that for either the choice to operate a system using Tall Oaks Lake or the choice to connect to an established utility, IDEM expressed its commitment to "ensure a safe drinking water supply". IDEM commented that the establishment furthers IDEM's mission of assuring a safe and reliable drinking water infrastructure. Wilson stated that, for that reason, the public health would be prospectively served.

The fourth inquiry of the Commission is to determine if the proposed conservancy district proposes to serve a proper area. Wilson stated that the proposed TOLCD appears to provide contiguity in the area proposed and she recommended that the establishment proposes to serve a proper area.

The fifth and final inquiry is if the proposed conservancy district is proposed in a manner compatible with other districts or projects. Wilson stated that the attorney for the Petitioner, Alan Hux, offered that he is unaware of any existing conservancy district (CD), flood control project, reservoir, lake, drain, levee, or other water management or water supply project that the establishment of the TOLCD would interfere. In addition, the Department reported that no other CD boundaries would overlap with the proposed TOLCD. Wilson concluded and recommended that the establishment purposes are proposed in a manner compatible with other districts or projects.

Wilson stated that as the hearing officer her recommendation is for the Commission to consider the Hearing Officer's proposed fact finding report and accept the hearing officer report as the "Report of the Natural Resources Commission with Respect to the Petition for the Establishment of the Tall Oaks Lake Conservancy District". Wilson noted that Alan Hux, attorney for the petitioner proposing the TOLCD, was present and available to answer questions.

The Chair recognized Alan Hux, attorney for the petitioner.

Hux stated he had nothing to add to the hearing officer's report but that he would answer any questions, if there were any.

Bruce Walkup moved to accept the Hearing Officer's Report as the Natural Resources Commission's Report with respect to the Petition for the Establishment of the Tall Oaks Lake Conservancy District. Patrick Early seconded the motion. Upon voice vote, the motion carried.

Consideration of Hearing Officer Report on rule processing, public hearing, and hearing officer analyses with recommendation regarding final adoption adding 312 IAC 3-1-3.5, governing the participation and representation of a party to an adjudicatory proceeding pending before the Natural Resources Commission; LSA Document #18-272(F); Administrative Cause No. 16-116A

Sandra Jensen, Hearing Officer, presented this item. Jensen explained that the proposal for consideration for final adoption is to add an administrative rule, 312 IAC 3-1-3.5, governing the participation and representation of a party to an adjudicatory proceeding pending before the Commission. She noted that in large part the proposed rule would not impact attorneys that represent a party, but it does require an attorney to file and withdraw their appearance in accordance with the Indiana Trial Rules. Jensen observed that any party may be represented by an attorney but such representation is not required.

Jensen said that the primary focus of the proposed rule is to address a party's participation in person or representation of a party by a non-attorney representative. Jensen explained that the rule clarifies that a party who is an incompetent individual may be represented by their next friend, court appointed representative, or power of attorney. Jensen said that a party that is a trust, a partnership, an association, or other type of unincorporated artificial entity could be represented by a trustee, a partner, a member, or some other principal. She explained that a corporate party may be represented by any duly authorized individual. Jensen observed with respect to corporate representation that the authorization may be through a corporate resolution, an operating agreement, or other corporate authorization. Jensen added that under the rule a state agency, political subdivision, or other governmental entity could be represented by any individual authorized by a board resolution or other formal appointment attorney.

Jensen added that the proposed rule requires a party who is interested in being represented by a non-attorney to file a document that identifies and designates the representative. She said that by executing the document the party would affirm that the designated representative would act on behalf of the party, the representative's actions are binding upon the party, and would specify that all communications would be with the representative and not with the party. She said the document would also require acknowledgement that the representative is not a licensed attorney and would not be able to make legal arguments or take action associated with any profession for which a license is required. Jensen stated that the acknowledgment would also require the party and their representative accept that any argument or issue not raised in the adjudication process could be waived on judicial review or any other proceeding following administrative adjudication. The proposed rule would also require that the designated representative make similar acknowledgments.

Jensen stated that the proposed rule provides clarity with respect to the Administrative Law Judge's (ALJ) ability to rescind or reject a party's designation of non-attorney representation. She stated that situations currently occur where people who do not understand administrative proceeding cause confusion and delays that potentially prejudice other parties. Jensen said that the proposed rule would give the ALJ's the authority to require a party to represent themselves or hire an attorney if needed because the designated non-attorney representation was inadequate.

Jensen stated that overall purpose of the proposed rule is to provide clarity to the regulated public and to improve the ability of the Commission's ALJ's to enhance efficiency and protect the integrity of the Commission's administrative review responsibilities. She said that the proposed rule would offer a greater degree of integrity and enforceability of the Commission's final order. Jensen said that the proposed rule would have little or no fiscal impact on any party and would not dissuade anyone from seeking their right to an administrative review.

Jensen stated that the concept for the proposed rule originated with a formal advisory opinion issued by the Office of the Attorney General (OAG) in response to a Commission inquiry in 2015. She stated that the proposed rule was developed in collaboration with members of the AOPA Committee, the Indiana State Bar Association's Unauthorized Practice of Law Committee, and ALJ's from other agencies who provided assistance and helped with developing the rule language.

Jensen stated that following the fiscal review by OMB there were two revisions made to further reduce possible fiscal consequences. Jensen said that those changes were made prior to publication of the proposed rule language by the Legislative Services Agency. Jensen noted that all the rulemaking procedure requirements were fulfilled with the Notice of Intent being published in the Indiana Register on June 27, 2018. Jensen noted that additional notices were provided by the Indiana State Bar Association's and the Indianapolis Bar Association's Environmental Law Sections, and the proposed rule was also discussed during a continuing legal education event that occurred on December 6, 2018. A public hearing was conducted as scheduled on December 7, 2018. No one attended the public hearing and no one offered comments by any means. Jensen stated that the proposed rule contains formatting and stylistic revisions suggested by LSA and those revisions were incorporated into the rule language for final adoption in Exhibit B.

Stautz thanked Jensen, other ALJ's, agencies, and those who were involved in the collaboration of the drafting of 312 IAC 3-1-3.5. She stated that the rule would be helpful in governing the participation and representation of a party to an adjudicatory proceeding in the future.

Clark stated that the proposed rule would be helpful. He noted that his only concern is the challenge that the ALJ's will have in educating non-attorney's on what a non-attorney may or may not be permitted to do with regards to representation.

Jensen observed that the ALJ's are already faced with challenges referred to by Clark and expressed hope that the proposed rule would offer guidance to ALJs in addressing those challenges. Jensen also expressed that requiring parties to make a formal designation and

acknowledge being bound by the actions of a non-attorney representative may facilitate the party to make that decision with deliberation. She said that the Division of Hearings will be working to develop forms and a guide to the administrative review process that will be available on-line.

Bart Herriman moved to give final adoption to add 312 IAC 3-1-3.5, governing the participation and representation of a party to an adjudicatory proceeding pending before the Natural Resources Commission. Phil French seconded the motion. Upon voice vote, the motion carried.

Adjournment

The meeting was adjourned at approximately 10:54 a.m., ET.