



United States Department of the Interior

National Park Service
Midwest Region
601 Riverfront Drive
Omaha Nebraska 68102-4226



18-00127(MWR-LCPP/G)

December 4, 2015

Ms. Paula Dinerstein, Senior Counsel
Public Employees for Environmental Responsibility
2000 P Street, NW, Suite 240
Washington, D.C. 20036

Dear Ms. Dinerstein:

I am writing in response to your letters of September 16 and October 23, 2015, regarding the current pavilion restoration project at Indiana Dunes State Park. Thank you for taking the time to discuss this issue with me by phone and for making yourself available to join the call with my staff, Norm Hellmers, and Jim Sweeney on November 2, 2015. I hope these conversations provided clarity on the National Park Service's (NPS) role in administering the Land and Water Conservation Fund (LWCF) program.

The Indiana Department of Natural Resources (IDNR), through its State Parks Division, has received Land and Water Conservation Fund (LWCF) assistance under several grants for improvements to this park. The NPS, as administrator of the LWCF State Assistance Program, has had several conversations with the IDNR about this project to ensure that the project is compliant with the LWCF program.

This project began when the IDNR executed a lease with Pavilion Partners, a private company, covering the operation of parts of the Indiana Dunes State Park pavilion. Leases can be an effective tool for public agencies to transfer responsibility for the operation, maintenance, and/or renovation of a publicly-owned facility or park to a lessee. Leases similar to these are common within park systems and do not require NPS approval for LWCF purposes.

There are conditions within the Indiana Dunes State Park lease which are LWCF-compliant as they provide direct benefits to the recreating public and cover historic uses of the pavilion and the park. These include the construction of a shower and restroom structure, improvements to the lower level food service area, and a lifeguard station within the pavilion.

On June 5, 2015, the IDNR briefed us on the concept plans for operation of private banquet and conference services within the pavilion and a new banquet facility. At that time, we advised the IDNR that several of the prospective uses would be non-compliant, and if carried out, would constitute a conversion that would trigger NPS involvement. During that same conversation, we also informed the IDNR of all the legal requirements necessary to complete a conversion.



The LWCF Act (Public Law 88-578) does not give the NPS the authority to usurp a grantee's ownership and control of its property and facilities, nor does it remove the grantee's sovereign responsibility for making its own decisions on how to manage its holdings. Rather, the NPS will assess the loss of LWCF-encumbered park land due to all non-compliant conditions and the consequent mitigation which would be required under LWCF.

In this case, demolition work within the pavilion had commenced on the LWCF-compliant uses and communications were occurring between the IDNR and lessee about potential additional, non-LWCF compliant uses. On October 22, 2015, we were informed by the IDNR that this work has ceased and that the contractor's work was now limited to weather-proofing the building. On November 12, 2015, IDNR confirmed that negotiations are incomplete between them and the lessee as to what may be permitted for new construction as well as future uses within the pavilion, and that there are presently no approved plans for the design for the new building.

Although IDNR is unclear at this time how they will move forward, they informed us that they are preparing an environmental assessment and a historical/cultural analysis, as well as preparing to conduct appraisals of park land and replacement land, should a conversion be necessary. While the NPS is providing guidance to the IDNR, it is the IDNR's responsibility to comply with these requirements.

You asked several specific questions in your October 23, 2015, letter and the responses follow:

- You asked if the NPS has received final plans for the entire project. The NPS has discussed with the IDNR the general concept of the overall proposal, but has not received any final plans. You will need to contact IDNR for site plans and construction drawings.
- You also asked if there has been a mutual agreement between the DNR and the NPS as to how much area will be converted from LWCF use. One of the purposes for early coordination between the IDNR and the NPS is to ascertain the extent of a possible conversion. Once IDNR has determined how they would like to move forward if a conversion is triggered, then the NPS and the IDNR will reach an agreement as to how much park area would be converted from public outdoor recreation use.

A conversion is measured by how much underlying park land is affected and how it impacts the public outdoor recreation use of the park area. If the environmental analysis identifies impacts to the environment larger than the footprint of the building, the size of the conversion will be larger.

- You asked several questions regarding Chapter 8, Section H, of the Department of the Interior Land and Water Conservation Fund Federal Financial Assistance Manual Volume 69 (October 1, 2008), including which uses could be classified as public outdoor recreation. Activities that could be considered supportive of and contributing to the public outdoor recreation experience that are generally conducted indoors, such as restaurants and exercise areas, could be considered public facilities consistent with Section H. Those activities that could not be considered supportive of and contributing to the public outdoor recreation experience would trigger a conversion. Although

weddings, wedding receptions, and banquets can be conducted outdoors, they are not generally categorized as contributing to the outdoor recreation experience. Therefore, if it is determined that any part of the pavilion would be used for commercial/private events, then it would not be consistent with Section H and a conversion would be necessary. Likewise, the construction of new banquet facilities not accessible to the public could not be approved as a public facility under Section H and would result in a conversion.

- You asked several questions about the comfort center (outdoor showers, changing rooms, and restrooms). We do not know whether or not the park land upon which the comfort center is located had been previously developed as this would not be a consideration under any LWCF-related circumstance. There was no consultation between the IDNR and the NPS on the comfort center as this does not constitute a federal undertaking under the LWCF program and, therefore, does not need NPS approval.

Although you stated that your past inquiries to the IDNR have not always been answered, I urge you to continue to contact them regarding your concerns.

If you have additional questions, please contact Ms. Kelly Pearce, Program Officer, via email at kelly_pearce@nps.gov or (402) 661-1552.

Sincerely,



Cameron H. Sholly
Regional Director