



Public Employees for Environmental Responsibility

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September 16, 2015

Cameron Sholly, Midwest Regional Director
National Park Service
601 Riverfront Drive
Omaha, NE 68102-4226
Cam_Sholly@nps.gov

Dear Mr. Sholly,

I write you on behalf of Public Employees for Environmental Responsibility (PEER), a non-profit organization with tax exempt status incorporated in Washington, D.C. PEER serves government employees in environmental fields such as scientists, natural resources specialists, and land managers. PEER engages in education, advocacy, and litigation to protect the environment. It has come to our attention that a building construction project at the Indiana Dunes State Park is proceeding without legal compliance that should be enforced by your office.

The Indiana Department of Natural Resources, in conjunction with a private entity, Pavilion Partners, LLC, is currently underway with the Indiana Dunes State Park Pavilion Restoration Project (the Project). In addition to restoring the historic Indiana Dunes State Park Pavilion (with restaurants and alcohol service on three levels including the roof), the Project also calls for a banquet center with two levels of indoor space for weddings, receptions, meetings, and other events, also with alcohol service. This Project threatens to significantly change the nature and function of the Park.

Historically, the Indiana Dunes State Park has been developed partially through grants from the Land and Water Conservation Fund, including the development of the Indiana Dunes State Park Pavilion. Pursuant to the Land and Water Conservation Fund Act, restrictions exist on the conversion of property developed with LWCF assistance. Restrictions include a prohibition on conversion of LWCF-developed property to uses other than for public outdoor recreation, absent approval from the National Park Service.

The Project constitutes a conversion of LWCF-developed property for a use other than public outdoor recreation, which requires NPS approval. It is our understanding that construction has begun on the Project without the approval of the NPS.



Below are the relevant sections of the Land and Water Conservation Fund Act and the Land and Water Conservation Fund State Assistance Fund Manual pertaining to conversions of LWCF property.

I. National Park Service approval is required for a conversion of Land and Water Conservation Fund property to a use other than outdoor public recreation.

Section 6(f)(3) of the Land and Water Conservation Fund Act exists to ensure protection of federal investments and the quality of LWCF-assisted resources by protecting against conversions of grant-assisted areas. According to Section 6(f)(3), “No property acquired or developed with assistance under this section shall, without the approval of the Secretary, be converted to other than public outdoor recreation uses.”¹

Further, the Land and Water Conservation Fund State Assistance Program Manual states that “Property acquired or developed with LWCF assistance shall be retained and used for public outdoor recreation. Any property so acquired and/or developed shall not be wholly or partly converted to other than public outdoor recreation uses without the approval of NPS pursuant to Section 6(f)(3) of the LWCF Act and these regulations.”²

In the event of an unapproved conversion, the Manual requires that:

“If the NPS is alerted or otherwise becomes aware of an ongoing conversion activity that has not been approved, NPS shall request the State Liaison Officer (SLO) to advise the project sponsor of the necessary prerequisites for approval of a conversion and to discontinue the unauthorized conversion activities. If the conversion activity continues, NPS shall formally notify the State and it must take appropriate action to preclude the project sponsor from proceeding further with the conversion, use, and occupancy of the area pending NPS independent review and decision of a formal conversion proposal.”³

¹ Land and Water Conservation Fund Act, 78 Stat. 897 (1965).

² Land and Water Conservation Fund State Assistance Program Manual, Federal Financial Assistance Manual Vol. 69 Ch. 8-3

³ *Id.* at 8-4.

II. The Indiana Dunes State Park Pavilion Restoration Project constitutes a conversion to a use other than outdoor public recreation, and, thus, National Park Service approval is required.

As an initial matter, the property on which the new pavilion is to be located was developed with LWCF assistance, thus triggering the necessity for compliance with Section 6(f)(3) of the Land and Water Conservation Fund Act.⁴

Next, the pavilion property is being converted to a use other than public outdoor recreation facilities. Included among Pavilion Partners proposals for the existing pavilion and new conference center are:

(1) In the pavilion, a first-floor “casual” restaurant (with alcohol service), a “gallery” for wedding rehearsal dinners, and space for a craft brew pub, a yoga/dance studio, exercise area, a photography studio, and an art studio; a second-floor “fine dining restaurant (with alcohol service); and a “rooftop lounge” (with alcohol service), accessible by elevator, including outdoor fireplaces for birthdays, wedding rehearsal dinners, and corporate events; and (2) a new banquet center (with alcohol service), intended primarily to host weddings and wedding receptions.

These proposed amenities within the pavilion and new conference center stretch the standards for “public outdoor recreation” beyond their conceivable limits. Additionally, the Indiana Department of Natural Resources has stated that it “believe[s] a conversion for LWCF use will be caused by the Pavilion Project.”⁵ Thus, the property is being converted to other than public outdoor recreation uses, and approval by NPS is required pursuant to Section 6(f)(3) of the LWCF Act.

Finally, based on our understanding, the NPS has not approved the conversion. The Indiana Department of Natural Resources admits that it has “no documentation of approval yet from NPS because we (both NPS and DNR) have not yet determined exactly what will be converted,” reasoning that “we (NPS and DNR) have agreed to wait until all building plans are final before completing the final calculation of how much area will be converted from LWCF use.”⁶

However, conversion has already begun on the existing pavilion, including partial destruction of the west plaza during construction of the comfort center; construction of a concrete elevator shaft that already protrudes through the roof of the pavilion; and, complete demolition of the interior, including removal of all bathhouse facilities. DNR’s stated reason of waiting until building

⁴ Land and Water Conservation Fund Grants, Indiana, <http://projects.invw.org/data/lwcf/grants-in.html>. The Land and Water Conservation Fund granted \$152,991.00 in 1972 for the development of the Indiana Dunes Pavilion, and \$93,172.20 in 1974 for development of Indiana Dunes Comfort Stations.

⁵ Indiana Dunes State Park Pavilion Restoration, Indiana Department of Natural Resources, <http://www.in.gov/dnr/parklake/8462.htm> (last visited Sep. 8, 2015).

⁶ *Id.*

plans are finalized until seeking NPS approval cannot be reconciled with the fact that construction has already begun on the pavilion.

III. Conclusion

It is our understanding that there has been no formal NPS approval of the conversion activity currently taking place on the Indiana Dunes State Park Pavilion. If this is not the case, please provide documentation showing otherwise.

However, if the conversion activity is, in fact, occurring without approval from the NPS, it is in violation of clear statutory requirements, and the NPS must notify the state to take action to preclude the project sponsor from proceeding further with the conversion, use, and occupancy of the area pending NPS independent review and decision of a formal conversion proposal.

We request that, pursuant to Section 6(f)(3) of the Land and Water Conservation Fund Act, activity on the Indiana Dunes State Park Pavilion Restoration project cease until statutory requirements are met. Please let me know what actions you are taking to ensure compliance with the LWCF Act in connection with this project, and to ensure that it does not go forward without such compliance.

Sincerely,

A handwritten signature in cursive script that reads "Paula Dinerstein".

Paula Dinerstein
Senior Counsel

cc: John Jarvis, Director National Park Service
Jon_Jarvis@nps.gov