



Preserving America's Heritage

October 5, 2017

Mr. Jeff Ruch  
Public Employees for Environmental Responsibility (PEER)  
Executive Director  
962 Wayne Ave #610  
Silver Spring, MD 20910

Mr. Norman Hellmers  
Dunes Action  
904 Institute Street  
Valparaiso, Indiana 46383

Ref: *Public Inquiry Regarding Section 106 Consultation for the Indiana Dunes State Park Pavilion Rehabilitation Project*

Dear Mr. Ruch and Mr. Hellmers:

The Advisory Council on Historic Preservation (ACHP) received your letter via email on September 24, 2017, regarding the referenced project, and the status of compliance with the requirements of Section 106 review of the National Historic Preservation Act (NHPA) and its implementing regulations, "Protection of Historic Properties" (36 CFR Part 800), for this undertaking. In order to respond to your inquiry seeking the ACHP's views on whether or not the Pavilion Rehabilitation Project and other recent associated activities (Project) required IN DNR and LWCF to comply with the requirements of Section 106, we contacted the U.S. Department of Interior's Land and Water Conservation Fund (LWCF) State and Local Assistance Program. This letter summarizes what we learned from LWCF staff and the Indiana State Historic Preservation Officer (IN SHPO) regarding the Indiana Department of Natural Resources (IN DNR) responsibility to conduct Section 106 reviews for the Project.

LWCF advised us that LWCF State and Local Assistance Program has provided four (4) grants to IN DNR since the early 1970s for projects located within the Indiana Dunes State Park (Park). These 4 LWCF grants funded the following activities:

1. 1972 Grant – Renovation of the first floor in the Pavilion;
2. 1974 Grant – Restoration of a Comfort Station;
3. 1984 Grant – Funding for Picnic Restrooms; and
4. 1987 Grant – Funding for a Nature Center with Support Facilities.

With the issuance of these grants, the IN DNR and the Indiana Dunes State Park are required to adhere to Section 6(f)(3) of the LWCF Act and 36 CFR 59.3 for maintaining LWCF assisted sites and facilities in public outdoor recreation use following project completion.

Furthermore, the IN DNR has to ensure that LWCF-assisted areas remain accessible to the general public, including non-residents of assisted jurisdictions. These post-completion responsibilities apply to each area or facility for which LWCF assistance is allocated, regardless of the extent of participation in the program. These responsibilities must be consistent with the contractual agreement between NPS and the State (IN DNR), as well. It is the State that is responsible for compliance with, and enforcement of, these requirements for both state and locally sponsored projects. The LWCF and the State are required to comply with the requirements of Section 106 if any land within the park boundaries is converted into a non-park use along with other LWCF Conversion Policy requirements. Moreover, the IN DNR and the Park are required to follow the guidance provided in the 2014 NPS Memorandum (2014 Memorandum), which clarifies the existing LWCF Act Section 6(f)(3) guidance regarding the use of buildings (indoor structures), in particular historic properties, located in Section 6(f)(3)-protected outdoor recreation areas. A copy of this Memorandum is provided for your review (see enclosed).

We understand that beginning in 2015, you have been in touch with LWCF and the Indiana State Historic Preservation Officer (IN SHPO) regarding the applicability of the Section 106 review process to the Project, e.g. roof repairs and lease agreement. You expressed concerns about the potential for these proposed changes to alter the integrity of the Pavilion. Regrettably, the response you received from the LWCF and Indiana SHPO clarified that the Project did not include any federal involvement, and that a Section 106 review would ONLY be required for the proposed new banquet/conference center conversion package with the IN DNR conducting the Section 106 review and the LWCF making the final determination(s). The IN SHPO further stated that the proposed Project would not alter character defining elements significant to this historic Pavilion, with the exception of the replacement windows and the entry canopy removal.

In light of our review of the background information, the ACHP finds no basis to object to LWCF's conclusion that this Project does not meet the definition of an undertaking as set for in 36 CFR 800.16(y) of our regulations. An undertaking is defined as a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval. LWCF has no approval authority for the proposed Project. Nor is LWCF awarding any grant funds, at this time. Further, the information we reviewed indicates that the proposed Project will be paid for with private funds. LWCF will provide informal technical assistance regarding changes to the existing Pavilion, however. This review is consistent with the guidance in the LWCF 2014 Memorandum, which explains that NPS' review and approval is not needed for proposed improvements or changes to buildings, including projects similar to this rehabilitation, as long as the intended use is not changed, and the State agency remains responsible for ensuring the requirements of the LWCF Act are met.

In closing, the ACHP recommends that the IN DNR continue to review this Project under state and local preservation law(s), and to consult with the IN SHPO, as appropriate. While you have raised a number of issues regarding the manner in which the IN SHPO has conducted its review of this Project, we see no basis to recommend that their previous review be invalidated, and a new review conducted under Section 106. Through ongoing collaboration among the stakeholders and the IN SHPO regarding this Project, we believe that many of your concerns can be addressed during the planning and implementation process.

We appreciate you bringing this matter to our attention. Should you have any questions, please contact Sarah Stokely at 202-517-0224 or via e-mail at [sstokely@achp.gov](mailto:sstokely@achp.gov).

Sincerely,



Charlene Dwin Vaughn, AICP  
Assistant Director  
Office of Federal Agency Programs  
Federal Permitting, Licensing and Assistance Section