

NATURAL RESOURCES COMMISSION

FINDINGS AND RECOMMENDATIONS TO THE U.S. ARMY CORPS OF ENGINEERS FOR MARINA SLIP RATE PETITIONS

INDEX A

(After August 1, 2003 through November 2011)

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RECOMMENDATIONS
OF THE
NATURAL RESOURCES
COMMISSION

*FOUR WINDS
RESORT & MARINA*

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:)	
)	
PETITION FOR RATE INCREASE	)	ADMINISTRATIVE CAUSE
BY FOURWINDS RESORT AND	)	NUMBER: 11-010P
MARINA)	

**FINDINGS AND RECOMMENDATION OF THE
NATURAL RESOURCES COMMISSION TO THE
U.S. ARMY CORPS OF ENGINEERS**

...

5. FINDINGS AND PROPOSAL BY THE COMMISSION’S DIVISION OF HEARINGS

A. Findings

The scope of the review accorded by the Commission in Information Bulletin #20 is addressed to petitions for rate establishment or increase at marinas and related facilities on properties owned or leased by the Department. Although the Department may appropriately exercise whatever rights are provided in a ground lease with respect to marina facilities, as well as any other rights provided by law or equity, the scope of review for the purpose of setting rates at marinas and related facilities is determined by IB #20, which specifies that the lessee “shall include justification for the request along with comparable rates from other marinas.” Information Bulletin #20 proceeds to specify that “the department will analyze comparable facilities to compare rates with those sought by the lessee.”

The Commission’s role in the setting of rates at marina facilities on Department leased or owned properties is to offer a recommendation regarding the appropriateness of the rates to the U.S. Army Corps of Engineers. In exercising its responsibility to offer a recommendation to the U.S. Army Corps of Engineers, the Commission has charged the appointed hearing officer with the responsibility to review the record, which includes the lessee’s request and any supporting documentation, written comments provided by affected persons and the analysis by the department in preparing a report and proposed recommendation for Commission consideration.

The Commission, through its adoption of IB #20, established as fundamental to a determination of the appropriateness of a proposed rate the consideration of rates charged by comparable marinas. The comparison therefore requires identification of marinas comparable to Fourwinds. In addition to the marina facility, Fourwinds includes a resort hotel that provides a dining room and lounge as well as a swimming pool and tennis courts among other amenities. Fourwinds offered as comparable, the rates at Kent’s, which is located on Brookville Reservoir in Liberty,

Indiana and Jamestown, which is operated on Lake Cumberland in Jamestown, Kentucky. Miller agreed that the facilities were comparable facilities.

Hammond noted in Fourwinds' petition for rate increase that \$2 million dollars has been expended on a variety of improvements, including the complete replacement of four additional docks, since its last rate increase in 2008. Additional improvements since 2008 include upgrades to parking, which has been a significant issue raised by slip renters in past fee increase proceedings, and the replacement of all old 3-4 foot wide in-water walkways with new 8 foot wide walkways. The Department's analysis concurs that there have been continual improvements at Fourwinds since it was acquired by Traina Enterprises, Inc. in 2001. Miller, on behalf of the Department, stated, "The marina is simply not the same marina as it was in 2001."

Overall, Fourwinds' rates are generally consistent with the rates of comparably sized slips at Kent's and Jamestown. As would be expected, the current rates at Fourwinds are both higher and lower than the current rates of the comparable marinas.

The consistency in rates between Fourwinds and Kent's Harbor Marina is particularly remarkable. It is noted also that Fourwinds' proposed increased rate on its 20 foot slip to \$1,360.00 remains lower than the rate of \$1,595.00 charged currently by Kent's Harbor Marina for the same size slip. This is similarly the situation with respect to the proposed rate of \$4,232.00 for many of Fourwinds' 46 foot slips for which Kent's Harbor Marina currently assesses a rate of \$4,280.00.

However, the rate comparison between Fourwinds and Jamestown actually reveals that in the majority of instances Fourwinds' current rates are already higher than Jamestown's current rates. Although Fourwinds' current rates are not significantly higher than the current rates of Jamestown, the fact that they are consistently higher reflects a need for modesty with respect to rate increases to be granted to Fourwinds.

In conducting the evaluation of the data and comments, the hearing officer sought from Hammond additional information regarding the price differentials relating to a variety of slips of the same size and the status of rates on Docks P1 through P5, that do not appear on Fourwinds' 2008 rate sheet approved by the Commission.¹ Hammond explained that the rates of certain same length slips varied because the widths of the slips were different. However, Hammond also acknowledged that in some cases the slips' rates varied despite the fact that the slips were identical. With respect to the slips on Docks P1 through P5, Hammond confirmed that the existing rates were interim rates established by the Department and that Fourwinds was seeking increases above the established interim rates. The inquiry and Hammond's response are attached as Exhibit D [*not attached*] and incorporated by reference.

Both Fourwinds and the Department sought to establish "whole dollar" rates, which has been achieved in the attached recommendation by rounding figures to the nearest whole dollar.

¹ See FINDINGS AND RECOMMENDATION BY THE NATURAL RESOURCES COMMISSION TO THE US ARMY CORPS OF ENGINEERS, dated September 16, 2008. *In the Matter of Petition for Rate Increase by Fourwinds Resort and Marina, Administrative Cause # 08-079*

The Department also noted that over time and with the replacement of a vast majority of the slips and docks, Fourwinds' now has a situation where the same sized slip on one dock may have a Commission approved rate different from the Commission approved rate of a same sized slip on another dock. The Department has expressed a desire to eliminate this price variation. Hammond's response to the hearing officer's follow-up inquiry reflects a similar desire to eliminate these rate variations. The hearing officer does not believe it is appropriate to subject Fourwinds to a reduction of rates previously approved by the Commission to accomplish this purpose. Likewise, the hearing officer does not believe that subjecting the patrons of Fourwinds to rates in excess of the rate increases proposed by Fourwinds is appropriate. With these restrictions in mind the hearing officer has attempted to accomplish equality in the rates for same sized slips to all extents possible.

General Rate Increase Determination

In reviewing all the available data that was provided by Fourwinds and the Department as well as considering the written comments submitted by slip renters at Fourwinds, the Commission has determined that, with some exceptions, Fourwinds should be granted a rate increase as follows:

1. A two percent (2%) rate increase should be granted for any slip rate that is currently more than a rate charged by either Kent's or Jamestown.
2. A four percent (4%) increase should be granted for any rate that is currently less than a rate charged by either Kent's or Jamestown or for which there is no direct comparison possible.

This general rate increase methodology has been applied to all Fourwinds' slips except its 20 foot open seasonal slips, 24 foot open annual slips, 26 foot covered annual slips, 28 foot open annual slips, certain of the 36 foot open annual slips, 42 foot open annual slips on G Dock, 46 foot open annual slips (except six K dock slips close to the gazebo, beach and restaurant and twelve G Dock slips that are 3 feet narrower), and the more expensive 50 foot open annual slips on K dock. These exceptions are discussed in more detail below.

Exceptions

Kent's current rate is higher than Fourwinds' current rate for the 20 foot open seasonal, the 24 foot open annual and the 28 foot open annual slips. Under the general methodology established above, Fourwinds would be granted a 4% rate increase. With respect to these slip sizes a 4% increase would result in a rate that remains significantly below the current rates of Kent's. In fact, the rates proposed by Fourwinds for these slips are either less than or equal to Kent's rates. Therefore, it was determined that the rate proposed by Fourwinds should be approved even though they represent increases in excess of 4%. It is therefore recommended that the 20 foot open seasonal slip be approved a rate of \$1,360.00, the 24 foot open annual slips be granted a rate of \$2,208.00 and the 28 foot open annual slips' rate be established at \$2,576.00.

With respect to the 36 foot slips for which Fourwinds currently charges \$3,357.90 and \$3,565.38, the general methodology would have resulted in a rate increase of 2%. However, a 2% rate increase for these slips would have resulted in rates that exceeded the rates sought by

Fourwinds. Therefore, with respect to these slips, the rate of \$3,420.00 and \$3,600.00 as proposed by Fourwinds is recommended for approval. It is important to note that while there is an interest in establishing equal rates for same sized slips, the 36 foot slips at Fourwinds, similar to the 36 foot slips at Kent's are of varying widths, which makes reasonable the rate differentials for these size slips.

Presently there are three rates established for 42 foot open annual slips at Fourwinds. Hammond explained that the 42 foot slips on I dock are newer construction with eight foot walkways and four foot fingers whereas the 42 foot slips on G dock are of an older design with five foot walkways and three foot fingers. Therefore, Fourwinds desires to maintain some rate difference between the G dock and I dock 42 foot slips. Despite the fact that the 42 foot slips on G dock are identical they have current approved rates of both \$3,549.00 and \$3,838.38. Fourwinds is seeking a less than 1% increase for the 42 foot slips at the \$3,838.38 rate but an increase of nearly 8% above the \$3,549.00 rate in order to have an equal rate for an equal slip. This more significant rate increase on a one-time basis to achieve equivalency in the rate of \$3,864.00 for 42 foot slips on G Dock is considered appropriate.

According to Hammond there are 46 foot slips throughout Fourwinds. With the exception of 12 slips on G dock that are three feet narrower, the 46 foot slips are all identical as to size and shape. Six of this sized slip are located on K dock near the gazebo, beach and restaurant and have a higher rate because of their desirability and the 12 narrower slips have a lower rate. The remainder of the 46 foot slips a rate of \$4,078.62. With respect to the 46 foot slips with current rates of \$3,794.70 and \$4,078.62 a 4% increase would have been appropriate under the general methodology because Kent's has slips of this size with a rate of \$4,280.00. The rate established for the six more desirable slips on K dock already exceed Kent's rate by nearly \$100.00 and therefore only a 2% increase would be appropriate for these slips under the general methodology. A 4% increase above \$3,794.70 results in a rate for the twelve narrow slips at \$3,946.00. A 2% increase above the current rate for the six more desirable K Dock slips calculates to \$4,461.00. A 4% increase above Fourwinds' current rate of \$4,078.62, which applies to the majority of Fourwinds' 46 foot slips would exceed the rate of \$4,232.00 proposed by Fourwinds and therefore it is determined that the rate of \$4,232.00 as proposed by Fourwinds for these slips should be approved.

A similar situation exists with respect to Fourwinds 26 foot slips. Presently Fourwinds has approved rates for 26 foot open annual slips, 26 foot open seasonal slips, and 26 foot covered seasonal slips. According to Hammond, since the 2008 rate increase, all of the 26 foot slips have been converted to annual slips and the slips on J dock that are reflected as seasonal slips should be listed as annual slips. Consequently, it is appropriate that the 26 foot open annual slips, whether on F dock or J dock should have the same rate whereas the covered annual slips on J dock should appropriately have a higher rate. To achieve this outcome it is recommended that the 26 foot open annual slips be granted a 4% increase to a rate of \$2,277.00 while the 26 foot covered annual slips be granted the rate proposed by Fourwinds of \$2,392.00, which amounts to an approximate 9.25% increase.

The sizes and characteristics of the slips on Docks P1 through P3 are the same as slips on other Docks and the rates recommended for approval are also the same. The slips on Docks P4 & P5

are the only 24 foot covered annual slips at Fourwinds and the rate recommended for these slips is \$660.00 more than the rate recommended for Fourwinds' 24 foot open annual slips. This differential appears appropriate.

B. Proposal

The Commission recommends that Fourwinds be granted a rate increase determined as explained herein. The column entitled "hearing officer recommended" on the spreadsheet attached as Exhibit E and incorporated by reference reflect the actual whole dollar rates resulting from the calculation methodologies explained herein. These rates are recommended for approval by the Commission.

Dated: July 26, 2011

Robert E. Carter, Jr., Secretary
Natural Resources Commission

EXHIBIT E

Fourwinds Resort & Marina Slip Rates - 3/08 through 3/11

Dock	Slip Length	Open or Covered	Seasonal or FY	Current Slip Rate	per foot of length	2012-13 Proposed		Hearing Officer Recommended
						\$	per ft	
D	36	O	F	\$3,150.42	\$87.51	\$3,312.00	\$92.00	\$3,213.00
	36	O	F	\$3,357.90	\$93.28	\$3,420.00	\$95.00	\$3,420.00
	36	O	F	\$3,565.38	\$99.04	\$3,600.00	\$100.00	\$3,600.00
	36	O	F	\$3,778.32	\$104.95	\$3,960.00	\$110.00	\$3,854.00
	46	O	F	\$4,078.62	\$88.67	\$4,232.00	\$92.00	\$4,232.00
	50	O	F	\$4,275.18	\$85.50	\$4,600.00	\$92.00	\$4,447.00
E	20	O	S	\$1,157.52	\$57.88	\$1,360.00	\$68.00	\$1,360.00
	30	C	F	\$3,923.33	\$130.78	\$4,140.00	\$138.00	\$4,002.00
F	24	O	F	\$2,020.20	\$84.18	\$2,208.00	\$92.00	\$2,208.00
	26	O	F	\$2,189.46	\$84.21	\$2,392.00	\$92.00	\$2,277.00
	28	O	F	\$2,440.62	\$87.17	\$2,576.00	\$92.00	\$2,576.00
	32	O	F	\$2,762.76	\$86.34	\$2,944.00	\$92.00	\$2,873.00
	36	C	F	\$4,707.99	\$130.78	\$4,968.00	\$138.00	\$4,896.00
G	42	O	F	\$3,549.00	\$84.50	\$3,864.00	\$92.00	\$3,839.00
	42	O	F	\$3,838.38	\$91.39	\$3,864.00	\$92.00	\$3,839.00
12 narrower	46	O	F	\$3,794.70	\$82.49	\$4,232.00	\$92.00	\$3,946.00
H	46	O	F	\$4,078.62	\$88.67	\$4,232.00	\$92.00	\$4,232.00
	48	C	F	\$6,277.32	\$130.78	\$6,624.00	\$138.00	\$6,528.00
	42	C	F	\$5,492.76	\$130.78	\$5,796.00	\$138.00	\$5,712.00
I	54	C	F	\$6,747.30	\$124.95	\$7,128.00	\$132.00	\$7,017.00
	30	C	F	\$3,923.33	\$130.78	\$4,140.00	\$138.00	\$4,002.00
J	42	O	F	\$4,389.27	\$104.51	\$4,620.00	\$110.00	\$4,565.00
	26	O	F	\$2,189.46	\$84.21	\$2,392.00	\$92.00	\$2,277.00
K	26	C	F	\$2,189.46	\$84.21	\$2,392.00	\$92.00	\$2,392.00
	46	O	F	\$4,078.62	\$88.67	\$4,232.00	\$92.00	\$4,232.00
	50	O	F	\$4,275.18	\$85.50	\$4,600.00	\$92.00	\$4,447.00
6 slips near gazebo, beach, rest	46	O	F	\$4,373.46	\$95.08	\$4,600.00	\$100.00	\$4,461.00
L	50	O	F	\$4,750.20	\$95.00	\$5,000.00	\$100.00	\$4,751.00
	60	O	F	\$5,700.24	\$95.00	\$6,000.00	\$100.00	\$5,814.00
	76	O	F	\$7,315.21	\$96.25	\$7,600.00	\$100.00	\$7,608.00
P1	30	C	F	\$3,923.33	\$130.78	\$4,140.00	\$138.00	\$4,002.00
P2	30	C	F	\$3,923.33	\$130.78	\$4,140.00	\$138.00	\$4,002.00
P3	36	C	F	\$4,707.99	\$130.78	\$4,968.00	\$138.00	\$4,896.00
P4	24	C	F	\$2,811.90	\$117.16	\$3,000.00	\$125.00	\$2,868.00
P5	24	C	F	\$2,811.90	\$117.16	\$3,000.00	\$125.00	\$2,868.00
Super Dock	72	C	F	\$9,415.98	\$130.78	\$9,936.00	\$138.00	\$9,793.00
EZ-Ports	90	C	F	\$11,769.97	\$130.78	\$12,420.00	\$138.00	\$12,241.00
		O	S	\$ 682.50	\$ -	\$ 725.00	\$ -	\$725.00

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:)	
)	
PETITION FOR RATE INCREASE	)	ADMINISTRATIVE CAUSE
BY FOURWINDS RESORT AND	)	NUMBER: 09-093P
MARINA)	

**FINDINGS AND RECOMMENDATION
BY THE NATURAL RESOURCES COMMISSION
TO THE U.S. ARMY CORPS OF ENGINEERS**

A. Findings

The scope of the review accorded by the Natural Resources Commission (*Commission*) in Information Bulletin #20 is addressed to petitions for rate establishment or increase at marinas and related facilities on properties owned or leased by the Department. Although the Department may appropriately exercise whatever rights are provided in a ground lease with respect to marina facilities, as well as any other rights provided by law or equity, the scope of review for the purpose of setting rates at marinas and related facilities is determined by Information Bulletin #20, which specifies that the lessee “shall include justification for the request along with comparable rates from other marinas.” Information Bulletin #20 proceeds to specify that “the department will analyze comparable facilities to compare rates with those sought by the lessee.”

The Commission’s role in the setting of rates at marina facilities on Department leased or owned properties is to offer a recommendation regarding the appropriateness of the rates to the U.S. Army Corps of Engineers, which will ultimately determine to accept or reject the recommendation. In exercising its responsibility to offer a recommendation to the U.S. Army Corps of Engineers, the Commission has charged the appointed hearing officer with the responsibility to review the record, which includes the “lessee’s request and any supporting documentation, written comments provided by affected persons, the analysis by the department, and oral and written statements received during the rate hearing” in preparing a report and proposed recommendation for Commission consideration.

The Commission, through its adoption of Information Bulletin #20 established as fundamental to a determination of the appropriateness of a proposed rate the consideration of rates charged by comparable marinas. The comparison therefore requires identification of marinas comparable to Fourwinds. In addition to the marina facility, Fourwinds includes a resort hotel that provides a dining room and lounge as well as a swimming pool and tennis courts among other amenities. Kent’s Harbor (*Kent’s*), a marina operated on Brookville Lake, also provides an on site resort,

café, harbor bar and access to a golf club. Hammond Marina (*Hammond*) offers banquet facilities, a lighted promenade as well as casino access including restaurants overlooking Lake Michigan. During the public hearing Mr. Hammond stated that Fourwinds is most closely comparable to Jamestown Marina (*Jamestown*), located in Jamestown, Kentucky.

Mr. Miller noted during the public hearing that some of the marinas identified on Fourwinds' spreadsheet of comparable facilities are actually small marinas that do not provide the amenities or facilities that Fourwinds provides. Mr. Miller identified those marinas as being Patoka Lake, Hoosier Hills, Eddy Creek and the State Dock at Jamestown. Mr. Miller also noted that Ventura West Marina is a coastal marina and as such is equally not a true comparable for Fourwinds. Mr. Miller agreed that Kent's Marina is similar in terms of facilities and amenities.

Based upon input from Mr. Hammond and Mr. Miller regarding the comparison of facilities, the hearing officer did not consider the rates associated with Patoka Lake, Hoosier Hills, Eddy Creek, the State Dock at Jamestown or Ventura West Marina as being true comparables. The hearing officer considered the remainder of the facilities identified by Mr. Hammond with greater emphasis being placed upon the comparison of Fourwinds to Kent's, Hammond and Jamestown. In comparing Fourwinds' rates with Jamestown, Hammond and other out-of-state marinas the hearing officer focused on Fourwinds' current rates because there is no means of estimating whether and to what extent these marinas may increase their rates in 2010. Kent's falls under the authority of Information Bulletin #20 (Second Amendment) and the hearing officer was aware that no rate increase had been sought, therefore Kent's current rates, which will also apply throughout 2010, were compared to Fourwinds proposed rates.

General Comparison:

The rates charged by Jayhawk Marina (Hillsdale Lake, KS), Sunset Marina & Resort (Dale Hollow, TN), Starboard Cove Marina (Flowery Branch, GA) and Grandpapy Point Resort & Marina (Denison, TX) are lower across the board than the current rates charged by Fourwinds. The rates charged by four (4) marinas, Delaware State Park Marina (Rehoboth, DE), Duffy Creek Marina (Georgetown, MD), Mears Point Marina (Grasonville, MD) and Oselka Marina (New Buffalo, MI) were consistently higher than the current rates charged by Fourwinds. In considering the rates of Waukegan Harbor (Waukegan, IL), McKinley Marina (Milwaukee, WI) and Bald Knob Marina (Johnsburg, IL) the hearing officer determined that the rates being charged were less than Fourwinds' rates but the rates were for seasonal slips whereas Fourwinds' rates were annual rates. Taking into consideration the seasonal nature of these rates, they appear generally consistent with Fourwinds' annual rates.

Comparison to Jamestown:

A comparison to Jamestown is complicated, particularly for the shorter slips, by the fact that it has slips of only 20', 26', 40', 50' and 70' whereas Fourwinds maintains slips that increase in two foot to four foot increments from 18' to 54'. Fourwinds also maintains slips of 60', 72', 76' and 90'. However, a comparison of Fourwinds' to Jamestown's rates is not impossible. Fourwinds 20' slips are all seasonal while Jamestown's 20' slips are full year rates and Jamestown has only open 20' slips. Jamestown's full year rates for 20' open slips as compared to Fourwinds' 20' open slip seasonal rates reveals that Fourwinds' rate is up to \$120.00 more than Jamestown's lower rate and up to \$1,479.60 less than Jamestown's most expensive rate.

Except for a few slip sizes, Fourwinds' current rates are generally higher than Jamestown's current rates. Fourwinds' current annual rates for a 36' open slip are \$3,150.00, \$3,357.00, \$3,565.38 and \$3,778.00 while Jamestown charges only \$3,595.00 for an open 40' slip. Presently, Fourwinds' rates for one of its 36' slips categories is higher than Jamestown's rate for its four foot (4') longer slip and for two other categories of 36' slips, Fourwinds' rate is only slightly less than Jamestown's 40' slip rate. Fourwinds presently charges an annual rate of \$4,078.62 for a 46' open slip and proposes an increase in that rate to \$4,282.55 while Jamestown charges only \$3895.00 for a slip of this exact size and type. Fourwinds bills \$6,277.32 annually for a 48' covered slip while a two foot longer slip at Jamestown rents for only \$6,195.00 annually. Fifty foot open slips are presently rented at Fourwinds for either \$4,275.18 or \$4,750.20 while Jamestown presently rents this same size and type of slip for \$4,495.00.

In some instances Fourwinds' rates are not higher than Jamestown's rates. Fourwinds 42' open slips are currently billed annual rates of \$3,549.00, \$3,838.38, \$4,389.27. It would be expected that a 42' open slip rate would be slightly higher than Jamestown's rate for a two foot shorter, or 40' open slip, and in this size category Fourwinds rates do not appear out of line. A comparison of Jamestown's 40' covered slip to Fourwinds' 42' covered slip reveals that Fourwinds charges only \$472.40 more for a two foot longer covered slip and this too is not a significant disparity. Furthermore, Jamestown charges \$9,395.00 for a 70' covered slip while Fourwinds presently charges only \$20.98 more for a two foot longer covered slip and proposes a rate for its 72' covered slip that is only \$491.00 more than Jamestown's present rate for its 70' slip.

Comparison to Kent's Harbor:

Kent's and Fourwinds share only four (4) slip sizes, 20', 26' 36' and 50', that are the same between the two marinas. An evaluation of rates relating to those sizes of slips reveals that with the exception of the 20' slips, Fourwinds' rates are currently higher than Kent's rates and its proposed rates would increase the disparity between these two marinas' rates.

Both Fourwinds' present and proposed rate for its 20' open seasonal slips remain less than Kent's rate of \$1,595.00. In all other respects Fourwinds' current rates are higher than Kent's rates for same sized slips. Fourwinds' proposed rates would be \$65.15 or \$108.93 higher for 26' open slips, depending upon category. Thirty-six foot slips would rent at Fourwinds for \$442.94, \$660.80, \$878.65 or \$1,102.24 more than Kent's, depending upon category. Under its proposed rates and dependant upon category, Fourwinds could charge either \$873.94 or \$1,372.21 more than Kent's for 50' open slips.

Comparison to Hammond Marina:

Fourwinds maintains three (3) categories of slips that are also maintained by Hammond Marina. Fourwinds' current rates are lower by \$188.00 for one category of 50' slips and \$90.80 lower for another category of 50' slips. With respect to rates for its 60' slips, Fourwinds current rate is \$82.24 higher. The differential in the rates as compared between these two marina is not notable.

Discussion:

In general terms, Fourwinds rates are consistent with or higher than rates charged by the majority of the marinas identified as having comparable facilities. The marinas identified as having rates consistently higher than Fourwinds are located in Maryland and Delaware, not in the Midwestern part of the United States.

More specifically, however, a comparison of Fourwinds' rates with the three marinas that were considered to be most similar to Fourwinds in terms of facilities and amenities reveal that Fourwinds' rates are presently consistent with the rates of those marinas. Because Kent's is a marina subject to the requirements of Information Bulletin #20 and it did not petition for an increase of rates, it is certain that Kent's rates for 2010 will be unchanged from current rates, some of which are significantly lower than some of Fourwinds' rates. Because Jamestown and Hammond are not subject to Information Bulletin #20 it is possible that these marinas could raise rates for the 2010 boating season.

While it is possible, there is no indication in the record that Hammond actually anticipates any type of increase in rates for 2010. For the sizes of slips at Hammond that are consistent with certain slip sizes and categories maintained at Fourwinds, Hammond's current rates are generally consistent although slightly higher than Fourwinds' current rates. While an increase of rates at Hammond would increase the differential in rates between Hammond and Fourwinds for 50' and 60' slips, that potential result is not determinative of Fourwinds petition, particularly with respect to the numerous additional sizes and categories of slips maintained by Fourwinds.

Mr. Hammond reflected that Jamestown plans a potential rate increase of two – five percent (2 – 5%) for the 2010 season. However, with respect to many slip sizes and categories Jamestown's current rates are lower than Fourwinds' current rates and a 2 – 5% increase would bring many of those rates to equality with Fourwinds' current rates. For example, a 2 – 5% increase in Jamestown's rate for a 46' open slip would bring that rate to between \$3,972.90 - \$4,089.75 as compared to Fourwinds' current rate of \$4,078.62 that it proposes to increase up to \$4,282.55.

The hearing office acknowledged that Fourwinds has made significant improvements to the marina in the years since 2001, when it acquired the marina property. The Commission does not dispute that these improvements have involved a tremendous investment of financial resources and that future plans, as highlighted by Mr. Hammond during the public hearing, will involve the investment of substantial additional resources into this property. There is no intent to stifle Fourwinds' ability to earn a profitable return from its investment nor is intended that Fourwinds' marina development should be hampered, however, based upon a comparison of rates for similar facilities, the Commission is unable to recommend approval of Fourwinds' petition to increase rates for 2010. It is the Commission's determination, based upon the foregoing analysis, that Fourwinds' proposed 2010 rates will in most cases exceed the fair market rates being charged by marinas operating and maintaining comparable facilities and providing similar amenities.

B. Proposal

Consideration of all available information indicates that the rate increase sought by Fourwinds should be denied in its entirety. The Commission recommends to the U.S. Army Corps of

Engineers that Fourwinds' requested increase in rates be denied and that the current rates recommended for approval by the Commission on September 28, 2007 and September 16, 2008 and accepted by the U.S. Corps of Engineers be retained.

Dated: September 25, 2009

Robert E. Carter, Jr.,
Secretary, Natural Resources Commission

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:)	
)	
PETITION FOR RATE INCREASE	)	ADMINISTRATIVE CAUSE
BY FOUR WINDS RESORT AND	)	NUMBER: 08-079P
MARINA)	

**FINDINGS AND RECOMMENDATION
BY THE NATURAL RESOURCES COMMISSION
TO THE U.S. ARMY CORPS OF ENGINEERS**

A. Findings

Four Winds Resort and Marina (*Four Winds*) found it necessary to submit a petition for rate increase in 2008 due to a failure to obtain formal Natural Resources Commission (*Commission*) establishment of rates for certain sizes of slips through its 2007 petition. Despite Four Winds' intent to obtain the establishment of rates for these slips the failure to identify and expressly seek approval of certain interim rates authorized by the Department prevented that from occurring. A certain amount of background information is provided here for the purpose of facilitating understanding of the findings and proposal.

During the winter of 2004 several docks at Four Winds were damaged or destroyed by a snowstorm and resulting snow accumulations. During the reconstruction of these docks, the sizes of certain slips were modified. Because the modified slips were of sizes different from the sizes of slips for which Four Winds had previously obtained rate approval from the Commission and U.S. Army Corps of Engineers, in 2005 Four Winds received Department authorization, in accordance with Information Bulletin #20 (First Amendment), to charge interim rates for these slips.

The last sentence of Section 6 of Information Bulletin #20 was interpreted by Doug Traina, President and CEO of TEI Industries, the owner of Four Winds, to require Four Winds to "include any interim rates for final approval the very next time we request a rate increase." *See letter dated March 10, 2008*). Contrary to Mr. Traina's interpretation, the actual intent was that a marina receiving authorization to charge an interim rate would file a petition by April 1 following receipt of that authorization in order to seek Commission approval of that rate or the establishment of a different rate. Due to Four Winds interpretation of Section 6, the interim rates for the new sizes of slips, were not brought before the Commission in 2006 but instead were included in Four Winds' 2007 rate increase petition.

Prior to 2007, the Commission's last rate making proceeding involving Four Winds occurred in 2002. In 2007, Four Winds' petition identified the newly sized slips and listed the associated

current (interim) rate and proposed increases to that rate; however, throughout the review of Four Winds' petition there was no express identification of any rates as interim rates or notification that the Commission had never established a permanent rate for those slips. Consequently, the hearing officer proposed that the Commission recommend to the U.S. Army Corps of Engineers (USACE) that a percentage increase above the 2002 rates be approved and the Commission adopted that approach. Ultimately, the Commission offered the following recommendation to the USACE:

It is recommended that the rates approved for Four Winds Resort & Marina in 2002 be increased as follows:

1. A 3% increase is recommended for slips located on Four Winds' A, B, & C Docks.
2. Notwithstanding paragraph 16, Four Winds should be authorized to increase rates up to 5% for fifty (50) slips on Dock A that have already been replaced and twenty (20) slips on Dock B that are new.
3. With respect to all remaining slips within Four Winds' marina facility it is recommended that Four Winds be granted a rate increase of 5%.

See Findings and Recommendation by the Natural Resources Commission to the U.S. Army Corps of Engineers, September 28, 2007. The impact of the Commission's 2007 recommendation was to increase only those rates established in 2002, which failed to establish rates for the newly sized slips that were not in existence in 2002. Consequently, the instant petition involves rates for only 30' covered slips, 36' covered slips, 42' uncovered slips, 48' covered slips, 54' covered slips, 72' covered slips and 76' uncovered slips (*collectively referred to as "Effected Slips"*).

The scope of the review accorded by the Commission in Information Bulletin #20 (First Amendment) is addressed to petitions for rate increase at marinas and related facilities on properties owned or leased by the Department. Although the Department may appropriately exercise whatever rights are provided in a ground lease with respect to marina facilities, as well as any other rights provided by law or equity, the scope of review for the purpose of setting rates at marinas and related facilities is determined by Information Bulletin #20 (First Amendment), which specifies that the lessee "shall include justification for the increase request along with comparable rates from other marinas." Information Bulletin #20 (First Amendment) proceeds to specify that "the department will analyze comparable facilities to compare rates with those sought by the lessee."

The Commission's role in the setting of rates at marina facilities on Department leased or owned properties is to offer a recommendation regarding the appropriateness of the rates to the USACE, which will ultimately determine to accept or reject the recommendation. In exercising its responsibility to offer a recommendation to the USACE, the Commission has charged the appointed hearing officer with the responsibility to review the record, which includes the "lessee's request and any supporting documentation, written comments provided by affected persons, the analysis by the department, and oral and written statements received during the rate hearing" in preparing a report and proposed recommendation for Commission consideration.

The Commission, through its adoption of Information Bulletin #20 (First Amendment) established as fundamental to a determination of the appropriateness of a proposed rate increase the consideration of rates charged by comparable marinas. The comparison therefore requires identification of marinas comparable to Four Winds. In addition to the marina facility, Four Winds includes a resort hotel that provides a dining room and lounge as well as a swimming pool and tennis courts among other amenities. Similarly, Kent's Harbor operates a marina that also provides an on site resort, café, harbor bar and access to a golf club, while the Hammond Marina (*Hammond*) offers banquet facilities, a lighted promenade as well as casino access including restaurants overlooking Lake Michigan. As compared to Kent's Harbor and Hammond, Four Winds' rates are consistently, although in some cases not significantly higher. Four Winds' proposed rate for a 30' covered slip is \$3,923.33, while Kent's Harbor, following the 2008, effective 2009, rate increase that the hearing officer has recommended for approval, charges as much as \$3,085.00 for an open 30' slip. Given that one rate is for a covered slip while the other is for an open slip, the difference in rates is not deemed substantial. However, Four Winds seeks the establishment of a rate for a 54' covered slip at \$6,747.30 whereas Kent's Harbor, again under increased 2009 rates recommended for approval by the hearing officer, would be charging only \$3,917.00 for the same length open slip. A variant of \$2,830.30 is significant when the only difference in the slips is that Four Winds' slip is covered while Kent's Harbor's is open. However, Hammond, which does not have 54' slip, charges up to \$4,610.00 for a 50' slip. This rate, when compared to Four Winds' proposed rate for a 54' covered slip is somewhat less disparate.

Without doubt Four Winds' proposed rates are higher than the increased rates recommended for approval by the hearing officer for Hoosier Hills Marina (*Hoosier Hills*) and Patoka Lake Marina (*Patoka*). However, neither Patoka nor Hoosier Hills offer on-site lodging or other amenities similar to Four Winds, Kent's Harbor or Hammond. In that light, these marinas do not offer good comparisons.

The individuals who offered comments raised issues consistent with the concerns discussed during the processing of Four Winds' 2007 rate petition. Certain of the comments reflected that amenities available to the marina patrons have been reduced as a result of the closure of the hotel. Particularly, some of the comments observe that the lounge, dining room and accommodations as well as the swimming pool and beach have been unavailable for themselves and their guests because of the closure of these facilities pending sale of Four Winds. The hearing officer reflects that Four Winds cited improvements to these facilities during the processing of its 2007 rate petition and in response the marina patrons claimed that these improvements did not justify increased rates at the marina as they were predominantly for the benefit of hotel guests. For instance; "the new beach...is nice but not a part of the boating experience. It is great for the hotel guests," *Comment of Jan Warren, Report Of Hearing Officer, Including Findings And Proposal To The Natural Resources Commission As To Its Recommendations To The U.S. Army Corps Engineers*, and "the restaurant is mainly for Hotel Guests." *Comment of Cheryl Moore, Id.*

A second continuing concern relates to the reconstruction of docks to include slips of greater lengths than what marina patrons were accustomed to leasing. This occurrence required Four Winds to obtain authorization to charge interim rates with respect to new and reconstructed

docks of lengths that were different than slip sizes that existed in 2002 when Four Winds' rates were last established by the Commission. Certain individuals infer that Four Winds' act of increasing the length of the slips was designed to create the ability to increase the rates charged to existing slip holders. During the reconstruction of the docks it stands to reason that Four Winds would exercise good management practices in determining the sizes of slips appropriate for the facility. In addition, Mr. Hammond explained that engineering design standards dictated that the slip lengths be determined on six (6) foot increments, which of necessity forced, for example, a 26' slip to become a 30' slip. Despite Four Winds' authorization by the Department to charge an interim rate for the Effected Slips, Four Winds deferred implementation of that increased rate for one season in order to allow its patrons the opportunity to stay in the larger slips at the rate for the smaller slip to assess their ability and desire to stay in the larger slip at the higher rate. Those patrons who wished to move to smaller, less expensive slips were accommodated.

There is no question that the intent of Information Bulletin #20 (First Amendment) was that a marina authorized to charge an interim rate would commence the process for receiving Commission establishment of a permanent rate by April 1 following approval of the interim rate. Based upon this understanding of Section 6 of Information Bulletin #20 (First Amendment), certain Four Winds' patrons believe that the interim rates that were implemented in 2006 were wrongly charged by Four Winds in 2007. There is also concern expressed that in 2008 Four Winds billed patrons located on the Effected Slips at the interim rate plus the 5% increase that was authorized in 2007 for other slips at Four Winds without regard for the fact that the Commission did not officially approve the interim rates or any increase to the interim rates for the Effected Slips through the 2007 petition.

As previously stated Mr. Traina believed that the interim rate was effective until the next time Four Winds sought a rate increase and was unaware that, as written, the Commission's recommendation to the USACE resulted in a failure to establish rates for the Effected Slips. During the 2008 rate increase cycle, three (3) marinas, in addition to Four Winds, filed petitions for rate increase. During the review of those petitions, the hearing officer as well as Department representative Gary Miller discussed the interpretation of Section 6 of Information Bulletin #20 (First Amendment) with the other marina operators. Each of the operators indicated that they would have had the same understanding as did Mr. Traina. While the hearing officer believes Section 6 of Information Bulletin #20 (First Amendment) is clear in its intent, based upon the representations of these marina operators and owners, plans are being made to review and possibly amend Information Bulletin #20 to address this matter.

In any event Four Winds is entitled to charge patrons for the use of the Effected Slips. While the patrons do not believe they should be charged the interim rate for 2007 or 2008 due to the fact that the interim rate should have been reviewed by the Commission before implementation beyond 2006 they offer no means of determining what the appropriate rate would be. It is assumed by the hearing officer that the patrons presently located in one of the Effected Slips desires to be charged at their previous rate, which was for a smaller slip, and this result is simply unfair under the circumstances.

The hearing officer would like to reiterate concerns expressed in her 2007 Report regarding the need of Four Winds to address security and parking as well as provide proper janitorial and maintenance services. The hearing officer understands Mr. Hammond's explanation regarding the closure of the hotel during renovations and preparations for sale of the marina and resort. While it stands to reason that amenities and services might be diminished during this time, Four Winds must remain cognizant that its marina patrons properly expect that routine grounds maintenance, security, trash removal, etc. will continue despite the impending sale and closure of the hotel.

Similar to the determination reached in 2007, the hearing officer is of the opinion that the interim rates approved by the Department should be confirmed and increased by 5% simply to address increased costs of doing business. However, the 5% increase should not take effect until 2009. Four Winds marina patrons leasing one of the Effected Slips should be charged the Department authorized interim rate for the 2008 season. Any marina patron who has already paid the increased rate for 2008 should be awarded a refund or credit.

B. Proposal

Consideration of all available information indicates that the rate increase sought by Four Winds above the Department authorized interim rates for the Effected Slips should be recommended to the U. S Army Corps of Engineers for approval for the 2009 season. Four Winds should be granted authority to charge the Department's established interim rates for the 2008 season. Any marina patron who has already paid the increased rate for 2008 should be awarded a refund or credit.

A listing of the rates for the Effected Slips recommended for approval through the instant proceeding to be implemented in 2009, as well as the rates established for implementation in 2008 pursuant to Findings and Recommendations by the Natural Resources Commission to the U.S. Army Corps of Engineers, September 28, 2007, are identified below as "Fourwinds Slip Rate".

September 16, 2008

Robert E. Carter, Jr.
Secretary, Natural Resources Commission

Dock	Slip Length	Open or Covered	Seasonal or F/Y	2008 Fourwinds Slip Rate
A	18	C	S	\$1,215.81
	24	C	F	\$2,811.90
B	20	O	S	\$1,157.52
	20	C	S	\$1,569.31
C	20	C	S	\$1,569.31
	24	C	S	\$2,040.64
	20	O	S	\$1,135.47
	24	O	F	\$1,981.72
	26	O	F	\$2,147.76
D	36	O	F	\$3,150.42
	36	O	F	\$3,357.90
	36	O	F	\$3,565.38
	36	O	F	\$3,778.32
	46	O	F	\$4,078.62
	50	O	F	\$4,275.18
E	30	C	F	\$3,923.33
F	24	O	F	\$2,020.20
	26	O	F	\$2,189.46
	28	O	F	\$2,440.62
	32	O	F	\$2,762.76
	36	C	F	\$4,707.99
G	42	O	F	\$3,549.00
	42	O	F	\$3,838.38
	46	O	F	\$3,794.70
	46	O	F	\$4,078.62
	48	C	F	\$6,277.32
H	42	C	F	\$5,492.76
	54	C	F	\$6,747.30
I	30	C	F	\$3,923.33
	42	O	F	\$4,389.27
J	32	C	F	\$3,532.62
	26	C	F	\$3,041.22
	26	C	S	\$2,189.46
K	46	O	F	\$4,078.62
	50	O	F	\$4,275.18
	46	O	F	\$4,373.46
	50	O	F	\$4,750.20
	60	O	F	\$5,700.24
	76	O	F	\$7,315.31
SD	72	C	F	\$9,415.98
EZ-Port	-	O	S	\$682.50

EXHIBIT
B

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:)	
)	
PETITION FOR RATE INCREASE	)	ADMINISTRATIVE CAUSE
BY FOURWINDS RESORT &	)	NUMBER: 07-094P
MARINA)	

**FINDINGS AND RECOMMENDATION
BY THE NATURAL RESOURCES COMMISSION
TO THE U.S. ARMY CORPS OF ENGINEERS**

A. Findings

1. The scope of the informal administrative review accorded by the Commission in Information Bulletin #20 is addressed to petitions for rate increase at marinas and related facilities on properties owned or leased by the Department.
2. Although the Department may appropriately exercise whatever rights are provided in a ground lease with respect to marina facilities, as well as any other rights provided by law or equity, the scope of review provided in Information Bulletin #20 (First Amendment) is limited to the subject of the petition for rate increase. Indeed, the Commission ultimately recommends action on the petition to the U. S. Army Corps of Engineers, and the Corps may either accept or reject the recommendation.
3. In determining whether to recommend that a rate increase be granted, the Department is to analyze similar facilities and compare rates with those sought by the petition. Implicit to the public hearing is that interested persons may also seek and analyze comparables.
4. The public comments received during the consideration of Fourwinds' petition reveal a certain degree of tension between patrons and the marina management, which has resulted in objections to the sought rate increase. Without doubt, Fourwinds has accomplished many improvements to the marina and resort property since its 2001 purchase. The dispute between the slip holders and the marina management generally focuses on the perception of the marina patrons that the vast majority of physical improvements and support services as well as intangible assets, such as the good will of the management, benefit the hotel and its guests but not the marina or the slip holders.
5. Three predominant issues; security, parking and marina maintenance; appear to lie at the center of the tension.
6. Fourwinds concedes that parking is not optimal but offered no opposition to the slip holders' contention that Fourwinds profits from its use of a significant portion of the parking lots for the storage of boats and trailers. Photographs provided by the slip holders confirm that a significant

number of parking lot spaces are filled with stored trailers and boats while weekend parking appears to overflow into grass areas around the marina. With respect to maintenance, the slip holders best demonstrated this concern by the fact that non-slip strips, known to be in need of replacement since the 2006 boating season, had not been installed by July 2007. Fourwinds also offered no response with respect to this concern.

7. Pertaining to the security issue, the slip holders provided multiple examples of security not being on site when called and of events that occurred over extended periods of time that, in their opinion, would not have been possible if security officers had been visible in the marina. In response, Fourwinds maintains that it has retained security services that, by contract, are dedicated 95% to the marina and requested that the slip holders monitor the security situation and advise the management if appropriate security is not visible.

8. Mr. Hammond explained that while the slip holders may not view the to-date improvements as a benefit to them, he expressed his perception that each of the improvements is but a “small piece of a larger puzzle” intended to improve Fourwinds overall. However, those who commented in opposition to the rate increase appear uninformed about Fourwinds’ long-term plans. The hearing officer observes that communication between marina patrons and Fourwinds management may be lacking but wishes to also note that all individuals involved appear to be reasonable in their opinions and perspectives and she attributes the communication failures to no particular person or group of persons. Quite possibly the formation of a marina committee designed to liaise with Fourwinds management, as suggested by one commenter, would be the best method of overcoming, or decreasing, the obvious animosity that presently exists.

9. All in all, there is no doubt that many of the improvements cited by Fourwinds involve efforts readily identifiable with the hotel, but they are amenities available to marina patrons as well. One individual commented that the improvements are nice for weddings and other hotel events but observed that these amenities are of no use to the boaters. However, the gazebo and water pond area available to the marina patrons for their weddings or their children’s weddings, the same as these areas are available to hotel guests. Whether the marina slip holders make use of any particular amenity, such as the beach, the pool, the gazebo area, the expanded restaurant and lounge, except those located directly at the marina is their choice. With respect to the actual marina area, there have also been vast improvements made there as well, with the replacement and renovation of docks and security gated dock access. With that in mind, it is also noted that continuing improvement at the marina, particularly with respect addressing problems with maintenance, security, malfunctions with the security gates and the renovation of A, B & C Docks, remains necessary.

10. With respect to marina rates, the use and analysis of comparables is the fundamental consideration in determining the propriety of proposed rate increases to marina slips.

11. In the past, Fourwinds’ rates were more comparable to coastal marinas, but due to rate increases associated with inland marinas over the past few years, Fourwinds’ proposed rates, while continuing to be somewhat higher than other inland marinas, are more comparable. However, the Department notes that it has denied requests for increases that would result in fees lower than those proposed by Fourwinds.

12. It is recommended that Fourwinds' requested rate increase of 10% across the board, to be implemented at the discretion of Fourwinds, be rejected.

13. The Department suggests that Fourwinds' rate increase should be 3% for A, B & C Docks, which remain in need of replacement, and 8% for the remainder of the marina.

14. Further review of the Department's comparables reveals that in many instances Fourwinds' 2007 rates are already higher than rates charged by other inland marinas for slips of the same or similar size. For instance Fourwinds presently charges \$4,483.80 for a yearly thirty-six foot covered slip, whereas three other marinas charge only \$3,100.00, \$3,650.00 and \$3,465.00 for a comparable slip. While there are some isolated instances in which Fourwinds' existing rates are less than the rates charged by other marina's identified by the Department, that result is not consistent across all identified marinas with comparably sized slips.

15. This consideration dissuades the hearing officer from recommending approval of the Department's suggested 8% rate increase for any portion of Fourwinds. However, the preponderance of the information in the record discloses that Fourwinds should be granted some rate increase in recognition of the improvements made to date and to encourage continued facility improvement.

B. RECOMMENDATION

It is recommended that the rates approved for Fourwinds Resort & Marina in 2002 be increased as follows:

1. A 3% increase is recommended for slips located on Fourwinds' A, B & C Docks.
2. Notwithstanding paragraph 16, Fourwinds should be authorized to increase rates up to 5% for fifty (50) slips on Dock A that have already been replaced and twenty (20) slips on Dock B that are new.
3. With respect to all remaining slips within Fourwinds' marina facility it is recommended that Fourwinds be granted a rate increase of 5%.

Dated: September 28, 2007

Robert E. Carter, Jr. Secretary
Natural Resources Commission

HOOSIER HILLS MARINA, INC.

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:)
)
PETITION FOR RATE INCREASE) **ADMINISTRATIVE CAUSE**
BY HOOSIER HILLS MARINA, INC.) **NUMBER: 09-094P**

**FINDINGS AND RECOMMENDATION
BY THE NATURAL RESOURCES COMMISSION
TO THE U.S. ARMY CORPS OF ENGINEERS**

A. Findings

The scope of the review accorded by the Natural Resources Commission (*Commission*) in Information Bulletin #20 is addressed to petitions for rate establishment or increase at marinas and related facilities on properties owned or leased by the Department. Although the Department may appropriately exercise whatever rights are provided in a ground lease with respect to marina facilities, as well as any other rights provided by law or equity, the scope of review for the purpose of setting rates at marinas and related facilities is determined by Information Bulletin #20, which specifies that the lessee “shall include justification for the request along with comparable rates from other marinas.” Information Bulletin #20 proceeds to specify that “the department will analyze comparable facilities to compare rates with those sought by the lessee.”

The Commission’s role in the setting of rates at marina facilities on Department leased or owned properties is to offer a recommendation regarding the appropriateness of the rates to the U. S. Army Corps of Engineers (*USACE*), which will ultimately determine to accept or reject the recommendation. In exercising its responsibility to offer a recommendation to the USACE, the Commission has charged the appointed hearing officer with the responsibility to review the record, which includes the “lessee’s request and any supporting documentation, written comments provided by affected persons, the analysis by the department, and oral and written statements received during the rate hearing” in preparing a report and proposed recommendation for Commission consideration.

The Commission, through its adoption of Information Bulletin #20 established as fundamental to a determination of the appropriateness of a proposed rate the consideration of rates charged by other marinas for comparable facilities. The Department’s provided spreadsheet of comparable facilities reveals that the rates proposed by Hoosier Hills are generally consistent with rates charged by other marinas for same or similar sized slips. Hoosier Hills’ proposed rate is approximately \$700.00 higher than the rate charged by Conley Bottom, which according to Mr.

Miller is the marina with the most similar facilities. However, Hoosier Hills' sought rate is less than the rate charged by the remaining four (4) marinas²

Hoosier Hills has already rented one of the new slips and reports having two (2) people potentially interested in the remaining 22' x 80' slip.

The preponderance of the evidence available for consideration reveals that the interim rates previously authorized by the Department for the 22' x 80' slips do not exceed fair market rates and should be established as permanent rates as sought by Hoosier Hills.

B. Proposal

Consideration of all available information indicates that the rate of \$4,840.00 as sought by Hoosier Hills for the 22' x 80' slips, beginning with the 2010 season, is reasonable. That rate is, therefore, recommended to the U. S Army Corps of Engineers for approval.

Dated: September 25, 2009

Robert E. Carter, Jr.
Secretary, Natural Resources Commission

² For comparison purposes the square footage of the Kent's Harbor slip was calculated using the dimension 70' x 22' to arrive at a square footage rate of \$4.39, and the Harbor Lights slips square footage was calculated using the dimension of 75' x 22', which equates to a rate of \$2.80 per square foot. Hoosier Hills square footage rate is \$2.75. (The public hearing officer notes that she is uncertain whether the width of the Kent's Harbor and Harbor Lights slips are 20' or 22'. A square footage calculation based upon a 20' width would increase the square footage rate being charged by Kent's Harbor and Harbor Lights making Hoosier Hills' proposed rate even less by comparison.)

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:)
)
PETITION FOR RATE INCREASE) **ADMINISTRATIVE CAUSE**
BY HOOSIER HILLS MARINA, INC.) **NUMBER: 08-080P**

**FINDINGS AND RECOMMENDATION
BY THE NATURAL RESOURCES COMMISSION
TO THE U.S. ARMY CORPS OF ENGINEERS**

A. Findings

The scope of the review accorded by the Natural Resources Commission (*Commission*) in Information Bulletin #20 is addressed to petitions for rate increase at marinas and related facilities on properties owned or leased by the Department. Although the Department may appropriately exercise whatever rights are provided in a ground lease with respect to marina facilities, as well as any other rights provided by law or equity, the scope of review for the purpose of setting rates at marinas and related facilities is determined by Information Bulletin #20 (First Amendment), which specifies that the lessee “shall include justification for the increase request along with comparable rates from other marinas.” Information Bulletin #20 (First Amendment) proceeds to specify that “the department will analyze comparable facilities to compare rates with those sought by the lessee.”

The Commission’s role in the setting of rates at marina facilities on Department leased or owned properties is to offer a recommendation regarding the appropriateness of the rates to the U. S. Army Corps of Engineers (*USACE*), which will ultimately determine to accept or reject the recommendation. In exercising its responsibility to offer a recommendation to the USACE, the Commission has charged the appointed hearing officer with the responsibility to review the record, which includes the “lessee’s request and any supporting documentation, written comments provided by affected persons, the analysis by the department, and oral and written statements received during the rate hearing” in preparing a report and proposed recommendation for Commission consideration.

The Commission, through its adoption of Information Bulletin #20 established as fundamental to a determination of the appropriateness of a proposed rate increase the consideration of rates charged by other marinas for comparable facilities. The Department’s provided spreadsheet of comparable facilities reveals that the increased rates proposed by Hoosier Hills are generally consistent with or lower than rates charged by other marinas. One example of this can be found with respect to the 16’ x 45’ slip for which Hoosier Hills proposed an increased rate of \$2,300.00. The comparable spreadsheet reveals no other marina charging less than \$3,535.00 for

a slip of this length. It is also apparent that Hoosier Hills has considered the rates of comparable facilities in making its request because it has requested no rate increase in instances where its rates are already consistent, or higher, than other marina's rates. For instance, Hoosier Hills has requested no increase in the present \$2,500.00 rate for its 12' x 30' single berth covered slip where comparable slips where ten (10) of eighteen marinas are charging rates somewhat less than Hoosier Hills' present rate.

Hoosier Hills has not increased rates in five (5) years, but understandably has experienced increases in the costs of doing business. Within its Petition, Mr. Dukes reflects that a variety of improvements have been made to the marina, including the replacement of steps with bridges for improved access to boaters with disabilities, the reconstruction of both A-Dock and B-Dock and the new construction of C-Dock. Additionally, Hoosier Hills has added a year round sewage system to the houseboat dock.

The one written comment received complains that the percentage increase of 15% associated with the 16' x' 45' double berth slip is disproportionate to the 10% increases requested for other slip sizes on A-Dock. The accuracy of this comment is acknowledged. While the percentage increase may be higher than the percentage increase proposed for other slips, the discussion above reflects that the proposed increased rate for a slip of this size remains nearly \$1,200.00 less than slips of this size at other marinas.

The preponderance of the evidence available for consideration reveals that the interim rates previously authorized by the Department should be confirmed and that the increased rates sought by Hoosier Hills, including the increases to the interim rates for 20' x 80' single berth, 20' x'75' single berth, 16' x 36' double berth and 14' x 36' double berth slips, are reasonable and appropriate and should properly be recommended for approval.

B. Proposal

Consideration of all available information indicates that the rate increase sought by Hoosier Hills for the existing facility beginning with the 2009 season should be recommended to the U. S Army Corps of Engineers for approval.

The rates recommended for approval are identified as "Proposed Rate" on Exhibit A.

September 16, 2008

Robert E. Carter, Jr.
Secretary, Natural Resources Commission

The proposed slip and storage rates are as follows:

	<u>Current</u>	<u>Proposed rate</u>	<u>\$/ft2</u>	<u>% change</u>
A-Dock				
20' X 80' single berth *	4000	4400	2.75	10
20' x 75' single berth *	3750	4125	2.75	10
18' X 70' single berth	3300	3640	2.88	10.3
17' X 60' single berth	3080	3390	3.53	10.06
18' X 70' double berth	2750	3050	2.42	10.9
18' X 60' double berth	2530	2790	2.58	10.28
16' x 50' double berth	2310	2550	3.18	10.38
16' X 45' double berth	2000	2300	3.19	15.0
B-Dock				
12' X 24' Single Covered *	2000	2000	6.94	0
12' X 30' Single Covered *	2500	2500	6.94	0
12' X 24' double berth	900	950	3.29	5.55
C-Dock				
16' X 36' double berth *	1700	1800	3.12	5.88
14' X 36' double berth *	1500	1600	3.17	6.66
14' X 30' single berth *	1700	1700	4.04	0
12' X 30' single berth *	1600	1600	4.44	0
12' X 30' double berth	1100	1300	3.61	18.18

*= interim rates charged on newly built slips.

Daily w/o electricity	15	20		33
Daily w/ electricity	20	30		50

Mooring Balls

Small Boat	450.00	500.00		11.1
Houseboat	500.00	600.00		20.0
Storage				
Winter wet storage	300.00	500.00		66.7
Winter dry storage	300.00	400.00		33.0
Lot storage/ month	30.00	40.00		33.0
Covered lot/ month	40.00	50.00		25.0

We will supply comparables and confidential customer lists soon.

Respectfully submitted,

Jeff Dukes
 President
 Hoosier Hills Marina, Inc.



Mooring Balls

Small Boat	450.00	500.00	11.1
Houseboat	500.00	600.00	20.0

Storage

Winter wet storage	300.00	500.00	66.7
Winter dry storage	300.00	500.00	66.7
Lot storage/ month	30.00	40.00	33.0
Covered lot/ month	40.00	50.00	25.0

We will supply comparable slip rates and confidential customer lists very soon.

Respectfully submitted,

Jeff Dukes

President

Hoosier Hills Marina, Inc.

IN THE MATTER OF:)	
	)	Administrative Cause
PETITION FOR RATE INCREASE	)	Number: 03-072P
BY HOOSIER HILLS MARINA, INC.)	

**FINDINGS AND RECOMMENDATION
BY THE NATURAL RESOURCES COMMISSION
TO THE U.S. ARMY CORPS OF ENGINEERS**

A. Findings

1. The scope of the informal administrative review accorded by the Natural Resources Commission in Information #20 (First Amendment) is addressed to petitions for rate increase at marinas and related facilities on properties owned or leased by the Department of Natural Resources.

2. Although the Department may appropriately exercise whatever rights are provided in a ground lease with respect to marina facilities, as well as any other rights provided by law or equity, the scope of review provided in Information #20 (First Amendment) is limited to the subject of the petition for rate increase. Indeed, the Commission ultimately recommends action on the petition to the U. S. Army Corps of Engineers, and the Corps may either accept or reject the recommendation.

3. In determining whether to recommend a rate increase be granted, the Department is to analyze similar facilities and compare rates with those sought by the petition. Implicit to the public hearing is that interested persons may also seek and analyze comparables.

4. The use and analysis of comparables is fundamental to determining the propriety of proposed rate increases to marina slips and mooring buoys. The Department completed its comparable analysis.

5. Hoosier Hills Marina has requested slip rate increase ranging from 9% (one slip) to 17% (one slip) with rates of six slips increasing 10%.

6. Hoosier Hills Marina has also requested a rate to be established for five slips—styles that are not currently available.

7. The Natural Resources Commission delegated authority to the Director of the Division of State Parks and Reservoirs in Information Bulletin # 20 (First Amendment) to approve interim rate adjustments for projects or slips not yet constructed or modified. However, the approved rates apply only until the next rate request cycle when Hoosier Hills must present a petition for rate approval as provided in this information bulletin.

8. Hoosier Hills Marina has not requested a slip rate for six years. The marina operator has continued a facility maintenance schedule. The operator has also replaced electric service on

Dock “C” and has completed reinforcement of Docks “A” and “B” with new anchors, and cables along with repairs to dock surfaces.

9. Evidence supports that there is a general industry trend of ever-increasing insurance costs associated with marina operations.

10. The Department supports the request by to increase slip rates in the range 9% to 17% as submitted. The Department also supports the requested rates apply to slips that are planned to be constructed.

11. The requested increase in slip rates and houseboat rental is supportable and may be recommended for approval.

B. Recommendation

The Natural Resources Commission recommends to the U.S. Army Corps of Engineers that the rate increase sought by the Hoosier Hills Marina for existing and proposed facilities be approved as requested and set forth below.

HOUSEBOAT DOCK “A”	
Size	Rate
45’ shared slip	2000.00
50’ shared slip	2310.00
50’ single slip	2800.00
60’ shared slip	2530.00
60’ single slip	3080.00
70’ shared slip	2750.00
70’ single slip	3300.00
80’ shared slip	3000.00
80’ single slip	3600.00

*plus \$25.00/ft/year to extend beyond the slip. Max. 20% of boat out of slip.

SMALL BOAT DOCK “B”	
Size	Rate
20’ shared slip	800.00
24’ shared slip	900.00

* plus \$25.00/ft/year to extend beyond the slip. Max. 20% of boat out of slip

CRUISER DOCK “C”	
Size	Rate
30’ shared slip	1100.00
30’ single slip	1500.00
30’ covered	1650.00
*plus \$25.00/ft/year to extend beyond the slip. Max. 20% of boat out of slip.	

Buoy Balls	
Size	Rate
Small boat/summer	450.00
Large boats/summer	500.00
*Maximum 40' boat on buoy ball.	
Storage	
Winter wet storage	300.00
Winter dry storage	300.00
Temporary slip w/o elec.	12.00
Temporary w/electricity	17.00

KENT'S HARBOR & MARINA

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:)
)
PETITION FOR RATE INCREASE) **ADMINISTRATIVE CAUSE**
BY KENT’S HARBOR) **NUMBER: 08-078P**

**FINDINGS AND RECOMMENDATION
BY THE NATURAL RESOURCES COMMISSION
TO THE U.S. ARMY CORPS OF ENGINEERS**

A. Findings

The scope of the review accorded by the Commission in Information Bulletin #20 (First Amendment) is addressed to petitions for rate increase at marinas and related facilities on properties owned or leased by the Department. Although the Department may appropriately exercise whatever rights are provided in a ground lease with respect to marina facilities, as well as any other rights provided by law or equity, the scope of review for the purpose of setting rates at marinas and related facilities is determined by Information Bulletin #20 (First Amendment), which specifies that the lessee “shall include justification for the increase request along with comparable rates from other marinas.” Information Bulletin #20 (First Amendment) proceeds to specify that “the department will analyze comparable facilities to compare rates with those sought by the lessee.”

The Commission’s role in the setting of rates at marina facilities on Department leased or owned properties is to offer a recommendation regarding the appropriateness of the rates to the U. S. Army Corps of Engineers (*USACE*), which will ultimately determine to accept or reject the recommendation. In exercising its responsibility to offer a recommendation to the USACE, the Commission has charged the appointed hearing officer with the responsibility to review the record, which includes the “lessee’s request and any supporting documentation, written comments provided by affected persons, the analysis by the department, and oral and written statements received during the rate hearing” in preparing a report and proposed recommendation for Commission consideration.

The Commission, through its adoption of Information Bulletin #20 (First Amendment) established as fundamental to a determination of the appropriateness of a proposed rate increase the consideration of rates charged by comparable marinas. The comparison therefore requires identification of marinas comparable to Kent’s Marina. In addition to the marina, Mr. Reineking operates the Sagamore Resort, Ainsley’s Café & Harbor Bar and Buck Creek Golf Club on the property. Similarly, Four Winds Resort and Marina (*Four Winds*), also provides lodging, dining, and lounge facilities in addition to its marina while the Hammond Marina (*Hammond*), offers banquet facilities, a lighted promenade as well as casino access including

restaurants overlooking Lake Michigan. Kent's Harbor's proposed rates are consistent with and in many cases lower than the rates charged by Four Winds or Hammond.

By comparison Kent's Harbor's proposed rates are higher than the increased rates recommended for approval by the hearing officer for Hoosier Hills Marina (*Hoosier Hills*) and Patoka Lake Marina (*Patoka*). However, neither Patoka nor Hoosier Hills offer on-site lodging or other amenities similar to Kent's Harbor, Four Winds or Hammond. Given the overall differences in the marinas the higher rates proposed by Kent's Harbor are not disproportionate to Hoosier Hills or Patoka.

The individuals who offered comments acknowledge that Mr. Reineking operates the facility in a very professional manner and that the proposed increased rates are in line with inflation. Through the comments one individual has suggested that Kent's Harbor provide covered slips and a second comment questions the appropriateness of increasing the fee for overhangs. Mr. Reineking explained that in "areas prone to winter snow and ice stick" covered slips create liability associated with ice and snow accumulations that can damage or even sink floating docks. Furthermore, covered docks increase the risk and exposure to greater losses from fire due to the spread of flames laterally when they are prevented from extending vertically by the cover. Kent's Harbor is presently considering having single slip fabric covers available at the option of slip holders. These covers are removable during the winter months and will burn through in the event of fire thereby lessening the liability concerns. With respect to the increase in charges for overhangs, Mr. Reineking offered that "increased costs of operating marinas are not limited to the physical length of a dock finger" citing that property taxes increased by 10.25% in 2008. Therefore, an incremental increase in the per-foot rate for overhangs is consistent with the increase in slip fees. Overall, it appears that Kent's Harbor's patrons are very satisfied with the facility and its operation. It is the hearing officer's belief that Mr. Reineking's willingness to consider alternative means of accommodating his patrons' requests, such as possibly offering the single slip covers, is a good indicator of the professionalism brought to this operation.

Since its last rate increase Kent's Harbor has paved three previously graveled parking areas and added twenty-five new paved parking spaces as well as two paved unloading zones. Pedestrian pathways and dock access drives are presently being repaved and a new promenade near the restaurant is scheduled for completion soon. Kent's Harbor has also upgraded its fuel system with 700 feet of seamless fuel lines along with upgraded fuel monitoring systems.

The preponderance of the evidence available for consideration reveals that the interim rates previously authorized by the Department should be confirmed and that the increases sought by Kent's Harbor, including increases to the interim rates, are reasonable and should properly be recommended for approval.

B. Proposal

Consideration of all available information indicates that the rate increase sought by Kent's Harbor for implementation with the 2009 season, including the increase above the present

interim rates for slips on the I-Dock, should be recommended to the U. S Army Corps of Engineers for approval.

The rates recommended for approval are identified as “Proposed 2009 Rates” below.

September 16, 2008

Robert E. Carter, Jr.
Secretary, Natural Resources Commission

Kent's Harbor 2007 – 2008 Dockage Rates**Proposed 2009 Rates****B through G – Docks**

20'	\$1545.00	Seasonal	\$1595.00
26'	\$2085.00	Annual	\$2190.00
30'	\$2405.00	"	\$2525.00
36'	\$2725.00	"	\$2865.00
40'	\$2995.00	"	\$3175.00
50'	\$3430.00	"	\$3615.00
Over 50'	\$71.25 / Ft.		\$75.50 / Ft.

H – Dock

24'	\$1595.00	Seasonal	\$1675.00
18'x60'	\$4142.50	Annual	\$4390.00
Over 60'	\$71.25 / Ft.		\$75.50 / Ft.

A – Dock

24'	\$1795.00	Seasonal	\$1885.00
28' End	\$2212.00	"	\$2295.00
13'x24'	\$2125.00	Annual	\$2230.00
13'x28'	\$2445.00	"	\$2575.00
14'x30'	\$2745.00	"	\$2885.00
15'x30'	\$2935.00	"	\$3085.00
15'x36'	\$3085.00	"	\$3240.00
16'x36'	\$3295.00	"	\$3460.00
18'x46'	\$4075.00	"	\$4280.00
20'x70'	\$6450.00	"	\$6775.00
Over 70'	\$90.00		\$94.50

I – Dock

24'	\$1896.00	Seasonal	\$1990.00
28'	\$2380.00	"	\$2495.00

Sagamore Resort 2007 – 2008 Lodging Rates**Proposed 2009 Rates**

Studio	\$149.00 per night	\$159.00
One Bed room	\$184.00 per night	\$197.00
Two Bed room	\$249.00 per night	\$269.00

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:)
)
PETITION FOR RATE INCREASE) **ADMINISTRATIVE CAUSE**
BY KENT’S HARBOR) **NUMBER: 06-093P**

**FINDINGS AND RECOMMENDATION
BY THE NATURAL RESOURCES COMMISSION
TO THE U.S. ARMY CORPS OF ENGINEERS**

A. Findings

1. The scope of the informal administrative review accorded by the Natural Resources Commission in Information #20 (First Amendment) is addressed to petitions for rate increase at marinas and related facilities on properties owned or leased by the Department of Natural Resources.
2. Although the Department may appropriately exercise whatever rights are provided in a ground lease with respect to marina facilities, as well as any other rights provided by law or equity, the scope of review provided in Information #20 (First Amendment) is limited to the subject of the petition for rate increase. Indeed, the Commission ultimately recommends action on the petition to the U. S. Army Corps of Engineers, and the Corps may either accept or reject the recommendation.
3. In determining whether to recommend a rate increase be granted, the Department is to analyze similar facilities and compare rates with those sought by the petition. Implicit to the public hearing is that interested persons may also seek and analyze comparables.
4. The use and analysis of comparables is fundamental to determining the propriety of proposed rate increases to marina slips and mooring buoys. The preponderance of information in the record discloses that the rate increases sought by Kent’s Harbor are within the range of slip rates for comparable facilities.
5. Kent’s Harbor has made improvements to the facilities by renovating the bathrooms and showers including the installation of new floors, ceilings, countertops, fixtures, mirrors, etc. The clubroom has been updated with new furnishings. A double retaining wall was installed to accommodate the construction of additional pull-offs. Additionally, a new parking area has been constructed around the lodging area along with new landscaping. There are also now three pump-out stations at the facility.
6. The requested increase in rates is within the industry range and is supportable. The requested rates may properly be recommended for approval.

B. Recommendation

The Natural Resources Commission recommends to the U.S. Army Corps of Engineers that the rate increase sought by the Lake Monroe Sailing Association, Inc. for existing facilities be approved as requested and set forth below.

Proposed 2007 Rates

B through H-dock

20'	\$1545.00 (unchanged)
24'	\$1595.00
26'	\$2085.00
30'	\$2405.00
36'	\$2725.00
40'	\$2995.00
46'	\$3155.00
50'	\$3430.00
Over 50	\$71.25/ft.

A -Dock

13' x 24'	\$2125.00
13' x 28'	\$2445.00
14' x 30'	\$2745.00
15' x 30'	\$2935.00
15' x 36'	\$3085.00
16' x 36'	\$3295.00
18' x 46'	\$4075.00
20' x 70'	\$6450.00
Over 70'	\$90.00/ft (unchanged)

Lodging Rates for 2006 Proposed 2007

Studio	\$133 per night	Accommodates 4	\$149
One Bedroom	\$165 per night	Accommodates 4	\$184
Two Bedroom	\$219 per night	Accommodates 8	\$249

IN THE MATTER OF:)
)
PETITION FOR RATE INCREASE) **Administrative Cause**
BY KENT’S HARBOR) **Number: 03-074P**

**FINDINGS AND RECOMMENDATION
BY THE NATURAL RESOURCES COMMISSION
TO THE U.S. ARMY CORPS OF ENGINEERS**

A. Findings

1. The scope of the informal administrative review accorded by the Natural Resources Commission in Information #20 (First Amendment) is addressed to petitions for rate increase at marinas and related facilities on properties owned or leased by the Department of Natural Resources.
2. Although the Department may appropriately exercise whatever rights are provided in a ground lease with respect to marina facilities, as well as any other rights provided by law or equity, the scope of review provided in Information #20 (First Amendment) is limited to the subject of the petition for rate increase. Indeed, the Commission ultimately recommends action on the petition to the U. S. Army Corps of Engineers, and the Corps may either accept or reject the recommendation.
3. In determining whether to recommend a rate increase be granted, the Department is to analyze similar facilities and compare rates with those sought by the petition. Implicit to the public hearing is that interested persons may also seek and analyze comparables.
4. The use and analysis of comparables is fundamental to determining the propriety of proposed rate increases to marina slips, mooring buoys, and hotel rooms.
5. Kent’s Harbor Marina is requesting slip rate increases from 2% to 2.6% along with a 4% increase in lodging and houseboat rentals.
6. Kent’s Harbor Marina paved and expanded parking areas, expanded the restaurant, remodeled the clubhouse and restroom facilities, added a pump out station, and opened a new golf course.
7. Evidence supports that there is a general industry trend of ever-increasing insurance costs associated with marina operations.
8. The Department found it “difficult” to locate other marinas that include slips, lodging, foodservice, and a golf course for its comparable analysis. However, the Department compared Kent’s Harbor Marina 2004 rate increase request to 13 other marinas.
9. The Department found that Kent’s Harbor Marina rates for the 2004 boating season “fall in line” with the industry and are comparable.
10. The requested increase in slip rates, lodging, and houseboat rental is supportable and may be recommended for approval.

B. RECOMMENDATION

The Natural Resources Commission recommends to the U.S. Army Corps of Engineers that the rate increase sought by Kent's Harbor for facilities be approved as requested and set forth below.

2004 PROPOSAL	RATE
HOUSEBOAT RENTALS 36'	\$850
DOCKAGE	
20'	\$1545
24'	\$1545
26'	\$2025
30'	\$2335
36'	\$2645
40'	\$2890
46'	\$3065
50'	\$3330
Over 50'	\$69.25/FT
LODGING	
Studio	\$133 per night
One Bedroom	\$165 per night
Two Bedroom	\$219 per night

LAKE MONROE
SAILING ASSOCIATION

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:)	
)	
PETITION FOR RATE INCREASE	)	ADMINISTRATIVE CAUSE
BY THE LAKE MONROE SAILING	)	NUMBER: 06-094P
ASSOCIATION)	

**FINDINGS AND RECOMMENDATION
BY THE NATURAL RESOURCES COMMISSION
TO THE U.S. ARMY CORPS OF ENGINEERS**

A. Findings

1. The scope of the informal administrative review accorded by the Natural Resources Commission in Information #20 (First Amendment) is addressed to petitions for rate increase at marinas and related facilities on properties owned or leased by the Department of Natural Resources.

2. Although the Department may appropriately exercise whatever rights are provided in a ground lease with respect to marina facilities, as well as any other rights provided by law or equity, the scope of review provided in Information #20 (First Amendment) is limited to the subject of the petition for rate increase. Indeed, the Commission ultimately recommends action on the petition to the U. S. Army Corps of Engineers, and the Corps may either accept or reject the recommendation.

3. In determining whether to recommend a rate increase be granted, the Department is to analyze similar facilities and compare rates with those sought by the petition. Implicit to the public hearing is that interested persons may also seek and analyze comparables.

4. The use and analysis of comparables is fundamental to determining the propriety of proposed rate increases to marina slips and mooring buoys. The preponderance of information in the record discloses that the rate increases sought by the Lake Monroe Sailing Association (LMSA) are within the range of slip rates for comparable facilities.

5. LMSA has made improvements to the facilities by the replacement the old "A" dock, previously accommodating 10 boats, has been replaced with concrete decking and now accommodates 48 boats. The new "A" dock incorporates a wave attenuator for the protection of both boats and the dock. The old manager's residence has been replaced with larger accommodations and the septic system has been replaced. The "T" docks, which were dangerous having been damaged from wave action, have also been replaced with concrete

decking. Two shelter packages have been purchased for the replacement of existing shelters on the east shore. A wi fi hot spot has been installed in order for boat owners and the facility manager to monitor the dock areas to address security concerns. A second septic system serving the bathhouse was also replaced. The total cost of the improvements identified approximate \$486,000.00.

6. The requested increase in rates is within the industry range and is supportable. The requested rates may properly be recommended for approval.

B. Recommendation

The Natural Resources Commission recommends to the U.S. Army Corps of Engineers that the rate increase sought by the Lake Monroe Sailing Association, Inc. for existing facilities be approved as requested and set forth below.

Lake Monroe Sailing Association
Proposed Schedule of User Fees for the 2007 season

	<u>Proposed Fee</u>	<u>% change to nearest \$</u>
Winter Dry Storage (November through March)		
Dry Storage (20' or under)	103.00	3%
Dry Storage (20' to and including 26')	144.00	3%
Dry Storage (26' up to and including 30')	175.00	3%
Dry Storage (30 up to and including 34')	185.00	3%
Dry Storage (Boats over 34')	196.00	3%
Empty Trailer or Cradle	72.00	3%
Sailing Season Use (April through October)		
Board Boat (1 st boat) (I.e. windsurfer)	82.00	3%
Board Boat (second boat)	71.00	3%
Dry Storage (20' or under)	321.00	3%*
Dry Storage (over 20' up to 26')	422.00	3%*
Dry Storage (26' and over)	496.00	3%*
Buoy (standard single anchor)	819.00	3%*
Buoy (heavy duty double anchor)	922.00	3%*
Slips		
Concrete breakwater		
24' x 12'	1334.00	3%*
26' x 12'	1437.00	3%*
30' x 14'	1540.00	3%*
32' x 14'	1643.00	3%*
34' x 14'	1746.00	3%*
Wooden Slips		
22' x 12'	1076.00	3%*
24' x 12'	1128.00	3%*
26' x 12'	1231.00	3%*

*Consistent with prior practice, users are permitted to deduct \$200.00 from the above sailing Season storage fees for boats upon agreeing to complete 20 hours of work in the LMSA Earned Credit program. Users failing to meet their earned credit commitment are charged for the unearned credit.

IN THE MATTER OF:)	
	)	Administrative Cause
PETITION FOR RATE INCREASE BY	)	Number: 03-073P
LAKE MONROE SAILING ASSOCIATION)	

**FINDINGS AND RECOMMENDATION
BY THE NATURAL RESOURCES COMMISSION
TO THE U.S. ARMY CORPS OF ENGINEERS**

A. Findings

1. The scope of the informal administrative review accorded by the Natural Resources Commission in Information #20 (First Amendment) is addressed to petitions for rate increase at marinas and related facilities on properties owned or leased by the Department of Natural Resources.

2. Although the Department may appropriately exercise whatever rights are provided in a ground lease with respect to marina facilities, as well as any other rights provided by law or equity, the scope of review provided in Information #20 (First Amendment) is limited to the subject of the petition for rate increase. Indeed, the Commission ultimately recommends action on the petition to the U. S. Army Corps of Engineers, and the Corps may either accept or reject the recommendation.

3. In determining whether to recommend a rate increase be granted, the Department is to analyze similar facilities and compare rates with those sought by the petition. Implicit to the public hearing is that interested persons may also seek and analyze comparables.

4. The use and analysis of comparables is fundamental to determining the propriety of proposed rate increases to marina slips and mooring buoys. The preponderance of information in the record discloses that the rate increases sought by the Lake Monroe Sailing Association (LMSA) are within the range of slip rates for comparable facilities.

5. The LMSA has shifted from a rate setting policy based on boat length, to rates based on slip size, which is more consistent with the industry and affords a more corresponding comparable evaluation.

6. LMSA has made improvements to the facilities by the replacement of "A" Dock with a new concrete breakwater dock. LMSA performs facility maintenance and continues to develop plans for upgrading and replacing docks, buoys, service craft, and shower and restroom facilities.

7. The proposed rates for the new breakwater slips are below the 2001 rates approved by the Corps of Engineers; and therefore, need not be considered in this report.

8. The requested increase in rates for the wood docks are within the industry range and are supportable. The requested rates may properly be recommended for approval.

B. Recommendation

The Natural Resources Commission recommends to the U.S. Army Corps of Engineers that the rate increase sought by the Lake Monroe Sailing Association, Inc. for existing facilities be approved as requested and set forth below.

USER FEES	2004 <u>PROPOSAL</u> <u>IN DOLLARS</u>
Daily Facility Use	5.00
Annual Facility Use	75.00
Wet Slips (Fees based on slip size)	
Wooden Decked Docks "B", "C", & "D"	
Size 12' x 22'	1045.00
Size 12' x 24'	1095.00
Size 12' x 26'	1195.00
Concrete Decked Breakwater "A" Dock	
Size 12' x 24'	1295.00
Size 12' x 26'	1395.00
Size 14' x 30'	1495.00
Size 14' x 32'	1595.00
Size 14' x 34'	1695.00
Dry Storage (April through Oct)	
Boat <20'	312.00
Boat >20' & < 26'	410.00
Boat > 26'	482.00
Winter Storage (November through March)	
Boat <20'	100.00
Boat > 20' & < 26'	140.00
Boat >26' & < 30'	170.00
Boat > 30' & < 34'	180.00
Boat > 34'	190.00
Trailer/Cradle	70.00
Buoys	
Standard Single Anchor	795.00
Heavy Duty Double or HD Anchor	895.00

PATOKA LAKE MARINA, INC.

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:)
)
PETITION FOR RATE INCREASE) **ADMINISTRATIVE CAUSE**
BY PATOKA LAKE MARINA, INC.) **NUMBER: 07-158P**

**FINDINGS AND RECOMMENDATION
BY THE NATURAL RESOURCES COMMISSION
TO THE U.S. ARMY CORPS OF ENGINEERS**

A. Findings

The scope of the review accorded by the Natural Resources Commission (*Commission*) in Information Bulletin #20 is addressed to petitions for rate increase at marinas and related facilities on properties owned or leased by the Department. Although the Department may appropriately exercise whatever rights are provided in a ground lease with respect to marina facilities, as well as any other rights provided by law or equity, the scope of review for the purpose of setting rates at marinas and related facilities is determined by Information Bulletin #20 (First Amendment), which specifies that the lessee “shall include justification for the increase request along with comparable rates from other marinas.” Information Bulletin #20 (First Amendment) proceeds to specify that “the department will analyze comparable facilities to compare rates with those sought by the lessee.”

The Commission’s role in the setting of rates at marina facilities on Department leased or owned properties is to offer a recommendation regarding the appropriateness of the rates to the U. S. Army Corps of Engineers (*USACE*), which will ultimately determine to accept or reject the recommendation. In exercising its responsibility to offer a recommendation to the USACE, the Commission has charged the appointed hearing officer with the responsibility to review the record, which includes the “lessee’s request and any supporting documentation, written comments provided by affected persons, the analysis by the department, and oral and written statements received during the rate hearing” in preparing a report and proposed recommendation for Commission consideration.

The Commission, through its adoption of Information Bulletin #20 established as fundamental to a determination of the appropriateness of a proposed rate increase the consideration of rates charged by other marinas for comparable facilities. The Department’s provided spreadsheet of comparable facilities reveals that the increased rates proposed by Patoka are generally consistent with rates charged by other marinas.

Both Patoka and Hoosier Hills Marina, Inc. (*Hoosier Hills*) are located on Patoka Lake, which circumstance provides one good source of rate comparison. Patoka proposed to increase the rate on 24’ slips to between \$900.00 and \$985.00 depending upon electricity whereas Hoosier Hills

has; during this rate increase cycle requested an increase on a comparable slip to \$950.00, which request has received a favorable recommendation from this hearing officer. This result is the same for 24' covered slips, which Patoka proposes to increase to between \$2,000.00 and \$2,100.00, and for which Hoosier Hills charges \$2,000.00. This result is generally consistent for all slip sizes. While Patoka's requested increased rates are consistent within the geographical area, the rates are often lower than those being charged by other marinas identified by the Department.

Patoka has not increased rates in six (6) years and throughout that time costs of doing business have been absorbed by the marina. Mr. Bartels indicated that Patoka is hopeful that additional slips will be added in the near future. In fact, Patoka is requesting rates for 20' x 40' and 24' x 60' annual slips that have not yet been constructed.

Of the five (5) written comments received, three simply state the writer's opinion that Patoka's proposed increases are too high and create an undue burden upon their patrons. While the hearing officer understands that any increase in slip fee is burdensome to the slip holders, Patoka's proposed increases are not excessive and are consistent with or less than the rates of other marinas. One comment expresses concern that the new operators of Patoka removed fenced slips that in the opinion of the writer provided an added measure of safety for boaters in wheelchairs. The hearing officer understands that Patoka has been operated by the current owners since 1998 so by all appearances the removal of fenced slips may have occurred several years ago. Furthermore, the writer acknowledges that another disable person was consulted prior to the removal of the slips. The hearing officer is without sufficient information to draw any conclusions regarding this one comment and Patoka was unable to respond to the comment, as it was received on July 14, 2008, after the public hearing at which Mr. Bartels might have been able to address the writer's concern. The fifth comment questions Patoka's attention to providing adequate restroom facilities. With respect to this comment, Mr. Bartels explained at the public hearing that the floating restroom at the marina was added strictly for the benefit of marina patrons but with particular concern for patrons with disabilities. He explained that the floating restroom is small and that there are two other public restrooms nearby. However, use of the marina restroom is heavy because marina patrons prefer that restroom to the public restrooms, which are at less convenient locations.

B. Proposal

Consideration of all available information indicates that the rate increase sought by Patoka for the existing facility beginning with the 2009 season should be recommended to the U. S Army Corps of Engineers for approval.

The rates recommended for approval are identified as "Proposed Rate" on Exhibit A.

September 16, 2008

Robert E. Carter, Jr.
Secretary, Natural Resources Commission

Patoka Lake Marina Inc.

"Stay and play on the water"

2991 North Dillard Road,
Birdseye, Indiana 47513
888-819-8816
sbartels@netstarusa.net

March 26, 2008

Natural Resource Commission of
The State of Indiana, Division of Hearings
402 W. Washington St. Room W272
Indianapolis, IN 47513

RE: Petition for Rate Increase

FILED

MAY 08 2008

NATURAL RESOURCES COMMISSION
DIVISION OF HEARINGS

Please consider this document as Patoka Lake Marina's official petition for a rate increase to those rates specified in the "Proposed Rate" column of the table below. Patoka Lake Marina Inc. has operated the site from 1998 with the last rate increase six years ago in 2001. For your reference in support of the rate request sought, please also find information indicating our current rates, as well as the rates of Hoosier Hills Marina, and 4-winds Marina in that reference table. In your consideration of the present market value of our rates, we would ask that you compare our proposed new rates to those of our competitors. Given the fact that our petition seeks to raise our rates to amounts equal or lower than the lower of the two competitor's rates you have already approved, we hope you will choose to grant our petition for increase of rates to these more appropriate levels.

Note: "na" was used if no direct or comparable rates were found.

Description	Current Rate	Proposed Rate	H. Hills	4-Winds
Wet Winter Storage	250	350	na	na
20' per season	600	800	800	per yr 1506
24' per season / no electric	800	900	900	na
24' per season w/ electric	891	985	900	1924
24' per season, covered w/ electric	1600	2000	na	na
24' annual, covered w/ electric	1850	2100	2000	2678
28' per season w/ electric	1035	1200	na	na
28' annual	1300	1425	30ft-1500	2024
28' per season, covered	1750	2200	na	na
28' annual, covered	2000	2300	30ft-2500	26 ft - 2696
40' annual	2185	2195	na	3255
40' annual, covered	3700	3925	na	36 ft - 4483
18' x 60' annual	2750	2950	3030	4520




• Page 2

March 26, 2008

18' x 60' annual, covered	4250	4500	na	54 ft - 8426
18' x 80' annual	3795	3995	4000	6026
18' x 80' annual, covered	5300	5500	na	na
20' x 40' annual	na	4500	na	na
24' x 60' annual	na	5520	na	20x 72ft - 8967

Thank you for your consideration of our petition for rate increase. We feel it to be a reflection of a fair, appropriate and in keeping with a competitive rate for our services. This petition, if granted, will facilitate Patoka Lake Marina's abilities to continue to provide the high quality services our customers have come to expect and appreciate.

Sincerely,



Stephen R. Bartels
Managing Owner

PLEASURE CRAFT MARINA

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:)	
)	
PETITION FOR RATE	)	ADMINISTRATIVE CAUSE
ESTABLISHMENT BY PLEASURE	)	NUMBER: 11-011P
CRAFT MARINA)	

**FINDINGS AND RECOMMENDATION OF THE
NATURAL RESOURCES COMMISSION TO THE
U.S. ARMY CORPS OF ENGINEERS**

FINDINGS AND PROPOSAL BY THE COMMISSION’S DIVISION OF HEARINGS

A. Findings

The scope of the review accorded by the Commission in Information Bulletin #20 is addressed to petitions for rate establishment or increase at marinas and related facilities on properties owned or leased by the Department. Although the Department may appropriately exercise whatever rights are provided in a ground lease with respect to marina facilities, as well as any other rights provided by law or equity, the scope of review for the purpose of setting rates at marinas and related facilities is determined by IB #20, which specifies that the lessee “shall provide written notice, by personal delivery, U.S. first class mail or by electronic mail, to each slip renter or buoy renter that the lessee is requesting a rate establishment or increase associated with slips or other mooring facilities, including buoys and docking stations.”

While the Revised Petition identifies the rates for PCM’s 12 x 28 foot covered and 17 x 32 foot uncovered slips and side ties the rates for these slips will not change as a result of this proceeding. The Revised Petition will only affect the rates associated with the 17 x 48 foot covered, 17 x 40 foot covered and 12 x 32 foot covered slips, which were assigned interim rates by the Department for the 2011 boating season.

For the 12 x 32 foot covered slip PCM is seeking formal establishment of the \$2,495.00 rate originally approved as an interim rate by the Department. It is important to note; however, that the Department approved interim rates for PCM’s 17 x 48 foot covered slips at \$4,900.00 and for the 17 x 40 foot covered slips at \$4,600.00 and the rates sought by PCM for formal establishment by the Commission are at least \$1,000.00 less than the approved interim rates.

The Department’s analysis confirms that the rates sought for formal establishment by PCM for the 17 x 48 foot covered, 17 x 40 foot covered and 12 x 32 foot covered slips are reasonable.

B. Proposal

The Commission recommends that the rates sought by PCM in its Revised Petition be formally established as requested. PCM's rates, including existing rates and the rates recommended for approval herein, are reflected in Exhibit C, which is attached and incorporated by reference.

Dated: November 18, 2011

Robert E. Carter, Jr., Secretary
Natural Resources Commission

EXHIBIT B

October 4, 2011

To: Sandra L. Jensen
Hearing Officer/Administrative Law Judge
Natural Resources Commission

Fr: Gary Miller
Assistant Director
Indiana State Parks and Reservoirs

Re: Lake Monroe Marina Rate Comparisons

Enclosed with this memo is the rate comparison chart for Lake Monroe Marina. This chart compares the rates with Kent's Harbor Marina on Brookville Lake, Patoka Lake and Hoosier Hills Marinas on Patoka Lake, as well as Fourwinds Resort and Marina on Monroe Lake.

Although all of these marinas offer different services and amenities, they do represent a good comparison for marinas in Indiana. As can be seen, the rates of Lake Monroe Marina are within acceptable ranges. These rates had previously been granted interim rate status and rates had been compared at that time, however, for this rate request, the rates were again reviewed and verified. The Division of State Parks and Reservoirs supports these rates being given permanent status at this time.

Lake Monroe Marina 2011							
Slip Rate Comparison							
Lake Monroe Marina rates		Kent's Harbor Marina		Patoka Lake Marina		Fourwinds Resort and Marina	
12' x 28' covered annual	\$2,495	30' open annual	\$2,525	12' x 28' covered annual	\$2,200	12' x 24' covered annual	\$2,811
12' x 32' covered annual	\$2,495	30' open annual	\$2,525			12' x 30' covered annual	\$3,923
17' x 40' covered annual	\$3,600	40' open annual	\$3,175	16' x 40' covered annual	\$3,625	15' x 42' covered annual	\$5,492
17' x 48' covered annual	\$3,800	50' open annual	\$3,615			15' x 48' covered annual	\$6,277
17' x 32' open annual	\$2,500	30' open annual	\$2,525	17' x 36' open annual	\$1,945	13' x 32' open annual	\$2,763
side tie slips	\$1,200	20' open annual	\$2,190				
Hoosier Hills Marina							
12' x 24' covered annual	\$2,000						
12' x 30' covered annual	\$2,500						
14' x 30' covered annual	\$2,750						
14' x 30' open annual	\$1,800*	double berth/ 2 boats share slip					

EXHIBIT C

2012 Lake Monroe Marina Rates

12' x 28' covered annual	\$2,495
12' x 32' covered annual	\$2,495
17' x 40' covered annual	\$3,600
17' x 48' covered annual	\$3,800
17' x 32' open annual	\$2,500
side tie slips	\$1,200

QUAKERTOWN MARINA

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:)
)
PETITION FOR RATE INCREASE) **ADMINISTRATIVE CAUSE**
BY THE QUAKERTOWN MARINA) **NUMBER: 07-093P**

**FINDINGS AND RECOMMENDATION
BY THE NATURAL RESOURCES COMMISSION
TO THE U.S. ARMY CORPS OF ENGINEERS**

A. Findings

1. The scope of the informal administrative review accorded by the Commission in Information Bulletin #20 is addressed to petitions for rate increase at marinas and related facilities on properties owned or leased by the Department.
2. Although the Department may appropriately exercise whatever rights are provided in a ground lease with respect to marina facilities, as well as any other rights provided by law or equity, the scope of review provided in Information Bulletin #20 (First Amendment) is limited to the subject of the petition for rate increase. Indeed, the Commission ultimately recommends action on the petition to the U. S. Army Corps of Engineers, and the Corps may either accept or reject the recommendation.
3. In determining whether to recommend that a rate increase be granted, the Department is to analyze similar facilities and compare rates with those sought by the petition. Implicit to the public hearing is that interested persons may also seek and analyze comparables.
4. The use and analysis of comparables is fundamental to determining the propriety of proposed rate increases to marina slips. The preponderance of information in the record discloses that the rate increases sought by Quakertown Marina, Inc. are within the range of rates for comparable facilities.
5. The rate increase sought by Quakertown Marina, Inc. amounts to a 7% increase for houseboats, 10% increase for cabin cruisers and 5% increase for pontoons and runabouts, during a time period that the consumer price index has increased by 12% and cost increases associated with insurance coverage and utilities far exceed the consumer price index.
6. Mr. Girot agrees that the metering of electric would possibly benefit slip holders who do not utilize electricity at the marina; however, he notes that the ability to meter electric can be accomplished only through additional expense of infrastructure installation and ongoing meter reading services. Mr. Girot expressed his belief that by imposing a modest increase of 5% for

non-electric slips, as compared to 7% and 10% for slips with electricity for houseboats and cabin cruisers, that the disparity can be addressed without the additional infrastructure and ongoing expenses. Mr. Girot's rationale in this regard is reasonable.

8. The Department concurs with Quakertown Marina, Inc.'s proposed rates for the 2008 boating season observing that a comparison to other marinas "clearly shows that the rates for the Quakertown Marina are well within the comparables for other marinas."

9. The requested rates may properly be recommended for approval.

B. RECOMMENDATION

It is recommended that the rates previously approved for Quakertown Marina be increased as follows:

1. Dock B: Houseboats: From \$2,750.00 to \$2,950.00 (annual).
Cabin Cruisers: From
Pontoons and Runabouts: from \$950.00 to \$990.00.

2. Dock C: Houseboats: From \$2,375.00 to \$2,550.00 (annual).
Cabin Cruisers: From \$1,450.00 to \$1,590.00.
Pontoons and Runabouts: From \$950.00 to \$990.00

DATED: September 20, 2007

Robert E. Carter, Jr., Secretary
Natural Resources Commission

IN THE MATTER OF:)	
	)	Administrative Cause
PETITION FOR RATE INCREASE	)	Number: 03-075P
BY THE QUAKERTOWN MARINA)	

**FINDINGS AND RECOMMENDATION
BY THE NATURAL RESOURCES COMMISSION
TO THE U.S. ARMY CORPS OF ENGINEERS**

A. Findings

1. The scope of the informal administrative review accorded by the Natural Resources Commission in Information #20 (First Amendment) is addressed to petitions for rate increase at marinas and related facilities on properties owned or leased by the Department of Natural Resources.
2. Although the Department may appropriately exercise whatever rights are provided in a ground lease with respect to marina facilities, as well as any other rights provided by law or equity, the scope of review provided in Information #20 (First Amendment) is limited to the subject of the petition for rate increase. Indeed, the Commission ultimately recommends action on the petition to the U. S. Army Corps of Engineers, and the Corps may either accept or reject the recommendation.
3. In determining whether to recommend a rate increase be granted, the Department is to analyze similar facilities and compare rates with those sought by the petition. Implicit to the public hearing is that interested persons may also seek and analyze comparables.
4. The use and analysis of comparables is fundamental to determining the propriety of proposed rate increases to marina slips, mooring buoys, and hotel rooms. The preponderance of information in the record discloses that the rate increases sought by the Quakertown Marina are within the range of slip rates for comparable facilities.
5. Since 1995, Quakertown Marina has not requested a slip rate increase.
6. Quakertown Marina has upgraded the existing docks. Dock "B" was replaced with a new concrete dock, slip size was increased along with wider fingers and walkways, and electrical and plumbing utilities were upgraded.
7. The customer demand for electricity has increased at the marina due to the larger boats with dual service, with some slip renters living year-round at Quakertown Marina.
8. Evidence supports that there is a general industry trend of ever-increasing insurance costs associated with marina operations.
9. The Department recommended approval for the requested rate increase for the existing facilities.
10. The requested increase in facility rates is supportable and may properly be recommended for approval.

B. RECOMMENDATION

The Natural Resources Commission recommends to the U.S. Army Corps of Engineers that the rate increase sought by Quakertown Marina for facilities be approved as requested and set forth below.

- Houseboat Dock B: \$2,750.00 (annual)
- Dock C: Houseboats \$2,375.00 (annual)
- Cabin Cruisers \$1,450.00 (seasonal)