

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
March 14, 2019**

I. Call to Order

A regular meeting of the State Ethics Commission (“Commission”) was called to order at 10:10 a.m. Commission members present included Acting Chairperson Corinne Finnerty; Sue Anne Gilroy; Priscilla Keith (telephonically) and Ken Todd (arriving at 10:13). OIG Staff present included Lori Torres, Inspector General; Jennifer Cooper, Ethics Director; Tiffany Mulligan, Chief Legal Counsel; Heidi Adair, Staff Attorney; Cindy Scruggs, Director of Administration; Special Agent Darrell Boehmer, Special Agent Mike Lepper and Special Agent Jack Bedan.

Others present were Christopher B. Serak, Ethics Officer and Prequalification Director, INDOT; Mary Cline, Case Coordinator, FSSA/VR; Latosha N. Higgins, Managing Attorney & Ethics Officer, FSSA; Rhnea Edwards, Intern, DOR; Sarah Kamhi, Assistant General Counsel, DOR; Beth Green, General Counsel, DWD; Tammera Glickman, Assistant General Counsel, IDOA; Jared Prentice, Ethics Officer, DOR; and Mattheus Mitchel, Compliance and Ethics Specialist, DOR.

II. Selection of Acting Chair

A motion was made by Commissioner Gilroy to appoint Commissioner Finnerty as acting chair for the March 14, 2019, Commission meeting. Commissioner Keith seconded, and the motion passed. (3-0)

III. Adoption of Agenda and Approval of Minutes

Commissioner Gilroy moved to adopt the Agenda and Commissioner Keith seconded the motion which passed. (3-0) Commissioner Gilroy moved to approve the Minutes of the February 14, 2019 Commission Meeting and Commissioner Keith seconded the motion which passed. (3-0)

IV. Request for Formal Advisory Opinion: Conflicts of Interest(s)

**2019-FAO-005 Mary Cline, VR Case Coordinator
 Latosha N. Higgins, Ethics Officer
 Family and Social Services Administration**

Commissioner Todd arrived at this point.

Latosha Higgins, Ethics Officer for the Indiana Family and Social Services Administration (FSSA), requested an advisory opinion on behalf of Mary Cline. Ms. Cline works within FSSA’s

Bureau of Rehabilitation Services (BRS), which is within FSSA's Division of Developmental Rehabilitation Services (DDRS), as a Vocational Rehabilitation Services (VR) case coordinator.

Ms. Cline is also the guardian of an adult child who receives services through FSSA through the Division of Rehabilitative Services (DRS) Family Support Waiver. Ms. Cline is interested in pursuing outside employment with Forte Residential, Inc. (Forte), a company that provides in-home support for individuals receiving Medicaid Home and Community Based Services.

Ms. Cline joined FSSA as a contractor in January 2012 and has held various positions as an employee and contractor. Since 2017, she has been employed as a VR case coordinator for the VR Program. VR provides a wide range of services to individuals with disabilities and provides support needed to help them prepare for, secure, retain, advance in, or regain employment. VR partners with vendors, who may be individuals or businesses, across the State to deliver these services.

The VR program is housed within FSSA's BRS, which is one of the four bureaus within DDRS. The other three bureaus are the Bureau of Quality Improvement Services (BQIS), Bureau of Developmental Disabilities Services (BDDS), and the Bureau of Child Developmental Services (BCDS). BRS oversees the planning and operation of FSSA's vocational rehabilitation programs and services. BQIS monitors BDDS providers of Medicaid in-home waivers services and assists other bureaus in DDRS with quality improvement activities. BQIS also conducts oversight activities for reporting instances of abuse, neglect, and exploitation, and ensures compliance with FSSA's state waiver requirements. BDDS provides and coordinates services for individuals with developmental disabilities receiving Medicaid waiver services.

As a VR case coordinator, Ms. Cline is responsible for processing referrals, scheduling appointments, assisting two VR counselors in their case management, and paying invoices. The VR counselors whom she supports make the decisions regarding when to create, renew, or cancel authorization. Ms. Cline performs the supportive administrative functions at the direction of the VR counselor. If an individual is referred for VR services, Ms. Cline gathers the demographic information from the individuals, assigns a VR counselor, and schedules the individual for an intake appointment. The referrals she processes come from a variety of sources, including the individuals themselves, employment agencies, medical providers, case managers, and family members. If it is a referral for a service, the VR counselor makes the decision regarding the vendor and then Ms. Cline creates the authorization per the VR counselor's request.

VR counselors also have the decision making authority over which invoices to pay. If Ms. Cline notices a discrepancy between an authorization and an invoice, she notifies the VR counselor. The VR counselor then makes the decision whether to pay the invoice and provides direction to Ms. Cline.

As a VR Case Coordinator, Ms. Cline is not responsible for the negotiation or administration of any contracts for FSSA. In addition, Ms. Cline is not responsible for making any licensing and regulatory decisions; her role is strictly administrative in nature.

On February 12, 2019, Ms. Higgins met with Ms. Cline to discuss whether it would be a conflict of interests for her to obtain outside employment with Forte. Prior to inquiring about conflicts of interests, Ms. Cline met with a representative of Forte on February 7, 2019. Ms. Cline has not had any further meetings or discussion with Forte since that date. Ms. Cline decided to pursue a formal advisory opinion regarding outside employment with Forte before applying or interviewing for a position with Forte.

Ms. Cline is interested in pursuing part-time employment as direct care staff with Forte so that she can be compensated for providing Participant Assistance Care services to her adult child. As direct care staff for Forte, she would be responsible for providing care, companionship, and support to her son and possibly other children and adults with developmental disabilities in a variety of home and community settings. She would be paid \$10.00 per hour by Forte for hours worked and compensated for her mileage. Ms. Cline would work evenings and weekends outside of her state work hours.

As a Medicaid waiver provider, Forte's business relationship with FSSA is governed by a BDDS provider agreement and the Indiana Health Coverage Programs (IHCP) Rendering Provider Agreement and Attestation Form. Neither provider agreement is signed by a representative from FSSA. Forte is the only signor on the agreements. Under both provider agreements, Forte agrees to provide services to Medicaid waiver recipients, such as Ms. Cline's adult child, and to submit claims for reimbursement for services rendered by the company or its employees to FSSA. The services Forte and its employees provide are those that are outlined on a waiver recipient's individualized support plan developed by their support team.

As a guardian for her adult child, Ms. Cline is a member of her child's support team. The support team is responsible for assisting with the development of her child's individualized support plan. Under 460 IAC 6-3-32, the individualized support plan is designed and agreed upon by an individual's support team. The individualized support plan sets forth the paid and unpaid supports and strategies that will be used to help an individual accomplish their short and long term goals. In addition to Ms. Cline, her child's support team currently consists of her child's case manager and recreational therapist. As the guardian, Ms. Cline makes decisions regarding what is added to or removed from her son's individualized support plan.

Ms. Cline's position with FSSA does not include any involvement with the BDDS waiver program or Forte. The prospective employment with Forte would be of a different nature than her duties for FSSA, and she does not anticipate that working for Forte would require her recusal from her official responsibilities to the extent that her ability to perform them would be materially impaired. Furthermore, Ms. Cline has confirmed that she would not be required to use any confidential information in her prospective employment with Forte. Additionally, she understands that she is prohibited from using her FSSA position to secure unwarranted privileges or exemptions that are of substantial value and not properly available to similarly situated individuals outside of state government.

Ms. Cline is not in a position to participate in any decisions or votes or other matters related to a decision in which Forte would have a financial interest in the outcome. Ms. Cline has informed

Ms. Higgins that she understands and agrees to abide by the ethics rules governing conflicts of interests, ghost employment, use of state property and confidential information.

The advisory opinion stated the following analysis:

A. Outside employment

An outside employment or professional activity opportunity creates a conflict of interests under IC 4-2-6-5.5(a) if it results in the employee: 1) receiving compensation of substantial value when the responsibilities of the employment are inherently incompatible with the responsibilities of public office or require the employee's recusal from matters so central or critical to the performance of his or her official duties that his or her ability to perform them would be materially impaired; 2) disclosing confidential information that was gained in the course of state employment; or 3) using or attempting to use his or her official position to secure unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals outside state government.

A written advisory opinion issued by the Commission stating that an individual's outside employment does not violate subsection (a)(1) or (a)(2) is conclusive proof that the individual's outside employment does not violate subsection (a)(1) or (a)(2).

Based on the information provided, Ms. Cline's duties in her position at Forte would be very different from her state responsibilities with FSSA and she does not anticipate that she would have to recuse herself from her official state duties to avoid any conflicts of interests. The agency's ethics officer, Latosha Higgins, testified that FSSA did not foresee any reason why Ms. Cline would have to recuse herself, and felt that she could perform this outside work without materially impairing her ability to perform her full time state job. Further, Ms. Cline has confirmed that she will not be required to use any confidential information in her prospective employment with Forte. In addition, she understands that she is not to use her FSSA position to secure unwarranted privileges or exemptions that are of substantial value and not properly made available to similarly situated individuals outside state government.

The Commission finds that Ms. Cline would not have a conflict of interests under this particular rule as her two positions at FSSA would not overlap. However, the Commission is not able to formally approve this outside position because of conflict of interests concerns under IC 4-2-6-10.5 (see analysis below).

B. Conflict of interests-decisions and votes

IC 4-2-6-9 (a)(1) prohibits Ms. Cline from participating in any decision or vote, or matter relating to that decision or vote, if she has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(3) prohibits Ms. Cline from participating in any decision or vote, or matter relating to that decision or vote, if a business organization with whom she is serving as an employee or is negotiating employment has a financial interest in the matter.

Ms. Cline currently works as a VR case coordinator for FSSA and is seeking outside employment with Forte. As she is negotiating employment and if she begins working for Forte, she would be prohibited from participating in any decisions or votes, or matter relating to those decisions or votes, in which Forte would have a financial interest in the outcome.

Based on the information provided, Ms. Cline is not in a position at FSSA to participate in any decisions or votes, or other matters related to such decisions or votes, in which Forte would have a financial interest in the outcome. Accordingly, the Commission finds that Ms. Cline does not have a potential conflict of interests under this rule.

C. Conflict of interests – contracts

Pursuant to IC 4-2-6-10.5, a state employee may not knowingly have a financial interest in a contract made by any state agency. The definition of “financial interest” in IC 4-2-6-1(a)(11) includes, in part, “an interest arising from employment”. The Commission has interpreted this rule to apply when a state employee derives compensation from a contract between a state agency and a third party. This prohibition, however, does not apply to an employee that does not have contracting responsibility for the contracting agency, provided certain statutory criteria are met.

Forte is a Medicaid waiver provider, and its relationship with FSSA is governed by a BDDS Medicaid provider agreement and the Indiana Health Coverage Programs Rendering Provider Agreement and Attestation Form. Under both provider agreements, Forte is attesting that it agrees to provide services to Medicaid waiver recipients and follow FSSA rules to submit claims for and to receive reimbursement. Neither of these agreements is signed by a representative of FSSA.

If Ms. Cline accepts the prospective position, she would be employed directly by Forte and her wages would be paid by Forte. For providing these services under the Medicaid waiver, Forte would seek reimbursement from FSSA per the provider agreements.

Ms. Higgins confirmed at the Commission’s public meeting that this agreement between FSSA and Forte for the reimbursement for services provided to Medicaid waiver recipients is a contract. Accordingly, the Commission finds that Ms. Cline would have a financial interest in a state contract, which is prohibited under IC 4-2-6-10.5, if she were to accept the position at Forte.

Further, although Ms. Cline does not have contracting authority for FSSA, she is unable to meet all of the disclosure requirements in IC 4-2-6-10.5(b). Specifically, she would not be able to meet the requirement in IC 4-2-6-10.5 (b)(2) of filing a written statement with the inspector general *before* she executes the contract with the state agency.¹ The Commission found that because this contract between Forte and FSSA is already in place, Ms. Cline cannot meet this requirement.

In addition, there could be implications beyond the Code of Ethics if Ms. Cline accepts this position with Forte. Specifically, IC 35-44.1-1-4 is the criminal statute that prohibits any public servant from knowingly or intentionally having a pecuniary interest in or deriving a profit from a contract/purchase connected with an action by the agency served by the public servant. The statute contains certain exceptions in subsection (c). One of these exceptions applies to an individual who obtains written approval from the Commission that the individual will not or does not have a conflict of interests in connection with a contract or purchase under IC 4-2-6 and IC 35-44.1-1-4.

The Commission is unable to provide this written approval due to its finding that Ms. Cline would have a financial interest in a contract and cannot meet the exceptions to avoid a conflict of interests under IC 4-2-6-10.5.

D. Confidential information

Ms. Cline is prohibited under 42 IAC 1-5-10 and 42 IAC 1-5-11 from benefitting from, permitting any other person to benefit from, or divulging information of a confidential nature except as permitted or required by law. Similarly, IC 4-2-6-6 prohibits Ms. Cline from accepting any compensation from any employment, transaction, or investment which is entered into or made as a result of material information of a confidential nature. The term “person” is defined in IC 4-2-6-1(a)(13) to encompass both an individual and a corporation. In addition, the definition of “information of a confidential nature” is set forth in IC 4-2-6-1(a)(12).

To the extent Ms. Cline is exposed to or has access to such confidential information in her position with FSSA, she would be prohibited not only from divulging that information but from ever using it to benefit any person, including her outside employer, in any manner.

E. Use of state property and Ghost employment

IC 4-2-6-17 prohibits Ms. Cline from using state property for any purpose other than for official state business unless the use is expressly permitted by a general written agency,

¹ It is not disputed that Ms. Cline is not executing any contract with FSSA. Nevertheless, the statute provides only one exception from the conflicts of interest prohibition. The exception requires the employee to have no contracting authority for the contracting agency, and to file a written statement “with the inspector general before the ... employee ... executes the contract with the state agency.” The statutory exception does not contemplate an employee executing a statement before accepting employment with a contractor.

departmental or institutional policy or regulation. Likewise, 42 IAC 1-5-13 prohibits Ms. Cline from engaging in, or directing others to engage in, work other than the performance of official duties during working hours, except as permitted by general written agency, departmental or institutional policy or regulation.

To the extent Ms. Cline observes these provisions in any outside employment opportunity she may engage in, such outside professional activity would not violate the use of state property or ghost employment laws.

The Commission found that it is unable to approve Ms. Cline's outside employment opportunity with Forte. Forte's contract with FSSA would create a conflict of interests for Ms. Cline under IC 4-2-6-10.5 as she would have a financial interest in Forte's contact with FSSA if she were to accept this outside employment opportunity.

Chairperson Finnerty moved to approve the Commission's finding and Commissioner Gilroy seconded the motion which passed. (3-0)

**V. Consideration of the Final Report
In the Matter of Adam K. Jones
Case Number 2018-07-0183
Tiffany Mulligan, Chief Legal Counsel
Office of Inspector General**

State Ethics Director Jen Cooper presented the Final Report draft to the Commission for their approval, reminding them that they had approved the settlement agreement in this case at their February meeting and that the Final Report would be the final disposition in this case.

Sue Anne Gilroy made a motion to approve the Final Report. Commissioner Keith seconded the motion which passed. (3-0)

VI. Director's Report

State Ethics Director, Jen Cooper, stated that Governor Holcomb appointed our newest Commission member, Commissioner, Ken Todd and named Commission Katherine Noel as Chairperson. Ms. Cooper reported that the number of informal advisory opinions issued by the Office of Inspector General since the last meeting was 29. Ms. Cooper conveyed that the OIG Financial Disclosure Statements annual filing requirements have been completed.

VII. Adjournment

Commissioner Gilroy moved to adjourn the public meeting of the State Ethics Commission and Commissioner Keith seconded the motion, which passed (3-0).

The public meeting adjourned at 10:47 a.m.

INDIANA
OFFICE OF INSPECTOR GENERAL

315 WEST OHIO STREET, ROOM 104, INDIANAPOLIS, IN 46202 317.232.3850

**Report of Inspector General to
State Ethics Commission
2019 Q1**

1. IAOs: Q1 January 1 – March 31, 2019
 - a. 77 issued in Q1
 - i. Compares to 83 issued in Q4
 - ii. Compares to 75 in Q1 in 2018
 - iii. 2018 we issued 321
2. Investigations: Q1 January 1 – March 31, 2019
 - a. 87 Hotline Reports/Requests to Investigate
 - i. Compares to 73 in Q4 2018
 - ii. 87 YTD compared to 100 at this time in 2018
 - b. 14 New investigations opened by our office.
 - i. Compared to 16 in Q4 2018
 - ii. Compared to 22 in Q1 2018
 - c. 17 Closed investigations/Final Reports
 - i. Compared to 15 closed in Q4 2018
 - ii. Compared to 11 closed for Q1 in 2018
 - iii. 12 of 17 closed cases are published on the website
3. KPI's for Q1
 - a. KPI #1 - Number of informal advisory opinions (“IAO”s) requested **81(4 withdrawn or no jurisdiction)**
 - b. KPI #2 - Average number of business days to provide an IAO **1.19**
 - c. KPI #3 - Number of recommendations made to reduce waste, inefficiency, fraud and improve integrity **6 recommendations in 4 reports (2 confidential and 2 public reports)**
4. 2019 Auditors & Investigators Conference
 - i. Tuesday, June 4, 2019 1:00 – 4:00 p.m.
5. Kathy Noel appointed by Gov. Holcomb as chair of the commission and Kenneth Todd appointed as commission member.
6. OIG Annual Report will be issued before next Commission meeting. A link will be sent to you.



STATE OF INDIANA

OFFICE OF THE ATTORNEY GENERAL
302 WEST WASHINGTON STREET, IGCS 5TH FLOOR
INDIANAPOLIS, INDIANA 46204

CURTIS T. HILL, JR.
ATTORNEY GENERAL

March 4, 2019

TO: Indiana State Ethics Commission

FROM: Joan Blackwell, General Counsel and Ethics Officer, Office of the Indiana Attorney General, on behalf of Chris Proffitt, Communications Director

RE: Request for Formal Advisory Opinion

The Office of the Indiana Attorney General (OAG) respectfully requests a formal advisory opinion from the State Ethics Commission (Commission) on behalf of the OAG's Communications Director, Christopher Proffitt. This formal advisory opinion request is in regards to the application of Indiana Code § 4-2-6-15¹ to specific types of video/audio communications that the OAG Communications Division wishes to post on Attorney General (AG) Curtis T. Hill, Jr.'s official state social media accounts, including the AG's official Facebook, Instagram, and Twitter accounts, and on the official OAG website.² The OAG respectfully presents the following background information to provide the Commission with the full context of the questions presented.

The OAG is the "state's law firm," as the OAG represents the State of Indiana in lawsuits involving the State's interest and provides legal defense to state officials and state agencies in lawsuits. In addition to these duties, the OAG engages in numerous initiatives and other services to the citizens of the State of Indiana, including: numerous endeavors related to consumer protection; the Jail Chemical Addiction Program; the OAG Drug Abuse Taskforce and drug takeback events which netted 3,488 pounds in 2018; a partnership with the Indianapolis TenPoint Coalition; and the work provided to citizens via the OAG's Unclaimed Property Division, a division of the OAG that collects and safeguards unclaimed property on behalf of all citizens of Indiana and distributes these unclaimed funds and property to their rightful owners.

The OAG is continually looking for ways to engage with the citizens of the State of Indiana and raise awareness and familiarity with the services and initiatives of the OAG. One of the initiatives the OAG has implemented toward achieving this goal is the OAG's Mobile Operation Unit, an office-owned vehicle that allows OAG staff to conduct mobile outreach to Hoosiers on unclaimed property and consumer protection as well as on other initiatives of interest to citizens and consumers. Another way that the OAG strives to increase engagement with Indiana citizens is through effective use of the office's social media accounts. The OAG, like other statewide-elected officials, has an official state Facebook account, Instagram account, and Twitter account. Each of

¹ For ease of reference, the current statute is reproduced at the end of this request.

² We will refer to the AG's official social media accounts and the official website of the OAG as "digital media accounts." We will also refer to "social media accounts." Our references to social media accounts should be understood to also include the OAG's official website.

these social media accounts includes the AG's name and title in the handle – "Indiana Attorney General Curtis T. Hill, Jr" – and includes a picture of the AG as the account's profile picture. As part of the OAG's effort to use social media to more fully engage with the citizens of Indiana, the OAG would like to post various types of video and audio communications to these accounts, as described more fully below. The OAG would like to use these communications on the OAG's social media accounts because the OAG recognizes that social media use is highly prevalent and that the way individuals engage with social media has evolved. Individuals are more likely to engage with social media content that contains a video communication. Therefore, the most effective way for the OAG to conduct outreach to Hoosiers on various office initiatives is through the use of video communications posted on social media.

In August 2018, the OAG removed content from digital media accounts that had been created and posted by either OAG staff or by the OAG's Unclaimed Property marketing vendor after the OAG learned that an Unclaimed Property Division (UPD) public service announcement (PSA), which was created by the OAG's UPD marketing vendor as part of its contract, included the AG's name, but not his likeness. The OAG has refrained from posting certain types of audio/video communications during this six-month period. During this hiatus, the OAG has observed a noticeable decline in the public's engagement with the OAG's Unclaimed Property website, as the number of searches on the UPD website has significantly declined. The OAG has observed a 41% decrease in the number of searches on its Unclaimed Property website between June/July and Sept/October of 2018. (The metrics from OAG's outside vendor show that the UPD website had a total of 593,070 searches completed in June/July, which decreased to 352,013 searches in September/October 2018.) The OAG believes that the lack of engaging social media content for Unclaimed Property has contributed to this decline.

In addition to removing content and refraining from posting other similar content on social media, the OAG conducted an internal review of content posted and then drafted an internal protocol for review and approval of all digital media content to ensure compliance. During this internal review, a number of questions arose about how Indiana Code § 4-2-6-15 applies to social media usage by statewide elected offices and officials, such as the Attorney General and the OAG, and as other statewide-elected officials use their social media accounts to engage with the public in various ways. As a consequence, on November 29, 2018, the OAG requested an informal advisory opinion from State Ethics Director Jennifer Cooper, which the OAG received on December 7, 2018 (the informal advisory opinion is attached to this request). Ms. Cooper raised specific questions about each type of audio/video communication noted in the OAG's November 29 request and recommended that the OAG seek a formal advisory opinion on these questions to obtain a final determination.

The OAG seeks a formal advisory opinion on three types of audio/video communications the OAG would like to post on the OAG's official state social media accounts: (1) audio/video communications that are created by OAG Communications staff that do contain the AG's name or likeness as part of the communication; (2) audio/video communications created by the OAG's contractor for Unclaimed Property marketing materials that do *not* contain the AG's name and likeness; and (3) audio/video communications created and paid for by a third party (such as a news outlet) that do contain the AG's name and likeness as part of the communication.

Additional factual background and specific examples of each type of video for your consideration follow.

A. May audio/video communications³ created by OAG Communications Division staff that include the AG's name and likeness be posted on the AG's state digital media accounts?

The OAG Communications Division consists of approximately seven (7) employees whose duties include responding to questions from the media and the public, drafting official statements and press releases, engaging in outreach initiatives, documenting activities of the AG and other OAG events (including still photographs and short videos of speeches and other events), publishing an internal office newsletter on a monthly basis, and creating other materials, such as video communications, to illustrate various office initiatives that are of interest to Indiana citizens, such as the OAG's consumer protection and unclaimed property responsibilities.

Video communications created by Communications staff are filmed on state-issued smartphones or cameras. These video data files are available to be posted to social media immediately after recording or at a later time after a Communications staff member edits the video file. The AG, or the AG's name, may appear in a portion of these staff-created videos.

Below are specific examples of these types of videos that the OAG would like to post on social media as part of its efforts to more fully engage with the citizens of Indiana. These are videos that the office has created but has not yet posted, or previously posted but has since removed from the official state social media accounts:

- (1) A video "round-up" of the activities undertaken by the OAG's Mobile Operations Unit: <https://www.youtube.com/watch?v=Fx1GhFpUQ0o>. This video includes footage of the Mobile Operations Unit, which includes the AG's name directly on the vehicle.⁴ It also includes soundless footage of the AG as he engages with citizens who attended events held at the Mobile Operations Unit.
- (2) A video about the OAG's Drug Back initiatives: <https://www.youtube.com/watch?v=4hr6-Wfys6w&feature=youtu.be>. This video includes narration by the AG as he describes the office's efforts as well as still photographs and videos of the AG when he attended a Drug Takeback on Monument Circle in downtown Indianapolis.
- (3) A video of a speech given at the OAG's statehouse office that includes the AG, a representative from the Better Business Bureau, and the Federal Trade Commission: <https://www.youtube.com/watch?v=-emVjD-0fbk&feature=youtu.be>. This video includes both the AG's name and likeness as it shows him speaking in a portion of the video.

The OAG's request for an informal advisory opinion to the State Ethics Director Jennifer Cooper asked the following question on these types of video communications, as summarized below:

Is an audio/video communication that includes the Attorney General's name or likeness, created by a staff member on an office camera or smartphone and then uploaded to the Attorney General's official social media accounts (Facebook, Twitter, Instagram) considered to be paid for "entirely or in part with appropriations made by the general assembly" and therefore in violation of Indiana Code § 4-2-6-15?

³ For ease of reference, we will refer hereafter to "videos" as comprising video content accompanied by audio. It would be rare, although not unheard of, that an audio-only file would be posted on social media.

⁴ The State Ethics Director, Ms. Cooper, previously approved the signage on the mobile operations unit.

Ms. Cooper opined in her informal advisory opinion that the OAG may wish to obtain a formal advisory opinion on whether the funds used to pay a state employee's salary or the funds used to purchase the equipment necessary to make these video communications would then mean that the video is considered to be "paid for entirely or in part with appropriations made by the general assembly" or whether the connection is too tenuous for the communication to be considered paid for entirely or in part with appropriations from the general assembly.

In seeking this opinion, the OAG does not mean to foreclose consideration of other relevant matters besides whether this proposed use of video in social media accounts and the OAG's website is paid for entirely or in part with appropriations by the General Assembly.

B. May audio/video communications created by the OAG's vendor for Unclaimed Property that do *not* include the AG's name or likeness be posted on the AG's state digital media accounts?

The OAG has contracted with a marketing agency that creates various types of marketing materials specifically for the OAG's Unclaimed Property Division. This includes materials intended for social media posts. Some of the materials created for social media are not considered a "communication" under Indiana Code § 4-2-6-15, but other materials that may be created by the vendor for social media are video communications.

None of the video communications created by this outside vendor under this contract include the AG's name or likeness directly in the communication; however, the OAG would like to post the communications on the AG's social media pages, which, as previously noted, contain the AG's name in the account handle and the AG's photographic likeness in the account profile picture. Therefore, the communications created by this vendor would appear as part of a post where the video communication is directly below and in close proximity to the AG's name and likeness.

The OAG's request for an informal advisory opinion to the State Ethics Director Jennifer Cooper posed the following question on these types of video communications, as summarized:

Can the OAG post an audio/video communication paid for with state funds that does not contain the AG's name and likeness, but the audio/video communication is then posted on the AG's social media accounts, which do contain the AG's name in the account handle and a picture of the AG as the profile picture?

In response to this question, Ms. Cooper opined in her informal advisory opinion that the use of Attorney General Hill's name and likeness on a social media page itself is not prohibited under the Code of Ethics, and that audio and video communications that do not contain the AG's name or likeness are not prohibited. Ms. Cooper further opined that it would likely be a broad interpretation of the rule to say that a social media platform itself becomes a communication simply because it is used to post video communications, but she recommended that the OAG obtain a formal advisory opinion from the Commission on this question for a final determination.

C. May audio/video communications paid for by a third party that include the AG's name and likeness be posted on the AG's state digital media accounts?

The OAG Communications Division staff, who manage the official state social media accounts for the office, also wish to post or "share" links to videos created and paid for by third parties, such as news outlets. These communications include the AG's name or likeness, but are not

paid for with any state funds. However, as with the previous questions, these videos would be posted on the office's social media accounts, which are managed by state employees.

The OAG's request for an informal advisory opinion asked the following question on these types of communications, as summarized below:

Can the OAG post or share on its official social media accounts a video created and paid for by a third-party (such as a news outlet) that contains the AG's name or likeness?

In response to this question, Ms. Cooper opined that the use of the AG's name/likeness in a video created and paid for by a third party would not violate Indiana Code § 4-2-6-15; however, she again raised the question whether a social media platform becomes a video communication that includes the name and/or likeness of the AG where such a communication is posted on the platform hosted with state resources. She noted that such an interpretation should be reserved for the Commission to make a final determination.

Questions Presented

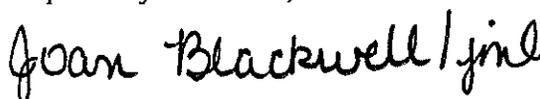
Therefore, in accordance with this background information and based on the recommendation of State Ethics Director Jennifer Cooper, the OAG respectfully requests a formal advisory opinion from the Commission on the following questions:

- (1) Is it permissible under Ind. Code § 4-2-6-15 to post audio/video communications created by OAG staff using state-issued smartphones and cameras that include the AG's name and likeness on official digital media accounts?
 - a. Specifically, as noted by State Ethics Director Jennifer Cooper, are these types of audio/video communications considered to be "paid for entirely or in part with appropriations from the general assembly" or is the connection between the state employee's salary, the state funds used to purchase this equipment and digital media hosting costs of the resulting communication too tenuous for the communication to be considered paid for entirely or in part with state appropriations?
- (2) Is it permissible under Ind. Code § 4-2-6-15 to post audio/video communications created by an OAG vendor (where the communications would be paid for with state appropriations) that do *not* contain the AG's name and likeness on the OAG's official digital media accounts, that include the AG's name in the handle and the AG's photograph as the profile picture?
 - a. Specifically, as noted by State Ethics Director Jennifer Cooper, would the OAG's digital media platform itself be considered a "communication" simply because the OAG posts a communication to the platform that does not otherwise include the AG's name or likeness?
 - b. Does taking a communication that by itself does not violate Ind. Code § 4-2-6-15 become a violation of Ind. Code § 4-2-6-15 if that same communication is posted onto a social media platform that does contain a state officer's name and likeness?
- (3) Is it permissible under Ind. Code § 4-2-6-15 for the OAG to post audio/video communications paid for by a third party that contain the AG's name or likeness?
 - a. Specifically, as noted by State Ethics Director Jennifer Cooper, would the OAG's digital media platform itself be considered a "communication" within the meaning of

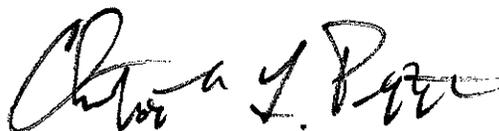
- Ind. Code § 4-2-6-15 simply because the OAG posts a communication paid for by a third-party onto the platform?
- b. Does taking a communication that by itself does not violate Ind. Code § 4-2-6-15 because it was paid for with third-party funds become a violation of Ind. Code § 4-2-6-15 if that same communication is posted onto a digital media platform that is managed by state employees?

The OAG recognizes that the Commission has not opined on Indiana Code § 4-2-6-15 in the past and appreciates the Commission's time and consideration of these questions. If additional information is needed, please contact the OAG Ethics Officer and General Counsel, Joan Blackwell.

Respectfully submitted,



Joan Blackwell
General Counsel and Ethics Officer



Christopher Proffitt
Director of Communications

Ind. Code § 4-2-6-15 Communications paid for with appropriations or from securities division enforcement account; use of state officer's name or likeness prohibited; exceptions

Sec. 15. (a) This section does not apply to the following:

(1) A communication made by the governor concerning the public health or safety.

(2) A communication:

(A) that a compelling public policy reason justifies the state officer to make; and

(B) the expenditure for which is approved by the budget agency after an advisory recommendation from the budget committee.

(b) This section does not prohibit a state officer from using in a communication the title of the office the state officer holds.

(c) As used in this section, "communication" refers only to the following:

(1) An audio communication.

(2) A video communication.

(3) A print communication in a newspaper (as defined in IC 5-3-1-0.4).

(d) A state officer may not use the state officer's name or likeness in a communication paid for entirely or in part with appropriations made by the general assembly, regardless of the source of the money.

(e) A state officer may not use the state officer's name or likeness in a communication paid for entirely or in part with:

(1) money from the securities division enforcement account established under IC 23-19-6-1(f); or

(2) appropriations from the state general fund made under IC 23-19-6-1(f).

As added by P.L.58-2010, SEC.33. Amended by P.L.114-2010, SEC.1.

Subject: CONFIDENTIAL: Ethics Informal Advisory Opinion
Attachments: Ethics IAO Blackwell ATTACHMENT 11-29-18.pdf

From: Cooper, Jennifer [<mailto:JCooper@ig.IN.gov>]
Sent: Friday, December 7, 2018 9:45 AM
To: Blackwell, Joan <Joan.Blackwell@atg.in.gov>
Subject: CONFIDENTIAL: Ethics Informal Advisory Opinion

Joan,

Thank you for contacting our office for an informal advisory opinion. I understand you are requesting advice regarding the applicability of the Code of Ethics to potential future communications by the Office of the Attorney General (OAG), specifically the office's Communications Division.

Specifically you are asking for guidance on the application of IC 4-2-6-15 to the activities of the Communications Division's staff.

I address each of your specific questions below.

- 1. "Does it violate IC 4-2-6-15 for a staff member to make an audio and/or video which includes the state officer's name or likeness with an office camera or smart phone and upload that audio and/or video to the official website or social media site of the office holder?"**

You state that your office believes that this type of situation should be permissible under IC 4-2-6-15 if the creation of the video or audio recordings is incidental or simultaneous with OAG Communications Division employees' other regularly assigned duties.

As you are aware, IC 4-2-6-15 (42 IAC 1-5-16) states that a state officer may not use the state officer's name or likeness in a "communication" paid for entirely or in part with appropriations made by the general assembly, regardless of the source of the money.

"State officer" is defined to include the Attorney General (IC 4-2-6-1(a)(19)(F)). "Communication" for purposes of this rule includes only the following: (1) an audio communication; (2) a video communication; or (3) a print communication in a newspaper (as defined in IC 5-3-1-0.4).

The State Ethics Commission (Commission) has the authority to interpret IC 4-2-6; therefore, this determination would fall under their purview. The Office of Inspector General issues informal advisory opinions based on past formal advisory opinions from the Commission. To date, the Commission has not issued a formal advisory opinion interpreting the term "paid for entirely or in part with appropriations made by the general assembly" or any other aspect of this rule; therefore, we have no guidance from the Commission to apply to your question.

Your office may wish to request that the Commission issue a formal advisory opinion regarding whether a state employee's salary and/or the funds used to purchase office equipment, such as a camera/smartphone, would be considered to be paid for with appropriations made by the General Assembly, or whether this connection is too tenuous for the communications to be considered to be paid for entirely or in part with appropriations made by the General Assembly. Given that the employee and the equipment used are indeed funded by state appropriations, the Commission may find that the communication was paid for with state appropriations.

Though you provide a number of examples, please note that because the application of the ethics rules is so fact specific, the Commission is reluctant to provide broad interpretations of terms or phrases. If you decide to seek a formal advisory opinion on this issue, I would suggest you request advice about a specific factual scenario.

- 2. "Does a video or audio violate IC 4-2-6-15 if it is created and paid for in part or entirely with appropriations made by the General Assembly which do not include the likeness and/or name of the state officer – yet the video/audio is posted on a social media site which includes the state officer's name or likeness along with the office title so when the social media site is viewed, the state officer's name and likeness is visible? For example, the Facebook, Twitter and Instagram accounts of Attorney General Hill include his name and a small image of him in a circle next to his name. The social media accounts of other state officers also identify them by name and include a small image of their likeness."**

The prohibition against a state officer using his or her name or likeness in a communication paid for by certain funds/appropriations would not apply to the profile photo or name listed on the AG's website or social media (Facebook, Twitter, or Instagram) accounts. This is consistent with the informal advice we provided the AG's Office in the past; specifically, that the signage on the Mobil Operations Unit van would not constitute an audio communication, a video communication, or a print communication in a newspaper. Accordingly, the use of Attorney General Hill's name and likeness on a website/social media page is not prohibited under the Code of Ethics.

Audio and video recordings created or paid for in part or entirely with appropriations made by the General Assembly and disseminated to the public in some form would be considered audio and video communications. However, if these audio and video communications do not contain the name or likeness of AG Hill, they would not implicate the prohibition in this rule against the use of a state officer's name and/or likeness in communications paid for by appropriations from the General Assembly.

This statute was enacted in 2010, before social media became prevalent. Further, the State Ethics Commission has not interpreted any part of this rule in a formal advisory opinion to date. It would likely be a broad interpretation of the rule to say the website and/or social media platform through which an audio or video communication is posted is also an audio or video communication just because it contains audio or video recordings; however, we believe this question is best left to the State Ethics Commission for a final determination.

- 3. "Does a video or audio containing the name and likeness of the AG that is created with third-party, nongovernmental funds violate IC 4-2-6-15 if it is posted on an official website or social media platform of an elected state officeholder (for example an interview by a news outlet or a public service announcement paid for entirely by a third party)?"**

The prohibition against a state officer using their name or likeness in a communication paid for by certain funds/appropriations would not apply to an audio or video recording produced by a third-party and/or without the use of state funds. Although this would constitute an audio or video communication, no state funds would be used to create the communication.

Accordingly, the use of the AG's name or likeness (images and/or narration) in such audio/video would not be contrary to IC 4-2-6-15. However, whether the website or social media platform itself becomes an audio or video communication if the audio/video containing the AG's name/likeness is posted on it, is still an interpretation that should be left to the State Ethics Commission.

In summary, as I have mentioned throughout this informal advisory opinion, the Commission has never issued a formal advisory opinion on this rule so our office does not have any guidance from them to apply to your questions. I would recommend you seek a formal advisory opinion to more fully answer your questions.

Thank you again for submitting your question to our office. Please note that this response does not constitute an official advisory opinion. Only the Commission may issue an official advisory opinion. This informal advisory opinion allows us to give you quick, written advice. The Commission will consider that an employee or former employee acted in good faith if it is determined that the individual committed a violation after receiving advice and the alleged violation was directly related to the advice rendered. Also, remember that the advice given is based on the facts as I understand them. If this e-mail misstates facts in a material way, or omits important information, please bring those inaccuracies to my attention.

Sincerely,

Jen Cooper
State Ethics Director
Office of Inspector General

Please take a few moments to provide feedback on your experience:
<https://www.surveymonkey.com/r/OIGInformals>. *Thank you!*

42 IAC 1-5-16 Communications by state officers

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-6-15; IC 4-2-7

Sec. 16. Restrictions on certain communications by state officers are set forth in IC 4-2-6-15.

IC 4-2-6-15

Communications paid for with appropriations or from securities division enforcement account; use of state officer's name or likeness prohibited; exceptions

Sec. 15. (a) This section does not apply to the following:

(1) A communication made by the governor concerning the public health or safety.

(2) A communication:

(A) that a compelling public policy reason justifies the state officer to make; and

(B) the expenditure for which is approved by the budget agency after an advisory recommendation from the budget committee.

(b) This section does not prohibit a state officer from using in a communication the title of the office the state officer holds.

(c) As used in this section, "communication" refers only to the following:

(1) An audio communication.

(2) A video communication.

(3) A print communication in a newspaper (as defined in IC 5-3-1-0.4).

(d) A state officer may not use the state officer's name or likeness in a communication paid for entirely or in part with appropriations made by the general assembly, regardless of the source of the money.

(e) A state officer may not use the state officer's name or likeness in a communication paid for entirely or in part with:

(1) money from the securities division enforcement account established under IC 23-19-6-1(f); or

(2) appropriations from the state general fund made under IC 23-19-6-1(f).

Jen Cooper | State Ethics Director
Indiana Office of Inspector General/
State Ethics Commission
315 W. Ohio Street, Room 104
Indianapolis, IN 46202
Tel: 317.234.4108
Email: jcooper@ig.in.gov
Web: www.in.gov/ig

From: Sutton, Elizabeth [<mailto:Elizabeth.Sutton@atg.in.gov>]
Sent: Thursday, November 29, 2018 3:17 PM
To: Cooper, Jennifer <JCooper@ig.IN.gov>
Subject: re: Request for Informal Opinion

**** This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. ****

Director Cooper:

Please find attached a letter from our Chief of Staff Joan Blackwell.

This letter has also been sent by First Class Mail.

Thanks,

Liz

Liz Sutton
Executive Assistant to Chief of Staff
Office of the Attorney General Curtis Hill
302 W. Washington Street
IGCS - 5th Floor
Indianapolis, IN 46204
p:317-233-3205 | f:317-232-7979
Elizabeth.sutton@atg.in.gov



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STATE OF INDIANA

OFFICE OF THE ATTORNEY GENERAL
302 WEST WASHINGTON STREET, IGCS 5TH FLOOR
INDIANAPOLIS, INDIANA 46204

CURTIS T. HILL, JR.
ATTORNEY GENERAL

November 29, 2018

Ms. Jennifer Cooper
State Ethics Director
Office of Inspector General
315 W. Ohio Street, Room 104
Indianapolis, IN 46202

Re: Request for Informal Opinion

Dear Ms. Cooper,

As the ethics officer for the Office of the Attorney General ("OAG"), I have been working with our office's Communications Division to determine what questions they have regarding Ind. Code 4-2-6-15 and how it would apply to projects and other work that they do. They provided me with the questions listed below. Our office has done its own internal review of these issues; and set forth below are the conclusions reached from that review. Would the OIG provide us with an informal advisory opinion on our office's conclusions as to these questions?

- 1. Does it violate IC 4-2-6-15 for a staff member to make an audio and/or video which include the state officer's name or likeness with an office camera or smart phone and upload that audio and/or video to the official website or social media site of the office holder?**

This type of situation should be permissible under Ind. Code § 4-2-6-15. The permissibility of a staff-created video or audio communication containing the name or likeness of the Attorney General (AG) depends on the nexus of the state funds used to pay the employee's salary to the employee's creation of the video: if a staff member creates the video or audio and posts it on social media as part of the staff members' engagement in other regularly-assigned duties, then the nexus between the state funds used to pay the employee and the creation of the video is such that the video or audio should not be considered paid for by state funds and it should be permissible.

Situations that should be permissible under Ind. Code § 4-2-6-15 are ones where the creation of the video or audio are incidental or simultaneous with OAG Communications staffs' other regularly assigned duties. This would include situations such as:

- (1) An OAG Communications staff member, while on outreach with the OAG Mobile Operations Unit, films a few portions of an outreach event with office phone or camera as part of other duties performed on outreach. The Mobile Operations Unit, which includes the AG's name, appears in the background of filmed portions of the event. Because the staff member

created the video while engaging in other typically-assigned duties, payment of the staff member's salary for the staff member's work at the event – including the video with the AG's name in the background – should not be considered paying for the communication itself with state funds.

(2) OAG Communications staff engages in outreach and the AG attends a portion of the outreach event. A staff member uses an office iPhone or office camera to film the AG as he makes a brief statement about the event and then later briefly films the AG as he engages with citizens at the event. In addition to filming portions of the event, the staff member also engages in outreach at the event and performs other duties. The staff later uploads a video of the event to the OAG's Facebook page. Because the staff member created the video while engaging in other typically-assigned duties, payment of the staff member's salary for his/her work at the event – including shooting these videos – should not be considered paying for the communication itself with state funds.

- 2. Does a video or audio violate IC 4-2-6-15 if it is created and paid for in part or entirely with appropriations made by the General Assembly which do not include the likeness and/or name of the office holder - yet the video/audio is posted on a social media site which includes the state officer's name or likeness along with the office title so when the social media site is viewed, the state office holder's name and or likeness is visible? For example, the Facebook, Twitter and Instagram accounts of Attorney General Hill include his name and a small image of him in a circle next to his name. The social media accounts of other state officeholders also identify them by name and include a small image of their likeness.**

Using the Attorney General's name and photograph on his Facebook account should be permissible. This issue does not implicate Ind. Code § 4-2-6-15, as the statute does not contemplate social media platforms or accounts created on those platforms. First, social media platforms such as Facebook, Twitter, and Instagram are not considered a "communication" as this term is applied in Ind. Code § 4-2-6-15(c). This subsection limits "communication" to include *only* an audio communication, a video communication, and a print communication in a newspaper. Therefore, for example, the Attorney General's official state Facebook account in and of itself is not considered a "communication" for the purpose of this statute. Second, although this account is managed by OAG personnel in the Communications Division as part of their official state duties, the OAG is not paying for the account with appropriations by the general assembly or with money from the state general fund (there is no cost to create an account). Therefore, using the AG's name and photograph on his official state Facebook, Twitter, and Instagram accounts are permissible under Ind. Code § 4-2-6-15.

This should be permissible under Ind. Code § 4-2-6-15 because the AG's name/likeness is not used in the video or audio communication itself, as his name and likeness simply appear on the social media platform and not directly in the video communication posted on the platform. As explained above, accounts on social media platforms are not considered a communication for the purpose of Ind. Code § 4-2-6-15(c).

- 3. Does a video or audio containing the name or likeness of the AG that is created with third-party, nongovernmental funds violate IC 4-2-6-15 if it is posted on an official website or**

social media platform of an elected state officeholder (for example an interview by a news outlet or a public service announcement paid for entirely by a third party)?

This should be permissible depending on the entity paying for the creation of the video or audio communication. If the OAG posts or shares an interview of the AG created and paid for by a third party as part of a public service announcement or an interview by a news outlet (or a staff member films a video of the interview as part of the staff member's other duties while attending the taping or interview), then this should be permissible under Ind. Code § 4-2-6-15 because no state funds are being used as contemplated by IC 4-2-6-15.

Please let me know if you need any additional information. Thank you in advance for your time and assistance on this matter.

Sincerely,

A handwritten signature in black ink that reads "Joan Blackwell". The signature is written in a cursive, flowing style.

Joan Blackwell
Chief of Staff
Indiana Office of the Attorney General

Indiana Ethics Commission

Request for Formal Advisory Opinion at April 11, 2019 meeting.

James Bergens, Property Manager at Jasper-Pulaski Fish and Wildlife Area, Department of Natural Resources, Division of Fish and Wildlife.

State email jbergens@dnr.in.gov Phone 219-843-4841

Personal email jbergens@centurylink.net Phone 219-843-8071

Ethics question: as a state employee can I sell my property to the Division of Fish and Wildlife?

As a condition of employment my wife and I live in a state owned residence on Jasper-Pulaski Fish and Wildlife Area. Knowing that once I retired we would need a place to live we purchased a house and 5 acres next to the Fish and Wildlife Area in 2003. In 2004 the 55 acres of farmland surrounding the 5 acres came up for sale and we purchased the property. The 60 acres is adjacent to Jasper-Pulaski Fish and Wildlife Area and borders the state property on two sides. We are selling 38 acres. I asked the Division of Fish and wildlife is they would be interested in purchasing the property. They indicated they would be interested in purchasing the property at appraised value. They submitted the request to our Land Acquisition Specialist, Ken Hasselkus. He asked that I get an ethics opinion. Our DNR Ethics Officer, Samantha DeWester, was contacted. She indicated that the Inspector General's Office was the only one who could issue an opinion. I then submitted a request for an Ethics Informal Advisory Opinion. The email correspondence with Jennifer Cooper is attached. I also met with DNR staff attorney Elizabeth Gamboa. Both Jennifer Cooper and Elizabeth Gamboa suggested I get a Formal Advisory Opinion from the State Ethics Commission.

Thank you for your consideration,



James Bergens

Attachments:

Bergens Ethics Informal Advisory Opinion

Email Correspondence the Division of Fish and Wildlife and Department of Natural Resources Staff

JPFWA Land Acquisition Plan

Bergens, Jim

From: Cooper, Jennifer
Sent: Wednesday, February 27, 2019 4:38 PM
To: Bergens, Jim
Subject: Ethics Informal Advisory Opinion; Bergens; Conflict of Interests

James,

Thank you for contacting our office for ethics advice and providing additional information. I understand that you are employed by the Department of Natural Resources (DNR) as a Property Manager at Jasper-Pulaski Fish and Wildlife Area (FWA).

You provide that you own 60 acres of land adjacent to Jasper-Pulaski FWA; your land borders the state property on two sides. You are selling 38 acres, and you asked the Division of Fish and Wildlife (the Division) if they would be interested in purchasing the property. You provide that the Division indicated it would be interested in purchasing the property at appraised value. The Division submitted the request to DNR's Land Acquisition Specialist, Ken Hasselkus. Mr. Hasselkus suggested you request an ethics opinion, and DNR's Ethics Officer, Samantha DeWester referred you to our office for this opinion.

You provide that your main duties as Property Manager at Jasper-Pulaski FWA are to plan, coordinate, implement and direct 1) wildlife management practices and procedures, 2) construction and maintenance of property facilities and 3) purchase and maintenance of all property equipment.

You further provide that you do not have any contracting responsibility for the Jasper-Pulaski FWA or DNR. Your role as related to contracts is to provide information only. As an example, with the Jasper-Pulaski FWA's trash contract you would determine the specifications, such as, to provide two 4 yard dumpsters and empty once per week and provide a list of possible vendors in your area. You would submit that information a Purchase Request to DNR Purchase, and they would send out the bid packets, receive the vendor bid proposals and execute the contract with the selected vendor. You would be responsible for insuring that the terms of the contract are met and that the vendor is paid per terms of the contract.

You state that you do not participate in any decisions regarding land acquisition purchases. Jasper-Pulaski FWA has a five year management plan written by your assistant that includes a land acquisition plan. You explain that it is a three tiered plan. Since Jasper-Pulaski FWA is primarily forested, the goal is to purchase upland or farmland, which would be Tier 1, the highest priority. Another factor in assigning priorities is proximity to the FWA. Land adjacent to the FWA would also fall into the Tier 1 category. When a parcel becomes available, Division of Fish and Wildlife leadership is notified and make the decision to proceed based on the acquisition plan and the availability of funds. Leadership will work with the Division of Land Acquisition to hire out an appraisal. Due to federal restrictions, the Division will not offer more than the appraised value. All decisions will be made by Division leadership and land acquisition will handle all the administrative functions in the land acquisition. Since federal funds will be used, a federal reviewer will also review the appraisal to ensure that he or she agrees with the appraisal. The property you have for sale fits the criteria for Tier 1 since it is both upland and farmland and borders the FWA on two sides.

I understand you are seeking advice to determine whether, under the Code of Ethics, you can sell your property to the DNR.

While none of the rules in the Code of Ethics would prohibit DNR from purchasing your property, your inquiry invokes consideration of the ethics rules on conflicts of interests regarding contracts and conflicts of interests regarding decisions

and votes. It also invokes consideration of IC 4-2-6-7, which pertains to excess compensation for sale or lease of property by a state employee.

I included all relevant rules and definitions at the end of this opinion for your reference.

IC 4-2-6-7 – Excess Compensation for Sale or Lease

IC 4-2-6-7 prohibits a state employee from accepting compensation for the sale or lease of any property or service that substantially exceeds that which he or she would charge in the ordinary course of business or from any person who has a business relationship with the agency in which the individual is employed.

In this case, you would be selling your property to DNR for the appraised value of the property, and the transaction would be in compliance with all federal restrictions. Accordingly, it does not appear that you would be receiving excess compensation for the sale of your property.

IC 4-2-6-10.5 – Conflicts of Interests; Contracts

Assuming the land would be purchased via a contract between you and DNR, you would need to ensure that you comply with all of the requirements in IC 4-2-6-10.5. This rule prohibits a state employee from having a financial interest in a contract with a state agency unless you (1) do not participate in or have contracting responsibility for the contracting agency; and (2) file a disclosure statement with our office before executing the contract with the state agency.

The Code defines “financial interest” to mean an interest in a purchase, sale, lease, contract, option, or other transaction between an agency and any person or an interest involving property or services.

Because you do not have contracting responsibility for DNR, you would not violate this rule so long as you file the required [disclosure statement](#) - prior to entering into the contract - in order to disclose your financial interest in the land purchasing contract with DNR. Please feel free to contact our office or DNR’s Ethics Officer, Samantha DeWester, if you have further questions regarding the application of this rule.

IC 4-2-6-9 – Conflicts of Interests; Decisions and Votes

Please also be aware of IC 4-2-6-9, which pertains to conflicts of interests; decisions and voting. This rule prohibits you from participating in any decision or vote, or matter related to that decision or vote, if you have knowledge that various persons may have a “financial interest” in the outcome of the matter, including yourself.

Please note that this prohibition extends beyond merely the decision or vote on the matter to encompass any participation in that decision or vote. In addition, the rule requires a state employee who recognizes a potential conflict of interests to notify his agency’s appointing authority and ethics officer in writing and either (1) seek a formal advisory opinion from the State Ethics Commission or (2) file a written disclosure form with our office.

You provide that you do not participate in any decisions regarding land acquisition; however, it appears that you oversee or at least are involved in the land acquisition plan for the Jasper-Pulaski FWA that is developed by your assistant. This appears to come close to participating in decisions in which you have a financial interest as you noted that your property includes the type of land the Jasper-Pulaski FWA is seeking based on the land acquisition plan and borders the Jasper-Pulaski FWA on two sides. Further, leaders within your DNR Division are deciding whether to purchase your property, and it appears they would be using input from your office in this decision, including whether your land meets criteria established in the land acquisition plan.

I would encourage you to speak with DNR’s Ethics Officer, Samantha DeWester, to see if she thinks it will be possible for DNR to screen you from participating in any land acquisition decisions, or other matters, including discussions, related to

these decisions in which you would have a financial interest in the outcome. In other words, you should be screened from all matters related to the acquisition and sale of your property in your capacity as the Property Manager at Jasper-Pulaski FWA.

As noted above, you can file a public disclosure statement with our office. Based upon past history regarding similar real estate transactions between agency employees and their agencies, I strongly encourage you to seek a public and transparent opinion from the State Ethics Commission. This may save you from criticism and scrutiny in the future. The Commission's next public meeting is March 14, 2019, and all requests for opinions to be rendered at this meeting need to be submitted to our office by March 4, 2019. More information on formal advisory opinions can be found [here](#).

42 IAC 1-5-10 and 42 IAC 1-5-11 – Confidential Information

In addition, please keep in mind the ethics rules pertaining to confidential information found at 42 IAC 1-5-10 and 42 IAC 1-5-11. These rules prohibit you from benefitting from, permitting another person to benefit from, or divulging information of a confidential nature except as permitted by law. To the extent that you will possess information of a confidential nature by virtue of your position at DNR that could be used to benefit yourself or any other person, you must ensure that you comply with these rules.

Indiana Criminal Code

In addition to the Code of Ethics rules described above, the Indiana Criminal Code also prohibits a state employee from having financial interests in contracts *with the agency that the employee serves*. Based on the information provided, you would likely be entering into a contract for purchase of your property with DNR, the agency that you serve. The criminal statute can be found at IC 35-44.1-1-4. Our office does not provide advice on the Criminal Code, but we recommend that you familiarize yourself with the statute and ensure you comply with it. Please note that subsection (c)(5) permits a state employee to obtain approval from the State Ethics Commission that he or she does not have a conflict of interests under the IC 35-44.1-1-4 or the Code of Ethics. This is another reason to seek the formal advisory opinion from the State Ethics Commission.

Thank you again for submitting your inquiry. Please let me know if you have any questions regarding this opinion. Please note that this response does not constitute an official advisory opinion. Only the Commission may issue an official advisory opinion. This informal advisory opinion allows us to give you quick, written advice. The Commission will consider that an employee or former employee acted in good faith if it is determined that the individual committed a violation after receiving an informal advisory opinion, and the alleged violation was directly related to the advice rendered. Also, remember that the advice given is based on the facts as I understand them. If this e-mail misstates facts in a material way, or omits important information, please bring those inaccuracies to my attention.

Sincerely,

Jen Cooper
State Ethics Director
Office of Inspector General

Please take a few moments to provide feedback on your experience:
<https://www.surveymonkey.com/r/OIGInformals>. ***Thank you!***

IC 4-2-6-1 Definitions

Sec. 1. (a) As used in this chapter, and unless the context clearly denotes otherwise:

(1) "Advisory body" means an authority, a board, a commission, a committee, a task force, or other body designated by any name of the executive department that is authorized only to make nonbinding recommendations.

...

(4) "Assist" means to:

(A) help;

(B) aid;

(C) advise; or

(D) furnish information to; a person. The term includes an offer to do any of the actions in clauses (A) through (D).

...

(7) "Compensation" means any money, thing of value, or financial benefit conferred on, or received by, any person in return for services rendered, or for services to be rendered, whether by that person or another.

...

(11) "Financial interest" means an interest:

(A) in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or

(B) involving property or services.

The term includes an interest arising from employment or prospective employment for which negotiations have begun. The term does not include an interest of a state officer or employee in the common stock of a corporation unless the combined holdings in the corporation of the state officer or the employee, that individual's spouse, and that individual's unemancipated children are more than one percent (1%) of the outstanding shares of the common stock of the corporation. The term does not include an interest that is not greater than the interest of the general public or any state officer or any state employee.

(12) "Information of a confidential nature" means information:

(A) obtained by reason of the position or office held; and

(B) which:

(i) a public agency is prohibited from disclosing under IC 5-14-3-4(a);

(ii) a public agency has the discretion not to disclose under IC 5-14-3-4(b) and that the agency has not disclosed; or

(iii) is not in a public record, but if it were, would be confidential.

(13) "Person" means any individual, proprietorship, partnership, unincorporated association, trust, business trust, group, limited liability company, or corporation, whether or not operated for profit, or a governmental agency or political subdivision.

...

(17) "Represent" means to do any of the following on behalf of a person:

(A) Attend an agency proceeding.

(B) Write a letter.

(C) Communicate with an employee of an agency.

4-2-7-1

Definitions

Sec. 1. The following definitions apply throughout this chapter:

...

(5) "Lobbyist" means an individual who seeks to influence decision making of an agency and who is registered as an executive branch lobbyist under rules adopted by the Indiana department of administration.

IC 4-2-6-6

Present or former state officers, employees, and special state appointees; compensation resulting from confidential information

Sec. 6. No state officer or employee, former state officer or employee, special state appointee, or former special state appointee shall accept any compensation from any employment, transaction, or investment which was entered into or made as a result of material information of a confidential nature.

IC 4-2-6-7

State officers and employees; excess compensation for sale or lease; advisory body member exception

Sec. 7. (a) This section does not apply to a special state appointee who serves only as a member of an advisory body.

(b) A state officer, employee, or special state appointee may not receive compensation:

(1) for the sale or lease of any property or service which substantially exceeds that which the state officer, employee, or special state appointee would charge in the ordinary course of business; and

(2) from any person whom the state officer, employee, or special state appointee knows or, in the exercise of reasonable care and diligence should know, has a business relationship with the agency in which the state officer, employee, or special state appointee holds a position.

(Formerly: Acts 1974, P.L.4, SEC.2.) As amended by P.L.9-1990, SEC.6; P.L.89-2006, SEC.8.

IC 4-2-6-9

Conflict of economic interests; commission advisory opinions; disclosure statement; written determinations

Sec. 9. (a) A state officer, an employee, or a special state appointee may not participate in any decision or vote, or matter relating to that decision or vote, if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:

(1) The state officer, employee, or special state appointee.

(2) A member of the immediate family of the state officer, employee, or special state appointee.

(3) A business organization in which the state officer, employee, or special state appointee is serving as an officer, a director, a member, a trustee, a partner, or an employee.

(4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.

(b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and ethics officer in writing and do either of the following:

(1) Seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter.

The commission shall:

(A) with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter; or

(B) make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services that the state expects from the state officer, employee, or special state appointee.

(2) File a written disclosure statement with the commission that:

(A) details the conflict of interest;

(B) describes and affirms the implementation of a screen established by the ethics officer;

(C) is signed by both:

(i) the state officer, employee, or special state appointee who identifies the potential conflict of interest; and

(ii) the agency ethics officer;

(D) includes a copy of the disclosure provided to the appointing authority; and

(E) is filed not later than seven (7) days after the conduct that gives rise to the conflict.

A written disclosure filed under this subdivision shall be posted on the inspector general's Internet web site.

(c) A written determination under subsection (b)(1)(B) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory opinion under this section to participate in the particular matter. A written determination under subsection (b)(1)(B) shall be filed with the appointing authority.

IC 4-2-6-10.5 State officers and employees; financial interest in contract made by agency; exceptions

Sec. 10.5. (a) Subject to subsection (b), a state officer, an employee, or a special state appointee may not knowingly have a financial interest in a contract made by an agency.

(b) The prohibition in subsection (a) does not apply to a state officer, an employee, or a special state appointee who:

(1) does not participate in or have contracting responsibility for the contracting agency;

and

(2) files a written statement with the inspector general before the state officer, employee, or special state appointee executes the contract with the state agency.

(c) A statement filed under subsection (b)(2) must include the following for each contract:

(1) An affirmation that the state officer, employee, or special state appointee does not participate in or have contracting responsibility for the contracting agency.

(2) An affirmation that the contract:

(A) was made after public notice and, if applicable, through competitive bidding; or

(B) was not subject to notice and bidding requirements and the basis for that conclusion.

(3) A statement making full disclosure of all related financial interests in the contract.

(4) A statement indicating that the contract can be performed without compromising the performance of the official duties and responsibilities of the state officer, employee, or special state appointee.

(5) In the case of a contract for professional services, an affirmation by the appointing authority of the contracting agency that no other state officer, employee, or special state appointee of that agency is available to perform those services as part of the regular duties of the state officer, employee, or special state appointee.

A state officer, employee, or special state appointee may file an amended statement upon discovery of additional information required to be reported.

(d) A state officer, employee, or special state appointee who:

(1) fails to file a statement required by rule or this section; or

(2) files a deficient statement;

before the contract start date is, upon a majority vote of the commission, subject to a civil penalty of not more than ten dollars (\$10) for each day the statement remains delinquent or deficient. The maximum penalty under this subsection is one thousand dollars (\$1,000).

42 IAC 1-5-10 Benefiting from confidential information

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 10. A state officer, employee, or special state appointee shall not benefit from, or permit any other person to benefit from, information of a confidential nature except as permitted or required by law.

42 IAC 1-5-11 Divulging confidential information

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 11. A state officer, employee, or special state appointee shall not divulge information of a confidential nature except as permitted by law.

Jen Cooper | State Ethics Director
Indiana Office of Inspector General/
State Ethics Commission
315 W. Ohio Street, Room 104
Indianapolis, IN 46202

Tel: 317.234.4108
Email: jcooper@ig.in.gov
Web: www.in.gov/ig

From: Bergens, Jim
Sent: Tuesday, February 26, 2019 8:46 AM
To: Cooper, Jennifer <JCooper@ig.IN.gov>
Subject: RE: Advice

Jennifer,

My main duties as Property Manager at Jasper-Pulaski Fish and Wildlife Area are to plan, coordinate, implement and direct 1) wildlife management practices and procedures; 2) construction and maintenance of property facilities, and 3) purchase and maintenance of all property equipment.

I have no contracting responsibility. My role for contracts is provide information only. As an example, with our trash contract I would determine the specifications, such as, to provide two 4 yard dumpsters and empty once per week and provide a list of possible vendors in our area. That information would be submitted as a Purchase Request to DNR Purchase and they would send out the bid packets, receive the vendor bid proposals and execute the contract with the selected vendor. I would be responsible for insuring that the terms of the contract are met and that the vendor is paid per terms of the contract.

I do not participate in any decisions regarding land acquisition purchases. We have a five year management plan written by my assistant that includes a land acquisition plan. It is three tiered plan. Since Jasper-Pulaski FWA is primarily forested, the goal is to purchase upland or farmland which would be Tier 1, the highest priority. Another factor in assigning priorities is proximity to the Fish and Wildlife Area. Land adjacent to the Fish and Wildlife Area would also fall into the Tier 1 category. When a parcel becomes available, Division of Fish and Wildlife leadership is notified and they make the decision to proceed based on the acquisition plan and the availability of funds. Leadership will work with our Division of Land acquisition to hire out at an appraisal. Due to federal restrictions, the division will not offer more than the appraised value. All decisions will be made by division leadership and land acquisition will handle all the administrative functions in the land acquisition. Since federal funds will be used, a federal reviewer will also review the appraisal to ensure that they agree with the appraisal. The property I have for sale fits the criteria for Tier 1 since it is both upland farmland and borders the Fish and Wildlife on two sides.

I can also provide our leadership contact in Indianapolis if you desire. If you have additional questions please let me know.

Thank you for your consideration.

Jim Bergens.

From: Cooper, Jennifer
Sent: Monday, February 25, 2019 1:54 PM
To: Bergens, Jim <JBergens@dnr.IN.gov>
Subject: RE: Advice

Hi James,

Thank you for contacting our office for ethics advice. Can you provide a brief description of your position as Property Manager at the Jasper-Pulaski Fish and Wildlife Area? Do you have any contracting responsibility for the area, the Division

of Fish and Wildlife, or DNR in general? Do you participate in any decisions regarding land acquisition or purchases for the area you manage or for the Division of Fish and Wildlife?

Would this proposed purchase of the land follow all of the standard procedures for land acquisition or is this situation different in any way?

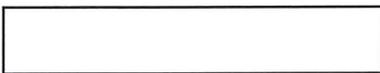
Thank you for taking the time to answer my questions. I look forward to your response.

Best regards,

Jen Cooper | State Ethics Director
Indiana Office of Inspector General/
State Ethics Commission
315 W. Ohio Street, Room 104
Indianapolis, IN 46202
Tel: 317.234.4108
Email: jcooper@ig.in.gov
Web: www.in.gov/ig

From: noreply@formstack.com [<mailto:noreply@formstack.com>]
Sent: Friday, February 22, 2019 7:13 AM
To: IG Info <info@ig.IN.gov>; ccarrasco@ig.in.gov; Cooper, Jennifer <JCooper@ig.IN.gov>
Subject: Advice

****** This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. ******



Formstack Submission For: **ig_2334**

Submitted at 02/22/19 7:12 AM

Name:	James Bergens
Email:	jbergens@dnr.in.gov
Phone:	(219) 843-4841
State Agency:	Department of Natural Resources Division of Fish and Wildlife
Description of Your State Occupation:	Property Manager at Jasper-Pulaski Fish and Wildlife Area

What is your ethics question?:

I own 60 acres adjacent to Jasper-Pulaski Fish and Wildlife Area that borders the state property on two sides. I am selling 38 acres. I asked the Division of Fish and Wildlife if they would be interested in purchasing the property. They indicated they would be interested in purchasing at appraised value. They submitted the request to our Land Acquisition Specialist, Ken Hasselkus. He suggested we get an ethics opinion. We contacted our Ethics Officer, Samantha DeWester. She indicated that the Inspector General's Office was the only one who could issue an opinion. So, the question is, as a state employee can I sell my property to the Division of Fish and Wildlife?

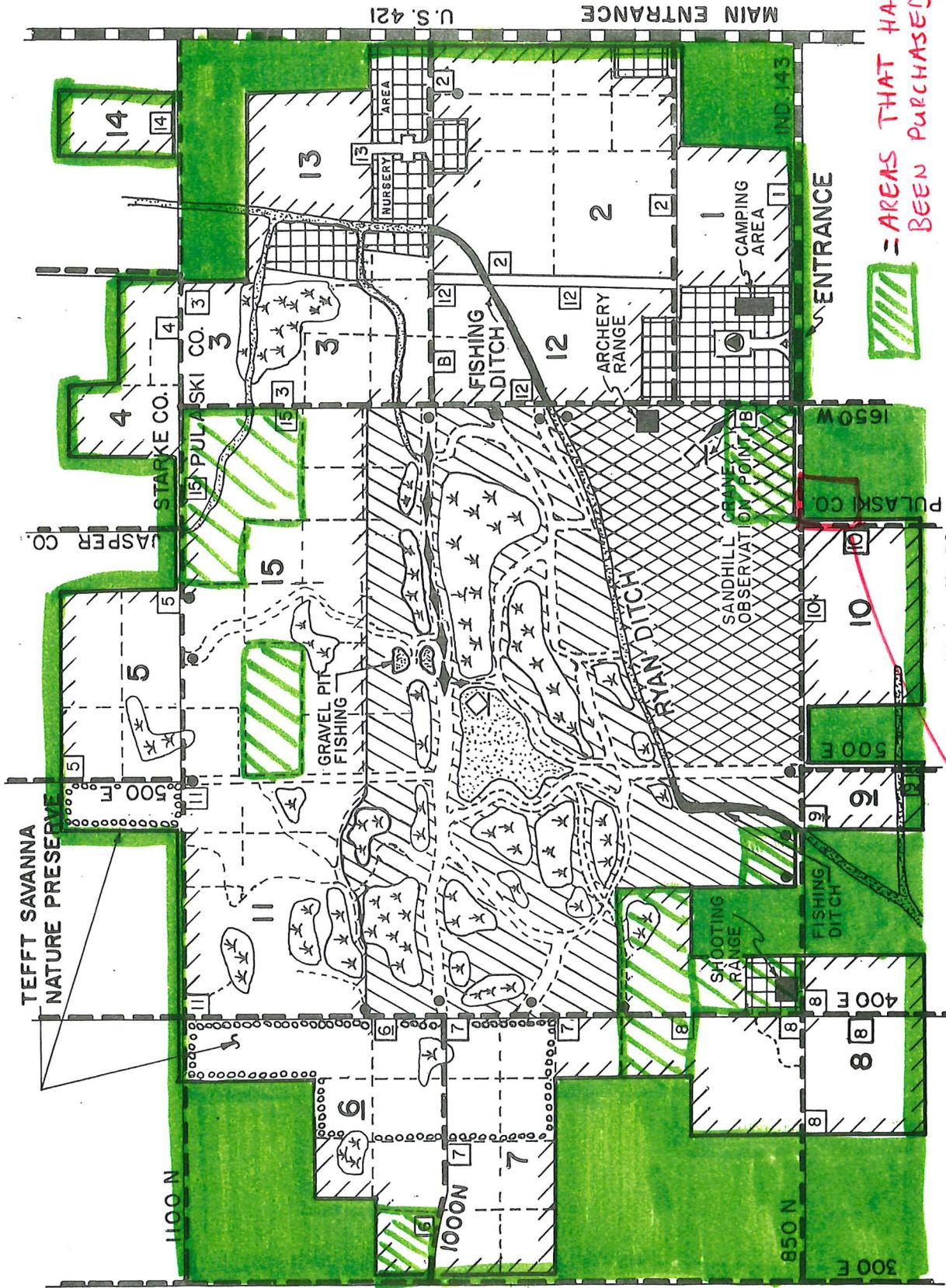
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Formstack, 11671 Lantern Road, Suite 300, Fishers, IN 46038

JASPER-PULASKI FISH & WILDLIFE AREA

FROM THE
"VOLMER PLAN" - 1965
STATE OF INDIANA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF FISH & WILDLIFE

The Division wishes to express its appreciation to the property owners of the Jasper-Pulaski Fish & Wildlife Area who have donated their property to the State of Indiana. The Division of Fish & Wildlife is primarily responsible for the management of the game, fish and game resources of the State. The Division of Fish & Wildlife is primarily responsible for the management of the game, fish and game resources of the State. The Division of Fish & Wildlife is primarily responsible for the management of the game, fish and game resources of the State.



LEGEND:
 = AREAS THAT HAVE BEEN PURCHASED
 = VOLMER BOUNDARY

BERGEN'S PROPERTY

HUN	WAT	REF	SAF	MAF	PAR	TOW	SPE	WAT	STA	COL	ARE	AUT	FOC	MAF	PRC	PRO	OBS	CAB	NAT

MASTER PLAN 1978

Jasper-Pulaski State Fish and Wildlife Area

Located close to densely populated Lake County, Jasper-Pulaski helps meet the demands for hunting, picnicking, and sightseeing as generated by the nearby metropolitan areas.

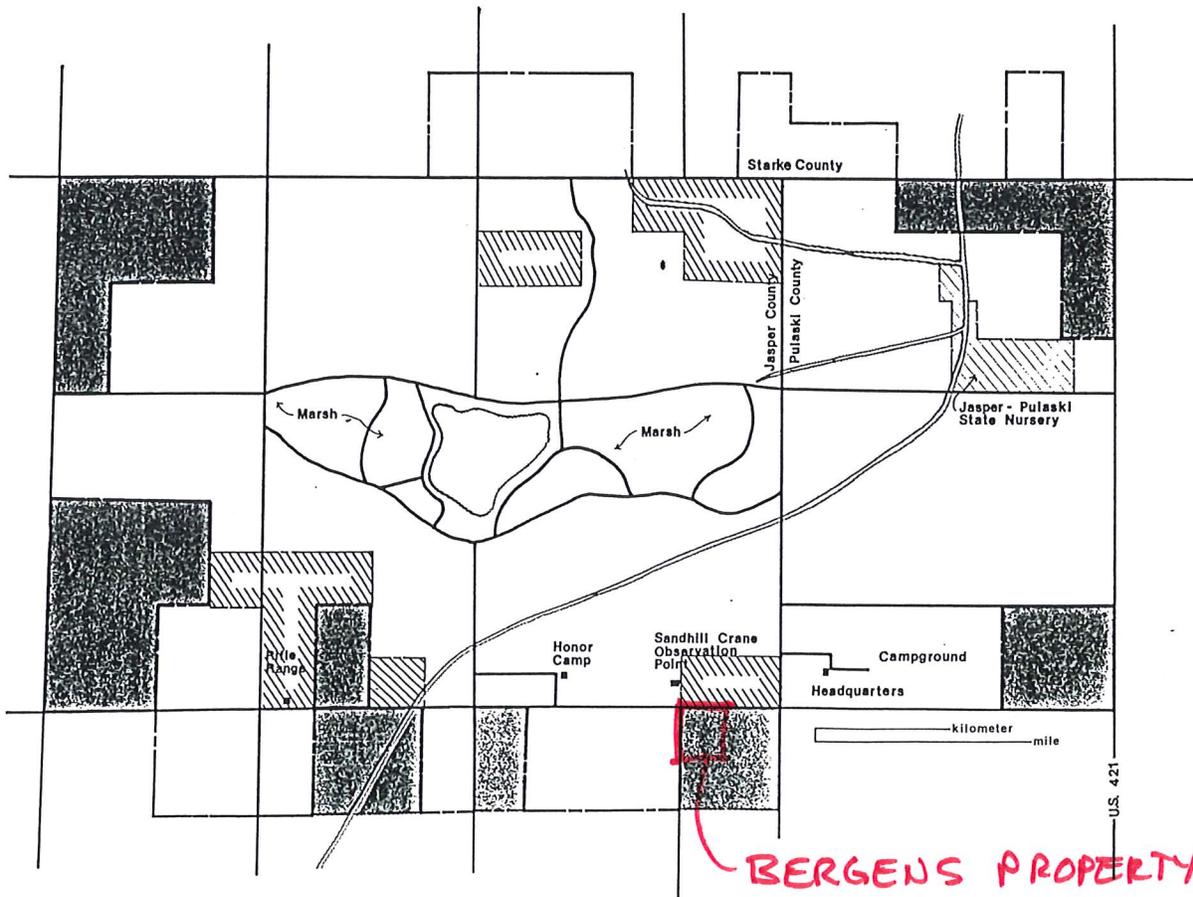
The hunting of white-tailed deer and fox squirrel is enhanced by an abundant oak habitat. Other species include quail and rabbit and a flock of Giant Canadian Geese that numbers over 1,000. Coupled with its location within the spring and fall waterfowl migration routes, this area is very popular for both hunting and birdwatching.

This property is also the major staging area for the eastern population of the Greater Sandhill Crane. Thousands of people visit the area to view these birds, whose fall populations exceed 12,000 individuals.

As land becomes available, an additional 1,280 acres need to be acquired to block-in the property and provide additional upland game habitat. An additional 1,200 acres should be purchased south of the present property to provide an area for goose hunting, as this area is presently used for feeding and resting.

Due to the high public use levels experienced by this property, a new headquarters complex is needed. This would consist of a combined office-check station. Comfort station replacements and remodeling are also needed.

1965 acreage:	7,360
1977 acreage:	8,014
future acreage:	9,294+

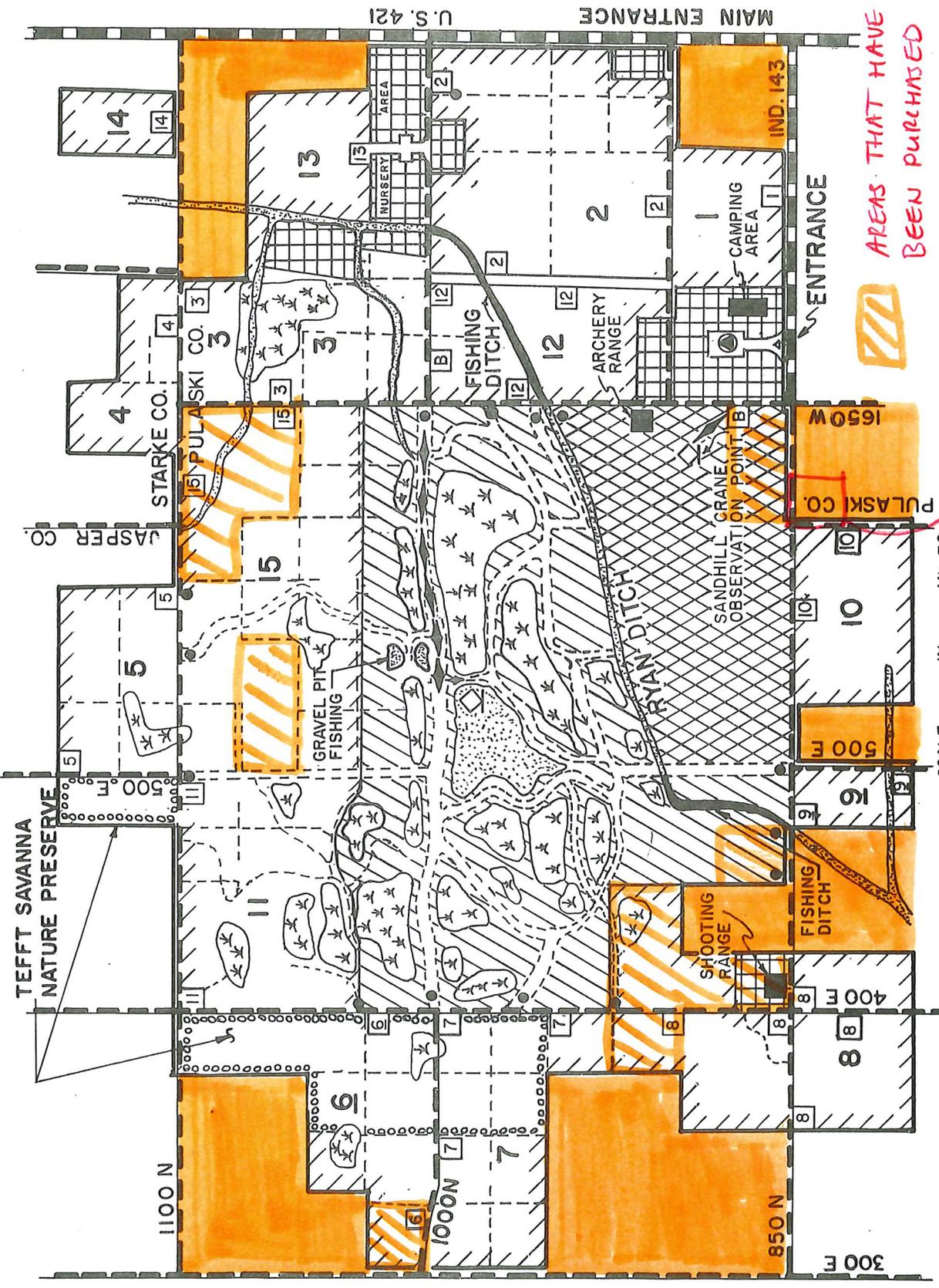


JASPER-PULASKI FISH & WILDLIFE AREA

STATE OF INDIANA
 DEPARTMENT OF NATURAL RESOURCES
 DIVISION OF FISH & WILDLIFE

FROM THE
 "MASTER PLAN 1978"

The Division wishes to express its appreciation to the property owners of the Jasper-Pulaski Fish & Wildlife Area who have been cooperative in the purchase of the area. The Division wishes to express its appreciation to the property owners of the Jasper-Pulaski Fish & Wildlife Area who have been cooperative in the purchase of the area.



AREAS THAT HAVE BEEN PURCHASED

BERGENS PROPERTY

HUF	WA	REI	SAF	MAI	PAF	TOI	SPE	WA	ST/	COI	ARI	AU	FOI	MA	PR	PR	OB	CA	NA
[Symbol]																			

BIENNIAL BUDGET

CAPITAL

Redesign of headquarters and constructing of a new office complex with a visitor center, office space, and meeting rooms, including revamping of the road system and rebuilding headquarters sewage and drainage system. \$700,000.

Add sealed storage and repair building onto present shop. Jasper-Pulaski is the main distribution point for the northern fish and wildlife properties for paper products, cleaning products, trash bags and various other materials. The building will also serve as the main storage for property materials. Although the present service building is in good repair, it is old and the overhead doors are less than nine feet wide; 70% of the property equipment can not be moved into the shop for repairs. With additional repair space all equipment could be serviced or repaired regardless of weather and climatic conditions.

Land Acquisition

<u>OWNER</u>	<u>ACRES</u>	<u>% TILLABLE</u>	<u>%TIMBERED</u>	<u>BUILDINGS PRESENT</u>	<u>PRICE</u>
1. Terstra	56	100		NO	\$ 78,400
2. Smolek	160	90	10	NO	240,000
3. Chesak	360	60	40	YES	522,000
4. Darnell	5	0	0	YES	75,000
5. Sutton	2	0	0	YES	65,000
6. Yeoman	80	90		NO	90,000
7. Huppert	80	60	40	NO	88,000
8. Wantola	80	80	10	YES	120,000
9. Will	128	95	55	NO	192,000
10. Buddenhoop	80	80	10	NO	104,000
11. Luken	80	90	5	NO	109,000
12. Dahnke	240	60	40	YES	288,000
13. Chernowsky	120	100		YES	110,000
14. Deerburg	120	100		YES	120,000
15. First Nat'l Bank Valpo.	80	90	10	NO	105,000
16. Rinehart	60	30	90	YES	66,000
17. M.W.R. Inc.	20	95	5	NO	20,000
18. Luken	89	80	10	YES	89,000
19. Rozhon	80	30	60	YES	80,000
20. Cripple Children Camp Inc.	80		100	NO	80,000
21. Peregrine	160		100	NO	176,000
22. Blodgett	46	20	80	NO	50,600
23. Hohner	160	40	60	YES	176,000
24. Davis	7	0		YES	60,000
25. Derkarr	33	5		YES	66,000
26.	10	0		YES	50,000
27. Hittle	25	0		YES	70,000
28. Fitzgerald	160	85	15	NO	216,000
29. Tetzloff	20	100	-	NO	30,000
30. Alberding	20	100	-	NO	30,000
31. Alberding	20	50	50	NO	25,000
32. Tetzloff	20	0	100	NO	24,000
33. Haman	40	0	100	YES	46,000

JASPER-PULASKI FISH & WILDLIFE AREA

Ownership and acreage of inholdings and land within the proposed purchase area. (12-30-91)

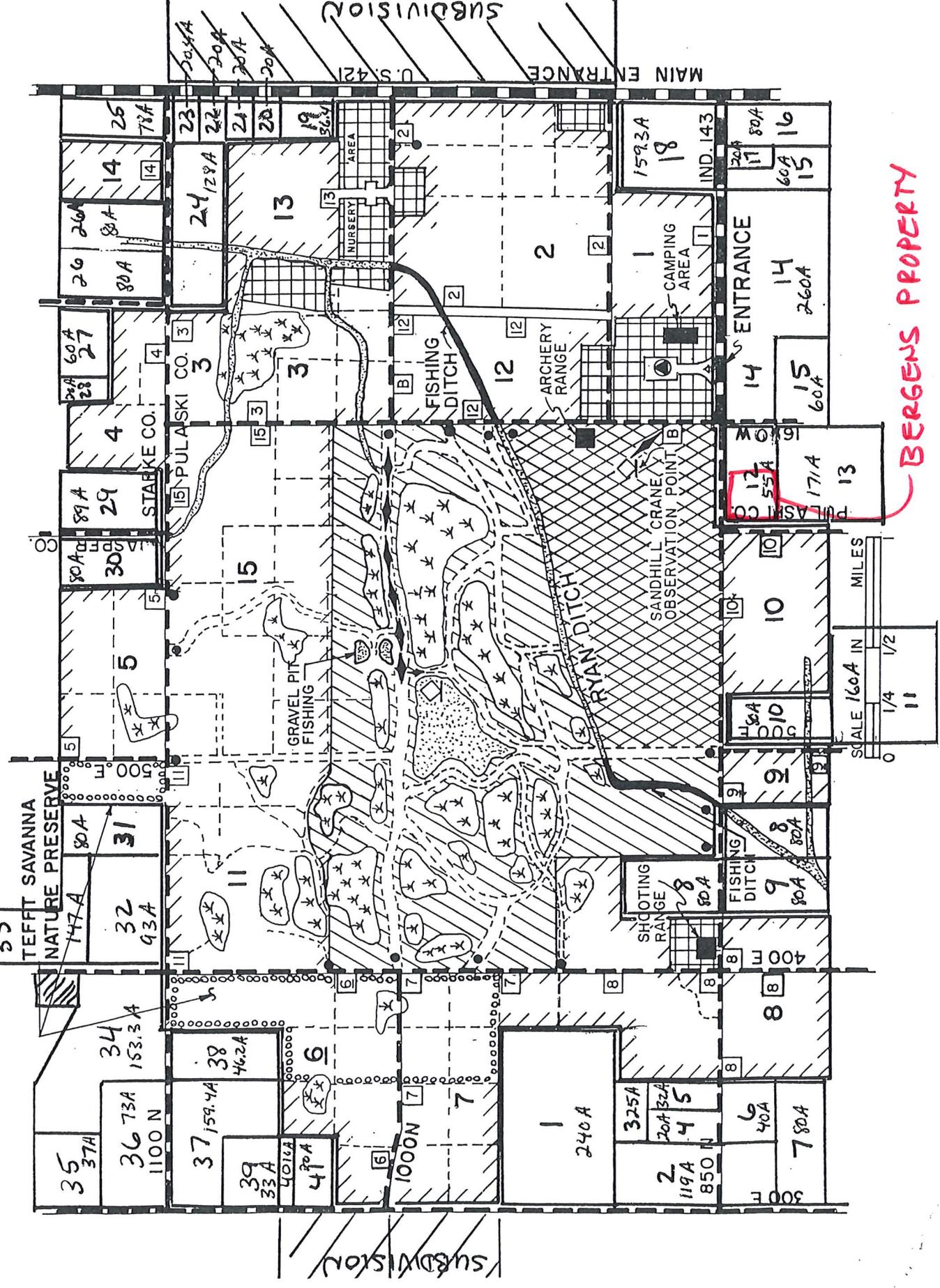
OWNER	ACRES
1. Lillian Heacock	240
2. Larry Pfladderer	119
3. Frank J. Chernowsky	25
4. Greg Chesak	20
5. Paul Chernowsky	32
6. Hans Markland	40
7. First National Bank of Valparaiso	80
8. James Yeoman	160
9. Leo Wantola	80
10. Norman & Donna Huppert	80
11. Darwin & Ruby Cawby	160
12. William Terpstra	55
13. Emil Smolek	171
14. James Chesak Jr.	260
15. Frank Row	60
16. James Tomlin	80
17. Felix Moyer	20
18. Alden & Evelyn Fitzgerald	159.3
19. Ronald Haman	36.4
20. Leroy Tetzloff	20
21. Ralph Alberding	20
22. Linda Alberding	20
23. Larry Tetzloff	20.4
24. Edward & Lois Will	128
25. Agnes Vauak	78
26. Mae Luken	80
26A. Morton Herrington	80
27. Larry Hunter	60
28. M.W.R. Inc.	20
29. Mae Luken	89
30. Cyril & Dorothy Rozhon	80
31. The Nature Conservancy	80
32. Robert Pergerine	93
33. Malcolm & Nora Pergerine	147
34. Richard Nuest	153.3
35. Ray Yeoman	37
36. Harry R. & Alice M. Miller	73
37. Vincent & Margaret Hohner	159.4
38. Angelo & Thomasine D'Ambrosio	46.2
39. Bilous & Prociu Derkaez	33
40. John R. Jeffers	10
41. Lawrence & Ceila Hittle	20

JASPER-PULASKI FISH & WILDLIFE AREA

STATE OF INDIANA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF FISH & WILDLIFE

12-30-91

The Division wishes to encourage property owners in the Area to donate their property. The Area has been established primarily for the benefit of game species and fish and game. Please obey laws printed on this map as well as those of the Wildlife Department.



BERGENS PROPERTY

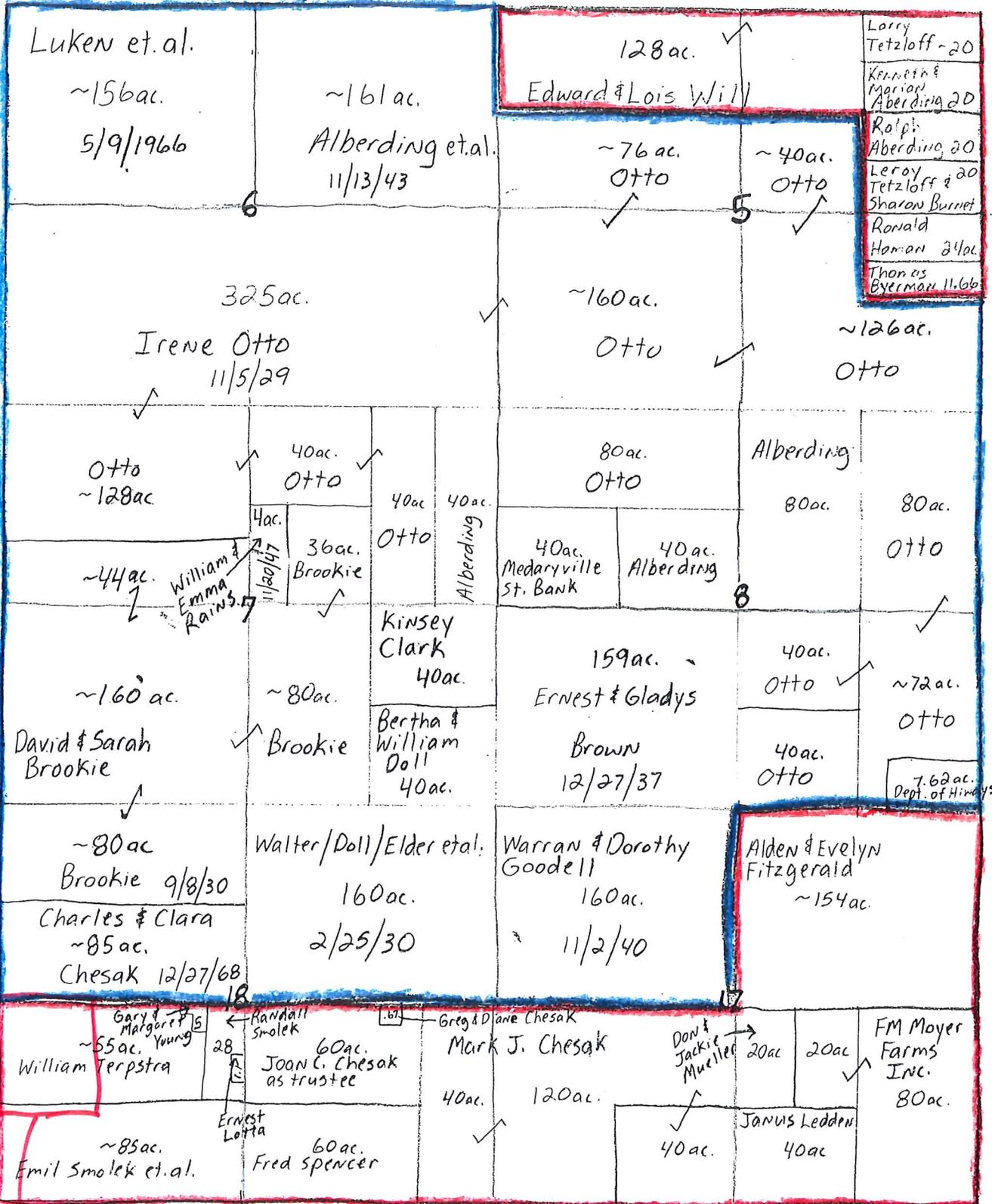
Cass Township
Pulaski County
2000-2001

Section #	Map #	Name of Landowner	Acres owned	Parcel #
5	N/A	Edward & Lois Will	128	004-00216-00
5	N/A	Larry Tetzloff	20.4	004-00212-00
5	N/A	Kenneth & Marion Alberding	20	004-00045-00
5	N/A	Ralph Alberding	20	004-00044-00
5	N/A	Leroy Tetzloff & Sharon Burnett	20	004-00213-00
5	N/A	Ronald Haman	~24	004-00126-00
5	N/A	Thomas Byerman	~11.66	004-00098-00
17	N/A	Alden & Evelyn Fitzgerald	154.1	003-00225-00
17	N/A	FM Moyer Farms Inc.	100	003-00380-00
17	N/A	Janus Ledden	40	003-00479-00
17	N/A	Don & Jackie Mueller	20	003-00478-00
17	N/A	Mark J. Chesak	160	003-00114-00
18	N/A	Mark J. Chesak	40	003-00117-00
18	N/A	Greg & Diane Chesak	0.67	003-00113-00
18	N/A	Joan C. Chesak as trustee	59.33	003-00111-00
18	N/A	Fred Spencer	60	003-00577-00
18	N/A	Ernest Lotta & Christine Luedtke	1.1	003-00368-00
18	N/A	Randall Smolek	28	003-00569-00
18	N/A	Gary & Margaret Young	5	003-00175-00
18	N/A	William Terpstra	~55	003-00633-00
18	N/A	Emil Smolek et.al.	85.44	003-00586-00

CASS Pulaski County

Township 31-N Range 4-W

- Privately owned land
- State owned land



BERGENS PROPERTY

Bergens, Jim

From: Kershaw, James
Sent: Tuesday, February 19, 2019 2:45 PM
To: Bergens, Jim
Subject: Fwd: Land For Sale

FYI-as you can see this is proving more complicated for some reason. I really don't think it is an issue and I suspect the IG will agree but I guess you will need to check.

Sent from my iPhone

Begin forwarded message:

From: "DeWester, Samantha E" <SDeWester@dnr.IN.gov>
Date: February 19, 2019 at 2:38:46 PM EST
To: "Reiter, Mark" <MREITER@dnr.IN.gov>
Cc: "Kershaw, James" <JKERSHAW@dnr.IN.gov>
Subject: Re: Land For Sale

He must request an opinion from the IG's office. It is on their website. They might have to present it to the commission.

Sent from my iPhone

On Feb 19, 2019, at 1:52 PM, Reiter, Mark <MREITER@dnr.in.gov> wrote:

Samantha,
There's not much more to the story than what I have told you already. What else do you need to know? Is there a form to fill out to get this reviewed?
Thanks

From: DeWester, Samantha E
Sent: Tuesday, February 19, 2019 12:36 PM
To: Kershaw, James <JKERSHAW@dnr.IN.gov>
Cc: Reiter, Mark <MREITER@dnr.IN.gov>
Subject: Re: Land For Sale

Nope. Same process. The IG is the only one who can issue opinions. I am the ethics officer and give advice but a formal opinion has to come from them. It's just a suggestion.

I would need dates, facts etc.

Sent from my iPhone

On Feb 19, 2019, at 12:04 PM, Kershaw, James <JKERSHAW@dnr.in.gov> wrote:

Has the process changed for ethics opinions? In the past, our chief legal counsel was our ethics officer.

Bergens, Jim

From: Kershaw, James
Sent: Tuesday, February 19, 2019 11:40 AM
To: Bergens, Jim
Subject: Fwd: Land For Sale

We are handling it for you.

Sent from my iPhone

Begin forwarded message:

From: "Reiter, Mark" <MREITER@dnr.IN.gov>
Date: February 19, 2019 at 11:34:21 AM EST
To: "DeWester, Samantha E" <SDeWester@dnr.IN.gov>
Cc: "Kershaw, James" <JKERSHAW@dnr.IN.gov>
Subject: FW: Land For Sale

Samantha,

One of our property managers owns some land we are interested in buying. He doesn't have the final say in the decision to buy this land. That decision is made several layers above him.

There is some concern as to whether this transaction is ethical. I don't believe it is any problem if all of the process employed to purchase this tract is exactly the same as it is to purchase any other tract.

Do you agree?

Thanks

From: Hasselkus, Kenneth
Sent: Tuesday, February 19, 2019 7:30 AM
To: Bergens, Jim <JBergens@dnr.IN.gov>; Kershaw, James <JKERSHAW@dnr.IN.gov>
Cc: Despot, Tom <TDespot@dnr.IN.gov>; Reiter, Mark <MREITER@dnr.IN.gov>
Subject: RE: Land For Sale

Please contact Samantha DeWester to get her opinion. Thanks.

Ken Hasselkus, Land Acquisition Specialist
Division of Fish and Wildlife
317-234-8761

From: Bergens, Jim
Sent: Tuesday, February 19, 2019 7:07 AM
To: Kershaw, James <JKERSHAW@dnr.IN.gov>; Hasselkus, Kenneth <KHasselkus@dnr.IN.gov>
Cc: Despot, Tom <TDespot@dnr.IN.gov>; Reiter, Mark <MREITER@dnr.IN.gov>
Subject: RE: Land For Sale

Are we good to go, or do I need to get ethics approval?

From: Kershaw, James
Sent: Monday, February 11, 2019 2:20 PM

To: Hasselkus, Kenneth <KHasselkus@dnr.IN.gov>
Cc: Bergens, Jim <JBergens@dnr.IN.gov>; Despot, Tom <TDespot@dnr.IN.gov>; Reiter, Mark <MREITER@dnr.IN.gov>
Subject: Re: Land For Sale

Who suggested that because Mark and I discussed that and did not foresee an issue. We can only paid appraised value and he is not in a decision making role so I am not sure where an issue would come in. That is why Mark suggested we refer Jim to you and we are handling it like normal.

Sent from my iPhone

On Feb 11, 2019, at 2:10 PM, Hasselkus, Kenneth <KHasselkus@dnr.in.gov> wrote:

Jim,

It was suggested to me that you should probably get ethics approval before we get too far along in the process. I don't foresee an issue, but we wouldn't want to get 6 months in, only to have the deal fall apart.

Please contact the state ethics board, or DNR's ethics officer (who I believe is Samantha DeWester) to get approval. Thanks.

Ken Hasselkus, Land Acquisition Specialist
Division of Fish and Wildlife
317-234-8761

From: Bergens, Jim
Sent: Monday, February 11, 2019 2:01 PM
To: Hasselkus, Kenneth <KHasselkus@dnr.IN.gov>; Kershaw, James <JKERSHAW@dnr.IN.gov>
Subject: RE: Land For Sale

Thanks.

From: Hasselkus, Kenneth
Sent: Monday, February 11, 2019 1:22 PM
To: Bergens, Jim <JBergens@dnr.IN.gov>; Kershaw, James <JKERSHAW@dnr.IN.gov>
Subject: RE: Land For Sale

Will do.

Ken Hasselkus, Land Acquisition Specialist
Division of Fish and Wildlife
317-234-8761

From: Bergens, Jim
Sent: Friday, February 08, 2019 3:39 PM
To: Hasselkus, Kenneth <KHasselkus@dnr.IN.gov>; Kershaw, James <JKERSHAW@dnr.IN.gov>
Subject: RE: Land For Sale

Yes, I would be willing. Please proceed with the appraisal.

From: Kershaw, James
Sent: Thursday, February 07, 2019 3:12 PM
To: Hasselkus, Kenneth <KHasselkus@dnr.IN.gov>
Cc: Bergens, Jim <JBergens@dnr.IN.gov>
Subject: RE: Land For Sale

If Jim is willing to work with us, Yes. We can replace the money freed up from Sun dog with this.

From: Hasselkus, Kenneth
Sent: Thursday, February 07, 2019 3:11 PM
To: Kershaw, James <JKERSHAW@dnr.IN.gov>
Subject: RE: Land For Sale

Would you like for me to proceed with an appraisal?

Ken Hasselkus, Land Acquisition Specialist
Division of Fish and Wildlife
317-234-8761

From: Kershaw, James
Sent: Thursday, February 07, 2019 3:10 PM
To: Hasselkus, Kenneth <KHasselkus@dnr.IN.gov>; Bergens, Jim <JBergens@dnr.IN.gov>
Cc: Despot, Tom <TDespot@dnr.IN.gov>
Subject: RE: Land For Sale

As you likely know though, we pay the closing costs and it would likely be a priority for us. I also believe we have the funding.

From: Hasselkus, Kenneth
Sent: Thursday, February 07, 2019 3:08 PM
To: Bergens, Jim <JBergens@dnr.IN.gov>; Kershaw, James <JKERSHAW@dnr.IN.gov>
Cc: Despot, Tom <TDespot@dnr.IN.gov>
Subject: RE: Land For Sale

Jim,

It will take 3-4 months to get an appraisal completed. And then another 3 months or so to get the paperwork processed. Plus, another couple of months due to the end of the fiscal year. So, if all goes well, we probably wouldn't get to a closing until at least late fall. Just thought it would be good for you to have a realistic idea of the timeline.

Ken Hasselkus, Land Acquisition Specialist
Division of Fish and Wildlife
317-234-8761

From: Bergens, Jim
Sent: Thursday, February 07, 2019 10:02 AM
To: Kershaw, James <JKERSHAW@dnr.IN.gov>; Hasselkus, Kenneth <KHasselkus@dnr.IN.gov>

Cc: Despot, Tom <TDespot@dnr.IN.gov>

Subject: RE: Land For Sale

My property is located within JPs acquisition boundary as a tier 1 priority. It borders JP on two sides, to the north and to the west (see attached location and Acquisition Plan map). I am open to entertaining appraised value. If the State is interested in purchasing the parcel, how long would it take to have an appraisal completed? I would like to sell sometime before summer. I am not looking at \$4 million. My guess is less than \$200,000.

Thanks for the consideration.

Jim.

From: Kershaw, James

Sent: Wednesday, February 06, 2019 8:27 AM

To: Bergens, Jim <JBergens@dnr.IN.gov>; Hasselkus, Kenneth <KHasselkus@dnr.IN.gov>

Cc: Despot, Tom <TDespot@dnr.IN.gov>

Subject: RE: Land For Sale

This is unique in that the items I normally request to consider an acquisition will also be coming from the seller but I will need an aerial showing how your parcel lies in relation to JP and where it lands in the acquisition plan. We will also need an idea of a timeline or if you are open and whether you will entertain the appraised value. Obviously, you may not know it but we need to make sure there is even a chance for success. For instance, if you are wanting \$4million we can save each other a lot of trouble on the front end.

These are standard questions that I request of everyone.

From: Bergens, Jim

Sent: Wednesday, February 06, 2019 8:19 AM

To: Hasselkus, Kenneth <KHasselkus@dnr.IN.gov>

Cc: Despot, Tom <TDespot@dnr.IN.gov>; Kershaw, James <JKERSHAW@dnr.IN.gov>

Subject: RE: Land For Sale

Ken,

Please see emails below and attachment. I had some of my property resurveyed to sell 38 acres. The property borders the state ground at Jasper-Pulaski FWA on two sides to the north and west. I would like to get an offer from the State. The new survey will be recorded at the time of the sale.

If you need anything else please let me know.

Thanks, Jim.

From: Despot, Tom

Sent: Tuesday, February 05, 2019 2:11 PM

To: Bergens, Jim <JBergens@dnr.IN.gov>

Subject: RE: Land For Sale

Please contact Ken Hasselkus if you wish to get an offer from the State. James said that it shouldn't be an issue since the State pays appraised value and in your position you don't have the authority to determine if the State buys the ground or not, so there would not be a conflict. I don't know what the acquisition funds look like since it depends on what other properties are already in the mix, but if you contact Ken he can then put it on the list and the leadership can make the judgement on the priorities for the available funds.

Thomas A. Despot
Indiana Division of Fish & Wildlife
North Region Public Lands Supervisor
4320 W. Toto Road
North, Judson, IN 46366
Office: 574-896-3522, Ext. 234
Cell: 574-595-0728

From: Bergens, Jim
Sent: Friday, February 01, 2019 1:09 PM
To: Despot, Tom <TDespot@dnr.IN.gov>; jbergens@centurylink.net
Subject: Land For Sale

I plan to sell about 40 acres of my farm ground. It's in JPs primary, tier 1 land acquisition plan. It borders JP on two sides. Two questions. First, does the division have any money for land purchases and are we, Public Lands, interested in the purchase? Second, would it be a conflict of interest for me, as a DNR employee, to sell to the state?

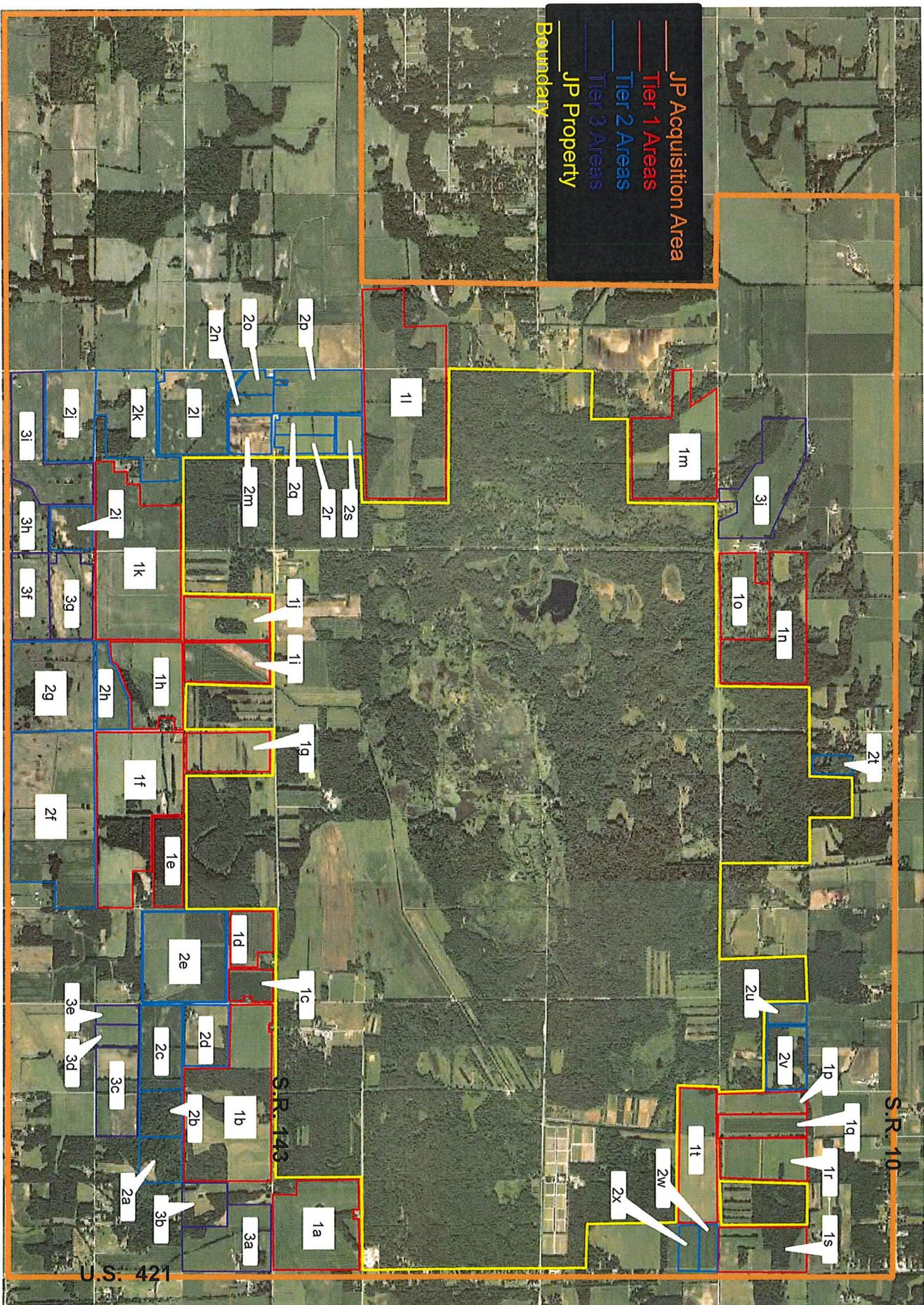
Thanks, Jim.

<image001.jpg>

Jasper-Pulaski FWA Land Acquisition Plan

Land acquisition at Jasper-Pulaski FWA should focus on agricultural lands, parcels with no structures, and areas that would allow connectivity of currently owned property. The highest priority areas would be immediately adjacent to current property boundaries on the north and south sides of the property. Acquisition should ultimately move in a SSW direction due to the suitability of the properties in this area. The lack of development and higher soil fertility will make habitat restoration efforts more successful. Additionally, the southerly direction is the most feasible since major highways and/or extensive development exist to the north, east and west of the property.

Jasper-Pulaski FWA Land Acquisition Plan - July 2018



Tier 1

1a	Byron Fitzgerald 109 WILLOW BEND Dr LA PORTE, IN 46350	152.6 acres Agricultural	1o	PEREGRINE, KENNETH W ETAL 3784 E ST RD 10 WHEATFIELD, IN 46392	84 acres 10 Ag 74 Wooded
1b	Mark Chesak 8340 W SR 10 SAN PIERRE ,IN 46374	260 acres 160 Ag 100 Wooded	1p	Hunter Larry L & Patricia A Trustees 8515 S 1100 W San Pierre,IN 46374	40 acres 38 Ag 2 Wooded
1c	Randell Smolek 12413 W 700 N NORTH JUDSON,IN 46366	28 acres Agricultural	1q	Abbring Jason C. & Pamela Lynn 1750 E 800 N Wheatfield,IN 46392	40 acres Agricultural
1d	James Bergens 5824 N FISH & WILDLIFE Ln MEDARYVILLE,IN 47957	60 acres 55 Ag 5 Wooded	1r	Harrington Morton M III & Deborah Ann 8225 S 1100 W San Pierre,IN 46374	80 acres 78 Ag 2 Wooded
1e	James Burelbach 287 CUMNOR AVE GLEN ELLYN, IL 60137	60 acres Wooded	1s	Heyn Clarence W 305 N Illinois Wanatah,IN 46390	80 acres 40 Ag 40 Wooded
1f	David Rastovski 1454 CEDAR CREEK CT VALPARAISO, IN 46383	213.6 acres 183.6 CRP 30 Wooded	1t	WILL, THOMAS E. 9914 SPRINGSTONE RD MC CORDSVILLE,IN 46055	128 acres 124 Ag 4 Wooded
1g	Donna Huppert 4400 N 1650 W MEDARYVILLE, IN 47957	80 acres Agricultural			
1h	Frank Stalbaum 203 W WILSON ST HEBRON, IN 46341	110.6 acres 102 Ag 8.6 Wooded			
1i	Harper Bros. Land LLC 15408 W 200 N MEDARYVILLE, IN 47957	80 acres Agricultural			
1j	Wantola, Leo J & Vera M. 4315 E 850 N WHEATFIELD, IN 46392	80 acres 71.5 Ag 8.5 Wooded			
1k	MIDWEST FARMS LLC PO BOX 654 KIRKLAND, WA 98083	265.63 acres Agricultural			
1l	The Nature Conservancy 620 E OHIO ST INDIANAPOLIS, IN 46368	360 acres 204 WRP & Prairie 156 Wooded			
1m	The Nature Conservancy 620 E OHIO ST INDIANAPOLIS, IN 46368	140 acres 102 Ag 38 Wooded			
1n	The Nature Conservancy 620 E OHIO ST INDIANAPOLIS, IN 46368	147 acres 40 Prairie 107 Wooded			

Tier 2

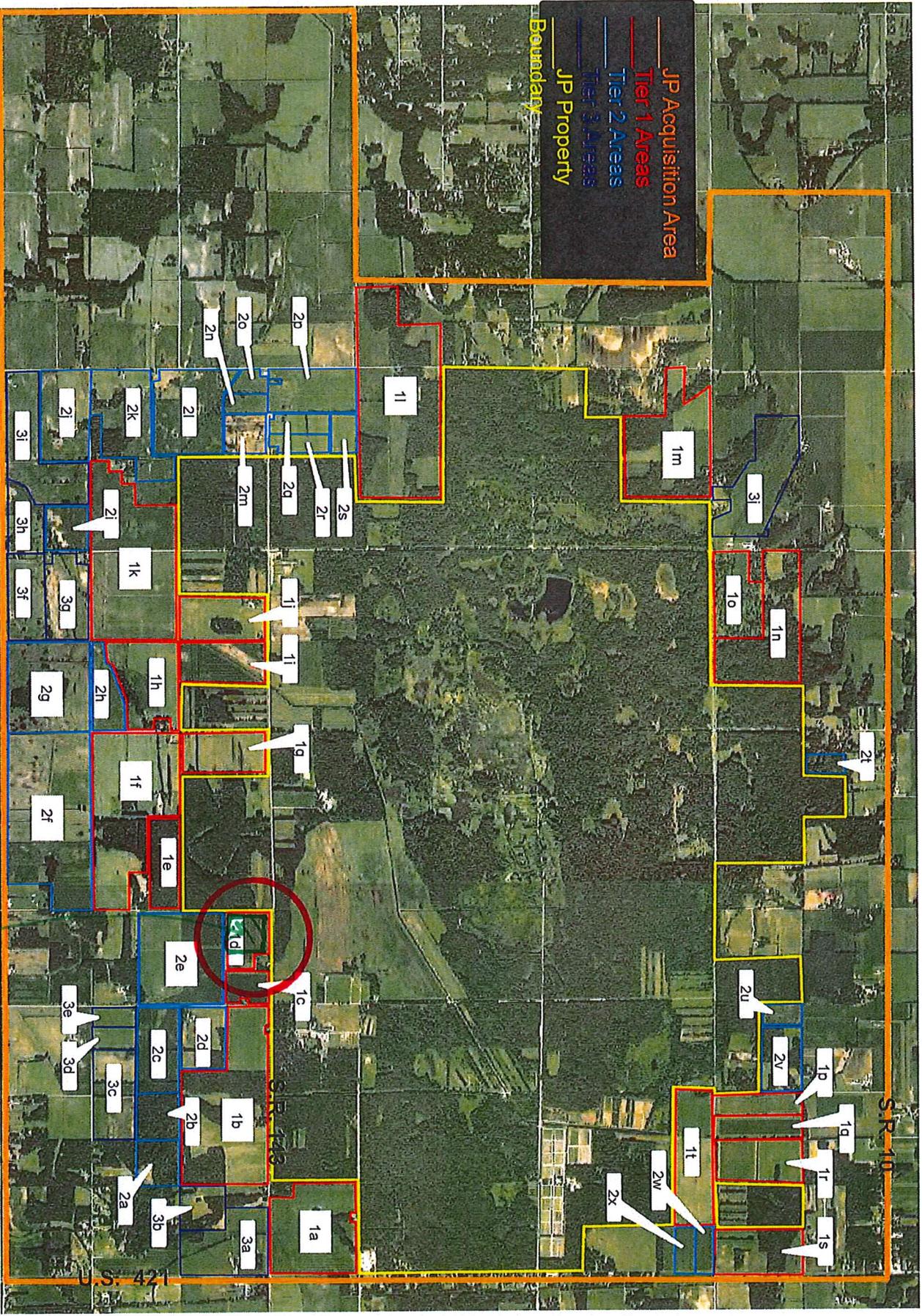
<u>2a</u>	Prusinski, Leo & Mark 3513 BOB WHITE CIRCLE VALPARAISO, IN 46383	40 acres 5 Ag 35 Wooded	<u>2o</u>	PFLEDDERER, LARRY R PO BOX 768 FRANCESVILLE, IN 47946	16.8 acres Agricultural
<u>2b</u>	JAMES, DONALD D. ETAL 444 RAND St HOBART, IN 46342	40 acres Wooded	<u>2p</u>	PFLEDDERER, LARRY R PO BOX 768 FRANCESVILLE, IN 47946	78 acres Agricultural
<u>2c</u>	Markland, Hans 58 W 1000 N WHEATFIELD ,IN 46392	80 acres Agricultural	<u>2q</u>	Chesak, Greg D. & Diane M. 7134 N US HWY 421 SAN PIERRE, IN 46374	20 acres Agricultural
<u>2d</u>	HOWARD, BONNY L. 3103 W 400 N RENSSELAER, IN 47978	60 acres 45 Ag 15 Wooded	<u>2r</u>	Ruan, David & Cindy H. Wai Yuen 2423 S NORMAL AVE APT I CHICAGO, IL 60616	28 acres Agricultural
<u>2e</u>	SMOLEK, EMIL T. ET AL 12413 W 700 N NORTH JUDSON ,IN 46366	85 acres 76 Ag 8 Wooded	<u>2s</u>	BROWN, BETTY 2741 N SALISBURY ST WEST LAFAYETTE, IN 47906	23 acres Agricultural
<u>2f</u>	Schultz, Ester E.;Trust 5950 E 700 N MEDARYVILLE, IN 47957	310 acres Agricultural	<u>2t</u>	SPEACHT, Donald R. & Dorothy M. 11750 N 500 E SAN PIERRE, IN 46374	20 acres Wooded
<u>2g</u>	T S F INC 14000 75TH ST BRISTOL, WI 53104	160 acres 130 Ag 30 Wooded	<u>2u</u>	Wuethrich Farms LLC 15543 W 500 S Francesville, IN 47946	20 acres Agricultural
<u>2h</u>	Stalbaum, Harold & Barbara 2682 E 1300 N WHEATFIELD, IN 46392	46.9 acres Agricultural	<u>2v</u>	Hunter Larry L & Patricia A 8515 S 1100 W San Pierre, IN 46374	60 acres 16 Ag 44 Wooded
<u>2i</u>	MIDWEST FARMS LLC PO BOX 654 KIRKLAND, WA 98083	40 acres Agricultural	<u>2w</u>	TETZLOFF, LARRY G. 5908 PAPAYA DR FORT PIERCE ,FL 34982	20.4 acres Agricultural
<u>2j</u>	HARPER BROS. LAND LLC 15408 W 200 N MEDARYVILLE, IN 47957	100 acres Agricultural	<u>2x</u>	ALBERDING FAMILY FARMS, LLC 450 W FM 931 GATESVILLE, TX 76528	20.4 acres Agricultural
<u>2k</u>	Harper Bros. Land LLC 15408 W 200 N MEDARYVILLE, IN 47957	110 acres Agricultural			
<u>2l</u>	Marlatt, David V. & Marcella 7683 N 300 E WHEATFIELD, IN 46392	140 acres Agricultural			
<u>2m</u>	Markland, Hans 58 W 1000 N WHEATFIELD ,IN 46392	40 acres Agricultural			
<u>2n</u>	Knight, Chris & Glenda 607 N SHERMAN ST CROWN POINT, IN 46307	16.8 acres Agricultural			

Tier 3

<u>3a</u>	F.M. MOYER FARMS, INC. 5294 N US 421 MEDARYVILLE ,IN 47957	100 acres Agricultural
<u>3b</u>	LED DEN, JAMES D. 15493 W SR 143 MEDARYVILLE ,IN 47957	40 acres 22 Ag 18 Wooded
<u>3c</u>	ABBRING, Fred & Janelle R. 4853 W 1300 N WHEATFIELD,IN 46392	80 acres Agricultural
<u>3d</u>	Bortkiewicz, Franklin & Brian 16344 W 450 N MEDARYVILLE,IN 47957	20 acres Agricultural
<u>3e</u>	BORTKIEWICZ, ANTON 4728 N 1650 W MEDARYVILLE ,IN 47957	20 acres Agricultural
<u>3f</u>	FOX, MYRALIN JOAN 16127 W BASE RD WEST MEDARYVILLE, IN 47957	80 acres Agricultural
<u>3g</u>	WUETHRICH, Bruce & Kathy 2012 S 550 E RENSELAER, IN 47978	70.9 acres Agricultural
<u>3h</u>	Selmer, Marie & Arlen Lizenby 1808 E 1500 N WHEATFIELD, IN 46392	46.2 acres Agricultural
<u>3i</u>	LUKAC, Randall L. & Terri L 6901 S 775 W SAN PIERRE, IN 46374	126.7 acres Agricultural
<u>3j</u>	NUEST, GARNET I TRUSTEE 11482 N 400 E WHEATFIELD, IN 46392	127 acres 115 Ag 12 Wooded

Jasper-Pulaski FWA Land Acquisition Plan- July 2018

JP Acquisition Area
Tier 1 Areas
Tier 2 Areas
Tier 3 Areas
JP Property
Boundary



Property for sale



Eric Holcomb, Governor
State of Indiana

Office of General Counsel
402 W. WASHINGTON STREET, ROOM W451, MS27
INDIANAPOLIS, IN 46204-2744

April 1, 2019

Ethics Commission
Office of the Inspector General
315 West Ohio Street, Room 104
Indianapolis, Indiana 46202
Via Email: info@ig.in.gov

RE: Request for Formal Advisory Opinion for Kevin Moore

Dear Chair Noel and members of the Ethics Commission:

The Indiana Family and Social Services Administration (“FSSA”), on behalf of Kevin Moore, requests a Formal Advisory Opinion from the State Ethics Commission regarding conflicts of interest and post-employment restrictions for Mr. Moore. Mr. Moore and I respectfully request to come before the Ethics Commission at its next meeting on April 11, 2019.

Since January 1, 2012, Kevin Moore has held the position of Director for FSSA’s Division of Mental Health and Addition (“DMHA”). As Director, Mr. Moore’s responsibilities include, the development, implementation and oversight of programs, operations and policies relating to the provision of information, resources and publicly funded services to individuals with mental illness and addictions. Mr. Moore plans to retire from state service on April 30, 2019. He is interested in pursuing a post-employment opportunity with Health Management Associates (“HMA”), following his retirement with an anticipated start date of May 13, 2019.

HMA is an independent national research and consulting firm in the healthcare industry. HMA has offices throughout the United States, with its corporate headquarters in Michigan. FSSA currently has a contract with HMA that is set to expire on June 30, 2019. The scope of work for the contract requires HMA to assist the State’s Medicaid program in policy development, implementation efforts and operational support. Specifically, the contract requires HMA to: (1) perform tasks for the Healthy Indiana Plan (HIP), such as project management, evaluation and monitoring, etc.; (2) perform tasks for the 1115 waiver; and (3) provide policy support, including ad hoc consulting as requested by FSSA division directors.

Mr. Moore did not have any involvement in the negotiation or administration of the contract HMA has with FSSA. Nor was he in a position to make any discretionary decision affecting the

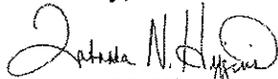


Mr. Moore knows and understands that Indiana's ethics laws will continue to apply to him as a private sector employee. He understands and agrees not to divulge confidential information of FSSA during his post-employment endeavors. Furthermore, Mr. Moore understands and agrees to abide by the one-year restriction regarding registering as an executive branch lobbyist.

Given that Mr. Moore: (1) neither engaged in the negotiation or administration of any contract between FSSA and HMA; (2) was not involved in a position to make a discretionary decision affecting the outcome of the negotiation or nature of the administration of any contract with HMA during his state employment; (3) did not make any regulatory or licensing decision that directly applied to HMA; and (4) the facts do not indicate that HMA's purpose in extending him an employment offer was to influence him in his official capacity, we believe Mr. Moore's prospective employment with HMA is permissible under Indiana's ethics laws so long as he does not engage in executive branch lobbying for one year after leaving state employment; refrains from divulging confidential information of FSSA; and complies with the particular matter restrictions set forth in the ethics code.

We appreciate the Ethics Commission's consideration.

Sincerely,



Latosha N. Higgins

Managing Attorney and Ethics Officer

March 27, 2019

Indiana Ethics Commission,
Office of the Inspector General
315 West Ohio Street, Room 104
Indianapolis, Indiana 46202
info@ig.in.gov

RECEIVED

MAR 29 2019

Indiana Office of Inspector General

RE: Request for Formal Advisory Opinion

Dear Ethics Commission:

I, Donna Marks, retired from my position as Provider Communications Manager, with the Indiana Family and Social Services Administration (FSSA), Office of Medicaid Policy and Planning (OMPP) on February 1, 2019. I have been offered the opportunity to subcontract with netlogx LLC to provide consultation services to OMPP related to the new FSSA Provider Enrollment and Credentialing (EnCred) project. Netlogx serves a project management role for FSSA/OMPP on the design, development, and implementation of EnCred as well as a number of other agency projects. The informal ethics advisory opinion I received advised that I request a formal opinion related to the "particular matter" restriction relative to said subcontract. Accordingly, I am submitting this request to the Ethics Commission.

As the Provider Communications Manager, I was responsible for overseeing OMPP provider publications and provider-facing guidance, reference materials, and resources. Specifically, I worked with FSSA/OMPP's fiscal agent, DXC Technology (DXC), to process and publish all provider-facing communication regarding Indiana Medicaid. This included reviewing, editing, and approving all provider bulletins, banner page articles, and website content. As such, I interfaced with OMPP subject matter experts to understand, clarify, and communicate provider guidance; and managed the process for updating provider policy and guidance modules, forms, and other provider documents consistent with OMPP policy. In my position I was responsible for overseeing the provider communication functions that were performed under contract by DXC to ensure contract obligations were met.

As the Provider Communications Manager, I was not involved in the solicitation or selection process for any FSSA vendors nor did I have contracting responsibilities with any FSSA vendors. Accordingly, I was not involved in the solicitation or contracting process with the EnCred vendor, Conduent or with the solicitation or contracting process with netlogx. With respect to EnCred, once design/development was underway, I was involved on an as-needed basis to address issues related to provider communication or provider interfacing with the new system. Prior to leaving state employment, I worked on and approved the initial provider communications about EnCred, as I did with all provider communications. With respect to netlogx, I was involved in some agency projects for which netlogx provided project management assistance. My involvement included project meetings, document reviews, and responding to project action items related to provider communications – which in some cases were coordinated by netlogx. I was not responsible for directing netlogx's work on any projects.

182

In my potential role as a subcontractor with netlogx, I will be consulting with the OMPP provider enrollment team on the EnCred communication strategy and on configurable provider-facing elements of the EnCred product itself. Consultation will include advising on strategies and timelines for publications, document development, and training as well as evaluating the EnCred solution in test mode relative to provider data entry, navigation, and other interface issues. Although I will be involved to some degree with provider-facing or stakeholder-facing publications and document development, I will be doing so from the perspective of a subject matter expert. I will not be responsible for approving publications or documents generated by the project or for overseeing the State's publication of same. My subcontract would not include executive branch lobbying or require the disclosure of confidential information.

I am seeking advice to determine whether the Indiana Code of Ethics would prohibit me from subcontracting with netlogx as a consultant on FSSA's EnCred Provider Enrollment and Credentialing project. I am hopeful consideration will be given to this request at the April 2019 Commission meeting.

Sincerely,



Donna Marks
5776 East Michigan Street
Indianapolis, Indiana 46219

317-809-4929

RECEIVED

MAR 29 2019

Indiana Office of Inspector General

2019