

APPENDIX L

**FULL TEXT OF CORRESPONDENCE RECEIVED
CONTAINING SUBSTANTIVE COMMENT ON THE
DRAFT EIS**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

Appendix L

OCT 17 2006



REPLY TO THE ATTENTION OF

B-19J

Mr. Steve Johnson
Acting Superintendent
Mississippi National River and Recreation Area
111 Kellogg Blvd. East, Suite 105
St. Paul, Minnesota 55101

Re: Comments on the Draft Environmental Impact Statement (DEIS) for the Disposition of Bureau of Mines Property, Twin Cities Research Center Main Campus in Hennepin County, Minnesota, EIS No. 20060348

Dear Mr. Johnson:

I am providing comments on the Draft Environmental Impact Statement (DEIS) for the Disposition of Bureau of Mines Property in Hennepin County, Minnesota, consistent with our responsibilities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act.

Based on our review of the information provided in the DEIS, we have rated the DEIS as "Environmental Concerns-Insufficient Information" (EC-2). We have enclosed a summary of EPA's rating system under NEPA. Our environmental concerns are due to remaining remediation issues and coordination on historic resources.

The Mississippi National River and Recreation Area (MNRRA), a unit of the National Park system administered by the National Park Service (NPS), has been designated by Congress to address the disposition of the federal property known as the Bureau of Mines, Twin Cities Research Center Main Campus, referred to throughout this letter as the Center. The Center has been closed since 1995. From 1949 until 1996, it had been used by the U.S. Bureau of Mines to store mineral deposit cores. It is near Minneapolis St. Paul International Airport, near the intersection of State Highways 62 and 55, and lies entirely within the boundaries of the MNRRA. The Center is comprised of 11 buildings on approximately 27 acres of land located on a bluff overlooking the Mississippi River. The buildings, some of which are of historic character, are in various stages of disrepair. A key factor in the analysis of disposition options is the fact that there are three historic districts (Fort Snelling National Historic District, Old Fort Snelling State Historic District, and the U.S. Bureau of Mines (USBM) Twin Cities Research Center Historic District) and a national historic landmark (Fort Snelling National Historic Landmark) that overlap the boundaries of the Center. A notable feature on the Center is Camp Coldwater Spring, a culturally important resource to Native Americans and other groups that was considered for, but not found eligible as, a traditional cultural property.

The DEIS states that the proposed action is needed because the Center permanently closed after Congress abolished the USBM and terminated funding for the USBM. Alternatives evaluated in the DEIS are as follows:

- Alternative A, no action/retention of the Center by the federal government,
- Alternative B, convey the Center, without conditions, to a university or nonfederal government entity,
- Alternative C, convey the Center, with condition(s), to a university or nonfederal government entity, and
- Alternative D, modify land, structures, or other improvements at the Center prior to conveyance (either without conditions, as in alternative B, or with conditions, as in alternative C) or retention.

Since the future use of the property is unknown each alternative considered conceptual land-use scenarios and mitigation measures. The NPS has not identify a preferred alternative in this DEIS.

Based on our review of the DEIS and the technical reports, we believe that the project need is well documented, the existing resources well researched, and the approach taken for evaluating alternatives and their impacts appropriate. The DEIS has well documented the wealth of resources that are part of this 27-acre parcel. The disposition of the Center and the related matter of the next use of the land are two critical issues that will dictate possible future environmental impacts. The three land use scenarios considered in the DEIS are: (1) Open Space/Park, (2), Interpretive/Nature/History Center, and (3) Training Center/Office Park.

We agree that the historical, cultural, and aesthetic values of the Center are significant. Some of the natural resources, such as wetlands, have been disturbed during the time of the Center's development and use. Given the Center's location within the boundaries of MNRAA and because of the existence of Coldwater Spring and associated wetlands on the property, we believe the disposition of the Center would provide an ideal opportunity to enhance and restore natural resources. This restoration could be done in a manner that would also enhance cultural and aesthetic values. The Open Space/Park and Interpretive/Nature/History Center scenarios appear more consistent with restoring natural resources on site than the Training Center/Office Park scenario. We would encourage the lead agency to strongly consider options that take advantage of this opportunity.

There are two fundamental challenges with disposing of this property: further environmental cleanup and coordination on historic features. Although the Center has undergone previous environmental site assessments and subsequent cleanup under the Minnesota Pollution Control Agency's Voluntary Investigation and Cleanup Program, there still are remaining hazardous substances and safety hazards on site that need to be addressed. Remaining hazards include asbestos, mold, radon, polychlorinated biphenyls, lead, and non-chemical hazards such as electrical and physical hazards. We agree with the statement made on page 221 of the DEIS that "...by renovation and/or clearing buildings and completing remediation the site prior to

disposition, the government would be more likely to find a willing transferee because they would be spared the cost and risk of such activities.”

In order to properly consider historic properties on this site, we believe remediation plans need to be integrated with historic preservation plans in a comprehensive plan. Alternative D is the most consistent with this approach. For this reason, EPA has identified Alternative D as the environmentally preferred alternative. This alternative would address the safety hazards associated with the existing structures, address remaining chemical and biological hazards (lead, asbestos, mold) associated with remaining infrastructure, and allow for restoration of sensitive resources such as wetlands, seeps, and streams. We believe that this alternative will allow activities to be done in a more comprehensively and integrative way than what might otherwise occur under the other alternatives. If another alternative is selected as a preferred alternative, the Record of Decision should include appropriate conditions protecting historic, cultural, and natural resources.

Thank you for the opportunity to comment on this DEIS. We are available to discuss these comments. If you have any questions, please contact me at (312) 886-2910. The staff person assigned to this project is Sherry Kamke; she can be reached at (312) 353-5794 or via email at kamke.sherry@epa.gov.

Sincerely,



Kenneth A. Westlake, Chief
NEPA Implementation Section
Office of Science, Ecosystems, and Communities

Enclosure (1)

SUMMARY OF RATING DEFINITIONS AND FOLLOW UP ACTION

Environmental Impact of the Action

LO-Lack of Objections

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC-Environmental Concerns

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impacts. EPA would like to work with the lead agency to reduce these impacts.

EO-Environmental Objections

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU-Environmentally Unsatisfactory

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS state, this proposal will be recommended for referral to the CEQ.

Adequacy of the Impact Statement

Category 1-Adequate

The EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collecting is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2-Insufficient Information

The draft EIS does not contain sufficient information for the EPA to fully assess the environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

Category 3-Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.



IN REPLY REFER TO:
FWS/AFWE/ICPO

United States Department of the Interior

FISH AND WILDLIFE SERVICE

Twin Cities Field Office
4101 East 80th Street
Bloomington, Minnesota 55425-1665

NOV 27 2006

Appendix L



Mr. Steven P. Johnson
Acting Superintendent
Mississippi National River and
Recreation Area
National Park Service
111 East Kellogg Blvd.
St. Paul, MN 55101-1256

received
11/29/06

Dear Mr. Johnson:

This responds to the Draft Environmental Impact Statement, Disposition of Bureau of Mines Property, Twin Cities Research Center Main Campus, Hennepin County, Minnesota (DEIS). The DEIS was prepared for the National Park Service (NPS) by Engineering-environmental Management, Inc. to address the disposition of the Federal property known at the U.S. Bureau of Mines (USBM) Property, Twin Cities Research Center Main Campus (Center). The U.S. Fish and Wildlife Service (FWS), in a 2004 Interagency Memorandum of Agreement with the NPS, agreed to act as a cooperating agency, assisting and providing comments to the NPS on the DEIS, and cooperating with the NPS to facilitate the decision process within the Department of the Interior (DOI) for the disposition of the USBM property and Center.

The USBM property consists of 27 acres near the intersection of State Highways 62 and 55 in Hennepin County, Minnesota. It lies entirely within the boundaries of the Mississippi National River and Recreation Area (MNRRA) as designated by the NPS and which has also been designated by the Governor of Minnesota as the Mississippi River Critical Area (MRCA). As a result the USBM property should be administered under provisions of law generally applicable to units of the National Park System. One of the major objectives of MRCA is to protect and preserve the biological and ecological functions of the corridor. The NPS is authorized by Congress to acquire the entire 27 acres of USBM property.

Three alternatives are identified in the DEIS in addition to the no-action alternative (Alternative A), which is to maintain the property in DOI ownership while having the FWS continue as the property caretaker. The three action alternatives include: (1)

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11-27-06

transfer of the Center to a university or nonfederal government entity without conditions (Alternative B), (2) transfer of the Center to a university or nonfederal government entity with conditions (Alternative C), and (3) modification of the Center property prior to transfer or retention (either with or without conditions on the transfer) (Alternative D). Three land use scenarios that could be implemented by a recipient were applied in the DEIS to all three action alternatives, including: (1) open space/park, (2) interpretive/nature/history center, and (3) training center/office park. The NPS also conducted a cumulative impact analysis identifying past, present, or reasonably foreseeable projects in the area of the Center that, when combined with the potential impacts from the disposition of the Center, could have cumulative effects on the environment. The NPS has not selected a preferred alternative in the DEIS.

Under Alternative A, the Center would remain under DOI ownership and current maintenance practices at the Center would continue, not including rehabilitation, renovation, or stabilization of the structures, which would continue to deteriorate. This assumes that the DOI would not remove any of the buildings and restore the native vegetation. We question this assumption. Even without removal of the buildings, some areas of the Center may be appropriate for restoration of natural plant communities, should funding become available.

Under Alternative B, the United States would transfer the USBM property to a university or nonfederal government entity without conditions imposed on the future use of the Center or the land, except for restrictions imposed by applicable laws and regulations. In our opinion, one significant shortfall of this option is the inability to require the restoration of native vegetation, even though the property lies within MNRRA and MCRA boundaries.

Under Alternative C, the DEIS provides that the university or nonfederal governmental owner could be required to restore the native vegetation, remove existing non-native vegetation, and/or control the spread of invasive species. We recommend that should this alternative be selected, the future owner must be required to restore native vegetation, remove non-native vegetation, and control the spread of exotic vegetation including common buckthorn.

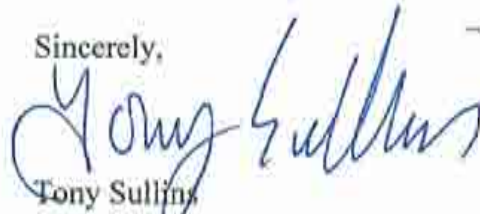
Under Alternative D, DOI would manage and bear the cost of modification for all or a part of the land, structures, or other improvements prior to conveyance or retention of the Center. Again, it was not explicitly stated in the DEIS that this alternative require the restoration of native vegetation, removal of existing non-native vegetation, and/or control

of the spread of exotic vegetation. Should this alternative be selected, we recommend that DOI be required to restore native vegetation, remove non-native vegetation, and control the spread of exotic vegetation including common buckthorn.

The FWS currently uses Building 11, which has 14,000 square feet, for storage of important equipment used in biological field work. Various federal, state, and county partners have indicated interest in using this building for similar purposes. If FWS loses the use of Building 11, we will be hard-pressed to locate and acquire a suitable replacement facility. Such space, even if available, would be very costly to lease or purchase. Building 11 is located on the periphery of the USBM property, and is conveniently accessed by an existing road skirting the southwestern edge of the property. The building itself lies near a busy highway, and is situated between the highway and Camp Coldwater Spring, such as to arguably provide some level of noise abatement for the spring site. Thus, we recommend consideration be given to retaining Building 11 and its existing access road in federal ownership, for continued use by FWS and its partners. In the attached January 17, 2006 letter to Engineering-environmental Management, Inc., Innovar Environmental, Inc. estimated that the cost of removing Building 11 to be \$40,917. The estimated cost of removing all the buildings and adjacent structures was \$1.08 million.

We appreciate the opportunity to comment and look forward to working with you in the future. If you have questions regarding our comments, please call Nick Rowse of my staff at (612) 725-3548, extension 210 or by email at nick_rowse@fws.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tony Sullins".

Tony Sullins
Field Supervisor



Shakopee Mdewakanton Sioux Community

2330 SIOUX TRAIL NW • PRIOR LAKE, MINNESOTA 55372
TRIBAL OFFICE: 952•445-8900 • FAX: 952•445-8906

Appendix L

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November 27, 2006

Steven P. Johnson, Acting Superintendent
Mississippi National River and Recreation Area
National Park Service
United States Department of Interior
111 Kellogg Boulevard East, Suite #105
St. Paul, Minnesota 55101

received
11/27/06

RE: Comments on the Draft Environmental Impact Statement

Dear Acting Superintendent Johnson:

Enclosed please find Comments on the Draft Environmental Impact Statement,
Disposition of Bureau of Mines, Twin Cities Research Center Main Campus, Hennepin
County, Minnesota.

If you have questions regarding this matter, please do not hesitate to contact SMSC Land
Manager Stanley Ellison at 952.496.6158 or Staff Legal Counsel William Hardacker at
952.496.6110.

Sincerely,


VICE CHAIRMAN S M S C

Stanley R. Crooks
Tribal Chairman

Enclosure

**Comments
on the
Draft Environmental Impact Statement
Disposition of Bureau of Mines
Twin Cities Research Center Main Campus
Hennepin County, Minnesota**

Submitted to the
National Park Service
U.S. Department of the Interior
St. Paul, Minnesota

Submitted by
Shakopee Mdewakanton Sioux Community
Prior Lake, Minnesota



November 27, 2006

The Shakopee Mdewakanton Sioux Community ("SMSC") is a federally recognized Indian Tribe organized under the Indian Reorganization Act of 1934 and its Constitution. The SMSC has reviewed the *Draft Environmental Impact Statement, Disposition of Bureau of Mines Property, Twin Cities Research Center Main Campus, Hennepin County, Minnesota*, which was released on August 18, 2006 ("Draft EIS"), and submits the following comments on the Draft EIS.

BACKGROUND

The Bureau of Mines Twin Cities Research Center Main Campus ("Center") is built on land obtained from the Dakota people in 1805. It lies close to the confluence of the Minnesota and Mississippi Rivers and encompasses Camp Coldwater Spring. Both the rivers' confluence and the spring area hold significant cultural importance for the Dakota people. Other Indian people believe in the importance of this land as well.

The SMSC seeks to repatriate this land. To this end, the SMSC also presents to you today, under separate cover, a proposal asking that the Secretary of the Interior ("Secretary") convey the land to the United States Government in Trust for the SMSC. The SMSC proposes to restore the land to its original ecological state and has a preliminary proposal for construction of an interpretive/historical center and trail system. The proposal also asks that the federal government remove the buildings from the site and remediate any hazardous conditions before the land is conveyed into Trust for the SMSC.

While other groups may have expressed an interest in the disposition or acquisition of the Center, the SMSC submits that it is the most responsible and financially capable entity to be caretaker of this land. Mdewakanton Dakota, other American Indian people, and the people of the State of Minnesota ("State") would benefit from the preservation of this land if the Center were transferred to the United States Government in Trust for the SMSC. The SMSC's proposal supports efforts to preserve the unique historic, cultural, and ecological aspects of the Center including Camp Coldwater Spring. Since many cultural aspects of the Center area and Camp Coldwater Spring relate to Indian people, this preservation is best done by the SMSC directly and not by an agency working on its behalf.

It is through the lens of its proposal that the SMSC focuses its comments on the Draft EIS.

GENERAL COMMENTS

1. The Draft EIS represents a good first effort to address the potential environmental consequences of the Center's disposition. With the addition of certain information more fully described below and other changes, the *Final Environmental Impact Statement, Disposition of Bureau of Mines Property, Twin Cities Research Center Main Campus, Hennepin County, Minnesota* ("Final EIS") should accurately and adequately portray these consequences.

2. The Draft EIS states that the legislation authorizing the Center's conveyance allows the Secretary to convey only to universities or other government entities. The Draft EIS fails to address adequately the possibility that an Indian Tribe is a government the Secretary could deem appropriate to receive the Center. For example, the Draft EIS repeatedly assumes that certain Minnesota laws and regulations would apply to a nonfederal government entity that receives the Center. This assumption is incorrect when applied to an Indian Tribe acquiring land in Minnesota to be held in trust by the United States Government for the tribe ("Trust Land"). The Final EIS should address the potential for an Indian Tribe to receive and use the Center as the SMSC proposes to do.
3. The SMSC has also reviewed the supporting documentation accompanying the Draft EIS, including:
 - *Archaeological Research at the Former Bureau of Mines Testing Facility*, Minnesota (Clouse 2001);
 - *Historical Study: Former Bureau of Mines Property Twin Cities Research Center* (Henning 2002); and
 - *The Cultural Meaning of Coldwater Spring: Final Ethnographic Resources Study of the Former U.S. Bureau of Mines Twin Cities Research Center Property*, Hennepin County, Minnesota, Terrell, Principal Investigator, June 2006 ("Terrell Ethnographic Study").

The documentation presented in the first two studies, while they are not truly comprehensive works, fulfills the general requirements for the Draft EIS. The SMSC offers no additional comment regarding their merit.

In regard to the Terrell Ethnographic Study, the SMSC has received recent correspondence from the National Park Service, Mississippi National River Recreation Area office ("NPS"), including a request for further consultation on, and an NPS internal staff evaluation of, Sacred Site and Traditional Cultural Property issues as presented in the Terrell Ethnographic Study. The SMSC submits that there are many unresolved issues surrounding the NPS's inclusion of this particular "final" study as part of the Draft EIS process, considering the NPS's obvious dissatisfaction with the study's conclusions.

SMSC staff has maintained ongoing consultation with NPS staff regarding the Draft EIS and accompanying studies. The SMSC knows that the NPS has determined that the Terrell Ethnographic Study is inadequate for its intended purposes and that an ethnographic evaluation will be undertaken by the NPS itself. Thus, the SMSC sees no reason to spend additional time providing detailed commentary regarding the inadequacy of the Terrell Ethnographic Study. The SMSC will cooperate with the NPS directly in the future on any necessary investigative work regarding the area.

The SMSC has already spent considerable effort in the process of evaluating and researching the cultural and historical aspects of the area around the Center. The SMSC maintains its well founded position that the Center and the area around it hold cultural significance for the Mdewakanton Dakota and other American Indian people, and also has great historical significance for the people of the State.

As Mdewakanton Dakota people, and as a federally recognized Indian Tribe, the SMSC is the most appropriate and responsible body to address the cultural and historic issues at the Center property, once the land is returned in the care of the Mdewakanton Dakota. Once the SMSC is notified that it will receive the Center property in Trust for the SMSC, the SMSC will continue its cultural evaluations and historical background investigations, as is the case with all lands within the SMSC jurisdiction.

SPECIFIC COMMENTS

4. **Chapter 1, Background On The Center, p. 4.** This section should indicate that the land on which the Center is located was obtained from the Dakota people by treaty in 1805.
5. **Chapter 1, Relationship With Other Laws . . . , Mississippi River Corridor Critical Area . . . , p. 14.** In discussing the Mississippi River Corridor Critical Areas statutes and regulations, the Draft EIS states, “. . . the executive order's interim development regulations would have jurisdiction of future land uses by any nonfederal owner.” This conclusion is incorrect for an Indian Tribe occupying Trust Land. Laws of the State and its various political entities and subdivisions, with certain limited exceptions, do not have any force on Trust Land. Since the SMSC proposes to acquire the Center in trust, the Final EIS should discuss this important distinction.
6. **Chapter 1, Relationship With Other Laws . . . , MNRRA Enabling Legislation . . . , p. 14-16.** In discussing the Mississippi National River and Recreation Area Comprehensive Management Plan (“MNRRA CMP”), the Draft EIS does not address whether or how the MNRRA CMP would apply to the Center site if it were Trust Land. For federal laws of general applicability, the general rule is that, unless Congress expressly exempts Indian Tribes from their reach, those statutes apply to the tribes. Since the SMSC proposes to acquire the Center in trust, the Final EIS should discuss how Public Law 100-696 would apply under this general rule if the SMSC acquires the Center in trust.
7. **Chapter 1, Relationship With Other Laws . . . , Minneapolis-St. Paul International Airport . . . Zoning Ordinance, p. 16.** In the discussion of the adoption of the *Minneapolis-St. Paul International Airport (Wold-Chamberlain Field) Zoning Ordinance* (“MSP Zoning Ordinance”), the Draft EIS contains minor factual errors. First, the word “Airport” has been omitted from the name of the adopting body; the proper name is the Wold-Chamberlain Field Joint Airport Zoning Board. Second, the Draft EIS refers to all members of the Board as municipalities. Neither the Metropolitan Airports Commission nor Hennepin County is municipal corporations. Hennepin County is a Minnesota county; the Commission is a metropolitan regional agency established by State statute. These errors should be corrected in the Final EIS.
8. **Chapter 1, Relationship With Other Laws . . . , Minneapolis-St. Paul International Airport . . . Zoning Ordinance, Airspace Obstruction Zone, p. 17.** In discussing the Minneapolis-St. Paul International Airport (“Airport”) and the MSP Zoning Ordinance, the Draft EIS states, “The airspace obstruction zone identifies airspace lying beneath precision instrument approach zones for each runway, and the height at which this approach zone

projects outward from the runway.” The Draft EIS then assumes that the entire Center is subject to the height limitations related to the precision instrument approach zone for the 22-End of Runway 4-22 at the Airport. Both the statement and the assumption are incorrect. The MSP Zoning Ordinance establishes height limitations related to five airspace surfaces – the Primary Surface, the Horizontal Surface, the Conical Surface, the Precision Instrument Approach Surface, and the Transition Surface. Three airspace surfaces that project out from Runway 4-22 overlie portions of the Center – the Horizontal Surface, the Precision Instrument Approach Surface, and the Transition Surface. Figure 4 shows and correctly identifies all three. The Draft EIS fails to distinguish among the three airspace surfaces and does not describe how each affects the portion of the Center site directly under that specific airspace surface. The Draft EIS only discusses the Precision Instrument Approach Surface. This oversight should be corrected in the Final EIS.

9. **Chapter 1, Relationship With Other Laws . . . , Minneapolis-St. Paul International Airport . . . Zoning Ordinance, Airspace Obstruction Zone, p. 17.** In discussing the practical effect of the airspace height limitations, the Draft EIS concludes that new structure height on the Center site would be limited “to an elevation of no more than approximately 872 feet at the highest point of the building.” The Draft EIS further concludes, “this translates to limiting new building construction to no greater than 40 to 60 feet depending on the existing topography.” Both conclusions are incorrect. Both the Precision Instrument Approach Surface and the Transitional Surface are sloped surfaces that rise as they project out from the 22-End of Runway 4-22. Figure 4 shows that the Precision Instrument Approach Surface crosses the westerly boundary of the Center site at heights ranging from approximately 872 to 885 feet above mean sea level (“MSL”) and rises until it ranges from approximately 885 to over 895 feet MSL along the eastern and northern boundaries of the property. Figure 4 also shows that the Transition Surface ranges from approximately 872 to 970 feet MSL along the westerly boundary of the site and from approximately 885 to 990 feet MSL along the easterly boundary. A very small portion of the site’s southeast corner lies under the Horizontal Zone whose height limitation is 994 feet MSL. The Final EIS should accurately discuss the height limitations and recalculate the allowable construction heights at various locations on the site under the MSP Zoning Ordinance.
10. **Chapter 1, Relationship With Other Laws . . . , Minneapolis-St. Paul International Airport . . . Zoning Ordinance, Land-use Safety Zoning, p. 17.** It would be helpful if the Final EIS briefly described the portions of the Center site and acreages within each State safety zone and then referred to Figure 19, which accurately depicts the three safety zones established by the MSP Zoning Ordinance.
11. **Chapter 1, Relationship With Other Laws . . . , Minneapolis-St. Paul International Airport . . . Zoning Ordinance, Land-use Safety Zoning, p. 17.** The discussion of Safety Zone B in the Final EIS should emphasize the acceptable uses in terms of the three conceptual land-use scenarios used in the Draft EIS. For example, Safety Zone B would permit open space and parks but not a campground. An interpretive, nature, or history center would be permitted, but not an amphitheater. And a training center or office park would be permitted.

12. **Chapter 1, Relationship With Other Laws . . . , Minneapolis-St. Paul International Airport . . . Zoning Ordinance, Permitting Requirements, p. 20.** The Draft EIS uses the term "maximum construction height" from the MSP Zoning Ordinance without the qualifying words "without a permit." This leaves the incorrect impression that some of the Center site is subject to a maximum new building height limitation of 30 feet. The "maximum construction height without a permit" for any property subject to the MSP Zoning Ordinance was calculated using the lowest point of any airspace surface above that property minus a margin related to ground level mapping accuracy. Larger properties like the Center site, where the sloping airspace surfaces rise considerably across the property, may be able to build structures of much greater height than the "maximum construction height without a permit" simply by applying for the permit. This should be clarified in the Final EIS.
13. **Chapter 1, Relationship With Other Laws . . . , Minneapolis-St. Paul International Airport . . . Zoning Ordinance, Permitting Requirements, p. 20.** The Draft EIS states, "Therefore, any future owner of the Center would have to comply with all applicable airport zoning ordinance and permit requirements." This conclusion is incorrect for an Indian Tribe occupying Trust Land, since the MSP Zoning Ordinance is a local, not a federal, regulation. Since the SMSC proposes to acquire the Center in trust, the Final EIS should discuss this important distinction.
14. **Chapter 1, Relationship With Other Laws . . . , Minneapolis-St. Paul International Airport . . . Zoning Ordinance, Airport Zoning and the Center, p. 20-21.** The Draft EIS correctly states the "maximum height without a permit" for new buildings on most of the site is 30 feet. In later paragraphs, this changes to "maximum construction height" without the qualifying words "without a permit." This leaves the incorrect impression that some of the site is subject to a maximum new building height limitation of 30 feet. See Comment 12. For the Center, which is subject to two sloping surfaces – the Precision Instrument Approach Surface and the Transition Surface, this means that much of the property can accommodate buildings considerably over 30 feet in height provided a permit is obtained. This should be explained in the Final EIS.
15. **Chapter 1, Relationship With Other Laws . . . , Minneapolis-St. Paul International Airport . . . Zoning Ordinance, Airport Zoning and the Center, p. 20.** The Draft EIS discussion of the Federal Aviation Administration ("FAA") rules relating to navigable airspace around airport runways makes the blanket statement, "Any future owner of the Center must comply with the FAA notice requirements prior to beginning any alteration or construction project that may fall under FAA review authority." This is correct but falls short of a full discussion of FAA authority over an Indian Tribe occupying the Center as Trust Land. The Federal Aviation Act is a statute of general applicability that affects Indian Tribes. Thus, the FAA regulations that define a runway protection zone identical to State Safety Zone A in the MSP Zoning Ordinance would apply to an Indian Tribe occupying the Center as Trust Land. And the FAA regulations that define Horizontal, Precision Instrument Approach, and Transition Surfaces identical to those in the MSP Zoning Ordinance would also apply. The Final EIS should include a separate subsection on FAA rules and how they apply to an Indian Tribe occupying the Center as Trust Land.

16. **Chapter 1, Relationship With Other Laws . . . , Camp Coldwater Spring Protection Legislation . . . , p. 22-23.** In the Final EIS, the discussion of the Camp Coldwater Spring protection legislation should note that these State laws do not apply to an Indian Tribe occupying Trust Land.
17. **Chapter 1, Relationship With Other Laws . . . , National Historic Preservation Act, p. 23-27.** The Draft EIS discussion of the National Historic Preservation Act ("NHPA") makes no mention of its applicability to an Indian Tribe occupying Trust Land. Since the SMSC proposes that the Center become Trust Land, the Final EIS should describe whether and how the NHPA, as a federal law of general applicability that applies to Indian Tribes, would affect activities at the site under those circumstances.
18. **Chapter 1, Relationship With Other Laws . . . , p. 27-29.** Please refer to General Comment 3 concerning the significance of the area and in reference to the archaeological, historical, and ethnographic studies and surrounding issues.
19. **Chapter 1, Relationship With Other Laws . . . , p. 13-29.** In this section on Relationship With Other Laws . . . , the Draft EIS makes no mention of the federal and State laws controlling activities in wetlands. They are presented and discussed in Chapter 3, Wetlands, on pages 99-100. Given the number of wetlands shown in the Center site wetland delineation, a review of the Clean Water Act, the Minnesota Wetland Conservation Act, and the applicable regulations under both should also be included in the Final EIS. This discussion should include an analysis of applicability to an Indian Tribe that acquires the Center in trust.
20. **Chapter 1, Relationship With Other Laws . . . , p. 17.** Since the SMSC is proposing to acquire the Center and have the land placed in trust, two other statutes relating to Indian matters should be discussed in the Final EIS in this section on Relationship With Other Laws. First the Indian Reorganization Act of 1934, which sets the criteria for what Indians groups will be considered sovereign tribes, should be presented. Second the Indian Gaming Regulatory Act controls whether gaming could be conducted on the Center if held in trust for an Indian Tribe. Under the Act, gaming can occur on land acquired in trust after October 17, 1988, only if the Indian Tribe for whom the land is acquired has been recently restored to federal recognition, does not have a reservation, has a reservation contiguous to acquired land, or receives state approval for gaming. In its proposal to acquire the Center, the SMSC states it will not conduct gaming on the Center site. And because the SMSC has a reservation, the Center is not contiguous to the SMSC's reservation, and the SMSC was not recently restored to federal recognition, it would require State approval before the SMSC could conduct gaming there.
21. **Chapter 1, Impact Topics Dismissed From Further Analysis, Hazardous Materials and Waste Management, p. 38.** The Draft EIS dismisses Hazardous Materials and Waste Management from further analysis based in part on its "previous efforts to identify and abate hazardous materials at the Center and the substantial reports produced incident to those efforts" The SMSC disagrees with the dismissal because the work done by the NPS does not: (a) analyze the implications and impacts of transferring buildings which contain or

are constructed of hazardous materials to a new owner or occupier, including determining whether the hazards are likely to increase (for example, more mold growth or increased friability of asbestos containing materials), estimating the costs to maintain the buildings, addressing potential liability to a new owner or occupant of leaving the buildings in their present state of disrepair (for example, the potential liability should people inadvertently enter Building 9 which has been determined unsafe for entry), assessing whether maintenance and removal costs would escalate over time, etc.; or (b) analyze the implications and impacts of hazardous materials and wastes if buildings are reused, including which buildings could and could not be reused, whether the costs to manage or remove hazardous materials and wastes would be higher than demolition costs, whether those costs would escalate over time, potential reuse liability, etc. The Final EIS should include the topic of Hazardous Materials and Waste Management to address these impacts.

22. **Chapter 2, Conceptual Land-use Scenarios, Interpretive/Nature/History Center, p. 42.** The Draft EIS states that, under the Interpretive/Nature/History Center conceptual scenario, new construction would be limited by various State and local laws and regulations. This conclusion is incorrect for an Indian Tribe occupying Trust Land. Since the SMSC proposes to acquire the Center in trust, the Final EIS should expand this discussion to address this important distinction.
23. **Chapter 2, Conceptual Land-use Scenarios, Interpretive/Nature/History Center, p. 42, and Training Center/Office Park, p. 42 & 43.** In discussing the Interpretive/Nature/History Center and the Training Center/Office Park conceptual scenarios, the Draft EIS asserts that the Center buildings have reuse potential without discussing which buildings and for what uses in the context of each scenario. For example, it seems unlikely that Building 1, given its size and layout, would work for the interpretative/nature/history center scenario. However, it could be reused for the training center/office park scenario. The Final EIS should include a building reuse analysis for each scenario either in Chapter 2 or in Chapter 3 where the buildings are described.
24. **Chapter 2, Alternative A, p. 46.** The SMSC questions how long the Center could be maintained "as is" as proposed in Alternative A. Will maintenance costs escalate as the buildings age? Will the costs to contain hazardous materials and contaminants escalate as the buildings age? Can Building 9 with its severe mold problem remain indefinitely? Is there contamination at the Center that is migrating, or could migrate, onto more of the Center land or adjoining lands? The Final EIS should address the long term impacts of this alternative more completely and realistically.
25. **Chapter 2, Alternative B, p. 47.** The SMSC submits that the Alternative B analysis here and throughout the Final EIS should be expanded to discuss an Indian Tribe acquiring the Center in trust without conditions. Expanding the Alternative C analysis is not appropriate because the Bureau of Indian Affairs will not approve taking land into trust with conditions as proposed in Alternative C.
26. **Chapter 2, Alternative B, p. 47.** The Final EIS should discuss the advantages of protecting Indian cultural and natural resources through tribal sovereignty. This allows an Indian

perspective on the birth of the State at the confluence of the Minnesota and Mississippi Rivers. Currently, the only historical perspective on this area as the birthplace of the State comes from the Fort Snelling historical site and the Minneapolis Park Board's preservation of early Minneapolis buildings at Minnehaha Park.

27. **Chapter 2, Alternative B, p. 47.** The Draft EIS states that because there would be no restrictions on subsequent transfer or sale under Alternative B, any future owner would be free to sell or transfer the Center to a private entity for use or development. This conclusion is incorrect for land acquired and conveyed into trust for an Indian Tribe. Trust Land can only be removed from trust with the Secretary's approval. Since the SMSC proposes that the Center become Trust Land, the Final EIS should discuss this important distinction.
28. **Chapter 2, Alternative B, Laws, Regulations . . . , MNRRA Enabling Legislation . . . , p. 47.** Whether and how the MNRRA CMP applies to Trust Land should be discussed. See Comment 6.
29. **Chapter 2, Alternative B, Laws, Regulations . . . , Mississippi River Corridor Critical Area, p. 47.** The Draft EIS incorrectly concludes that the State's Mississippi River Critical Area statute and Executive Order apply to an Indian Tribe occupying Trust Land. Since the SMSC proposes that the Center become Trust Land, the Final EIS should discuss this important distinction. See Comment 5.
30. **Chapter 2, Alternative B, Laws, Regulations . . . , Minneapolis-St. Paul International Airport Zoning Ordinance, p. 47.** The Draft EIS incorrectly concludes that any transferee of the Center would have to comply with the MSP Zoning Ordinance. This conclusion is incorrect as it applies to an Indian Tribe occupying Trust Land. See Comment 13.
31. **Chapter 2, Alternative B, Laws, Regulations . . . , Minneapolis-St. Paul International Airport Zoning Ordinance, p. 48.** The discussion of maximum structure heights for new construction should be revised to accurately portray the impact of the MSP Zoning Ordinance and its permitting requirements. See Comments 13 and 15.
32. **Chapter 2, Alternative B, Laws, Regulations . . . , Minneapolis-St. Paul International Airport Zoning Ordinance, p. 48.** The Final EIS should note that the FAA regulations governing land use and height limitations around airports would apply to an Indian Tribe occupying Trust Land. See Comment 15.
33. **Chapter 2, Alternative B, Laws, Regulations . . . , Camp Coldwater Spring Protective Legislation . . . , p. 47-48.** The Final EIS should note that the Camp Coldwater Spring protection legislation and the Minnesota Historic Sites Act do not apply to an Indian Tribe occupying Trust Land. See Comment 5.
34. **Chapter 2, Alternative B, Laws, Regulations . . . , National Historic Preservation Act, p. 49.** The discussion of the NHPA's application should be expanded to address the extent to which an Indian Tribe acquiring the Center site in trust would be subject to the Act. See Comment 17.

35. **Chapter 2, Alternative C, p. 50.** The discussion of Alternative C should indicate that an Indian Tribe would not acquire the Center site in trust under this alternative. The Bureau of Indian Affairs will not approve taking land into trust with conditions as proposed in Alternative C. See Comment 25.
36. **Chapter 2, Alternative C, Conditions, Conservation Easement, p. 51.** The Final EIS should note that the State conservation easement statute does not apply to an Indian Tribe occupying Trust Land.
37. **Chapter 2, Alternative C, Conditions, Covenants and Easements, p. 51-52.** The Final EIS should note that State laws governing easements and covenants do not apply to an Indian Tribe occupying Trust Land.
38. **Chapter 2, Alternative C, Laws, Regulations . . . , MNRRA Enabling Legislation . . . , p. 53.** In discussing the MNRRA CMP the Draft EIS does not address the application of MNRRA to the Center site if it were Trust Land. See Comment 6.
39. **Chapter 2, Alternative C, Laws, Regulations . . . , Mississippi River Corridor Critical Area Legislation, p. 53.** The fact that the Mississippi River Corridor Critical Area laws would not apply to an Indian Tribe occupying Trust Land should be discussed. See Comment 5.
40. **Chapter 2, Alternative C, Laws, Regulations . . . , Minneapolis-St. Paul International Airport Zoning Ordinance, Open Space/Park Scenario, Interpretive/ Nature/History Center Scenario, and Training Center/Office Park Scenario, p. 53.** The Final EIS should note that the MSP Zoning Ordinance does not apply to an Indian Tribe occupying Trust Land. See Comment 13 and note that the FAA regulations governing land use and height limitations around airports would apply to an Indian Tribe occupying Trust Land. See Comments 13 and 15.
41. **Chapter 2, Alternative C, Laws, Regulations . . . , Camp Coldwater Springs Protection Legislation . . . , p. 53-54.** The Final EIS should note that the Camp Coldwater Spring protection legislation does not apply to an Indian Tribe occupying Trust Land. See Comment 16.
42. **Chapter 2, Alternative C, Laws, Regulations . . . , National Historic Preservation Act, p. 54.** The discussion of the NHPA's application should be expanded to address the extent to which an Indian Tribe acquiring the Center site in trust would be subject to the Act. See Comment 17.
43. **Chapter 3, Buildings And Other Structures, p. 60-69.** This section on Buildings And Other Structures is the alternate location for a discussion of each building's reuse suitability under the three conceptual land-use scenarios. See Comment 23.

44. **Chapter 3, Other Infrastructure, p. 70.** No mention is made of current or past wells on the Center site. The Final EIS should indicate the history of any wells, including the locations, depths, aquifer tapped, past or present rates of draw, and, if any wells were closed, when and how.
45. **Chapter 3, Historic Contact, p. 73-74.** Please refer to General Comment 3 concerning the significance of the area and in reference to the archaeological, historical, and ethnographic studies and surrounding issues.
46. **Chapter 3, Ethnography, p. 81-82.** Please refer to General Comment 3 concerning the significance of the area and in reference to the archaeological, historical, and ethnographic studies and surrounding issues.
47. **Chapter 3, Natural Resources, Rare Plant Species, p. 93.** The discussion under Rare Plant Species is inadequate. The central question that must be addressed is – are any federal or State threatened or endangered plant species present on the Center site? (See Draft EIS page 94 under Wildlife where the United States Fish and Wildlife Service answers this very question with respect to fauna.) Given the presence of so many rare and native plant species within one mile, a biological survey to answer this question is needed for the Final EIS.
48. **Chapter 3, Natural Resources, Rare Plant Species, p. 93.** Under Rare Plant Species, the Draft EIS states, “According to the Natural heritage Program, disposition of the Center alone should not affect any know occurrences of rare plant species.” The Draft EIS does not contemplate “disposition alone.” It also contemplates reuse under three conceptual land-use scenarios. The presence on the Center site of threatened or endangered species and the need to protect their habitat, if present, could affect how reuse can occur on the Center site. Based on the outcome of a biological study, this should be addressed in the Final EIS.
49. **Chapter 3, Natural Resources, Hydrology, Surface Water Resources, p. 94-95.** The Draft EIS discusses the Minnehaha Creek Watershed District in some detail. However the Center Site is not within that watershed as later stated, “Rain water that falls on the Center does not flow into Minnehaha Creek, but rather flows eastward . . . to the Mississippi River. The Draft EIS does not identify the watershed district or watershed management organization, if any, in which the Center lies. The Final EIS should determine if the Center Site is within a watershed district or management organization’s jurisdiction and, if so, discuss the applicable regulations in Chapter 3 and in Chapter 1.
50. **Chapter 3, Natural Resources, Hydrology, Groundwater Resources, p 95-97.** If the Center site has or had wells, this should be discussed. See Comment 44.
51. **Chapter 3, Natural Resources, Water Quality, Surface Water Quality, p. 97-98.** As in Surface Water Resources, the Draft EIS discusses water quality in the Minnehaha Creek Watershed District even though the Center is not in that watershed. No mention is made of surface water quality in the Center’s watershed. Either surface water quality in the Center’s watershed should be discussed in the Final EIS, some connection should be made between surface water quality in the Minnehaha Creek Watershed District and the Center or Camp

Coldwater Spring, or some other reasons must be presented for using data only from the Minnehaha Creek Watershed District.

52. **Chapter 3, Natural Resources, Water Quality, Groundwater Quality, p. 98.** As in Surface Water Quality, the Draft EIS discusses water quality in aquifers underlying the Minnehaha Creek Watershed District even though the Center is not in that watershed. No mention is made of groundwater quality in aquifers under the Center's watershed or the Center. Either groundwater quality in the Center's watershed should be discussed in the Final EIS, some connection should be made between groundwater quality in the Minnehaha Creek Watershed District and the Center or Camp Coldwater Spring, or some other reasons must be presented for using data only from the Minnehaha Creek Watershed District.
53. **Chapter 3, Natural Resources, Wetlands, Regulatory Background, p. 99-101.** It appears that most of the discussion under Wetlands, Regulatory Background, should occur in Chapter 1 under Relationship With Other Laws . . . See Comment 19. Either there or here, the Final EIS should discuss whether and how these laws and regulations apply to universities, nonfederal government entities, and Indian Tribes.
54. **Chapter 3, Health and Safety, Mold, p. 108.** The Final EIS should repeat here the information on page 65 of the Draft EIS that Building 9 "has been determined unsafe for entry without protective equipment due to the presence of mold . . ."
55. **Chapter 3, Health and Safety, Lead-based Paint, p. 110.** If the last inspection of lead-based paint was between six and ten years ago as suggested in the section on Lead-based Paint, a further inspection should be made to determine the current condition. The results of this inspection should be reported in the final EIS.
56. **Chapter 3, Health and Safety, Other Hazards, p. 110-111.** The Other Hazards section states that break-ins at the Center "could expose individuals to hazards with serious potential injury potential." The Final EIS should discuss whether it is realistic to dispose of the Center with buildings and structures intact given these dangers. This discussion might be appropriate in connection with Alternative D.
57. **Chapter 3, Land Use, p. 111.** The Draft EIS states, "Critical Area plans are required for communities that manage land within the Critical Area." The Final EIS should note that an Indian Tribe occupying Trust Land would not be required to produce a Critical Area Plan. See Comment 5.
58. **Chapter 3, Land Use, Easements/Licenses/Rights-of-Way/Leases, p. 112-113.** The Draft EIS includes a list of applicable right-of-way, licenses, and leases with the statement that "Additional research on existing easements, licenses, rights-of-way, and leases may be necessary prior to conveyance of the Center." The SMSC submits that any conveyance should be with clear title, meaning a commitment for title insurance should be obtained and all title questions resolved before conveyance. The U.S. Department of Interior is in a particularly favorable position to resolve title questions with the other federal agencies,

including the U.S. Air Force, the U.S. Army Corps of Engineers, and the U.S. Department of Veterans Affairs, who appear on the list.

59. **Chapter 3, Public Experience and Values, p. 114.** Please refer to General Comment 3 concerning the significance of the area and in reference to the archaeological, historical, and ethnographic studies and surrounding issues.
60. **Chapter 3, Public Use And Experience, Public Experience and Values, p. 114.** The Final EIS should discuss the advantages of protecting Indian cultural and natural resources through tribal sovereignty. The Final EIS should note that tribal sovereignty allows an Indian perspective on the birth of the State at the confluence of the Minnesota and Mississippi Rivers. Currently, the only historical perspective comes from the Fort Snelling historical site and the Minneapolis Park Board's preservation of early Minneapolis buildings at Minnehaha Park. See Comment 26.
61. **Chapter 4, Alternative A, Laws, Regulations . . . , p. 135.** The Draft EIS indicates a federal agency might not be required to comply with the MSP Zoning Ordinance pending a determination of the federal basis of such regulations. This response in the Final EIS should be expanded to indicate the federal agency would be subject to FAA land use and airspace rules.
62. **Chapter 4, Alternative A, Historic Structures and Districts, Section 106 Assessment of Effect, p. 137.** The Draft EIS states the structures at the Center would be mothballed to "ensure that the structures do not deteriorate through neglect." What maintenance activities would be undertaken to prevent deterioration, what is their expected cost, and will these activities, in fact, prevent deterioration of the structures? How will maintenance activities address the hazardous materials and mold at the Center? The Final EIS should address these questions. See Comment 21.
63. **Chapter 4, Alternative A, Ethnographic Resources, p. 137.** Please refer to General Comment 3 concerning the significance of the area and in reference to the archaeological, historical, and ethnographic studies and surrounding issues.
64. **Chapter 4, Alternative A, Hydrology, p. 139.** Under Hydrology, the Final EIS should state the watershed district or management organization in which the Center lies. See Comments 51 and 52.
65. **Chapter 4, Alternative A, Health and Safety, p. 140.** On page 108, the Draft EIS describes the mold infestations at two buildings on the Site. Therefore, the Impacts section under the Health and Safety heading should discuss mold among the contaminants that could adversely affect workers or intruders.
66. **Chapter 4, Alternative A, Public Use and Experience, p. 141.** Please refer to General Comment 3 concerning the significance of the area and in reference to the archaeological, historical, and ethnographic studies and surrounding issues.

67. **Chapter 4, Alternative B, p. 142.** The Draft EIS incorrectly states that “any future owner under this alternative would be free to subsequently use, sell, and transfer the Center to a private entity for various uses or development.” This is not correct with respect to Indian Tribes occupying Trust Land. Trust Land can only be removed from trust with the Secretary’s approval. Since the SMSC proposes that the Center become Trust Land, the Final EIS should discuss this distinction. See Comment 27.
68. **Chapter 4, Alternative B, Laws, Regulations . . . , MNRRA Enabling Legislation . . . , p. 142.** The Draft EIS states the NPS would review federally funded or permitted activities. The Final EIS should also discuss how MNRRA applies to an Indian Tribe occupying Trust Land. See Comment 6.
69. **Chapter 4, Alternative B, Laws, Regulations . . . , Mississippi river Critical Area, p. 142.** The Draft EIS states that a new owner of the Center would be required to comply with the Critical Areas Act of 1973, State Executive Order 79-19. This is incorrect for an Indian Tribe occupying Trust Land. The Final EIS should address this distinction. See Comment 5.
70. **Chapter 4, Alternative B, Laws, Regulations . . . , Minneapolis-St. Paul International Airport Zoning Ordinance, p. 143.** The Final EIS should note that the MSP Zoning Ordinance does not apply to an Indian Tribe occupying Trust Land and that the FAA regulations governing land use and height limitations around airports would apply to an Indian Tribe occupying Trust Land. See Comments 13 and 15.
71. **Chapter 4, Alternative B, Laws, Regulations . . . , Minneapolis-St. Paul International Airport Zoning Ordinance, p. 143.** The Draft EIS states that because Buildings 4 and 11 are existing, “they could be rehabilitated or repaired . . .” This is correct under the MSP Zoning Ordinance but incorrect under FAA rules. Buildings must be removed from the FAA mandated Runway Protection Zone. The Final EIS should describe the application of FAA rules on existing buildings. See Comment 15.
72. **Chapter 4, Alternative B, Laws, Regulations . . . , Camp Coldwater Spring Protection Legislation . . . , p. 143-144.** The Draft EIS states that any recipient of the Center must abide by the Camp Coldwater Spring protection legislation and regulations and the Minnesota Historic Sites Act. This is incorrect for an Indian Tribe occupying Trust Land. The Final EIS should address this distinction. See Comment 16.
73. **Chapter 4, Alternative B, Laws, Regulations . . . , National Historic Preservation Act, p. 144.** The Draft EIS states that, once the Center is conveyed to a nonfederal entity, no federal protections under the NHPA would be available unless an action affecting the Center site was a federal action. The Final EIS should discuss the application of the NHPA to an Indian Tribe occupying Trust Land. See Comment 17.
74. **Chapter 4, Alternative B, Archeological Resources, p. 144-145.** The Draft EIS discussion for all three conceptual land-use scenarios states that, after conveyance, “the new owner could undertake actions that impact archaeological sites.” The Final EIS should discuss the

application of the NHPA to an Indian Tribe occupying Trust Land where archeological resources are concerned. See Comment 17.

75. **Chapter 4, Alternative B, Historic Structures and Districts, p. 146-148.** The Draft EIS discussion for all three conceptual land-use scenarios assumes that, after conveyance, the new owner could take actions that alter or eliminate some or all the structures at the Center with consequent adverse effects. The Final EIS should discuss the application of the NHPA to an Indian Tribe occupying Trust Land where historic structures and districts are concerned. See Comment 17.
76. **Chapter 4, Alternative B, Ethnographic Resources, p. 148.** Please refer to General Comment 3 concerning the significance of the area and in reference to the archaeological, historical, and ethnographic studies and surrounding issues.
77. **Chapter 4, Alternative B, Ethnographic Resources, Open Space/Park Scenario, Interpretive/ Nature/History Center Scenario, and Training Center/Office Park Scenario, p. 148-150.** The Final EIS should note for all three conceptual land-use scenarios that an Indian Tribe occupying Trust Land, like a private university, would not be required to comply with the Camp Coldwater Spring protective legislation or the Minnesota Historic Sites Act. See Comment 16.
78. **Chapter 4, Alternative B, Ethnographic Resources, Summary, p. 150.** The Summary will need to be rewritten in the Final EIS to describe the effect that various federal statutes of general applicability would have on an Indian Tribe occupying the Center site as Trust Land.
79. **Chapter 4, Alternative B, Soils, Open Space/Park Scenario, Interpretive/Nature/History Center Scenario, and Training Center/Office Park Scenario, p. 151-153.** The Draft EIS for all three conceptual land-use scenarios assumes that a new owner could remove existing structures, construct new structures, and alter infrastructure "without regard to impacts to soils," that building sites could be left to revegetate on their own," or that owners "could elect to implement mitigation measures." The federal Clean Water Act and rules, State water quality laws and rules, the Critical Area rules, and local erosion control ordinances and rules all require that construction activities (including demolition of buildings) be conducted in a manner that minimizes soil erosion. Under these laws, building sites cannot be left to revegetate on their own, property owners do not get to elect whether they implement mitigation measures. Rather specific mitigation measures must be employed to protect surface waters. The Final EIS should discuss in Chapter 1 and Chapter 4 how these laws protect surface waters, how the Clean Water Act applies to an Indian Tribe occupying Trust Land, and why the State and local laws would not govern an Indian Tribe occupying Trust Land.
80. **Chapter 4, Alternative B, Vegetation, p. 153.** The Final EIS should note that an Indian Tribe occupying Trust Land would not be required to comply with the MSP Zoning Ordinance as it applies to vegetation management and that the FAA regulations governing land use and height limitations around airports would apply to an Indian Tribe occupying Trust Land. See Comments 13 and 15.

81. **Chapter 4, Alternative B, Vegetation, Open Space/Park Scenario, p. 154.** The Draft EIS states that a recipient might elect to allow disturbed areas to revegetate on their own. This would not be permitted under federal, State, or local regulations. The final EIS should correct this. See Comment 79.
82. **Chapter 4, Alternative B, Vegetation, p. 153-155.** If the biological study recommended in Comment 47 determines that any threatened or endangered plant species is present on the Center site, then the Vegetation discussion will need to be rewritten in the Final EIS. See also Comment 48.
83. **Chapter 4, Alternative B, Hydrology, p. 158.** The Final EIS should state the watershed district or management organization in which the Center lies. See Comments 51 and 52.
84. **Chapter 4, Alternative B, Hydrology, p. 158.** The Final EIS should note that an Indian Tribe occupying Trust Land, like a private university, would not be required to comply with the Camp Coldwater Spring protective legislation or the Minnesota Historic Sites Act. See Comment 16.
85. **Chapter 4, Alternative B, Hydrology, Interpretive/Nature/History Center Scenario, Impacts, p. 159.** The Draft EIS refers to construction of a new building at the Center without removal of an existing structure as a “reduction in impermeable surfaces that would increase the surface flow.” The word “reduction” should be “increase.” The Final EIS should correct this error.
86. **Chapter 4, Alternative B, Hydrology, Interpretive/Nature/History Center Scenario and Training Center/Office Scenario, p. 159-160.** In both these scenarios, the Draft EIS indicates that an increase in impervious surfaces would lead to adverse impacts on hydrology due to increased runoff. However, under State laws and local ordinances, new development must address increases in impervious surface by controlling increased storm water runoff. Typically, runoff rates after development must not exceed pre-development runoff rates based on a specific storm event cited in the applicable law. The Final EIS should identify the applicable State and local storm water regulations in Chapter 1 and Chapter 4 and discuss their applicability to new construction at the Center. The Final EIS should also note that State and local storm water laws would not apply to an Indian Tribe occupying Trust Land, determine if any federal laws would apply, and if so, describe the application.
87. **Chapter 4, Alternative B, Water Quality, Open Space/Park Scenario, Interpretive/Nature/History Center Scenario, and Training Center/Office Park Scenario, p. 160-162.** In all three scenarios, the Draft EIS discussion is inadequate. First the discussion addresses only three of four potential water quality impacts – sedimentation from construction including demolition, fluid leakage on parking lots, and increased use of fertilizers, herbicides, and pesticides at the Center. The fourth, increased nutrient loading from increases in impervious surfaces, is not discussed. Second the Draft EIS does not discuss the federal, State and local laws designed to protect water quality. As noted in Comment 79, the Clean Water Act and State and local laws require erosion control measures to prevent

sedimentation of surface waters due to construction including demolition. State and local laws and ordinances also require water quality treatment which typically includes ponds to allow the deposition of particles carrying nutrients, fertilizers, herbicides, and pesticides. Pond inlets have skimmers to address runoff from parking lots, and in some cases, sumps are required in the parking lots to trap vehicle fluids. The Final EIS should describe all potential sources of water quality impacts and the federal, State, and local laws that address them. The Final EIS should also note that State and local storm water quality laws would not apply to an Indian Tribe occupying Trust Land, determine if any federal laws would apply, and if so, describe the application.

88. **Chapter 4, Alternative B, Wetlands, Open Space/Park Scenario, Interpretive/Nature/History Center Scenario, and Training Center/Office Park Scenario, p. 162-164.** In all three scenarios, the Draft EIS correctly concludes no conditions would be imposed by the Department of the Interior to protect wetlands and EIS indicates that wetlands could be adversely affected under all three scenarios. Missing, however, is a description of wetland protection under federal and State wetland laws, which are described in Chapter 3, Wetlands on pages 99-100. Chapter 4 should apply the laws to the three conceptual land-use scenarios, determine the degree of protection afforded by the laws, and reconsider the intensity of the probable impacts. This discussion should include an analysis of applicability to an Indian Tribe that acquires the Center in trust.
89. **Chapter 4, Alternative B, Health and Safety, Open Space/Park Scenario, Impacts, p. 167.** On page 108, the Draft EIS describes the mold infestations at two buildings on the Site. Therefore, the Final EIS should discuss mold among the contaminants that could adversely affect workers or intruders. See Comment 65.
90. **Chapter 4, Alternative B, Open Space/Park Scenario, Interpretive/ Nature/History Center Scenario, and Training Center/Office Park Scenario, p. 168-169.** In all three scenarios, the Draft EIS states, "All existing easements, licenses, rights-of-way and leases, and other land interests could be honored while the land is being used as open space or a park." However, the Draft EIS on page 113 notes that the University of Minnesota leases part of Building 1 and all of Building 2 for research purposes. The Final EIS should address this apparent contradiction.
91. **Chapter 4, Alternative B, Public Use and Experience, Summary, p. 170.** Please refer to General Comment 3 concerning the significance of the area and in reference to the archaeological, historical, and ethnographic studies and surrounding issues.
92. **Chapter 4, Alternative C, p. 174.** The Final EIS should note that conveyance with conditions does not work for an Indian Tribe asking to acquire the Center and place it into trust. The Bureau of Indian affairs will not approve taking land into trust with conditions. See Comment 35.
93. **Chapter 4, Alternative C, Laws, Regulations . . . , MNRRA Enabling Legislation . . . , p. 174-175.** The Draft EIS states the NPS would review federally funded or permitted

activities. The Final EIS should also discuss how MNRRA applies to an Indian Tribe occupying Trust Land. See Comment 6.

94. **Chapter 4, Alternative C, Laws, Regulations . . . , Mississippi River Corridor Critical Area Legislation, p. 174-75.** The Draft EIS states that a new owner of the Center would be required to comply with the Critical Areas Act of 1973, State Executive Order 79-19, including implementation of zoning ordinances and plans. This is incorrect for an Indian Tribe occupying Trust Land. The Final EIS should address this distinction. See Comment 5.
95. **Chapter 4, Alternative C, Laws, Regulations . . . , Minneapolis-St. Paul International Airport Zoning Ordinance, p. 175.** The Final EIS should note that the MSP Zoning Ordinance does not apply to an Indian Tribe occupying Trust Land and note that the FAA regulations governing land use and height limitations around airports would apply to an Indian Tribe occupying Trust Land. See Comments 13 and 15.
96. **Chapter 4, Alternative C, Laws, Regulations . . . , Camp Coldwater Spring protective Legislation . . . , p. 175.** The Final EIS should note that the Camp Coldwater Spring protection legislation and the Minnesota Historic Sites Act would not apply to an Indian Tribe occupying Trust Land. See Comment 5.
97. **Chapter 4, Alternative C, Laws, Regulations . . . , National Historic Preservation Act, p. 175-176.** The discussion of the NHPA's application should be expanded to address the extent to which an Indian Tribe acquiring the Center site in trust would be subject to the Act. See Comment 17.
98. **Chapter 4, Alternative C. Ethnographic Resources, p. 180-84.** Please refer to General Comment 3 concerning the significance of the area and in reference to the archaeological, historical, and ethnographic studies and surrounding issues.
99. **Chapter 4, Alternative C. Soils, Open Space/Park Scenario, Interpretive/Nature/History Center Scenario, and Training Center/Office Park Scenario, p. 182-84.** The Final EIS's discussion of soil impacts in all three land-use scenarios should address the applicability of federal, State, and local critical area regulations and the mitigation measures that would be required by these regulations. See Comment 79. The Final EIS should then determine whether additional conditions are needed to protect soils given the existing laws.
100. **Chapter 4, Alternative C, Vegetation, Assumptions, p. 184.** The Final EIS should note that the MSP Zoning Ordinance, and its attendant limitations on vegetation, is not applicable to an Indian Tribe occupying Trust Land, note that the FAA regulations governing land use and height limitations around airports would apply to an Indian Tribe occupying Trust Land, and determine if vegetation would be controlled in the federal Runway Protection Zone. See Comments 13 and 15. The Final EIS should then determine whether additional conditions are needed to protect airspace over the Center.

101. **Chapter 4, Alternative C, Hydrology, Description, p. 187.** The Final EIS should state the watershed district or management organization in which the Center lies. See Comments 51 and 52.
102. **Chapter 4, Alternative C, Hydrology, Open Space/Park Scenario, Interpretive/Nature/History Center Scenario, and Training Center/Office Park Scenario, p. 187-189.** In all three conceptual land-use scenarios, the Final EIS should indicate that State laws and local ordinances require new development to address increases in impervious surface by controlling increased storm water runoff. See Comment 86. The Final EIS should then determine whether additional conditions are needed to protect Center hydrology given the existing laws.
103. **Chapter 4, Alternative C, Water Quality, Open Space/Park Scenario, Interpretive/Nature/History Center Scenario, and Training Center/Office Park Scenario, p. 189-191.** In all three land-use scenarios, the Final EIS should address all four potential water quality impacts, the federal, State, and local laws designed to protect water quality. See Comment 87. The Final EIS should then determine whether additional conditions are needed to protect Center water quality given the existing laws.
104. **Chapter 4, Alternative C, Wetlands, Open Space/Park Scenario, Interpretive/Nature/History Center Scenario, and Training Center/Office Park Scenario, p. 191-193.** In all three conceptual land-use scenarios, the Final EIS should describe the protection afforded wetlands under federal and State wetland laws. See Comment 88. The Final EIS should then determine whether additional conditions are needed to protect Center wetlands given the existing laws.
105. **Chapter 4, Alternative C, Public Use and Experience, p. 196-198.** Please refer to General Comment 3 concerning the significance of the area and in reference to the archaeological, historical, and ethnographic studies and surrounding issues.
106. **Chapter 4, Alternative D, p. 201.** Responding to our previous comments on Alternatives B and C will necessitate changes to the various sections titled Archeological Resources, Historic Structures and Districts, Ethnographic Resources, Soils, Vegetation, Hydrology, Water Quality, Wetlands, Health and Safety, and Public use and Experience in the Final EIS under Alternative D. We will repeat some of our earlier comments where necessary.
107. **Chapter 4, Alternative D, Ethnographic Resources, p. 206-09.** Please refer to General Comment 3 concerning the significance of the area and in reference to the archaeological, historical, and ethnographic studies and surrounding issues.
108. **Chapter 4, Alternative D, Soils, Open Space/Park Scenario, Interpretive/Nature/History Center Scenario, and Training Center/Office Park Scenario, p. 209-211.** The Final EIS's discussion of soil impacts in all three land-use scenarios should address the applicability of federal, State, and local critical area regulations and the mitigation measures that would be required by these regulations. See Comment 79. The Final EIS should then determine whether additional conditions are needed to protect soils given the existing laws.

109. **Chapter 4, Alternative D, Soils, Training Center/Office Scenario, Impacts, p. 211.** The Draft EIS contains a mistake when it indicates that increasing the density of structures will reduce the impermeable surfaces. This error should be corrected in the Final EIS, and the conclusion about impact may need to be altered also.
110. **Chapter 4, Alternative D, Hydrology, Open Space/Park Scenario, Interpretive/Nature/History Center Scenario, and Training Center/Office Park Scenario, p. 214-217.** In all three conceptual land-use scenarios, the Final EIS should indicate that State laws and local ordinances require new development to address increases in impervious surface by controlling increased storm water runoff. See Comment 86. The Final EIS should then determine whether additional conditions are needed to protect Center hydrology given the existing laws.
111. **Chapter 4, Alternative D, Water Quality, Open Space/Park Scenario, Interpretive/Nature/History Center Scenario, and Training Center/Office Park Scenario, p. 217-219.** In all three land-use scenarios, the Final EIS should address all four potential water quality impacts, the federal, State, and local laws designed to protect water quality. See Comment 87. The Final EIS should then determine whether additional conditions are needed to protect Center water quality given the existing laws.
112. **Chapter 4, Alternative D, Wetlands, Open Space/Park Scenario, Interpretive/Nature/History Center Scenario, and Training Center/Office Park Scenario, p. 219-221.** In all three conceptual land-use scenarios, the Final EIS should describe the protection afforded wetlands under federal and State wetland laws. See Comment 88. The Final EIS should then determine whether additional conditions are needed to protect Center wetlands given the existing laws.
113. **Chapter 4, Alternative D, Socioeconomics, Open/Space Park Scenario, Impacts, p. 221.** The SMSC strongly agrees with the following conclusion in the Draft EIS, "The most significant difference with this alternative is that by renovation and/or clearing buildings and completing remediation of the site prior to disposition, the government would be more likely to find a willing transferee because they would then be spared the cost and risk of such activities." The SMSC in its proposal asks that the buildings be removed and that the Center be remediated due to the costs and risks of such activities.
114. **Chapter 4, Cumulative Impacts, p. 230.** Responding to our previous comments on Alternatives B and C will necessitate changes to the various the sections titled Archeological Resources, Historic Structures and Districts, Ethnographic Resources, Soils, Vegetation, Hydrology, Water Quality, Wetlands, Health and Safety, and Public use and Experience in the Final EIS under Cumulative Impacts. We will not repeat our earlier comments on those sections after this comment.
115. **Chapter 4, Cumulative Impacts, Fort Snelling State Park . . . , p. 230.** Because this is a past action, the impacts should be known already. Yet the text always refers to impacts that

“would” or “could” occur. This discussion should be corrected in the Final EIS to describe the actual impacts to the extent they are known or can be observed.

116. **Chapter 4, Sustainability and Long-Term Management, Alternative A, p. 283-284.** The discussion of Alternative A in this section does not analyze the long-term implications of the no-action alternative. What are the real maintenance costs as the buildings continue to deteriorate? What health and safety effects can be expected to result from leaving the hazardous materials on-site?
117. **Chapter 4, Sustainability and Long-Term Management, Alternatives B, C, and D, p. 284-286.** The SMSC does not agree that increased volume of use under the interpretive/nature/history center scenario under any alternative would result in impacts to long-term productivity through trampling of native vegetation, compaction of soils, and increased noise that would disturb and reduce the frequency of wildlife at the Center. Rather, combining an interpretive /history center with restoration of the native ecology, as the SMSC proposes, would increase long-term productivity.
118. **Chapter 4, Irreversible or Irretrievable Commitments of Resources . . . , Alternative B, p. 287.** The Draft EIS suggests the use of a conservation easement could require the salvage of materials from removed structures. The Final EIS should note that the State conservation easement statute does not apply to an Indian Tribe occupying Trust Land. See Comment 36.
119. **Chapter 4, Summary of Environmental Impacts by Alternative, p. 289-94.** The Final EIS should update this chart based on the SMSC's comments and changes to the Final EIS that result from our comments.

The SMSC appreciates the opportunity to submit comments on the Draft EIS. We hope our comments will be viewed constructively as an effort to make certain the Final EIS is complete and accurate.



Lower Sioux Indian Community

P.O. Box 308 • 39527 Res. Hwy. 1
Morton, Minnesota 56270



September 25, 2006

Kim Barnes
National Park Service

Dear Kim,

On the 25th of September, I met with you at the National Park's Service Building in Mpls. I mentioned to you that the Lower Sioux Indian Community would be passing a resolution regarding the US Bureau of Mines property.

This letter concerns the US Bureau of Mines property and the Lower Sioux Indian Community Resolution No. 06-144. The contents of this resolution, explains that the Lower Sioux Indian Community is requesting that the Dept of Interior, because of the cultural origin of the MN Mdwakanton. The Lower Sioux Indian Community is proclaiming this land for cultural and spiritual purposes.

Thank you for your information and if you need to get a hold of me, please feel free to call me on my work cell phone (507) 430-3625.

Respectfully,

Sheldon Peters Wolfchild
President



LOWER SIOUX INDIAN COMMUNITY

39527 Res. Hwy. 1 • P.O. Box 308
Morton, MN 56270

received
10-6-06

LOWER SIOUX INDIAN COMMUNITY RESOLUTION NO. 06-144

COLDWATER SPRINGS: THE FORMER U.S. BUREAU OF MINES TWIN CITIES RESEARCH CENTER PROPERTY, HENNEPIN COUNTY, MINNESOTA

WHEREAS, The Lower Sioux Indian Community is a duly organized and federally-recognized Indian Tribe under 25 U.S.C. §476, and is governed by the terms of a Constitution and By-Laws originally adopted by the Tribal Members on May 16, 1936, and approved by the Secretary of the Interior on April 23, 1936; and,

WHEREAS, pursuant to said Constitution and Bylaws, the Community Council is the governing body of the Lower Sioux Indian Community; and

WHEREAS, the Community Council has the authority, as enumerated in ARTICLE V – POWERS, including but not limited to: (a) To negotiate with the Federal, State, and local Governments on behalf of the Community, and to advise and consult with the representatives of the Interior Department ...; (b) To employ counsel for the protection and advancement of the rights of the Community and its members ...; (c) To approve or veto any sale, disposition, lease, or encumbrance of community lands, interests in lands, or other community assets; (d) To advise the Secretary of the Interior with regard to all appropriation estimates or Federal projects for the benefit of the Community prior to the submission of such estimates to the Bureau of the Budget and to Congress; (e) To make assignments of community land to members of the Community in conformity with Article IX of this Constitution; (f) To manage all economic affairs and enterprises of the Community in accordance with the terms of a charter ...; (g) To appropriate for public purposes of the Lower Sioux Indian Community available funds within the exclusive control of the Community; (h) To levy assessments upon members of the Community for the use of Community property and privileges, and to permit the performance of reservation labor in lieu thereof, and to levy; (i) To safeguard and promote the peace, safety, morals, and general welfare of the Community by regulating the conduct of trade and the use and disposition of property upon the reservation ...; (j) To establish ordinances ...; (k) To regulate the manner of taking nominations for Community officers and of holding community elections

...: (l) To adopt resolutions regulating the procedure of the Community Council itself and of other Community agencies and community officials; (m) To encourage and foster the arts, crafts, traditions, and culture of the Mdewakanton Sioux Indians of Minnesota; (n) To charter subordinate organizations for economic purposes and to regulate the activities of all such organizations ...; (o) To protect and preserve the property, wildlife and natural resources of the Community; (p) To delegate to subordinate boards, or community officials, or to cooperative associations ...; (q) To select delegates to sit in the annual conference of the Minnesota Mdewakanton Sioux Indians and in the National Council of the entire Sioux Nation; and,

WHEREAS, Article VI, Clause 2 of the United States Constitution provides that "all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land;" and

WHEREAS, In 1805 Lieutenant Zebulon Pike met at Little Crow's Kaposia Village to initiate negotiations with certain chiefs of the MN, Mdewakanton band for two (2) tracts of land intended for the establishment of military outposts; and

WHEREAS, The outcome of the negotiations, the Treaty with the Sioux Nation of Indians – 1805, was formally executed by Z.M. Pike, Le Petit Corbeau and Way Aga Enogee and reads as follows:

Conference Between the United States of America and the Sioux Nation of Indians.

Whereas, a conference held between the United States of America and the Sioux Nation of Indians, Lieut. Z. M. Pike, of the Army of the United States, and the chiefs and warriors of the said tribe, have agreed to the following articles, which when ratified and approved of by the proper authority, shall be binding on both parties:

ARTICLE 1. That the Sioux Nation grants unto the United States for the purpose of the establishment of military posts, nine miles square at the mouth of the river St. Croix, also from below the confluence of the Mississippi and St. Peters, up the Mississippi, to include the falls of St. Anthony, extending nine miles on each side of the river. That the Sioux Nation grants to the United States, the full sovereignty and power over said districts forever, without any let or hindrance whatsoever,

ARTICLE 2. That in consideration of the above grants the United States shall, prior to taking possession thereof, pay to the Sioux two thousand dollars, or deliver the value thereof in such goods and merchandise as they shall choose.

ARTICLE 3: The United States promise on their part to permit the Sioux to pass, repass, hunt or make other uses of the said districts, as they have formerly done, without any other exception, but those specified in article first.

In testimony hereof, we, the undersigned, have hereunto set our hands and seals, at the mouth of the river St. Peters¹ on the 23rd day of September, one thousand eight hundred and five; and

- WHEREAS, In his compilation of all United States treaties with the Indian Nations, Charles J. Kappler added the following footnote: "This treaty does not appear among those printed in the United States Statutes at Large. It was, however, submitted by the President to the Senate, March 29, 1808"; and
- WHEREAS, In this form the Senate, on the 16th of April, 1808, advised and consented to its ratification by a unanimous vote; and
- WHEREAS, The 1805 Treaty is a political agreement entered into between the United States government and the MN. Mdewakantons, and has lost none of the force it had when first made. Hence, it continues to be fully in effect as a political agreement which must be maintained by both parties; and
- WHEREAS, Although treaties are considered the supreme law of the land, the United States, either through design or sheer oversight has failed to satisfy its treaty obligations as enumerated in the Treaty of 1805; and
- WHEREAS, the American Indian Religious Freedom Act of 1978 (42 USC 1996) states that henceforth it shall be the policy of the United States to protect and preserve for American Indians their inherent right to freedom to believe, express, and exercise the traditional religions of the American Indians, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonies and traditional rites.
- WHEREAS, the President of the United States signed an Executive Order on May 24, 1996 to protect and preserve Indian religious practices;
- WHEREAS, Coldwater Springs and the land that surrounds it, is the ancestral land of the MN. Mdewakaton and has been used for traditional, spiritual, religious and cultural ceremonies by the MN. Mdewakanton and their hereditary descendants for thousands of years and therefore is the deemed legal ancestral property of the Lower Sioux Indian Community; and

WHEREAS, the Lower Sioux Indian Community is concerned with the effective management and control by Indian peoples over cultural resources on federal lands, and

WHEREAS, the Lower Sioux Indian Community publicly declares that Coldwater Springs and the land surrounding it is a usual and accustomed place for the exercise of fundamental religious, spiritual and cultural purposes.

NOW THEREFORE BE IT RESOLVED, The Community Council hereby declares that Coldwater Spring and the land that surrounds it, is defined in the Treaty with the Sioux Nation of Indians-1805 and is part of the ancestral lands of the MN. Mdewakanton people.

NOW THEREFORE BE IT RESOLVED, The Lower Sioux Indian Community demands that the United States uphold their "promise"...to permit the Sioux to pass, repass, hunt or make other uses of the said districts, as they have formerly done, without any other exception..." and recognize the cultural nexus that the Lower Sioux Indian Community has with Coldwater Springs and the land that surrounds it.

NOW THEREFORE BE IT FINALLY RESOLVED, The Community Council hereby requests that the United States restore to it's natural state-Coldwater Springs and the land that surrounds it *and* recognize the cultural and religious significance to the Lower Sioux Indian Community and that the Coldwater Springs site be protected as a traditional cultural property.

CERTIFICATION

I certify that Resolution No. 06-144 WAS DULY ADOPTED BY THE Community Council of the Lower Sioux Indian Community at a meeting held on the 2nd day of October, 2006, a quorum being present by a vote of 3 in favor, 0 opposed, and 0 abstaining.


Sheldon Peters Wolfchild, President


Scott Adolphson, Vice President


Jody Goodthunder, Asst. Secretary/Treasurer



Lower Sioux Indian Community

P.O. Box 308 • 39527 Res. Hwy. 1
Morton, Minnesota 56270

received
10-16-06

October 13, 2006

Kim Bernes
Department of Interior
National Park Service
Mississippi National River and Recreation Area
111 E. Kellogg Blvd.
Suite 105
St. Paul, MN 55101-1256

Dear Kim,

On the October 2, 2006, I gave you a letter regarding Lower Sioux Indian Community Resolution 06-144 concerning the U.S. Bureau of Mines property. Since that time, the resolution has been amended. I am attaching for your review, the last page of Resolution 06-144 signed by the Council and the Amended Resolution 06-146 also signed by the Council.

Thank you for your information and if you need to get a hold of me, please feel free to call me on my work cell phone (507) 430-3625.

Respectfully,

Sheldon Peters Wolfchild
President



Lower Sioux Indian Community

P.O. Box 308 • 39527 Res. Hwy. 1
Morton, Minnesota 56270

LOWER SIOUX INDIAN COMMUNITY AMENDMENT TO RESOLUTION NO. 06-146

COLDWATER SPRINGS: THE FORMER U.S. BUREAU OF MINES
TWIN CITIES RESEARCH CENTER PROPERTY, HENNEPIN COUNTY, MINNESOTA

WHEREAS, The Lower Sioux Indian Community is a duly organized and federally-recognized Indian Tribe under 25 U.S.C. §476, and is governed by the terms of a Constitution and By-Laws originally adopted by the Tribal Members on May 16, 1936, and approved by the Secretary of the Interior on April 23, 1936; and,

WHEREAS, pursuant to said Constitution and Bylaws, the Community Council is the governing body of the Lower Sioux Indian Community; and

WHEREAS, the Community Council has the authority, as enumerated in ARTICLE V – POWERS, including but not limited to: (a) To negotiate with the Federal, State, and local Governments on behalf of the Community, and to advise and consult with the representatives of the Interior Department ...; (b) To employ counsel for the protection and advancement of the rights of the Community and its members ...; (c) To approve or veto any sale, disposition, lease, or encumbrance of community lands, interests in lands, or other community assets; (d) To advise the Secretary of the Interior with regard to all appropriation estimates or Federal projects for the benefit of the Community prior to the submission of such estimates to the Bureau of the Budget and to Congress; (e) To make assignments of community land to members of the Community in conformity with Article IX of this Constitution; (f) To manage all economic affairs and enterprises of the Community in accordance with the terms of a charter ...; (g) To appropriate for public purposes of the Lower Sioux Indian Community available funds within the exclusive control of the Community; (h) To levy assessments upon members of the Community for the use of Community property and privileges, and to permit the performance of reservation labor in lieu thereof, and to levy; (i) To safeguard and promote the peace, safety, morals, and general welfare of the Community by regulating the conduct of trade and the use and disposition of property upon the reservation ...; (j) To establish ordinances ...; (k) To regulate the manner of taking nominations for Community officers and of holding community elections

...; (l) To adopt resolutions regulating the procedure of the Community Council itself and of other Community agencies and community officials; (m) To encourage and foster the arts, crafts, traditions, and culture of the Mdewakanton Sioux Indians of Minnesota; (n) To charter subordinate organizations for economic purposes and to regulate the activities of all such organizations ...; (o) To protect and preserve the property, wildlife and natural resources of the Community; (p) To delegate to subordinate boards, or community officials, or to cooperative associations ...; (q) To select delegates to sit in the annual conference of the Minnesota Mdewakanton Sioux Indians and in the National Council of the entire Sioux Nation; and,

WHEREAS, Article VI, Clause 2 of the United States Constitution provides that "all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land;" and

WHEREAS, In 1805 Lieutenant Zebulon Pike met at Little Crow's Kaposia Village to initiate negotiations with certain chiefs of the Mdewakanton band for two (2) tracts of land intended for the establishment of military outposts; and

WHEREAS, The outcome of the negotiations, the Treaty with the Sioux Nation of Indians – 1805, was formally executed by Z.M. Pike, Le Petit Corbeau and Way Aga Enogee and reads as follows:

Conference Between the United States of America and the Sioux Nation of Indians.

Whereas, a conference held between the United States of America and the Sioux Nation of Indians, Lieut. Z. M. Pike, of the Army of the United States, and the chiefs and warriors of the said tribe, have agreed to the following articles, which when ratified and approved of by the proper authority, shall be binding on both parties:

ARTICLE 1. That the Sioux Nation grants unto the United States for the purpose of the establishment of military posts, nine miles square at the mouth of the river St. Croix, also from below the confluence of the Mississippi and St. Peters, up the Mississippi, to include the falls of St. Anthony, extending nine miles on each side of the river. That the Sioux Nation grants to the United States, the full sovereignty and power over said districts forever, without any let or hindrance whatsoever.

ARTICLE 2. That in consideration of the above grants the United States shall, prior to taking possession thereof, pay to the Sioux two thousand dollars, or deliver the value thereof in such goods and merchandise as they shall choose.

ARTICLE 3. The United States promise on their part to permit the Sioux to pass, repass, hunt or make other uses of the said districts, as they have formerly done, without any other exception, but those specified in article first.

In testimony hereof, we, the undersigned, have hereunto set our hands and seals, at the mouth of the river St. Peters¹ on the 23rd day of September, one thousand eight hundred and five; and

WHEREAS, In his compilation of all United States treaties with the Indian Nations, Charles J. Kappler added the following footnote: "This treaty does not appear among those printed in the United States Statutes at Large. It was, however, submitted by the President to the Senate, March 29, 1808"; and

WHEREAS, In this form the Senate, on the 16th of April, 1808, advised and consented to its ratification by a unanimous vote; and

WHEREAS, The 1805 Treaty is a political agreement entered into between the United States government and the Mdewakantons, and has lost none of the force it had when first made. Hence, it continues to be fully in effect as a political agreement which must be maintained by both parties; and

WHEREAS, Although treaties are considered the supreme law of the land, the United States, either through design or sheer oversight has failed to satisfy its treaty obligations as enumerated in the Treaty of 1805; and

WHEREAS, the American Indian Religious Freedom Act of 1978 (42 USC 1996) states that henceforth it shall be the policy of the United States to protect and preserve for American Indians their inherent right to freedom to believe, express, and exercise the traditional religions of the American Indians, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites,

WHEREAS, the President of the United States signed an Executive Order on May 24, 1996 to protect and preserve Indian religious practices;

WHEREAS, Coldwater Springs and the land that surrounds it, is the ancestral land of the MN. Mdewakanton and has been used for traditional, spiritual, religious and cultural ceremonies by the MN. Mdewakanton and their hereditary descendents for thousands of years and therefore it is deemed legal ancestral property of the Lower Sioux Indian Community; and

WHEREAS, the Lower Sioux Indian Community is concerned with the effective management and control by Indian peoples over cultural resources on federal lands, and

WHEREAS, the Lower Sioux Indian Community publicly declares that Coldwater Springs and the land surrounding it is a usual and accustomed place for the exercise of fundamental religious, spiritual and cultural purposes.

WHEREAS, The United States National Park Service has provided public notice that it will consider applications to transfer ownership of certain Department of Interior lands, including Coldwater Spring, to an appropriate Indian tribe, governmental unit or University.

WHEREAS, The Coldwater Spring is a sacred spring for the Dakota people. The spring is the dwelling place of underwater spirit "Unktehi" and encompasses part of the center of the Earth for the Dakota people.

WHEREAS, The Water Spirit "Unktehi" at Coldwater Spring is the name given to the sacred spring by Dakota Spiritual Healers. The water of Coldwater Spring has been traditionally utilized for healing of Dakota people and others including Father Hennepin, whom Hennepin County is named after.

NOW THEREFORE BE IT RESOLVED, The Community Council hereby declares that Coldwater Spring and the land that surrounds it, is defined in the Treaty with the Sioux Nation of Indians-1805 and is part of the ancestral lands of the MN. Mdewakanton people.

NOW THEREFORE BE IT RESOLVED, The Lower Sioux Indian Community demands that the United States uphold their "promise"...to permit the Sioux to pass, repass, hunt or make other uses of the said districts, as they have formerly done, without any other exception..." and recognize the cultural nexus that the Lower Sioux Indian Community has with Coldwater Springs and the land that surrounds it.

NOW THEREFORE BE IT RESOLVED, The Community Council hereby requests that the United States restore to it's natural state-Coldwater Springs and the land that surrounds it *and* recognize the cultural and religious significance to the Lower Sioux Indian Community and that the Coldwater Springs site be protected as a traditional cultural property.

NOW THEREFORE BE IT FINALLY RESOLVED, The Community Council does hereby request the United States Department of Interior to transfer Department of Interior lands constituting the former Bureau of Mines property inclusive of Coldwater Spring to the Lower Sioux Indian Community, and that the Lower

Sioux Community does assert its commitment to maintain the property in a natural state as to Coldwater Spring and to permit access to it by all interested parties, including Indian tribes for ceremonial, cultural, and educational purposes.

CERTIFICATION

I certify that Resolution No. 06-146 WAS DULY ADOPTED BY THE Community Council of the Lower Sioux Indian Community at a meeting held on the 12 day of October, 2006, a quorum being present by a vote of 3 in favor, 0 opposed, and 0 abstaining.


Shannon Blue, President


Judy Goodhunder, Secretary



Loren Johnson, Treasurer

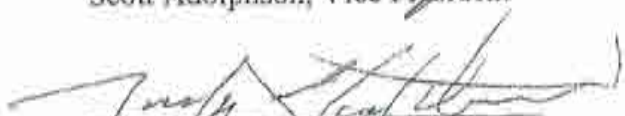
This is the first Resolution signed by Council on 10-02-06, before the new amendment.

CERTIFICATION

I certify that Resolution No. 06-144 WAS DULY ADOPTED BY THE Community Council of the Lower Sioux Indian Community at a meeting held on the 2nd day of October, 2006, a quorum being present by a vote of 3 in favor, 0 opposed, and 0 abstaining.


Sheldon Peters Wolfchild, President


Scott Adolphson, Vice President


Jody Goodthunder, Asst. Secretary/Treasurer



Lower Sioux Indian Community

P.O. Box 308 • 39527 Res. Hwy. 1
Morton, Minnesota 56270

received
1 NOV. 2006
hand delivered by
Joe Samangia

October 31, 2006

Kim Bernes
Mississippi National River and Recreation Area
National Park Service, Department of the Interior
111 E. Kellogg Blvd, Suite 105
Saint Paul, MN 55101-1256

Subject: Transfer of former Bureau of Mines property from the Department of the Interior to the Lower Sioux Indian Community; request for

Reference: Lower Sioux Indian Community Amended Resolution 06-146; "Coldwater Springs: The Former U.S. Bureau of Mines Twin Cities Research Center Property, Hennepin County, Minnesota."

Dear Ms. Bernes:

On October 13, 2006, we forwarded a copy of the Lower Sioux Indian Community's Amended Resolution 06-146, referenced above, to address a transfer of ownership of the subject property from the Government to the Lower Sioux Indian Community.

We have subsequently been informed that you were diligent in honoring our resolution by forwarding a copy of our letter to the Department of the Interior. Thank you for your prompt attention to our concerns about the disposition of the subject property. Your sensitivity to the subject matter is greatly appreciated.

In our cover letter dated October 13, 2006, we omitted making a specific request for a response and/or for a call for action by the Department of the Interior concerning our referenced Resolution, even though there were specific requests to that effect contained within the body of that Resolution. Accordingly, we wish to correct our oversight by following up on our letter of October 13 with the following, excerpted from our Amended Resolution:

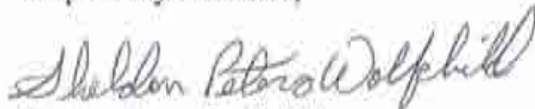
The Lower Sioux Indian Community hereby declares that Coldwater Springs and the land that surrounds it, is defined in the Treaty with the Sioux Nation of Indians [the 1805 Treaty between the U. S. Government and the Minnesota Mdewakaton people]. Hence, the Lower Sioux Indian Community demands that the United States uphold their "promise" ... "to permit the Sioux to pass, repass, hunt or make other uses of the said districts, as they have formerly done, without any other exception ..." and recognize the cultural nexus that the Lower Sioux Indian Community has with Coldwater Springs and the land that surrounds it,

Accordingly, the Lower Sioux Indian Community Council hereby requests that the United States restore to its natural state, Coldwater Springs and the land that surrounds it, recognize the cultural and religious significance to the Lower Sioux Indian Community, and that the Coldwater Springs site be protected as a [Native American Indian] traditional cultural property.

The Lower Sioux Community Council further requests the United States Department of the Interior to transfer Department of the Interior lands constituting the former Bureau of Mines property, inclusive of Coldwater Springs, to the Lower Sioux Indian Community, and that the Lower Sioux Indian Community does assert its commitment to maintain the [cited] property to permit access to it by all interested parties, including Indian tribes for ceremonial, cultural, and educational purposes.

Again, thank you for your cooperation and assistance concerning this matter that is of utmost importance to our community and to all Native Americans with ancestral ties to the surrounding area. If you wish to contact me in regards to this request, please feel free to call me at (507) 430-3626.

Respectfully submitted,



Sheldon Peters Wolfchild
for the Lower Sioux Council

Attachment: Copy of the Lower Sioux Community Council's Amended Resolution 06-146
cc: Files



Lower Sioux Indian Community

P.O. Box 308 • 39527 Res. Hwy. 1
Morton, Minnesota 56270

LOWER SIOUX INDIAN COMMUNITY AMENDMENT TO RESOLUTION NO. 06-146

COLDWATER SPRINGS: THE FORMER U.S. BUREAU OF MINES
TWIN CITIES RESEARCH CENTER PROPERTY, HENNEPIN COUNTY, MINNESOTA

WHEREAS, The Lower Sioux Indian Community is a duly organized and federally-recognized Indian Tribe under 25 U.S.C. §476, and is governed by the terms of a Constitution and By-Laws originally adopted by the Tribal Members on May 16, 1936, and approved by the Secretary of the Interior on April 23, 1936; and,

WHEREAS, pursuant to said Constitution and Bylaws, the Community Council is the governing body of the Lower Sioux Indian Community; and

WHEREAS, the Community Council has the authority, as enumerated in ARTICLE V – POWERS, including but not limited to: (a) To negotiate with the Federal, State, and local Governments on behalf of the Community, and to advise and consult with the representatives of the Interior Department ...; (b) To employ counsel for the protection and advancement of the rights of the Community and its members ...; (c) To approve or veto any sale, disposition, lease, or encumbrance of community lands, interests in lands, or other community assets; (d) To advise the Secretary of the Interior with regard to all appropriation estimates or Federal projects for the benefit of the Community prior to the submission of such estimates to the Bureau of the Budget and to Congress; (e) To make assignments of community land to members of the Community in conformity with Article IX of this Constitution; (f) To manage all economic affairs and enterprises of the Community in accordance with the terms of a charter ...; (g) To appropriate for public purposes of the Lower Sioux Indian Community available funds within the exclusive control of the Community; (h) To levy assessments upon members of the Community for the use of Community property and privileges, and to permit the performance of reservation labor in lieu thereof, and to levy; (i) To safeguard and promote the peace, safety, morals, and general welfare of the Community by regulating the conduct of trade and the use and disposition of property upon the reservation ...; (j) To establish ordinances ...; (k) To regulate the manner of taking nominations for Community officers and of holding community elections

...; (j) To adopt resolutions regulating the procedure of the Community Council itself and of other Community agencies and community officials; (m) To encourage and foster the arts, crafts, traditions, and culture of the Mdewakanton Sioux Indians of Minnesota; (n) To charter subordinate organizations for economic purposes and to regulate the activities of all such organizations ...; (o) To protect and preserve the property, wildlife and natural resources of the Community; (p) To delegate to subordinate boards, or community officials, or to cooperative associations ...; (q) To select delegates to sit in the annual conference of the Minnesota Mdewakanton Sioux Indians and in the National Council of the entire Sioux Nation; and,

WHEREAS, Article VI, Clause 2 of the United States Constitution provides that "all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land;" and

WHEREAS, In 1805 Lieutenant Zebulon Pike met at Little Crow's Kaposia Village to initiate negotiations with certain chiefs of the Mdewakanton band for two (2) tracts of land intended for the establishment of military outposts; and

WHEREAS, The outcome of the negotiations, the Treaty with the Sioux Nation of Indians - 1805, was formally executed by Z.M. Pike, Le Petit Corbeau and Way Aga Enogee and reads as follows:

Conference Between the United States of America and the Sioux Nation of Indians

Whereas, a conference held between the United States of America and the Sioux Nation of Indians, Lieut. Z. M. Pike, of the Army of the United States, and the chiefs and warriors of the said tribe, have agreed to the following articles, which when ratified and approved of by the proper authority, shall be binding on both parties:

ARTICLE 1. That the Sioux Nation grants unto the United States for the purpose of the establishment of military posts, nine miles square at the mouth of the river St. Croix, also from below the confluence of the Mississippi and St. Peters, up the Mississippi, to include the falls of St. Anthony, extending nine miles on each side of the river. That the Sioux Nation grants to the United States, the full sovereignty and power over said districts forever, without any let or hindrance whatsoever.

ARTICLE 2. That in consideration of the above grants the United States shall, prior to taking possession thereof, pay to the Sioux two thousand dollars, or deliver the value thereof in such goods and merchandise as they shall choose.

ARTICLE 3. The United States promise on their part to permit the Sioux to pass, repass, hunt or make other uses of the said districts, as they have formerly done, without any other exception, but those specified in article first.

In testimony hereof, we, the undersigned, have hereunto set our hands and seals, at the mouth of the river St. Peters' on the 23rd day of September, one thousand eight hundred and five; and

WHEREAS, In his compilation of all United States treaties with the Indian Nations, Charles J. Kappler added the following footnote: "This treaty does not appear among those printed in the United States Statutes at Large. It was, however, submitted by the President to the Senate, March 29, 1808"; and

WHEREAS, In this form the Senate, on the 16th of April, 1808, advised and consented to its ratification by a unanimous vote; and

WHEREAS, The 1805 Treaty is a political agreement entered into between the United States government and the Mdewakantons, and has lost none of the force it had when first made. Hence, it continues to be fully in effect as a political agreement which must be maintained by both parties; and

WHEREAS, Although treaties are considered the supreme law of the land, the United States, either through design or sheer oversight has failed to satisfy its treaty obligations as enumerated in the Treaty of 1805; and

WHEREAS, the American Indian Religious Freedom Act of 1978 (42 USC 1996) states that henceforth it shall be the policy of the United States to protect and preserve for American Indians their inherent right to freedom to believe, express, and exercise the traditional religions of the American Indians, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.

WHEREAS, the President of the United States signed an Executive Order on May 24, 1996 to protect and preserve Indian religious practices;

WHEREAS, Coldwater Springs and the land that surrounds it, is the ancestral land of the MN. Mdewakanton and has been used for traditional, spiritual, religious and cultural ceremonies by the MN. Mdewakanton and their hereditary descendents for thousands of years and therefore it is deemed legal ancestral property of the Lower Sioux Indian Community; and

- WHEREAS, the Lower Sioux Indian Community is concerned with the effective management and control by Indian peoples over cultural resources on federal lands, and
- WHEREAS, the Lower Sioux Indian Community publicly declares that Coldwater Springs and the land surrounding it is a usual and accustomed place for the exercise of fundamental religious, spiritual and cultural purposes.
- WHEREAS, The United States National Park Service has provided public notice that it will consider applications to transfer ownership of certain Department of Interior lands, including Coldwater Spring, to an appropriate Indian tribe, governmental unit or University.
- WHEREAS, The Coldwater Spring is a sacred spring for the Dakota people. The spring is the dwelling place of underwater spirit "Unktehi" and encompasses part of the center of the Earth for the Dakota people.
- WHEREAS, The Water Spirit "Unktehi" at Coldwater Spring is the name given to the sacred spring by Dakota Spiritual Healers. The water of Coldwater Spring has been traditionally utilized for healing of Dakota people and others including Father Hennepin, whom Hennepin County is named after.
- NOW THEREFORE BE IT RESOLVED, The Community Council hereby declares that Coldwater Spring and the land that surrounds it, is defined in the Treaty with the Sioux Nation of Indians-1805 and is part of the ancestral lands of the MN, Mdewakanton people.
- NOW THEREFORE BE IT RESOLVED, The Lower Sioux Indian Community demands that the United States uphold their "promise"...to permit the Sioux to pass, repass, hunt or make other uses of the said districts, as they have formerly done, without any other exception..." and recognize the cultural nexus that the Lower Sioux Indian Community has with Coldwater Springs and the land that surrounds it.
- NOW THEREFORE BE IT RESOLVED, The Community Council hereby requests that the United States restore to it's natural state-Coldwater Springs and the land that surrounds it *and* recognize the cultural and religious significance to the Lower Sioux Indian Community and that the Coldwater Springs site be protected as a traditional cultural property.
- NOW THEREFORE BE IT FINALLY RESOLVED, The Community Council does hereby request the United States Department of Interior to transfer Department of Interior lands constituting the former Bureau of Mines property inclusive of Coldwater Spring to the Lower Sioux Indian Community, and that the Lower

Sioux Community does assert its commitment to maintain the property in a natural state as to Coldwater Spring and to permit access to it by all interested parties, including Indian tribes for ceremonial, cultural, and educational purposes.

CERTIFICATION

I certify that Resolution No. 06-146 WAS DULY ADOPTED BY THE Community Council of the Lower Sioux Indian Community at a meeting held on the 12 day of October, 2006, a quorum being present by a vote of 3 in favor, 0 opposed, and 0 abstaining.



Shannon Blue, President



Jody Goodthunder, Secretary




Loren Johnson, Treasurer

This is the first Resolution signed by Council on 10-02-06, before the new amendment.

CERTIFICATION

I certify that Resolution No. 06-144 WAS DULY ADOPTED BY THE Community Council of the Lower Sioux Indian Community at a meeting held on the 2nd day of October, 2006, a quorum being present by a vote of 3 in favor, 0 opposed, and 0 abstaining


Sheldon Peters Wolfchild, President


Scott Adolphson, Vice President


Jody Goodthunder, Asst. Secretary/Treasurer

Audrey Bennett
President

Johnny Johnson
Secretary



Victoria Winfrey
Vice President

Alan W. Childs II
Treasurer

Ronald Johnson
Assistant Secretary/Treasurer

November 27, 2006

United States Department of the Interior
National Parks Service
Mississippi National River and Recreation Area
111 East Kellogg Blvd., Suite 105
Saint Paul, Minnesota 55101-1256

Re: Draft Environmental Impact Statement for Disposition of Bureau of Mines Property
Twin Cities Research Center Main Campus, Hennepin County, Minnesota

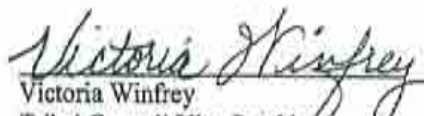
Greetings:

Enclosed please find the Prairie Island Indian Community's Comments to the Draft
Environmental Impact Statement for Disposition of Bureau of Mines Property Twin
Cities Research Center Main Campus, Hennepin County, Minnesota.

If you have any questions, please contact Philip Mahowald, Prairie Island Indian
Community General Counsel, at (651) 267-4006.

Sincerely,


Audrey Bennett
Tribal Council President


Victoria Winfrey
Tribal Council Vice President


Johnny Johnson
Tribal Council Secretary


Alan Childs II
Tribal Council Treasurer


Ronald Johnson
Tribal Council Assistant Secretary/Treasurer

**COMMENTS BY PRAIRIE ISLAND INDIAN COMMUNITY,
A FEDERALLY RECOGNIZED INDIAN TRIBE HAVING A
GOVERNMENT-TO-GOVERNMENT RELATIONSHIP WITH
THE UNITED STATES OF AMERICA,
TO THE DRAFT ENVIRONMENTAL IMPACT STATEMENT
OF THE NATIONAL PARK SERVICE REGARDING DISPOSITION
OF THE BUREAU OF MINES TWIN CITIES RESEARCH CENTER
MAIN CAMPUS, HENNEPIN COUNTY, MINNESOTA**

Thank you for including tribal entities in the process to determine the disposition of the Bureau of Mines Twin Cities Center ("Center"). In that regard we have designated representatives to assist in this process on behalf of Prairie Island Indian Community. You have appropriately included some references to our representatives and their positions in the Draft Environmental Impact Statement dated July 2006 ("Draft EIS"). Mindful of the importance of this property to all Dakota peoples of Minnesota, of which the Prairie Island Indian Community is a federally recognized representative part, we do wish to assert our position as an integral party in the processes for determinations and ultimately, the conveyance, of this property. It is in the context of the historical and cultural significance of the lands upon which the Center is located and the sacred associations our people have with the spring water that flows within the property, that we provide the following comments to the Draft EIS.

COMMENT #1: CLARIFICATION OF SIGNIFICANCE OF THE CENTER SITE TO NATIVE AMERICANS:

It is noted there are several instances within the Center documents which indicate that the Center probably does not or will not qualify for protective benefits under the Indian Sacred Sites protective legislation. While it is true that the use of land for tribal religious ceremonies may make a site "sacred," land may be considered traditional cultural property if, as in the instant case, the spring water flowing from and taken from the land is utilized by native peoples for use in religious ceremonies, even though those religious ceremonies may be conducted off the property and upon other land which is considered "sacred."¹ Reliance upon preliminary findings that there is little or no evidence that the land was a defined location for tribal religious ceremonies fails to give credence to the real native religious element at this site—the sacred spring water. This spring water, water which comes from the earth, water which has been purified by the earth, is the significant native religious element at this site and what in turn makes the site itself historically and culturally significant and traditional cultural property. It is this

¹ The spring waters have been used in different religious ceremonies or in different ways by different Dakota bands over the years. Each of the various uses, as passed down through the oral tradition of particular bands, is a valid expression of that particular band's tradition, and entitled to deference and respect. In other words, no one Dakota band or community can claim exclusivity of the uses of the spring waters in traditional religious ceremonies, and all of the varied traditions and beliefs about the sacred nature of the spring water, the medicinal and religious uses of the water, and the importance of the lands in the immediate vicinity are likewise entitled to deference and respect, even though differences might exist within the respective Dakota traditions.

water that the tribal people recognize as sacred and which is utilized for their traditional religious ceremonies and for making medicines. This "sacred water" needs to be preserved and that means preserving the site where the water is located. Without the continuation of the religious ceremonies of the Dakota peoples which have been practiced throughout their history, these ceremonies are likely to further dissipate or even disappear.

COMMENT #2: RESTATEMENT OF JOINT TRIBAL CONVEYANCE OF PROPERTY OR, AT THE LEAST, CONTINUED NATIVE ACCESS:

In the recent past, the Center, and its surrounding property with historical and cultural significance to the native peoples of the area, has been the subject of several invasive efforts, including this dispositional effort regarding the Center. We believe that the original Native American occupiers and owners of the property should at this time be given due consideration for the disposition of the Center property. The federally recognized tribes affected by the property are easily ascertainable. Their status of governmental entities with government-to-government relationships with the United States of American is well documented. Their right for notice, information and consideration as any other governmental body is federal law. Their governmental status should not be disregarded by giving more consideration to other governmental bodies and their priorities should not be disregarded in favor of private or non-profit entities.

In this regard, the federally recognized tribes now representing the Dakota people whose ancestors allowed the United States government to use the Center should now be given due consideration for the return of the property. It has always and continuously been recognized as Dakota property. If not in the sense of fee ownership, always in the sense of right of use. It is of significance, that in Article 3 of the Pike Treaty of 1805 which granted the land on which the Center is located to the United States, the rights of the Dakota were recognized by stating: "The United States promises, on their part, to permit Sioux to pass, repass, hunt or make other uses of the said districts, as they have formerly done, without any other exception but those specified in the article first." There is also some evidence in the Dakota's history indicating that the Dakota people and their Chiefs did not really agree to this conveyance in the first place. However, in any event, it is clearly evident that the United States recognized the tribal right to continued use of the property, and permitted access to the Coldwater Spring throughout the duration of the United States' ownership and occupation of the property. Even though some may assert that even this treaty right was abrogated by unwarranted and wrongful congressional actions, that did not totally take away the access to the site and use by native peoples of the sacred water though such access and use has been severely limited during the most recent governmental occupation. Now with the use of the property by the United States no longer necessary or desirable, it is only right that the property should be returned to those who have the most significant existing and continuing rights to use of the site, the native peoples of the region.

COMMENT #2: FAILURE TO INCLUDE FEDERALLY RECOGNIZED TRIBES AS ELIGIBLE ENTITIES AS GRANTEES OF PROPERTY:

As part of the Draft Environmental Impact Statement, several alternatives for disposition of the Bureau of Mines Property were included. However, the federally recognized Indian tribes did not receive consideration at all as a dispositional alternative. Based upon the location of the Center within original native lands, such lands being ceded to the United States by treaty and with such treaty providing a continuing right of access and use by Native Americans, the federally recognized tribes neighboring the site are the most logical alternative for disposition of the site. It appears clearly that the Dakota's access and use to the site was always a consideration for the United States. It is therefore only common sense that when the opportunity arises, as it has, for the United States to dispose of the site as no longer needed for use by the United States, the federally recognized Dakota tribes are the best alternative for disposition of the site. As federally recognized government's with government-to-government relationships representing the native peoples whose history and culture is most predominate to the interests sought to be protected, disposition of the property to the tribes is the best alternative for the site.

Alternative A is a no-action alternative which would continue existing conditions for the Center including low intensity visitor use. This is assumed to include visitor use by Native Americans. As previously stated, the waters from Camp Coldwater Springs are associated with Dakota and other Native American peoples sacred ceremonies. Native peoples have not been pleased with this very limited access to the springs. It most certainly does not coincide with the unfettered use granted in the Pike Treaty. Therefore, this alternative is not acceptable.

Alternative B is conveyance to a university or nonfederal government entity with no conditions imposed on future use. Except for a Minnesota state recipient, and even then with only limited restrictions on use, this alternative leaves available the opportunity for use of the property in a manner which is detrimental to the historical, cultural and designated rights of the Native Americans. This alternative is not acceptable.

Alternative C is conveyance to a university or nonfederal government entity with conditions. Even with conditions such as conservation easements, partial retention or other efforts to maintain the historical, cultural and natural resources of the site, this is not an acceptable alternative. Placing the property in the hands of non-Native Americans affords little comfort that the best intentions set forth in the conditions, would be carried out as fully intended. Certainly, those conditions, conditions which all deal with Native American interests in the site, could be most adequately fulfilled by the federally recognized tribes themselves and whose historical, cultural and religious connections to the site any considered conditions would address.

Alternative D is leaving the site in federal management with modifications to the site and then with subsequent conveyance to a university or nonfederal government entity. This conveyance could be with or without conditions. While the modifications are a nice enticement for this alternative, they are not complete unless the property is conveyed to the Prairie Island Indian Community individually or jointly with other federally recognized Mdewakanton Dakota tribes, for the reasons above stated.

Being aware of the kind of minimal care and limitations on access and use of the site at the present time, the Prairie Island Indian Community as a representative of some of the Dakota peoples with a historical, cultural and religious connection to the site, would respectfully request an additional alternative be considered involving conveyance to the Prairie Island Indian Community individually or jointly with the other federally recognized Mdewakanton Dakota tribes. This would not include non-profit organizations or other entities who may label themselves as interested or connected to Native American interests. None are as interested or connected as the tribes. As federally recognized tribes, these entities, have the resources, though limited in some respects, and the desire to seek full use and enjoyment of the original treaty provisions and stand in a position to develop, preserve and protect the site for the use and access that has been the stated intention of the United States government. The development of the site as a Dakota historical and cultural center open to the general public is a direction our Community is certainly willing to entertain and promote, individually or jointly. Returning most or all of the site to its original, pre-treaty and pre-Fort Snelling condition as a Dakota historical and cultural center would compliment the existing historical and recreational uses adjacent lands, and indeed provide the final piece to a cultural, historical and recreational corridor running from Minnehaha Falls Park to Historic Fort Snelling in the heart of the Dakota tribes' former lands, but also the heart of the Twin Cities metropolitan area. Such an additional alternative should be developed in consultation with the federally recognized tribes nearest to the Center property.

Please be aware that several of the detail matters set forth in the EIS to which comment could have been made have been set aside for the moment in favor of what is considered the major concern for comment, that the federally recognized Mdewakanton Dakota tribes have not been given due consideration as a possible grantee for protection of their cultural, historical and religious connections to the Center. Hoping that such an alternative will become a viable alternative through consultation with the tribes, this tribal entity reserves the right to comment further on such specific detail matters.



MINNESOTA HISTORICAL SOCIETY
State Historic Preservation Office

September 21, 2006

Mr. Steve Johnson
Acting Superintendent
National Park Service
Mississippi National River & Recreation Area
111 E. Kellogg Blvd., Suite 105
St. Paul, MN 55101-1256

Re: Bureau of Mines, Twin Cities Research Center (TCRC) Main Campus
Hennepin County
SHPO Number: 1996-0884

Dear Mr. Johnson:

Thank you for the opportunity to review and comment on the above project. It has been reviewed pursuant to the responsibilities given the State Historic Preservation Officer by the National Historic Preservation Act of 1966 and the Procedures of the Advisory Council on Historic Preservation (36CFR800).

The area of this proposed land transfer includes a portion of a National Historic Landmark, and at least two "layered" historic districts with National Register eligible/listed properties with different periods of significance. It is probable that all of the alternatives have potential adverse effects on historic properties. That said, some alternatives have a greater potential for a broader range of effects. We offer our comments below as a first step in the Section 106 consultation process.

Due to the levels of significance and complexity of the resources, and due to considerable public interest in the undertaking, we recommend that the Section 106 consulting parties be identified, and that the consultation process be initiated. Based on concerns of consulting parties and further analysis of information, additional issues other than those we have outlined below may need to be addressed as the process moves forward.

1. Regarding the identification of listed/eligible historic properties, the EIS includes information on the National Historic Landmark, the Ft. Snelling Historic District (listed on the National Register), and the U.S. Bureau of Mines Twin Cities Research Center Historic District (eligible for the National Register), along with recommendations for the modification of boundaries to the above properties. Other levels of designation and protection are also described.

A. The Archaeological Research report (Clouse, 2001) divides the proposed land transfer parcel into five zones. We concur with the determination that Zones I and II have archaeological potential, and that Zones III and IV do not. There appears to be a discrepancy between the EIS and the Archaeological Research report regarding Zone V. The EIS indicates that Zone V was found to contain no important cultural materials, while the Archaeological Research report indicates that Zone V includes a military railroad grade that is a contributing element of the Ft. Snelling Historic District.

B. The Archaeological Research report and the Historical Study report (Henning, 2002) recommend that the boundary of the Ft. Snelling Historic District be expanded to include the entire areas of Zones I and II and the area of Coldwater Spring. Generally, we concur with these recommendations, but we would like to consult further with you regarding the proposed boundaries of the expanded area.

C. A Phase II archaeology survey should be completed for Zones I and II as part of this planning process, before any property transfer takes place. Then, a comprehensive map of historic contributing properties – including all identified archaeological sites, the spring, the reservoir, the spring house, and the military railroad grade – can be prepared to serve as a basis for a specific treatment/mitigation strategy under any of the alternatives. In addition to the Phase II archaeology survey, an evaluation of the Camp Coldwater summer camp (1820-c. 1823) should be completed to assess if it is a contributing site to the Ft. Snelling Historic District (more for associative significance than for archaeological information potential). If it is contributing, it should be included on the comprehensive map.

D. The Ethnographic Resources Study (Terrell et.al., 2005) concludes that the Coldwater Spring meets the National Register criteria as a traditional cultural property (TCP). However, the EIS indicates that the National Park Service has determined that the spring does not meet TCP criteria. We believe that it is important to consider the views of interested parties as well as more information on the NPS evaluation as part of our assessment of this aspect of the spring's significance.

2. We have some concerns regarding the use of the three tables (pages 124-126) to assess effects for Section 106 purposes. The tables establish a relationship between impact intensity and effect determination/mitigation that is more specific than the effect definition in the Section 106 regulations. As a result, the effect determinations as proscribed in the table may not hold true in all cases. For example, a minor adverse effect on the overall integrity of a historic property could still be adverse (such as a case where certain elements of work on a historic building do not meet the Secretary of the Interior's Standards). On the other hand, major adverse effects do not always result in a situation where a mitigation agreement cannot be achieved. Since these tables could be misleading, it may be less confusing to simply use the assessment of effect as presented in 36 CFR 800.

We note that the table for ethnographic resources is presented only for NEPA assessments. Should additional consideration of Coldwater Spring establish that it is

eligible as a TCP (see comment 1.E., above), the table may need to be revised for 106 purposes.

3. As we stated above, all four alternatives have the potential for adverse effects to historic properties. (Again, should additional consideration of Coldwater Spring establish that it is eligible as a TCP, the comments below may need to be expanded.)

A. Alternative B, or the version of Alternative D with no use restrictions, would seem to have the potential for the highest level of adverse effects, since the property would transfer out of the federal government, with no Section 106 review of future projects, and with no restrictions. Mitigation would focus on data recovery and recordation so that a record of the historic properties would be made before the transfer is completed.

B. Alternative C, or the version of Alternative D with use restrictions, could offer much better protection of historic properties by including restrictions in the transfer. These could establish a process for review of future actions, maintenance thresholds, and other preservation measures. (We note that even under these alternatives it is quite possible that there would be some level of adverse effect. Certain uses may be more compatible with the historic properties from certain periods, leading to choices for removal of some elements. In addition, the cost of renovating all of the historic buildings associated with the Bureau of Mines is expected to be quite high.)

C. Alternative A could result in continued deterioration of historic properties, with accompanying adverse effects. However, under continued federal ownership, the federal agency would presumably have responsibility for stewardship of the historic properties under Section 110 of the National Historic Preservation Act.

We look forward to continuing to work with you and other interested parties as the review of this proposed undertaking moves forward. Contact our Compliance Section at 651-296-5462 with questions or concerns.

Sincerely,



Britta L. Bloomberg
Deputy State Historic Preservation Officer

October 16, 2006

Kim Berns, Project Manager
National Park Service
Mississippi River National River and Recreation Area
111 Kellogg Boulevard East, Suite 105
St. Paul, MN 55101

**RE: Comments on Draft Environmental Impact Statement (DEIS) for:
*Disposition of Bureau of Mines Property, Twin Cities Research Center Main Campus,
Hennepin County, Minnesota***
Metropolitan Council District 5 (Russ Susag)
Metropolitan Council Referral File No. 19818-1

Dear Ms. Berns:

Thank you for the opportunity to comment on the Draft Environmental Impact Statement (DEIS) for the proposed disposition of the Bureau of Mines (USBM) Twin Cities Research Center site. Metropolitan Council staff finds that the materials in the DEIS are accurate with respect to regional concerns and complete in addressing the potential for significant environmental impact. To inform your selection of preferred alternatives for the Final EIS, Council Staff offers advisory comments regarding information for natural resources, airport zoning and regarding the environmental impact of the proposed action alternatives.

The DEIS details the environmental, cultural and historic resources found on, adjacent to or associated with the site. The main issue is the effect of land use on these resources. Council Staff finds that Alternatives C and D would provide the greatest protection of the significant resources present on the USBM site; more than the no-action Alternative A, and considerably more than Alternative B. The comments presented below address this conclusion in more detail.

CHAPTER 1: PURPOSE AND NEED

Mississippi River Corridor Critical Area, MNRRA Enabling Legislation and the MNRRA Comprehensive Management Plan Victoria Dupre (651) 602-1621

Critical Area. The Critical Area Act requires local governments to plan for areas within the Critical Area corridor. Critical Area Plans are typically a component of a local comprehensive plan, and implemented by a Critical Area zoning ordinance. The USBM site does not lie within any local government, but is within Hennepin County. The DEIS states that the USBM site would be governed by Executive Order 79-19 Interim Development Regulations. The DEIS does not address how these regulations would be implemented or how proposed development would be reviewed and regulated.

MNRRA. The DEIS, p. 16, states that the Committee understands that Mississippi National River Recreation Area (MNRRA) ownership of land in the MNRRA corridor is inconsistent with the MNRRA comprehensive management plan (CMP). The CMP plan does not seem to exclude the possibility of MNRRA land ownership, but seeks to limit it. The plan states that the "NPS should own minimal land in the corridor." In addition, the CMP states that the "NPS will develop ... smaller interpretive centers in the Hastings area, at Fort Snelling State Park..." It does not seem inconsistent with the CMP that MNRRA own and/or manage the USBM Campus site.

Kim Berns, Project Manager
 October 16, 2006
 Page 2

**Airport Zoning Ordinance
 Chauncey Case (651) 602-1724**

Please be aware of potential changes to airspace rules. The DEIS preparers should review the Federal Register – Vol. 71, No. 113, of Tuesday June 13, 2006 for Notice of Proposed Rulemaking (NPRM) by the U.S. Department of Transportation. This NPRM concerns regulations regarding "Safe, Efficient Use and Preserving Navigable Airspace." The potential changes to these rules (14 CFR Part 77) are found in FAA Docket No. 2006-25002; Notice No. 06-06.

Aircraft noise impacts will need to be addressed if the site becomes privately owned or if the site is developed. When the USBM site ownership is transferred, and/or if development occurs on the site, conditions need to be in place requiring the new owner/developer to address potential aircraft noise impacts for land uses. Such conditions need to address notification of prospective owners and tenants of potential aircraft noise and provide assurance that structures will have acoustical integrity through appropriate design or mitigation measures.

CHAPTER 3: AFFECTED ENVIRONMENT

**Natural Resources
 James Larsen (651) 602-1724**

The USBM Campus site contains regionally significant natural resources identified for protection by the Minnesota Department of Natural Resources (MN DNR). The northeast portion of the USBM Campus site is within an area identified by the MN DNR as a Regionally Significant Natural Resource Area. The greater parcel within which the USBM Campus lies (from the eastern property line of the USBM Campus site) is designated by the MN DNR as a Regionally Significant Ecological Area. These designations/resources do not appear to be noted in the DEIS, Chapter 3: Affected Environment Natural Resources, and should be added to the final EIS. It is the Metropolitan Council's policy (through the *2030 Regional Development Framework* and the *2030 Regional Parks Policy Plan*) to work with other regional partners to protect such regionally important natural resources.

CHAPTER 4: ENVIRONMENTAL CONSEQUENCES, CHAPTER 2: ACTION ALTERNATIVES

Denise Engen (651) 602-1513

Alternative B would not protect the site from negative environmental impact. The DEIS, pp. 46-49, explains that under Alternative B the USBM Campus site would be conveyed to a university or nonfederal government entity, with no future use conditions, other than current regulations. Council staff prefers this alternative least because the low level and/or unclear nature of land use regulation that applies to the site. Alternative B affords little assurance that the site's unique natural, historic or cultural resources would be protected. Taking no action, or Alternative A, would be preferred over this option.

Alternatives C and D will allow continued protection of site resources. From the information presented in the DEIS, federal or state ownership would provide the most comprehensive protection of site resources, given the unclear nature of local development controls. If the site is conveyed to a non-federal or non-state owner, conditions governing the use of the property and protecting the natural, cultural and historic resources on the site should be implemented. As stated in the DEIS this can occur under Alternative C, or Alternative D with subsequent conditions (see discussion).

Kim Berns, Project Manager
October 16, 2006
Page 3

Alternative D would provide the most flexibility for future use and would permit near-term environmental remediation. Demolition and environmental remediation costs would place a significant burden on a future owner, and may pose a barrier to acquisition. Under Alternative D, the federal government would bear the cost and manage the modification of the site and/or structures, including demolition of structures and environmental remediation. After the site is modified the DEIS states, (DEIS, p. 55), that several options are available under Alternative D. These include, the conveyance methods of Alternative B and C, or retention of the site by the federal government for the purposes of the three conceptual land use scenarios proposed by the DEIS.

Alternative D with continued federal ownership, or with conveyance to a non-federal owner with conditions would be preferred over Alternatives B, A or C – especially if all on-site structures were removed by the federal government in accordance with the draft document's Appendix G report, and all on-site hazardous materials abated and disposed of in accordance with applicable requirements.

The Metropolitan Council looks forward to continuing to work with the National Park Service on this project. If you have any questions or need further information, please contact Denise Engen, Principal Reviewer, at 651-602-1513.

Sincerely,



Phyllis Hanson, Manager
Local Planning Assistance

cc: Russ Susag, Metropolitan Council District 5
Ann Beckman, Manager, Regional Growth Strategy
Denise Engen, Principal Reviewer/Sector Representative
Cheryl Olsen, Reviews Coordinator



Mendota Mdewakanton Dakota Community

1324 Sibley Memorial Highway
P O Box 50835
Mendota, MN 55150

Phone: 651-452-4141
Fax: 651-452-4232
Website: www.mendotadakota.org

received
11/27/06

November 27, 2006

To whom it may concern;

The Mendota Mdewakanton Dakota Community Tribal Council supports the Lower Sioux Community in their resolution for the Bureau of Mines Property (Coldwater Spring or Camp Coldwater is located on this property). The Mendota Mdewakanton Dakota Community Tribal Council additionally supports the Coldwater Coalition letters of support for the Lower Sioux Community.

We, MMDC, firmly believe the Dakota Communities should have a say in the future of the property as it is a significant sacred place for prayer and meditation for many native and non-native peoples. Our ancestors gathered there. Our people are connected to this sacred land. Thank you for the opportunity to give our opinion on this matter.

Sincerely,

Tiffany Eggenberg

Acting Secretary