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April 30, 2020

National Park Service
Roger Knowlton, Regional Manager
Recreation Grant Programs
Interior Regions 3-5
601 Riverfront Drive
Omaha, NE 68102

Dear Mr. Knowlton,

The Minnesota Department of Natural Resources (DNR) has prepared and published the Environmental Assessment (EA) for the conversion of Land and Water Conservation Fund (LWCF) Lands at the Lower Sioux Agency History Center. The 30-day EA public review and comment period began January 09, 2020 and ended February 10, 2020. Written comments on the EA could be submitted to the DNR by U.S. mail, facsimile, or via email.

During the 30-day public review and comment period, the DNR received comment letters from the individuals and agencies listed below. The letters have been annotated to note the comments within each letter that received a response. A copy of the comment letters are included in Attachment A of this letter.

Commenter	Date Received
01 - Kuehmichel, Bruce	01/09/2020
02 - Tesson, Owen	01/13/2020
03 - Flores, Anthony	01/20/2020
03a - Flores, Anthony	02/05/2020
04 - Gebhard, Darla	01/23/2020
05 - Smith, Justin	01/24/2020
06 - Larsen, Aaron	01/27/2020

Commenter	Date Received
07 - Dahlin, Curtis	02/03/2020
07a – Dahlin, Curtis	02/10/2020
09 - Jackson, Lois	02/07/2020
10 - Dirlam, Deb	02/07/2020
11 - Aude, Arille	02/07/2020
12 - Blue, Shannon	02/10/2020
13 - St. John, Cheyanne	02/10/2020
14 - Hogan, Mark & Michele Olafson, Scott and Kim	02/10/2020
15 - Beimers, Sarah, State Historic Preservation Office	02/10/2020
16 - Chappel, Stephanie	02/10/2020
17 - Murphy, Nora Lower Sioux Indian Community	02/10/2020
18 – Cox, Lori	01/23/2020

Comments are summarized below followed by DNR’s responses. The DNR appreciates all commenter’s reviews and comments on the EA. Copies of all comments letters and responses have been provided to all interested parties including the National Park Service (NPS) and persons who commented in writing or requested a copy.

Commenters 02, 03, 05, 09 through 13 and 17-18 expressed enthusiasm and/or support for the project. These comments did not address the accuracy or completeness of the material contained in the EA or environmental impacts that may warrant further investigation prior to removal of LWCF status.

Comments that did address the accuracy and completeness of the EA and/or potential impacts that may warrant further investigation before the proposed LWCF removal are summarized below followed by the DNR’s response. Comments included in these letters that did not address the accuracy and completeness of the material contained in the EA or potential impacts that may warrant further investigation prior to LWCF conversion did not receive a specific response.

Commenter 01 – Kuehmichel, Bruce

Comment 01.a: The commenter questions if the trust will be safe from current or future federal administrations.

Response 01.a: While the DNR cannot predict if current or future federal administrations would change the arrangement of the trust (25 CFR 151), placing the land in trust would result in federal oversight. Following the removal of LWCF designation, the Lower Sioux Agency would not lose the National Register of Historic Places (NRHP) designation. Under NRHP, evaluation under Section 106 must be completed for any future undertakings.

Comment 01.b: The commenter questions the no-action alternative and the “impractical circumstances” Mr. Joe Hiller (in attachment B) refers to that are preventing MNHS from operating the site.

Response 01.b: The EA addresses the no-action alternative in Chapter C.2 and attachment B. In the June email that Mr. Joe Hiller sent to the NPS, he states that the no-action alternative is “becoming increasingly impractical.” The DNR considered the no-action alternative and concluded it would not allow for the removal of LWCF and thereby would not support the goal of placing the property in trust and would not meet the project purpose and need. MNHS is committed to continue a working partnership with the LSIC through a management agreement on the site (see Attachment B).

Commenter 04 – Gebhard, Darla

Comment 04.a: The Commenter expressed concern about historic preservation of the battle site and cemetery and continued care of the property by US Government and State of Minnesota.

Response 04.a: Please see response 01.a. The DNR recognizes the preservation and importance of all historic sites and burials. The EA addresses historic preservation under Chapters A, B, and D. For any lands remaining in State of Minnesota/MNHS ownership, MNHS will continue to administer the lands and protect historic and cultural resources on the site in a manner consistent with the requirements of the National Historic Preservation Act (NHPA) as well as the Private Cemeteries Act (Minnesota Statutes 307.08) and MN State Statute Chapter 138, to the extent applicable. No known burials are on land authorized by the Minnesota Legislature, to be conveyed (see Attachment C) and MNHS is committed to continue a working partnership with the LSIC through a management agreement on the site (see Attachment B).

Comment 04.b: Commenter questions the assurance that burial sites will continue to be accessible to descendants of those buried on the site.

Response 04.b: Please see response 04.a. Chapter B addresses public access to the site. The EA is part of the process to remove LWCF status from the site property acquired through the grant program. This includes the property outlined in red on the Lower Sioux Agency Boundary map (Attachment C). The EA focused on removing LWCF status, but acknowledges both the larger historic site boundary, and plans to transfer a portion of the site to the LSIC (only Tract B is within the LWCF boundary). Removing LWCF status will not affect public access or the protection of the historic site. As shown in the attached map, the cemetery is not a part of the land that was authorized to be transferred by the Minnesota Legislature in 2017 (Minn. Law 2017, Ch. 54 § 23).

Comment 04.c: The commenter questions what notifications will be provided to the descendants of the people buried on the site, that the land is being conveyed to the LSIC.

Response 04.c: The purpose of the EA, a necessary administrative action to remove the LWCF status, does not address the land conveyance to this level of detail as that is a separate process. As addressed in Chapter B of the EA, MNHS intends to convey portions of the Lower Sioux Agency to the LSIC as was authorized by the Minnesota Legislature, please see response 04.b. Questions regarding the details of the land conveyance, such as how notification will be sent to descendants, can be addressed to the MNHS.

Commenter 06 – Larsen, Aaron

Comment 06.a: Commenter expressed concern regarding public access to the Lower Sioux Agency, once placed under jurisdiction of the LSIC.

Response 06.a: Please see response 4.b.

Comment 06.b: Commenter expressed concern about the LSIC opening the site for tribal hunting.

Response 06.b: The DNR has not been informed that the LSIC intends to open the site to tribal hunting, therefore this was not a consideration for the scope of this EA. MNHS would remain actively engaged at the Lower Sioux Agency in preservation, interpretation, and community outreach and is committed to continue a working partnership with the LSIC through a management agreement on the site (see Attachment B).

Comment 06.c: Commenter expressed concern about the loss of public land in Minnesota. Commenter also states that the LWCF contains a provision to protect grant-assisted lands from conversions.

Response 06.c: The purpose of the EA, a necessary administrative action to remove the LWCF status, does not address the specifics of land conveyance as that is a separate process. As addressed in Chapter B of the EA, conveyance of portions of the Lower Sioux Agency to the LSIC, was authorized by the Minnesota Legislature in 2017 (Minn. Law 2017, Ch. 54 § 23). As stated in response 6.d, with the approval of the DNR and NPS, conversion of LWCF park lands is allowed and the replacement land negates loss of public land.

Comment 06.d: Commenter believes the proposed transfer is contradictory to the objectives of the State's Comprehensive Outdoor Recreation Plan.

Response 06.d: DNR recognizes that park lands acquired or developed with LWCF are meant to be maintained in perpetuity for outdoor recreation. With the approval of the DNR and NPS, pursuant to Section 6(f)(3) of the LWCF Act, conversion of LWCF park lands is allowed with replacement lands that would provide recreation opportunities similar to those being converted at the Lower Sioux Agency. Chapters A, C and D address the need to provide replacement lands. Section 6(f)(3) allows for delayed replacement, with a commitment from the state that replacement lands will be acquired within an agreed upon length of time, typically that would be within one year of the conversion. As required, an EA will be completed on the replacement land. Also, please see response 04.a.

Comment 06.e: Commenter believes the EA failed to address an option in which the state retains land ownership and the LSIC assumes management of all infrastructures.

Response 06.e: The EA addressed alternatives under Chapter C. This particular option suggested by the commenter was not identified as one of the alternatives to be assessed in the EA. DNR finds that the alternative suggested by the commenter would not allow for the land to be placed in trust and therefore does not meet the project purpose and need. In addition, it would not result in less environmental or social impacts than the proposed action. The environmental review process requires the development and evaluation of reasonable alternatives. The DNR considered all reasonable alternatives to the proposed action of removing LWCF status from the park lands and thus has satisfied this requirement.

Commenter 07 – Dahlin, Curtis

Comment 07.a: The commenter provided historical narrative about the site and urged that the U.S. Government Installation and burials at the site be highlighted moving forward. The commenter also expressed concern regarding the sacredness of the burials and that nothing be constructed nor should the site be transformed into something different.

Response 07.a: See Response 04.a. The LSIC has a Cultural Resources Protection Ordinance that encompasses all property within the Lower Sioux Indian Community. According to the MNHS, the map that was provided by the commenter (see public comment letters, commenter 07) does not appear to provide accurate burial locations.

Commenter 08 – Bakeman, Mary

Comment 08.a: Commenter is opposed to the project, citing concern about the historic value of its place on the National Historic Register.

Response 08.a: Following the removal of LWCF designation, the Lower Sioux Agency would not lose its place on the National Register of Historic Places (NRHP).

Comment 08.b: Commenter questions if the site will return to a “Dakota” only culture, further questioning trail use, tourism, historical accuracy, bookstore sales, and cost of maintenance.

Response 08.b: The EA addresses cultural and historic resources under chapter D. Please see response 04.b. The EA addresses cultural and historic resources under chapter D. The LSIC and MNHS have both committed to continue to maintain the site, including the interpretive and hiking trails (see Attachment B). The trails will continue to remain accessible and open for all public use through LSIC and MNHS’s maintenance. For property remaining under the jurisdiction of the MNHS State Statute Chapter 138 applies.

Comment 08.c: Commenter questions what will happen to gravesites.

Response 08.c: Please see response 04.a and 07.a.

Comment 08.d: Commenter questions who would pay for the maintenance of the site?

Response 08.d: Each agency will be responsible for providing adequate funding for maintenance for property under their respective jurisdiction.

Comment 08.e: Commenter would like to know what other similar efforts are already underway.

Response 08.e: The DNR is not aware of any other similar efforts underway. Further, similar efforts would not be a consideration (impact) for the EA, which is a necessary administrative action to remove the LWCF status.

Commenters 14 – Hogan, Mark and Michele and Olafson, Scott and Kim

Comment 14.a: The commenters contend that the conversion/transfer of lands and subsequent enrollment into trust is unnecessary.

Response 14.a: The DNR acknowledges the commenter’s opinion. As addressed in Chapter B of the EA, MNHS intends to convey portions of the Lower Sioux Agency to the LSIC as was authorized by the Minnesota Legislature in 2017 (Minn. Law 2017, Ch. 54 § 23). The EA was prepared for the removal of the LWCF status in order to enroll the land in trust and thereby continue its protections.

Comment 14.b: Commenters assert that the DNR prepared an inadequate EA resulting in the inability for the public to have a full understanding of the subject and fully engage in the public comment process and “...possible limitation of public use and reduced land protection measures on lands being considered for conversion/transfer.”

Response 14.b: The DNR contends that the prepared EA is compliant with the National Environmental Policy Act (NEPA). Please see response 04.a, 04.b and 08.b regarding public use and response 01.a and 04.a regarding protection for park lands that would have LWCF status removed.

Comment 14.b.1: Commenters state that the purpose need and background (Chapter 1), must be the “...agency’s purpose and need for the project, not the applicant’s...”

Response 14.b.1: The EA addresses purpose and need under Chapter 1 and the Summary. The purpose and need of the project is the same as for the NPS - to enable the land to be enrolled into trust. To accomplish the purpose it is necessary to remove the LWCF designation. The EA is required under

Section 6(f)(3) for removal of LWCF. The DNR completed the EA in order to submit a request to the NPS for removal of LWCF designation as outlined in Attachment C.

Comment 14.b.2: Commenters assert there will be no protections on the property following the removal of LWCF designation, and once placed in trust and the conveyance of land.

Response 14.b.2: Please see responses 01.a, 04.a and 07.a

Comment 14.b.3: Commenters refer to the April 25, 2018 letter from Sarah Beimers of SHPO (attached to EA) as evidence of uncertainty in future protections at the project site.

Response 14.b.3: DNR acknowledges the letter received while consulting with SHPO during an earlier phase of the project. Ms. Beimers has since reviewed the EA during the public comment period (Commenter 15). Ms. Beimer's comments do not express concerns about adverse effects or lack of protection on the land and DNR Division of Parks and Trails continues to coordinate with SHPO on the Section 106 process.

Comment 14.b.4: Commenters believe that EA should have included "documents to demonstrate the extensive historic preservation statutes and policies enforced by the LSIC, the Cultural Protection Ordinance to protect historical resources at the site, Tribal Historic Preservation Plan, and Baseline Plan and Guidance for the Lower Sioux Indian Reservation Comprehensive Survey."

Response 14.b.4: DNR appreciates the desire of the commenter to see these documents; however, it is not a requirement of the EA to include all documents referred to in the EA. DNR contends the EA provided sufficient information. The commenter may wish to request to see these documents as a part of the Section 106 process.

Comment 14.b.5: The commenters assert that the Purpose and Need of the EA is too narrow, eliminating a range of alternatives to be considered.

Response 14.b.5: The DNR appreciates the commenters' desire to see additional alternatives; however, the DNR believes it did consider all reasonable alternatives to the proposed action of removing LWCF status from the park lands. The alternatives considered in the EA reflect the National Park Service's mandate and mission. Also, please see response to comment 06.e.

Comment 14.b.6: Commenters assert that the analysis does not support the rejection of the no action alternative.

Response 14.b.6: The DNR is confident the environmental assessment conducted on the proposed project does support the rejection of the no action alternative. All of the required sections of the LWCF guidance are included in the EA. Environmental effects were identified for the physical and biological environment, geology and soils, listed species, water resources, land use and cultural and historic resources. The EA did not identify any potential environmental impacts to these resources associated directly, indirectly or cumulatively with the proposed removal of LWCF status. With regard to the commenters' concerns about the EA process, please see responses to comments 14.a through 14.b.10.

Comment 14.b.7: Commenters assert that in completing the EA, DNR "has likely predetermined the NEPA analysis by committing itself to an outcome..." And, by "likely" failing to "...take a hard look at the environmental consequences of its actions due to its bias in favor of that outcome and, therefore, has acted arbitrarily and capriciously."

Response 14.b.7: DNR identified and assessed all impacts prior to any findings in the document. Please see response 14.b.6.

Comment 14.b.8: Commenters assert that the DNR did not provide an adequate review of the physical and biological environment, stating the US Fish and Wildlife iPac and Natural Heritage Review are inadequate based on the commenter's speculation that there will be a change of use, loss of protections and limitation of public access.

Response 14.b.8: The EA addresses the affected environment under Chapter D. The US Fish and Wildlife iPac and Natural Heritage Review provide adequate analysis to identify rare and natural resources that might be impacted by the removal of the LWCF designation. Their use in determining potential impacts is standard practice in environmental review. Physical changes to the site are not planned and the site use would not change. The LSIC intends to continue use of the existing Center without any modification to the existing footprint of the building. This eliminates the possibility of an adverse effect in the form of physical damage or destruction of archaeological deposits or physical features that reflect the environmental and historic character of the site. Please also see response to comments 01.a, 04.a, and 04.b.

Comment 14.b.9: Commenters describe adjacent and nearby lands and easements that are attached to various conservation programs. Commenter expresses concern that the EA did not address any impact to adjacent lands, asserting there will be less protection (leading to development and habitat fragmentation) on the proposed LWCF conversion park lands.

Response 14.b.9: The LWCF process does not include assessment of adjacent lands. The process is to assess lands in which LWCF designation is proposed to be removed. Because there are no physical changes proposed to the land, nor changes in site use, impacts to surrounding land uses would not be anticipated. Please see responses 01.a and 04.a regarding protection of the park lands.

Comment 14.b.10: Commenters cite the LWCF section 6(f)(3) that grant assisted areas "are to remain forever available for "public outdoor recreation use" and suggest that transparency is uncertain with a delayed replacement process.

Response 14.b.10: Please see response 06.d. The delayed replacement process is being followed as allowed by NPS under Section 6(f)(3). As required, DNR will go through a separate process to evaluate the replacement land through the NEPA and the NHPA.

Commenter 15: Beimers, Sarah - State Historic Preservation Office

Comment: Commenter thanks the DNR for the opportunity to review the EA and states that Chapter D.6, Cultural and Historic Resources "provides an accurate representation of the current status of the review process..." SHPO will continue to consult with DNR during the Section 106 process which is proceeding concurrently pursuant to NHPA and corresponding regulations at 36 CFR Part 800.

Response 15: DNR thanks SHPO for their review of the document.

Commenter 16: Chappel, Stephanie

Comment 16.a: Commenter asserts that the removal of LWCF is not in the best interest of the State because the site is on the NRHP and contains many burials.

Response 16.a: Please see responses 01.a, 04.a, 04.b. and 07.a.

Comment 16.b: Commenter states that the parcels associated with the project cannot be replaced for recreational use, "as suggested by the Department of Natural Resources."

Response 16.b: Please see response 06.d.

Comment 16.c: Commenter asserts that transfer of property should not happen because 1) acquisition of land was made by a federal grant with additional requirements required by private sellers in 1965; 2) burials on site; and 3) historical events that happened on site.

Response 16.c: Please see responses 01.a, 04.a, 06.d, and 07.a.

Comment 16.d Commenter refers to the April 25, 2018 letter from Sarah Beimers of SHPO (attached to EA) as evidence of uncertainty in future protections at the project site.

Response 16.d: Please refer to response 14.b.3.

Comment 16.e Commenter states that until the NRHP nomination being updated by the MN Department of Transportation is complete, the parcels cannot be considered for LWCF removal.

Response 16.e: This NRHP nomination update does not preclude the LWCF process from moving forward, but the information in the update would be considered during the removal process.

Comment 16.f: Commenter asserts protections, including access to the lands, will be limited following the proposed removal of LWCF designation, and once placed in trust and the conveyance of land.

Response 16.f: Please see responses 01.a, 04.a. and 04.b.

Comment 16.g: Commenter asserts that MNHS is “attempting to bypass all State and Federal laws” to convey portions of the property to the LSIC.

Response 16.g: The subject of the EA is the removal of the LWCF status. The purpose and need is so the land can be enrolled in trust. As addressed in Chapter B of the EA, MNHS intends to convey portions of the Lower Sioux Agency to the LSIC as was authorized by the Minnesota Legislature in 2017 (Minn. Law 2017, Ch. 54 § 23). In conducting the EA, DNR has followed the environmental review process according to NEPA and NPS guidance. DNR, MNHS, and NPS are completing all requirements per Section 6(f)(3) for removal of LWCF status on the Lower Sioux Agency lands.

The DNR appreciates the National Park Service’s review of this letter and accompanying information. Please contact me with any questions or concerns.

Sincerely,

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CC:

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