

# Sports Mall

## Timetable

### 2005

May: Legislature approves land lease provision.

June/July: RFP is published.

August: MASC committee reviews proposals and interviews the 3 finalists.

September: MASC board reviews proposals.

- Committee presents recommendation to the board.
- Board selects lead candidate.

- The lead candidate has requested time to prepare a plan.
- It is anticipated that a draft lease will be formalized in first quarter of 2006.

**Public Release Date 6/24/05**

**REQUEST FOR QUALIFICATIONS AND CONCEPT PROPOSALS  
DEVELOPMENT OF A SPORTS MALL/BUSINESS CENTER AT THE  
NATIONAL SPORTS CENTER IN BLAINE MINNESOTA**

**Introduction**

The Minnesota Amateur Sports Commission is seeking a qualified, creative Developer to develop a 16 acre, sports-oriented commercial development on the campus of the National Sports Center in Blaine Minnesota. The property ("Property") is owned by the Minnesota Amateur Sports Commission, (MASC) an agency of the State of Minnesota. The National Sports Center is a 657 acre sports facility providing facilities & programs to 3 million visitors each year which is operated and managed by a wholly owned non-profit organization, the National Sports Center Foundation (NSCF). The intent is to have the developer and/or businesses construct their own buildings on the Property pursuant to a 30 year land leases with the MASC, which leases would have qualified renewal options.

The National Sports Center is nation-wide destination for amateur athletics; the campus includes:

- Worlds largest athletic field complex
- The nation's largest indoor 4 sheet ice arena
- A 35,000 sf meeting facility
- A 12,000 seat outdoor stadium
- An all-wood outdoor velodrome
- An indoor 52,000 sf sports hall
- An 18-hole youth golf teaching center

The MASC is initiating this process to attract commercial facilities that are complimentary and will enhance the experience for participants in activities occurring at the National Sports Center.

The MASC intends to enhance the National Sports Center as a sports tourism destination by adding a mix of sports related services in the leased areas including retail destination oriented commercial uses. Examples of the types of uses that are desired are: sports medicine clinic, sport/fitness center, health food store, sporting goods store, athletic training or conditioning specialists, and youth oriented recreational attractions. General commercial enterprises like banks and gas stations would not be appropriate to the desired mix of sports related services.

## **Developer Benefits and Responsibilities**

### **I. Benefits**

- A. Rights to master plan a site subject to MASC approval.
- B. Rights to develop and construct facilities for specific sports compatible businesses.
- C. Right to a development fee/margin to develop said business facilities.
- D. MASC is open to proposals in which the master developer owns all, a portion or none of the buildings to be constructed over the 30 year term.

### **II. Responsibilities**

- A. Develop a master plan for the site subject to MASC approval.
- B. Publicly advertise this business opportunity in a manner approved by the MASC.
- C. Identify and recommend qualified businesses subject to MASC approval.
- D. Manage all aspects of governmental permitting and approval process for new facilities.
- E. Execute development agreement subject to approval by MASC with businesses to be located on the site.
- F. Facilitate a master land lease agreement with the MASC .

## **Site Location**

The MASC has identified a 16 acre site in the City of Blaine for development. This site is immediately north of 105<sup>th</sup> Avenue, a 6 lane connector street between Radisson & Highway 65. (See Attachment A).

## **Description of the Property**

16 acres will be available for development purposes including buildings and parking. It is anticipated that the building area estimated to be 170,000 square feet (4 acres).

## **Site Soil Conditions**

There are approximately 4 acres of naturally sandy soils area suitable for building pad. (See attachment B) It is anticipated that parking will be floated over imported fill areas.

## **Zoning**

The site is currently zoned Light Industrial 1 and plans call for rezoning RR (Regional Recreational). (See Attachment C) Adoption of final rezoning is subject to approval of the City of Blaine. The MASC will begin the rezoning process in June of 2005.

### **On Site Materials Available**

The National Sports Center has ample soil available immediately adjacent to the site and is available at market rates.

### **Access**

One access (36' curb cut) is presently available off 105<sup>th</sup> Avenue. There is a potential access on the west side of the site.

### **Sewer & Water**

There is access to sewer and water on the north side of 105<sup>th</sup> Avenue near building area.

### **Water Retention**

The MASC has land adjacent to the development parcel that can be utilized for storm water runoff. The developer will have access to a large water management area zone and can utilize both on-site and adjacent site solutions.

### **Applicable Fees**

Normal fees related to building in the city will apply including WAC, SAC, park dedication, building permits, etc and will be the responsibility of the developer.

### **The goals of the development are to**

1. Provide relevant commercial activity that complements the needs of visitors to the National Sports Center and the community and supports existing activity.
2. Provide new uses that increase the intensity of commercial activity in the area and draw people to the National Sports Center.
3. Create buildings/structures that complement and enhance the National Sports Center campus architecture.
4. Maintain and enhance public recreational use of the National Sports Center.
5. Enhance the character of the immediate area in the city.
6. Provide annual land lease payments to the MASC.
7. Provide potential in-kind products and services from potential tenants that support and enhance the experience of amateur sport participants.
8. Use must provide some benefit to amateur sports as stated in MASC authorizing statute.

### **Other Elements the MASC desires**

- Compatible store fronts that are inviting and blend well with the campus and community.
- Sufficient parking which may include dual uses during peak season.
- Businesses located in the site will be asked to provide in-kind support to the programs at the NSCF and educational opportunities at the facilities where appropriate.
- Integrated roadways that support both the commercial center and the existing and future National Sports Center road system.
- Integrated pedestrian access that encourages walking.
- Integrated storm water management.

### **Desired Developer Commitments/Contributions**

- The developer must demonstrate an understanding and commitment to the MASC's concept for development.
- The developer must demonstrate the experience necessary to solicit quality businesses and to organize and deliver a high quality project of the type and scale proposed.
- The developer is expected to organize, provide and execute the necessary private capital financing to fund 100% of project buildings, and related development including construction and permanent financing if ownership is retained.
- The developer must manage an open and public process to attract quality business tenants to the project.

### **MASC/NSCF Commitments**

- The MASC will be supportive of developer needs during City of Blaine's rezoning process and city staff have been briefed on the project.
- Once built, NSCF is open to managing coordinated maintenance contract services for building owner.
- MASC will approve tenant process in advance and requires final approval of all tenants, which approval will not be unreasonably withheld.

## **Land Lease**

The MASC will conduct a process to establish a fair market value of a 30 year land lease opportunity. The MASC will consult with the developer in making a final lease value determination. Once the MASC has determined the rate, the developer will require businesses to execute a MASC land lease agreement consistent with their facility development agreement.

## **MASC Statues**

Minnesota State Statutes Section 240A.03 refers to this proposal and is attached. Please note that the MASC must advise state officials in advance before any lease agreements are executed.

## **Taxes**

Businesses will pay all applicable taxes including real estate taxes. This site is not located in a TIF district nor is the City of Blaine offering any type of public assistance for new businesses.

## **Utilities**

Business Tenants will be responsible to pay their own utility and building operating costs and a percentage of the common use spaces as per a master tenant agreement.

## **Evaluation**

Developers responding to this Request will be evaluated on the following criteria:

- 1) Organization, experience, and history.
- 2) Financial strength.
- 3) Concept design elements.
- 4) Vision of developer's master plan.
- 5) Related recreational, sports medicine facility development experience.
- 6) Anticipated land lease annual payments.

**Developers shall submit the following information:**

1. Developer's legal name, form of organization, business registration(s), and contact information including address, phone, fax, and email data and same information for and development partners.
2. A preliminary concept development program describing the general, use type, size, estimated market value, pad size and project components.
3. A concept site plan that indicates how the development might be situated on the site. The site plan should be a simple "bubble diagram." This Request for Proposals does not require architectural drawings with elevations specific to the site. Architectural concept drawings may be presented as well as pictures of similar work done for others are welcome.
4. A general description of public improvements which may be required to support the new development. No form of public financing is anticipated for public improvements.
5. The developer's estimated range of annual land lease payments for the 30 year land leases for the 16 acres site.
6. Development Performa providing general sources and uses of funds, anticipated annual tenant lease rates and anticipated land lease.
7. The target market and anticipated public marketing plan for the site.
8. Common facilities that might be provided on the Site for the occupants of such development units, i.e.,.
9. An brief explanation of how the developer views the compatibility of such proposed development of the Site with other existing and planned developments and activities at the National Sports Center and the surrounding community.
10. Developer's projected time lines for implementing the proposed development and whether the proposed development would be accomplished in phases or as one action.
11. A description of the proposed project team including but not limited to the lead developer, development planner, architect, engineering consultant, environmental consultants, marketing firms, construction firms, landscaping firms attorneys, etc.

**Deadline**

All RFP packages shall be submitted to the MASC no later than 4:00 PM July 22, 2005. Proposals should be addressed to and please direct questions about this RFP to:

Paul D. Erickson  
Executive Director  
Minnesota Amateur Sports Commission  
National Sports Center  
1700 105th Ave NE  
Blaine, MN 55449  
(763) 785-5632

**Selection**

This information will be reviewed and evaluated by the MASC and NSCF. Thereafter they will likely make the selection of the developers for final candidates (3 likely) for interviews.

Thank you for your interest in developing at the National Sports Center. We look forward to receiving your proposal.

**Preliminary Project Schedule**

City Rezoning process	June 24 to September 2005
Public Announcement/ RFQ	June 24, 2005
RFQ due	July 22, 2005
MASC/NSCF Developer Review & Selection	August/Sept, 2005
Development Concept Plan Approval	September/Oct., 2005
Tenant Selection Process	Sept 2005 to March 2006
Start of Construction	Summer, 2006





Presented to State Government  
Finance Conference Committee 2005

## **MINNESOTA AMATEUR SPORTS COMMISSION**

### **Land Lease Provision**

**2005**

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#### **MINNESOTA AMATEUR SPORTS COMMISSION**

1700 105th Avenue NE • Blaine, Minnesota 55449-4500 • 763-785-5630 • fax 763-785-5699 • tdd 800-627-3529  
toll free 800-500-8766 • e-mail [masc@citilink.com](mailto:masc@citilink.com) • [www.masc.state.mn.us](http://www.masc.state.mn.us)

*An Equal Opportunity Employer*

# INTRODUCTION

## **“The Plan to Self-Sufficiency”**

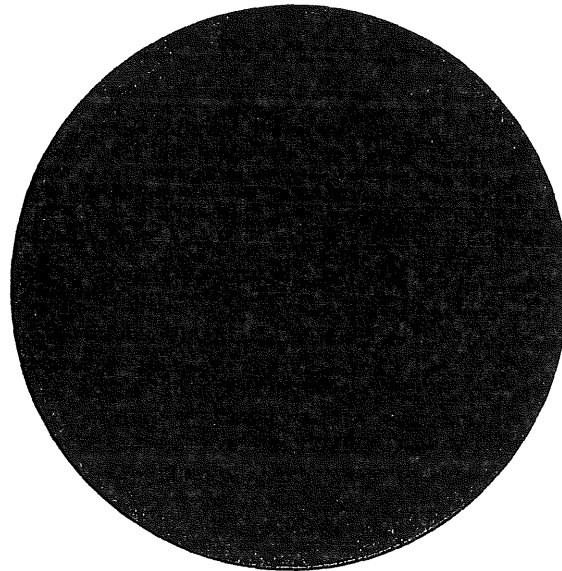
The MASC...

- In 1988, 70% of MASC activity was state funded.
- In 2004, 3% of MASC activity was state funded.
- The MASC budget has been reduced from \$1.2 million to \$300k.
- Since 1990, the MASC established a non-profit to operate the National Sports Center (NSC):
  - NSC operates without a state subsidy.
  - NSC operations have covered short term “CAPRA” costs.
- The MASC has accomplished the goal of the NSC being self-sufficient. Now, the goal of the Land Lease Provision is to create a revenue stream to enable the MASC to become self-sufficient by 2007. Land lease payments are intended to replace the \$300k annual appropriation to the MASC.
- Providing a stable funding source for the MASC Board and staff provides:
  - Ongoing policy oversight of the NSC.
  - Leadership for NSC sponsorship & management.
  - Leadership for statewide economic impact.

## MASC Funding 1988

■ *State Funding*      ■ *Private \$ Activity*

State Funding  
\$453,000 75%

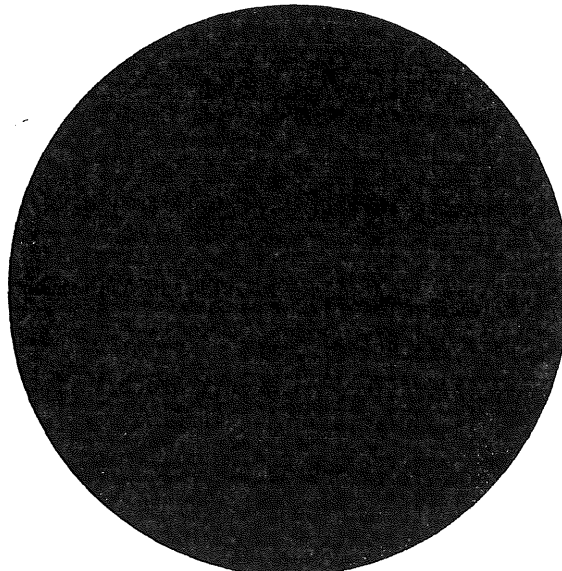


Private \$ Activity  
\$150,000 25%

## MASC Funding 2004

■ *State Funding*      ■ *Private \$ Activity*

State Funding  
\$300,000 3%



Private \$ Activity  
\$9,137,000 97%

\* Total includes state, National Sports Center Foundation, and State Games operations.

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# **I. Background**

A. MASC Lease Resolution

B. Bonding Bill Language

C. Senate Amended Language

MINNESOTA AMATEUR SPORTS COMMISSION  
(March 8, 2005)

MASC Lease Authority Resolution

WHEREAS, the Minnesota Amateur Sports Commission (MASC) desires to lease property to sport related businesses, in order to: 1) increase services to amateur sport participants, and 2) raise revenue for amateur sports programs and services, and

WHEREAS, the Laws of Minnesota 240A grant authority to the MASC to:

Subd. 3. **Property.** The commission may acquire by lease, purchase, gift or devise all necessary right, title, and interest in and to real or personal property or both necessary to the purposes of amateur sports facilities.

Subd. 10. **Use agreements.** The commission may lease, license, or enter into agreements and may lease, license, or enter into agreements and may fix, alter, charge, and collect rentals, fees, and charges to persons for the use, occupation, and availability of part or all of any premises, property, or facilities under its ownership, operation, or control. Fees charged by the commission are not subject to section 16A.1285. A use agreement may provide that the other contracting party has exclusive use of the premises at the times agreed upon.

WHEREAS, several MASC and NSC land acquisitions would be advantageous to secure sport related businesses in land-lease agreements.

THEREFORE, BE IT RESOLVED that the MASC Chair and Executive Director be authorized to implement a land lease program in consultation with the Attorney General's Office and Legislature.

THEREFORE, BE IT FURTHER RESOLVED that the MASC Chair and Executive Director be authorized to publish a NSC RFP and execute an RFP selection process to select a qualified developer for the land-lease program.

## 2005 Bonding Bill

14 The Minnesota Amateur Sports Commission  
15 may lease up to 20 percent of the area  
16 of the land purchased with money from  
17 the general fund appropriations in this  
18 subdivision for a term of up to 30  
19 years to one or more governmental or  
20 private entities for any use by the  
21 lessee, whether public or private, so  
22 long as the use provides some benefit  
23 to amateur sports. Lease payments  
24 received by the commission are  
25 appropriated to the commission for the  
26 purposes specified in Minnesota  
27 Statutes, chapter 240A. The land  
28 purchased from the general fund  
29 appropriations may be used for any  
30 amateur sport.

## 2005 Senate State Government Finance Bill

34.3 The Minnesota Amateur Sports Commission  
34.4 may lease up to 20 percent of the area  
34.5 of the land purchased with money from  
34.6 the general fund appropriations in this  
34.7 subdivision for a term of up to 30  
34.8 years to one or more governmental or  
34.9 private entities for any use by the  
34.10 lessee, whether public or private, so  
34.11 long as the use provides some benefit  
  
34.12 to amateur sports. Up to \$300,000 of  
34.13 lease payments received by the  
34.14 commission are each fiscal year is  
34.15 appropriated to the commission for the  
34.16 purposes specified in Minnesota  
34.17 Statutes, chapter 240A. The land  
34.18 purchased from the general fund  
34.19 appropriations may be used for any  
34.20 amateur sport.  
34.21 [EFFECTIVE DATE.] This section is effective retroactively  
34.22 on the effective date of Laws 2005, chapter 20, article 1,  
34.23 section 40.

## II. Land Description

The proposed parcel for land lease would be 20% of the land (approximately 80 acres total) purchased by the 1998 Bonding Bill appropriations. The land lease parcel totals approximately 16 acres.

The proposed parcel is currently undeveloped and is located in the center of the National Sports Center campus on the north frontage of 105<sup>th</sup> Avenue NE, Blaine MN (see map).

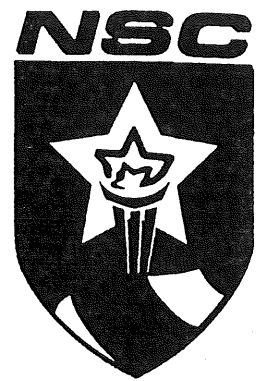
The legal description of the 1998 purchased parcel is...

*The West Half of the Northwest Quarter Section 21, Township 31, Range 23, Anoka County, Minnesota except the North 467.86 feet of the East 215 feet thereof.*

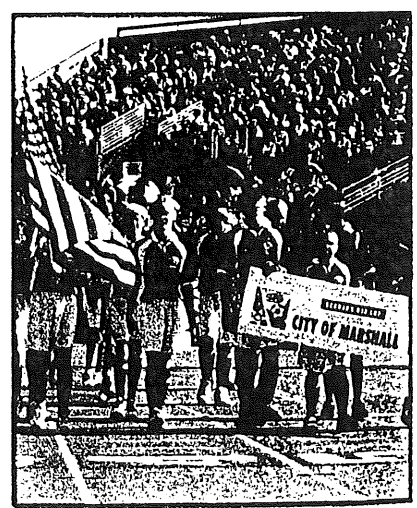
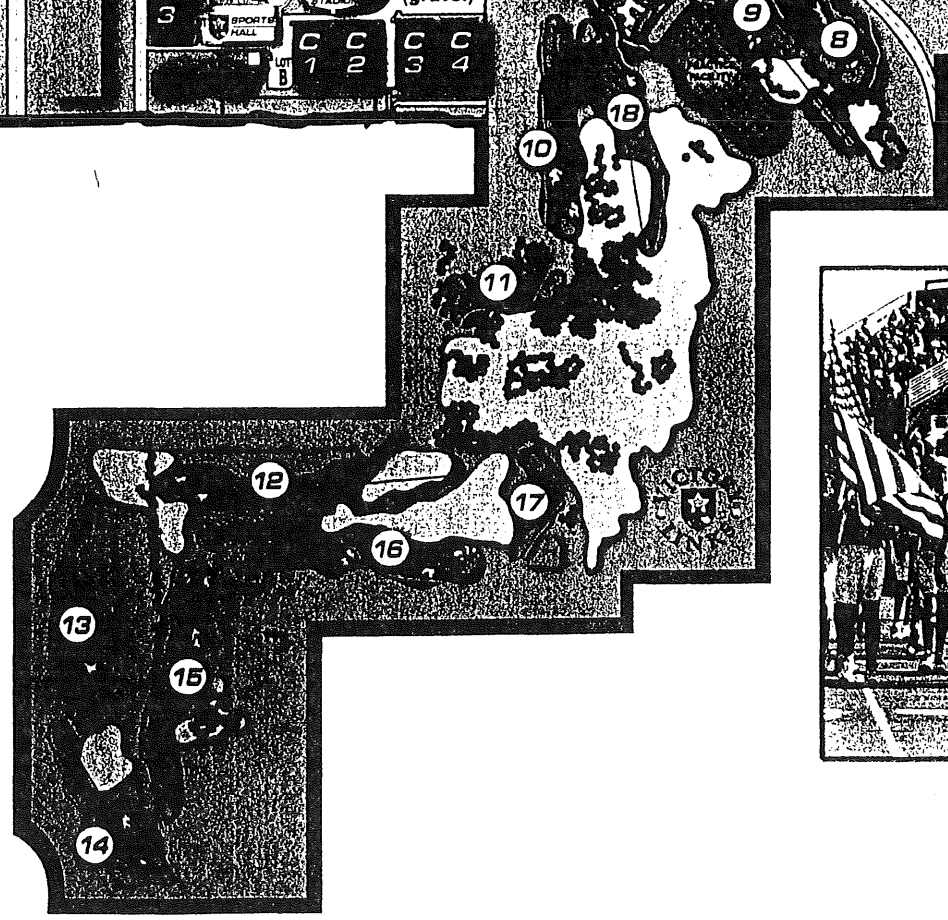
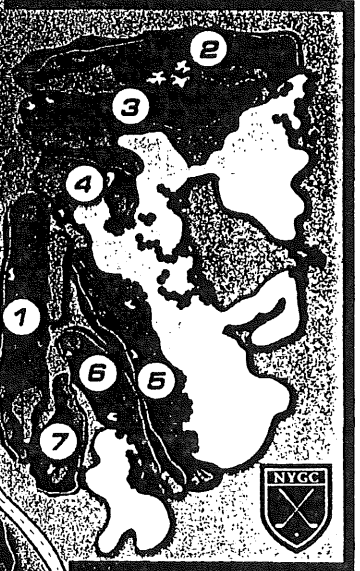
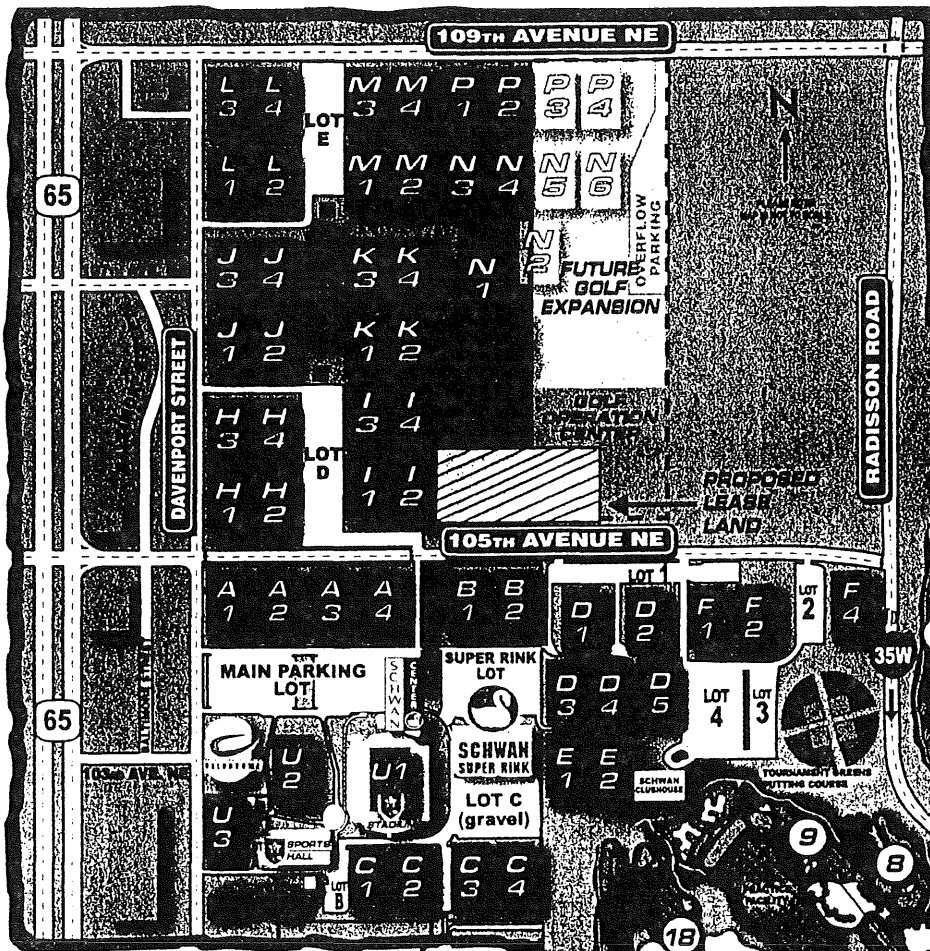
*Overall property: Area including right of way - 3,426,475 sq. ft. (78.66 acres)*



# NATIONALSPORTSCENTER



98 LAND



### **III. Recommended Businesses**

The plan for this initiative is to attract businesses whose product and services will enhance the experience for participants and will make the NSC a greater sports destination.

The MASC Board has recommended that the businesses need to have a relationship to the National Sports Center programs and participants. Three general benefits to the MASC/NSC were identified:

1. Annual lease payments to MASC.
2. Services and/or products to enhance the experience of amateur sport participants.
3. Access to parking for NSC events.

The MASC Board and staff have suggested the following types of businesses would qualify:

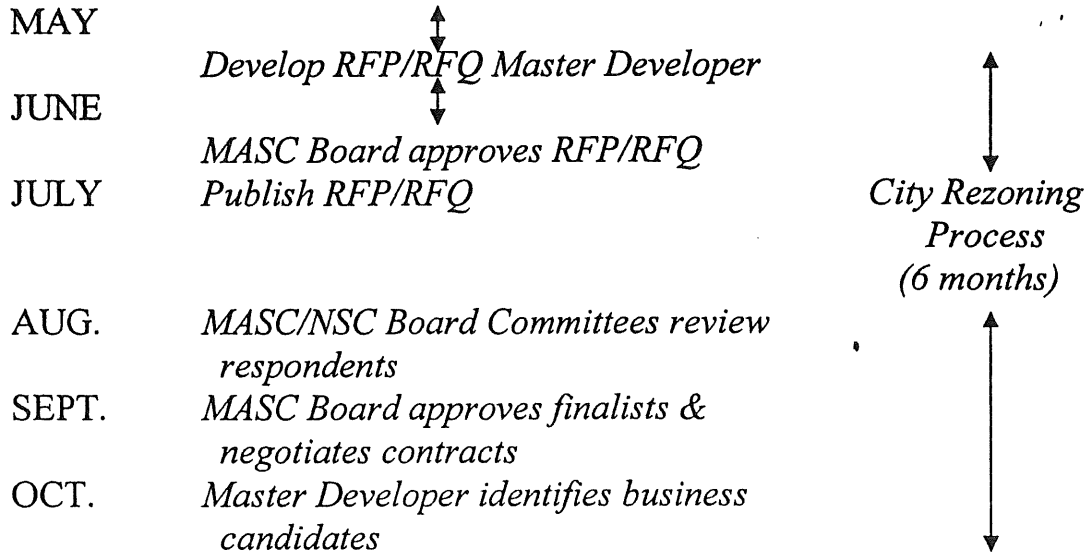
- sports medicine clinic
- sports conditioning service
- ice hockey training service
- sport & fitness center
- indoor snowboard & skateboard park

The land lease program is not intended for general business such as banks or gas stations.

## IV. Preliminary Timetable

The process will take between 22 to 28 months to realize the first lease payment.

### 2005



NOV.

DEC.

### 2006

JAN.

FEB. *Master Developer recommends candidates*

MAR. *MASC Board approves candidates & executes lease agreements*

APR.

*Construction*

MAY

JUNE

10

JULY  
AUG.  
SEPT.  
OCT.  
NOV.  
DEC.  
2007  
JAN.  
FEB.  
MAR.  
APR.  
MAY  
JUNE

*Construction*



*Realization of first lease payments.*

## **V. Proposed Selection Process**

- I. MASC Board approves RFP and Process
  
- II. MASC Board would select Master Developer with NSC Board input
  
- III. MASC Board would select individual businesses:
  - A. Master Developer would publish a public RFP.
  - B. Developer would identify and recommend most qualified businesses in a master site plan.
  - C. MASC Board would review and approve finalists.
  - D. MASC Board would approve final lease agreements.

## **VI. Establishing the Lease Value**

The MASC intends to achieve a fair market value for the lease payments. The MASC Board will perform the following due diligence in order to determine the market value of the land leases.

1. Perform an appraisal.
2. Survey local businesses and developers.
3. Consult with City of Blaine Economic Development Department.
4. Consult with the Department of Administration.

The goal is to conduct a public competitive process to attract the most qualified businesses at a fair market rate.

The ultimate test to establish the lease value will be what business respondents are willing to pay via their proposals.

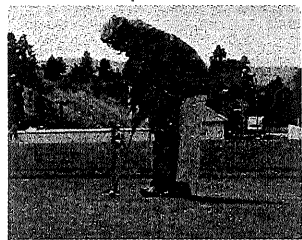
## **VII. Future Plans**

### **Land Lease**

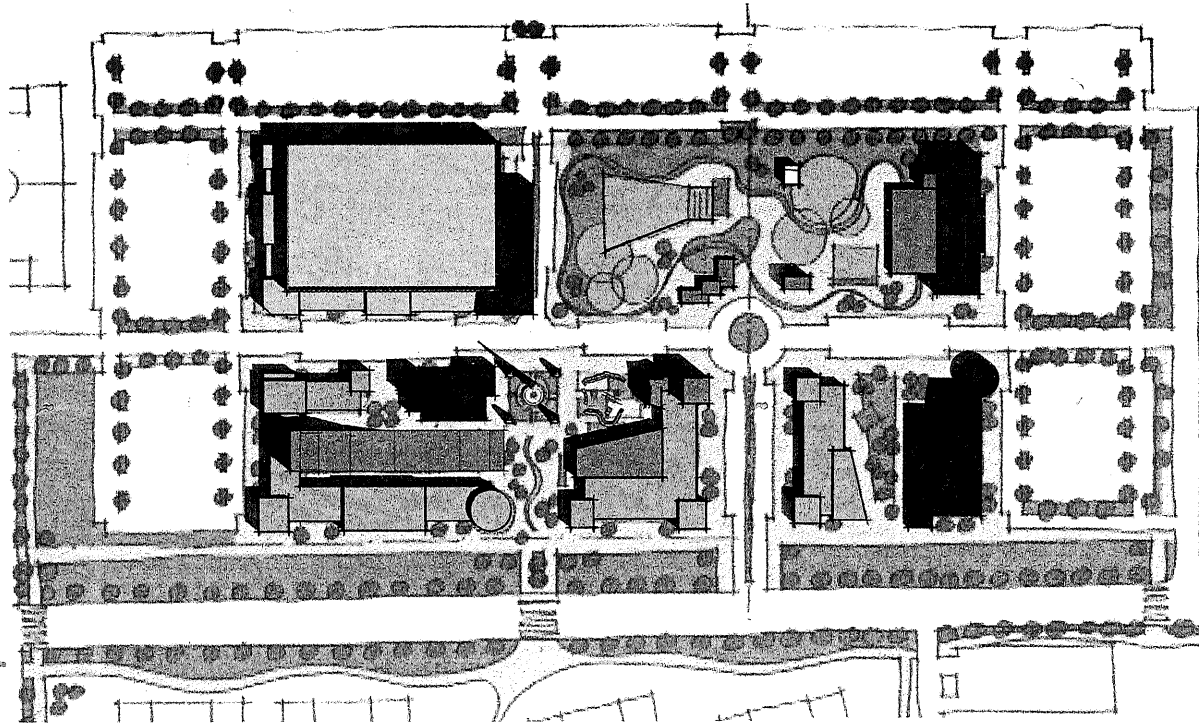
There are no plans to lease additional acres of land.

### **Land**

There are no plans for the MASC to acquire additional land for the National Sports Center in Blaine.



raining . recreation . sport . entertainment . leisure



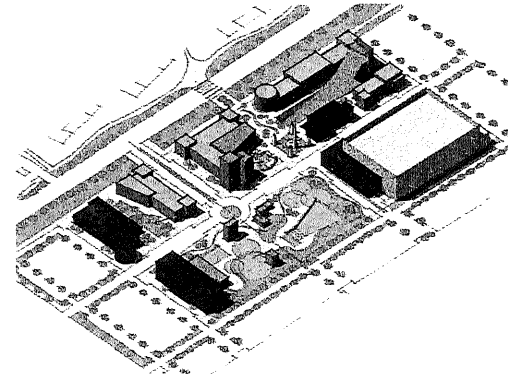
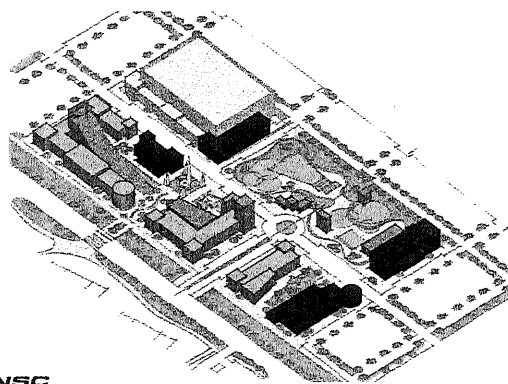
RETAIL & RESTAURANT  
RETAIL SPACES  
RESTAURANTS

COMMERCIAL  
ENTERTAINMENT  
MOVIE THEATRE  
GAME WORKS  
HOTEL  
FITNESS CENTER

RECREATION  
DRY SKI SLOPE  
X GAMES  
ROCK CLIMBING  
AQUATIC BATHHOUSE  
INDOOR AQUATIC PARK

OUTDOOR AQUATIC PARK  
WAVE POOL  
SPLASH DECK  
BODY SLIDES  
TUBE SLIDES  
WAVE RIDERS

SPORTS TRAINING &  
SPORTS MEDICINE CLINIC  
ORTHOPEDIC CLINIC  
MULTI-SPORT FIELDHOUSE  
ACCELERATION MINN.  
GOALIE SCHOOL  
GOLF ACADEMY  
TENNIS INSTRUCTION  
BASEBALL CAMP  
FOOTBALL CAMP  
SOCCER CAMP  
LACROSSE CAMP  
SHOOTING RANGE ...



Sports Mall/  
Business Center



EXTENDED  
SITE DEVELOPMENT





## Office of the Secretary of State

State Government Budget Division  
November 29, 2005



## Constitutional Officer Audits

- Regular mid-term financial audit
  - January 1, 2003 – December 31, 2004
  - Report released in July 2005
- Secretary of State
  - Diverse financial activity
  - New federal program



## Scope and Objectives

- Audit areas
  - Fee receipts
  - Payroll
  - Administrative expenditures
  - Help America Vote Act
- Objectives
  - Internal control over financial activities
  - Compliance with finance related legal provisions



## Conclusions

- In general, appropriate controls over financial activities and compliance with applicable legal provisions
- Five findings in two areas
  - Contract administration
  - HAVA compliance with applicable legal requirements



## Contract Administration

- Questioned process used to cancel a contract for computer services
  - Office originally denied payment because of unsatisfactory performance
  - Subsequently paid \$48,130
  - Agreed that cancellation would be blamed on state's budget cuts
  - Did not complete required approval forms
- Recommended consultation with appropriate state agencies if canceling contracts



## HAVA Funding

- Minnesota received about \$45 million from the HAVA federal program
  - Legislature appropriated \$6.5 million in 2003 and \$38.3 million in 2005 to the Secretary of State

**OLA HAVA Compliance**

- Federal law established allowable use of funds
- State law identified seven activities
  - > Develop state plan
  - > Modify statewide voter registration system
  - > Develop and administer complaint procedure
  - > Improve polling place accessibility
  - > Prepare training materials
  - > Provide assistance to persons with limited English language proficiency
  - > Train local election officials

**OLA HAVA Concerns**

- Questioned compliance with state appropriation law and reporting to Legislature on the use of funds
- Unreasonable charges for state plan development
  - > Payroll costs incurred after plan developed or not related to that activity
  - > Get out the vote advertising
  - > Payroll and other costs relating to voter registration system

**OLA HAVA Concerns (continued)**

- Documentation for allocation of administrative costs, such as space rental
  - > Complicated because of ongoing state funding for administration of election activities
- Payroll allocation errors relating to fringe benefits, overtime and recording actual hours worked

**OLA Other HAVA Issues**

- Improved cash management and federal reporting
- Process to identify suspended or debarred vendors

**OLA**

**The Secretary of State report (#05-40)  
is available via the World Wide Web at:**

**[www.auditor.leg.state.mn.us](http://www.auditor.leg.state.mn.us)**

**O L A**

**OFFICE OF THE LEGISLATIVE AUDITOR**  
STATE OF MINNESOTA

Financial Audit Division Report

**Office of the Secretary of State**  
**January 1, 2003, through December 31, 2004**



**JULY 7, 2005**

**05-40**

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## Financial Audit Division

The Office of the Legislative Auditor (OLA) is a professional, nonpartisan office in the legislative branch of Minnesota state government. Its principal responsibility is to audit and evaluate the agencies and programs of state government (the State Auditor audits local governments).

OLA's Financial Audit Division annually audits the state's financial statements and, on a rotating schedule, audits agencies in the executive and judicial branches of state government, three metropolitan agencies, and several "semi-state" organizations. The division also investigates allegations that state resources have been used inappropriately.

The division has a staff of approximately forty auditors, most of whom are CPAs. The division conducts audits in accordance with standards established by the American Institute of Certified Public Accountants and the Comptroller General of the United States.

Consistent with OLA's mission, the Financial Audit Division works to:

- Promote Accountability,
- Strengthen Legislative Oversight, and
- Support Good Financial Management.

Through its Program Evaluation Division, OLA conducts several evaluations each year.

OLA is under the direction of the Legislative Auditor, who is appointed for a six-year term by the Legislative Audit Commission (LAC). The LAC is a bipartisan commission of representatives and senators. It annually selects topics for the Program Evaluation Division, but is generally not involved in scheduling financial audits.

All findings, conclusions, and recommendations in reports issued by the Office of the Legislative Auditor are solely the responsibility of the office and may not reflect the views of the LAC, its individual members, or other members of the Minnesota Legislature.

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All OLA reports are available at our Web Site: <http://www.auditor.leg.state.mn.us>

If you have comments about our work, or you want to suggest an audit, investigation, or evaluation, please contact us at 651-296-4708 or by e-mail at [auditor@state.mn.us](mailto:auditor@state.mn.us)



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## OFFICE OF THE LEGISLATIVE AUDITOR

State of Minnesota • James Nobles, Legislative Auditor

Senator Ann H. Rest, Chair  
Legislative Audit Commission

Members of the Legislative Audit Commission

The Honorable Mary Kiffmeyer  
Secretary of State

We have audited the Office of the Secretary of State for the period January 1, 2003, through December 31, 2004. Our audit scope included revenue, payroll expenditures, and administrative expenditures. We also reviewed expenditures for the federal Help America Vote Act (HAVA) program. Our objectives focused on a review of the Office's internal controls over these financial activities and its compliance with applicable legal provisions.

The Report Summary highlights our overall audit conclusions. The specific audit objectives and conclusions are contained in the individual chapters of this report.

We would like to thank the staff from the Office of the Secretary of State for their cooperation during this audit.

*/s/ James R. Nobles*

James R. Nobles  
Legislative Auditor

*/s/ Claudia J. Gudvangen*

Claudia J. Gudvangen, CPA  
Deputy Legislative Auditor

End of Fieldwork: April 29, 2005

Report Signed On: July 1, 2005

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### Audit Participation

The following members of the Office of the Legislative Auditor prepared this report:

Claudia Gudvangen, CPA	Deputy Legislative Auditor
David Poliseno, CPA, CISA, CFE	Audit Manager
Ken Vandermeer, CPA, CFE	Audit Director
Ellen Sibley, CPA, CIA, CFE	Auditor
Steve Johnson, CPA	Auditor

### Exit Conference

We discussed the results of the audit with the following staff of the Office of the Secretary of State at an exit conference on June 21, 2005:

Mary Kiffmeyer	Secretary of State
Alberto Quintela	Chief Deputy
Bert Black	Business and Legal Analyst
Kathy Hjelm	Fiscal Director

## Report Summary

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### Overall Conclusion:

- The Office of the Secretary of State operated within available resources and complied with management's established internal controls. However, we have concerns about the office's contract administration procedures and its use of Help America Vote Act (HAVA) funding.

### Key Findings:

- The Office of the Secretary of State did not follow appropriate procedures when it cancelled a computer services contract. (Finding 1, page 8)
- The Office of the Secretary of State did not spend HAVA funds in compliance with state appropriation laws and did not accurately report the use of funds to the Legislature. (Finding 2, page 12)

*The audit report contained five audit findings relating to internal control and legal compliance. The board fully resolved the finding included in our prior audit report.*

### Audit Scope:

#### Audit Period:

Calendar Years 2003 – 2004

#### Selected Audit Areas:

- Fee Receipts
  - Payroll
  - Administrative Expenditures
  - Help America Vote Act
- 

### Agency Background:

The Office of the Secretary of State has primary responsibility to ensure that elections are conducted in accordance with state legal requirements. The office operates a statewide network connecting all counties and allowing access to business loan and voter registration databases.

The office is funded by a General Fund appropriation and fees deposited in the Special Revenue Fund. Beginning in fiscal year 2003, the office has received federal funding to implement the Help America Vote Act.

**Office of the Secretary of State**

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## Chapter 1. Introduction

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The Office of the Legislative Auditor audits all constitutional offices every two years according to a Legislative Audit Commission policy. We conduct our audits at the mid-point and at the end of each constitutional officer's term.

### Office Overview

Article V of the State Constitution established the Office of the Secretary of State, which operates under *Minnesota Statutes*, Chapter 5. The Secretary of State is elected for a four-year term and Mary Kiffmeyer currently serves in this position. The main functions of the office include administering elections, recording business documents and financing statements for business loans, and filing and preserving the official documents of the state. The office operates a statewide network connecting all counties and allowing access to databases containing business loan financing statements and voter registration information.

The office receives a General Fund appropriation to finance the majority of its activities. In addition, the office collects fees from customers who pay for on-line access to the computerized Uniform Commercial Code Network. The office retains these fees and uses them to maintain the network. The office also collects receipts for business filings, records processing, farm liens, and surcharges. It records these collections in the General Fund as nondedicated receipts. In fiscal year 2003, the office began participating in the federal Help America Vote Act program and has received about \$45 million over the past three fiscal years to administer the program. (Refer to Chapter 4 for more details.)

Table 1-1 provides a summary of the Office of the Secretary of State's financial activities for fiscal year 2004.

# Office of the Secretary of State

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**Table 1-1**  
**Sources and Uses of Funds**  
**Budget Fiscal Year 2004**

Sources:	
State Appropriation	\$ 5,912,000
Direct Access Receipts	941,753
Other Receipts	48,969
Balance Forward In <sup>(1)</sup>	<u>5,821,698</u>
Total Sources	<u>\$12,724,420</u>
Uses:	
Payroll	\$ 5,116,792
Professional and Technical Services <sup>(2)</sup>	1,623,228
Communications	406,097
Space Rental	471,943
Supplies and Equipment	1,164,347
Printing and Advertising <sup>(2)</sup>	131,794
Computer and System Services	86,541
Repairs and Alterations	142,080
Other	<u>115,659</u>
Total Expenditures	<u>\$ 9,258,481</u>
Balance Forward Out	<u>3,465,939</u>
Total Uses	<u>\$12,724,420</u>

Note 1: \$5,253,794 relates to HAVA funds carried forward from fiscal year 2003 to be spent in fiscal year 2004.

Note 2: These amounts include encumbrances of \$2,625 for P/T Contracts and \$23,406 for printing costs.

Source: Minnesota Accounting and Procurement System (MAPS) for fiscal year 2004 as of March 31, 2005.

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## Audit Approach

We conducted our audit in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we obtain an understanding of the office's internal controls relevant to the audit objectives. We used the guidance contained in *Internal Control-Integrated Framework*, published by the Committee of Sponsoring Organizations of the Treadway Commission, as our criteria to evaluate agency controls. The standards also require that we plan the audit to provide reasonable assurance that the office complied with finance-related legal provisions that are significant to the audit. In determining the office's compliance with legal provisions, we considered requirements of laws, regulations, contracts, and grant agreements.

To meet the audit objectives, we gained an understanding of the Office of the Secretary of State's financial policies and procedures. We considered the risk of errors in the accounting records and noncompliance with relevant legal provisions. We analyzed accounting data to identify unusual trends or significant changes in financial operations, and reviewed security clearances for various computer systems. We examined a sample of evidence supporting the office's internal controls and compliance with laws, regulations, contracts, and grant provisions.

## Chapter 2. Revenue

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### *Chapter Conclusions*

*The Office of the Secretary of State's internal controls provided reasonable assurance that it accurately recorded revenue in the accounting records, safeguarded receipts, and complied with significant finance-related legal provisions and management's authorizations.*

*For the items tested, the office complied with the significant finance-related legal provisions concerning revenue.*

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### **Audit Objectives**

Our review of revenue focused on the following questions:

- Did the Office of the Secretary of State's internal controls provide reasonable assurance that it accurately recorded revenue in the accounting records, safeguarded receipts, and complied with significant finance-related legal provisions?
- For the items tested, did the office comply with the significant finance-related legal provisions concerning revenue?

### **Background Information**

The Office of the Secretary of State collects revenue from three main business cycles: annual registrations, business services, and Uniform Commercial Code (UCC) filings. The office collects registration fees for corporate registrations, reinstatements, nonprofit amendments, legal newspaper registrations, renewal of assumed names, and filing annual and biennial reports. It also charges fees for business services, the primary purpose of which is to provide a central depository for the general public to register and obtain information related to businesses operating in Minnesota. The office collects UCC and related fees to support its function as an information clearinghouse for liens recorded for businesses across the state. In addition, the office collects a small number of other fees for special registrations and services, as provided in statute. The office deposits these receipts into the state's General Fund as non-dedicated revenue. Table 2-1 summarizes non-dedicated fee revenue by source for fiscal year 2004.

# Office of the Secretary of State

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**Table 2-1**  
**Non-dedicated Revenue by Source**  
**Fiscal Year 2004**

<u>Revenue</u>	<u>Amount</u>
Business Services and Annual Registrations	\$ 9,670,715
Uniform Commercial Code and Related Fees	2,423,951
Other	47,146
Net Revenue	<u>\$12,141,812</u>

Source: Minnesota Accounting and Procurement System (MAPS).

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The office also collects direct access fees charged to business entities requesting electronic access to certain public records maintained by the office. Customers prepay the office for fees associated with accessing the data. Minnesota statutes authorize the office to deposit these fees as dedicated revenue in the state's Special Revenue Fund. The office uses this revenue to maintain the computerized network. These receipts totaled nearly \$942,000 in fiscal year 2004.

There were no findings in the revenue area.

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## Chapter 3. Payroll and Administrative Expenditures

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### *Chapter Conclusions*

*The Office of the Secretary of State's internal controls provided reasonable assurance that it safeguarded assets and properly processed payroll and administrative expenditures. However, the office did not follow appropriate procedures when it cancelled a computer services contract as discussed in Finding 1. In addition, the office did not make timely adjustments to the HAVA payroll allocations as discussed in Chapter 4, Finding 4.*

*For the items tested, the office complied with the significant finance-related legal provisions concerning payroll and administrative expenditures.*

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### **Audit Objectives**

Our review of payroll and administrative expenditures focused on the following questions:

- Did the office's internal controls provide reasonable assurance that it properly authorized and processed payroll and administrative expenditures?
- For the items tested, did the office comply with significant finance-related legal provisions concerning payroll and administrative expenditures?

### **Payroll**

The Office of the Secretary of State expended approximately \$5.1 million on payroll in fiscal year 2004. Payroll, the largest expenditure category for the office, consisted of regular, part-time, overtime, and premium pay, as well as other benefits. The Office of the Secretary of State currently employs about 70 employees.

Employees use bi-weekly timesheets to record actual hours worked on the various programs funded through the Office of the Secretary of State. The supervisors approve the timesheets and forward them to the fiscal services division where the data is entered into SEMA4, the state's payroll and personnel system. An independent employee reviews the transactions recorded in the system. A personnel representative enters personnel transactions into SEMA4 and works with employees on human resource matters.

# Office of the Secretary of State

## Other Administrative Expenditures

The Office of the Secretary of State incurred other administrative costs totaling \$4.1 million in fiscal year 2004. Table 1-1 shows the expenditures by category for fiscal year 2004. Significant increases occurred from fiscal year 2003 to 2004 for professional/technical services and supplies/equipment due to the development of a new computer system. The office leases space in several buildings in the St. Paul area, including the State Office Building, the retirement systems building (Empire Building), and a storage area on Grove Street. The Department of Administration's Real Estate Management Division negotiated lease agreements on behalf of the office.

## Finding and Recommendations

### **1. The Office of the Secretary of State did not follow appropriate procedures when it canceled a professional/technical contract for computer services related to the statewide voter registration system.**

The office did not follow standard procedures when it agreed to cancel a computer services contract. As a result, it paid for services that it had previously identified as unsatisfactory. In January 2002, the office entered into a \$300,000 contract with a computer vendor to provide professional and technical services to maintain and improve the efficiency of the statewide voter registration system. From February to June of 2002, the office paid the contractor \$42,500 for services provided under the contract. However, it appeared that the office became dissatisfied with the work performed by the contractor. The contractor did not bill the office again until March 2003 when it submitted eight invoices totaling \$68,000 for the period July 2002 through February 2003. The office responded to those invoices by sending a letter to the vendor dated April 25, 2003, stating: "We are denying payment due to unsatisfactory performance." The office attached a three-page document listing the office's concerns.

During our prior audit, office staff informed us that they were in the process of canceling the contract and planned to meet with representatives from the Department of Administration and the Office of the Attorney General to decide on how to best proceed with the cancellation. However, there is no evidence that the office ever met with either agency. Despite its dissatisfaction with the work product, in June of 2003, the office paid the vendor \$48,130 of the \$68,000 invoiced by the vendor. Along with the payment, the Secretary of State and the president of the company signed an agreement canceling the contract. The signed agreement said: "The State agrees that all personnel participants to this contract will not give either verbal or written statements to anyone as to the cancellation of this contract other than it was cancelled by reason of the State of Minnesota's budget cuts." We think the office had other options, because section 15.1 of the contract allowed the state to cancel the contract at any time, with or without cause, upon 30 days written notice to the contractor. The contractor would have been entitled to payment only for services satisfactorily performed.

We asked the staff why they paid the contractor if they were dissatisfied with the performance of the work. They responded that the payment was to ensure that the vendor turned over the source code that it had developed for the new system. They felt the source code had value, and they wanted to avoid a protracted legal battle.

## Office of the Secretary of State

The office did not complete a final payment approval form as required by the Department of Administration. The form requires the agency head to certify that the contractor has satisfactorily fulfilled the terms of the contract. There is no evidence the office completed this form. During the 2003 Special Session, the legislature amended *Minnesota Statutes* Section 16C.08 requiring agencies to complete performance evaluations for all professional or technical services contracts. The provision went into effect four days after the office made the final payment.

### *Recommendations*

- *The office should work with the appropriate state agencies when canceling contracts.*
- *If a contract is canceled, the office should clearly document that payments to the vendor are for work that has been satisfactorily performed.*
- *The office should complete required approval forms at the completion of all professional/technical services contracts.*

**Office of the Secretary of State**

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## Chapter 4. Help America Vote Act (HAVA)

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### *Chapter Conclusions*

*Our review of HAVA expenditures disclosed the following concerns regarding compliance with federal or state laws:*

- *The Office of the Secretary of State did not spend HAVA funds in compliance with state appropriation laws and did not accurately report the use of funds when reporting to the Legislature. (Finding 2)*
- *The office did not have a process to ensure an accurate allocation of payroll expenses charged to the HAVA grant. (Finding 3)*
- *The office's cash management practices for the Election Assistance for Individuals with Disabilities (EAID) grant did not maximize the state's use of federal funds. (Finding 4)*
- *The office did not have a process to ensure that no federal funds were paid to suspended or debarred vendors. (Finding 5)*

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### **Audit Objectives**

Our audit of HAVA expenditures focused on the following questions:

- Did the Office of the Secretary of State's internal controls provide reasonable assurance that it properly authorized HAVA expenditures, accurately reported the expenditures in the accounting records, and complied with applicable state and federal legal provisions and management's authorization?
- For the items tested, did the Office of the Secretary of State comply with significant finance-related legal provisions concerning HAVA expenditures?

### **Background Information**

In 2002, Congress passed the Help America Vote Act (Public Law 107-252). The act established a program to provide funds to states to replace punch card voting systems, to establish the Election Assistance Commission to assist in the administration of federal elections and to otherwise provide assistance with the administration of certain federal election laws and

## Office of the Secretary of State

programs. The act also established minimum election administration standards for states and local units of government with responsibility for the administration of federal elections.

The state received a grant of \$5.3 million for Title I (CFDA 39.011) in fiscal year 2003 to improve the administration of elections for state and federal offices. In fiscal year 2005, the state received a grant of \$39,178,788 for the Title III program (CFDA 39.011) for equipment, administrative, educational, and other expenses related to improving the election process. In addition, the state was awarded two Title II grants (CFDA 93.617) of \$202,382 and \$144,745 to provide greater accessibility to individuals with a full-range of disabilities. Prior to the Secretary of State's Office spending any HAVA funds, the legislature had to pass legislation authorizing the expenditure. The legislature created a separate account in the state treasury to account for HAVA funds and any interest earned on unspent funds.

As of May 10, 2005, the Office of the Secretary of State had expended approximately \$5.7 million in federal funds from the Help America Vote Act of 2002. Table 4-1 shows the expenditures charged to the HAVA account by expenditure category.

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**Table 4-1**  
**Payroll and Administrative Expenditures**  
**Fiscal Years 2003 – 2005 <sup>(1)</sup>**

<u>Expenditure</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
Payroll	\$46,745	\$1,136,659	\$ 547,167
Professional and Technical Services	980	1,406,300	1,231,884
Communications			8,866
Space Rental		101,707	47,676
Supplies and Equipment	15,630	928,819	10,044
Printing and Advertising		16,527	104,016
Computer and System Services		633	39,436
Repairs and Alterations		41,650	(333)
Other	<u>2,300</u>	<u>36,300</u>	<u>19,152</u>
Total	<u>\$65,655</u>	<u>\$3,668,595</u>	<u>\$2,007,908</u>

Note 1: Expenditures are shown for the period January 1, 2003, through May 10, 2005.

Source: Minnesota Accounting and Procurement System (MAPS) as of May 10, 2005.

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## Findings and Recommendations

- 2. The Office of the Secretary of State did not spend HAVA funds in strict compliance with state appropriation laws and did not accurately report the use of funds when reporting to the Legislature.**

Laws of 2003, 1<sup>st</sup> Special Session, Chapter 7 appropriated \$6.5 million to the Office of the Secretary of State for HAVA related activities. The appropriation is available until June 30, 2005. The law further identified the following seven activities that the office could spend the funds on:

## Office of the Secretary of State

- Develop the state plan required under the act,
- Modify the statewide voter registration system,
- Develop and administer a procedure to process complaints,
- Improve polling place accessibility,
- Prepare training materials,
- Provide assistance to persons with limited proficiency in the English language, and
- Train local election officials.

The appropriation law did not limit the amount that could be spent in each category. The office established separate activity codes and budgets to monitor the expenditures. Table 4-2 shows the amounts recorded in the accounting records as expended or encumbered for each activity code as of April 26, 2005.

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**Table 4-2**  
**Summary of Charges to HAVA Accounts by Activity**  
**As of April 26, 2005**

<u>Activity</u>	<u>Amount</u>
Develop the state plan	\$ 597,059
Modify the statewide voter registration system	5,293,627
Develop and administer a procedure to process complaints	12,786
Improve polling place accessibility	244,619
Prepare training materials	116,287
Provide assistance to persons with limited English language proficiency	21,816
Train local election officials	104,776
Total	<u>\$6,390,970</u>

Source: Secretary of State's accounting records.

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We reviewed the office's accounting records and supporting documentation and identified various problems with expenditures charged to the HAVA appropriation. The office charged some costs to the appropriation that were not explicitly identified in the appropriation law. Also, the office did not charge some costs to the correct activity identified in the appropriation law. In addition, we question the department's rationale in its allocation of certain administrative costs to the HAVA funding. The office has historically received General Fund appropriations to finance its Elections Division and administrative costs have historically been funded from that appropriation.

### State Plan Development

One of the requirements for the state to receive federal funding was to develop a state plan for administering the HAVA program. The federal government required that certain provisions be included in the state plan as well as the state's method for complying with the act. The office completed its state plan in July 2003 and released it for comment. Minnesota's final state plan appeared in the March 24, 2004, Federal Register. Table 4-3 shows the costs charged by the Secretary of State's Office for developing the state plan. The office charged most of the \$597,059 in costs after it had developed the state plan.

## Office of the Secretary of State

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**Table 4-3**  
**Summary of Charges to State Plan Development**  
**As of April 26, 2005**

<u>Expenditure Category</u>	<u>Amount</u>
Payroll	\$312,429
Advertising <sup>(1)</sup>	104,446
Staff Augmentation <sup>(2)</sup>	92,103
Interagency Agreement with Public Safety <sup>(3)</sup>	37,000
Voting Registration Cards	12,692
Out of State Travel and Conferences	10,181
Office of Administrative Hearing's Services	7,260
Lease Payments <sup>(4)</sup>	5,100
Chairs	3,064
Other Expenditures	12,784
Total	<u>\$597,059</u>

Note 1: The advertising costs relate to "get out the vote" commercials that aired prior to the 2004 election.

Note 2: Computer services miscoded to the state plan activity code. (See third bullet.)

Note 3: This will allow driver license matches.

Note 4: This was part of the office's cost of its leased office space at the Empire (Retirement) Building.

Source: Office of the Secretary of State's accounting records as of April 26, 2005.

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The appropriation law did not specifically allow for administrative costs to be charged to the HAVA account. The office charged various administrative costs to state plan development, thereby inflating the actual costs incurred to develop the state plan. Although the expenditures comply with the federal laws, we question compliance with the state appropriation laws. The following examples describe some concerns from our review of expenditures allocated to the state plan:

- The office charged an unreasonable amount of payroll costs to developing the state plan. As indicated in the table above, the office allocated \$312,429 of payroll costs to plan development. Most of these costs were not incurred to develop the state plan, but rather, to implement some of its provisions. The office required employees to record the amount of time spent on their timesheets by activity code. The office loaded the information into its accounting system and allocated charges based on this information. However, employees continued to charge time worked to developing the state plan, long after it had been issued.
- The office charged about \$104,000 of advertising costs to the activity code for developing the state plan. The office paid to produce public service announcements as well as the airtime to run them. The "get out the vote" commercials ran on local media outlets prior to the 2004 election.
- The office did not accurately report its HAVA expenditures by category to the Legislature. In addition to the previously discussed payroll costs that did not relate to development of the state plan, the office erroneously charged \$92,103 to the state plan activity account for staff augmentation. According to office staff, these costs should have been charged to the statewide voter registration system activity code. The office made similar payments to the voter registration system contractor and coded them properly.

## Office of the Secretary of State

The office entered into an agreement with the Department of Public Safety for \$37,000 to verify voters' driver's license information. This activity pertains to voter registration and not to developing the state plan and should not have been charged to developing the state plan. These costs comply with the state appropriation laws, but should have been coded to a different activity code.

### Other Charges

- The office charged about \$172,500 of lease payments for office space rental to the HAVA appropriation account. In addition to the \$5,100 lease payment charged to state plan development, as identified in Table 4-3, the office also charged \$106,800 to the statewide voter registration system activity, \$54,250 to the training activity accounts, and \$6,374 to the complaint process activity. The Office of the Secretary of State did not incur any additional rental costs for office space once it began administering the HAVA grant, and it did not provide adequate documentation to support the allocation of space rental charges to the HAVA grant.

The Office of the Secretary of State must develop appropriate procedures and records to support the allocation of costs to the various activities financed from the HAVA appropriation.

#### *Recommendation*

- *The Office of the Secretary of State should establish appropriate procedures and controls to ensure that costs charged to the federal HAVA grant comply with applicable legal requirements and represent an appropriate distribution of costs based on services provided.*

### **3. The Office of the Secretary of State did not have a process to ensure an accurate allocation of payroll expenses charged to the HAVA grant.**

The Office of the Secretary of State did not allocate fringe benefits consistently for employees directly and indirectly charged to the HAVA program. In addition, the office did not correct other allocation errors pertaining to overtime charges and posting of actual hours worked. The office designed a labor distribution spreadsheet to meet federal requirements governing payroll allocation. The labor distribution spreadsheet captured both estimated and actual hours worked by employees charged to the HAVA program. We identified various allocation errors totaling \$114,000. The net affect of the errors was that the General Fund owed the HAVA account \$30,177.

Currently, the office does not produce or review monthly allocation summaries that would help identify posting errors. Office of Management and Budget (OMB) Circular A-87, *Cost Principles for State Governments*, requires that the allocation system provide periodic reports to identify and adjust estimated versus actual amount variances. The office explained that the allocation system, which began recording charges on July 1, 2003, was not fully operational.

## Office of the Secretary of State

Periodic reports could provide management with the opportunity to detect posting errors and inconsistencies in hours reported for overtime and other fringe benefits.

### *Recommendation*

- *The office should generate periodic payroll summaries and promptly correct identified allocation errors.*

#### **4. The office's cash management practices for the Election Assistance for Individuals with Disabilities (EAID) grant did not maximize the state's use of federal funds.**

As part of the HAVA program, the office received a separate \$202,382 grant for improving access to and participation by individuals with disabilities in the election process. The office awarded approximately \$190,000 to 126 local units of government to improve polling place accessibility. The awards ranged from \$90 to \$3,500.

The office did not draw down the federal funds in a timely manner. The office began disbursing the grants to local units of government in July 2004. As of April 26, 2005, the office had disbursed about \$170,000 of the grant award, but had not requested any reimbursement from the federal government. Instead, the office used Title 1 HAVA moneys to fund these costs. The office should have requested the federal EAID reimbursements as it made disbursements, in order to maximize investment income on accumulated balances.

In addition, the office did not accurately report its financial activity for this program to the federal government. The federal government's A-133 Compliance Supplement, Letter L, requires each recipient to report disbursement activity as prescribed by the awarding federal agency. The office submitted its financial status report, dated November 17, 2004, to the federal government for the period September 1, 2003, through August 31, 2004. Although the office had disbursed about \$9,400, it did not show this on the financial status report.

### *Recommendations*

- *The Office of the Secretary of State should draw down the federal share of its EAID grant expenditures as incurred to minimize the use of Title 1 funds.*
- *The office should establish appropriate controls to ensure it submits accurate financial status reports to applicable federal agencies.*

#### **5. The Office of the Secretary of State did not have a process to ensure that no federal funds were paid to suspended or debarred vendors.**

The Office of the Secretary of State did not have a process to determine whether a potential vendor had been suspended or debarred by the federal government prior to obligating federal funds. Federal regulations prohibit states from using federal money to procure goods or services

## Office of the Secretary of State

from vendors who are suspended or debarred. In addition, the federal government requires state agencies to ensure that subgrantees certify that they refrain from contracting with suspended or debarred vendors. The federal government suspends or debars vendors when it determines, or is informed, that the vendors have abused public trust or violated program provisions. The federal government has a process to identify suspended or debarred vendors, and requires states to prevent those vendors from receiving federal funds in the future. Without following proper certification or verification procedures, the department is liable for all disallowed costs resulting from any payments to suspended or debarred vendors.

### *Recommendations*

- *The Office of the Secretary of State should establish procedures to ensure it does not pay suspended or debarred vendors.*
- *The office should include standard language relating to suspension and debarment in its subgrantee contracts.*

**Office of the Secretary of State**

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**Status of Prior Audit Issues  
As of April 29, 2005**

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**Most Recent Audit**

**Legislative Audit Report 03-40**, issued in July 2003, examined certain activities of the Office of the Secretary of State for the two years ended December 31, 2002. The scope included revenue and refunds, payroll, and other administrative expenditures. The report contained one finding recommending the Office of the Secretary of State perform reconciliations between its business systems and the state's accounting system. The office implemented the recommendation.

**State of Minnesota Audit Follow-Up Process**

The Department of Finance, on behalf of the Governor, maintains a quarterly process for following up on issues cited in financial audit reports issued by the Legislative Auditor. The process consists of an exchange of written correspondence that documents the status of audit findings. The follow-up process continues until Finance is satisfied that the issues have been resolved. It covers entities headed by gubernatorial appointees, including most state agencies, boards, commissions, and Minnesota state colleges and universities. It is not applied to audits of the University of Minnesota, any quasi-state organizations, such as metropolitan agencies or the State Agricultural Society, the state constitutional officers, or the judicial branch.

**Office of the Secretary of State**

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**MINNESOTA SECRETARY OF STATE OFFICE**  
Mary Kiffmeyer, Secretary of State

James Nobles  
Legislative Auditor  
140 Centennial Building  
658 Cedar Street  
Saint Paul MN 55155-1603

Dear Auditor Nobles,

I want to thank you and your staff for your cooperation during the audit of the activities of the Office of the Secretary of State for the period concluding December 31, 2004.

The Office of the Secretary of State is best known for supervising elections in Minnesota. Last year, Minnesotans once again led the nation in turnout percentage and our election ran very smoothly. The election was the first conducted in conformance with the new Federal Help America Vote Act (HAVA) legislation.

As you know, the Office is small but has a great deal of fiscal activity, generating hundreds of thousands of fiscal transactions each biennium. Office staff are expert and honest stewards of the funds left with us by Minnesotans in fee-for service activities such as the filing of Uniform Commercial Code financing statements, the registration of new and updated business organizations, and retrieval of the records of these and other similar past transactions.

As a result of the fees paid for these transactions, the Office of the Secretary of State is a net contributor of approximately \$6 million per year to the general fund of Minnesota, which is unusual among state offices and agencies.

This letter is a response to your report.

During this audit period, this Office faced some new challenges. The Office handled Federal funds for the first time. This has been a learning experience. The Federal funds were structured in a way that was different from the usual and standard configuration. We understand and appreciate the suggestions made in the audit report, although there are clearly some items with which the office disagrees.

The following portion of this response focuses on your specific findings and recommendations, as referenced in the report. After the comments on each recommendation is listed the individual names of the staff assigned to resolve these issues and the date by which resolution is expected. Some issues have already been resolved.

With regard to Finding 1, Fiscal and supervisory staff of the Office have been directed to be meticulous in documenting contract activities. The position of the Office is that based on the terms of the computer system maintenance contract in question, the Office was authorized to cancel the contract with or without cause, as provided in paragraph 15.1 of the contract. Between the time the maintenance contract was entered into and the time it was cancelled, HAVA was passed and the requirements for statewide voter registration systems changed such that the old system could never have met those requirements. In addition, the source code provided by the vendor as a result of the cancellation was critical to the functions of the statewide voter registration database and provided a time savings value that allowed the HAVA compliant SVRS system to be implemented in time for the Fall 2004 elections. Finally, the office also wishes to point out that the office paid only \$90,630 of a \$300,000 contract, which reflected the satisfactory work product delivered, which was the source code.

In response to the first recommendation under this Finding, again, fiscal and legal staff have been directed to redouble efforts to ensure that proper procedures are followed. The Office has in the past utilized and will continue to utilize resources of appropriate offices when applicable. The person responsible for resolution of this issue is Kathy Hjelm and it has been resolved as of June 30, 2005.

Fiscal and supervisory staff have been directed to be meticulous in documenting contract activities as suggested by the second recommendation under this finding. The Office only paid for the portion of the work that was satisfactorily performed. The person responsible for resolution of this issue is Kathy Hjelm and it has been resolved as of June 30, 2005.

With regard to the last recommendation under this finding, the Office has completed approval forms at the completion of all other professional/technical services contracts as now required by law. While in this case a final letter stating terms of the cancellation was the equivalent of the approval form, Fiscal staff have been directed to complete an approval form at the conclusion of any contract where a payment is to be made, as required by statute. The person responsible for resolution of this issue is Sue Swanson and it has been resolved as of June 30, 2005.

The second finding (Finding 2), involves the categorization of HAVA funding. The Office of the Secretary of State spent HAVA funds in accordance with Federal appropriations. All amounts spent were in accordance with the Help America Vote Act. However, as a result of discussions with the audit staff as this audit proceeded, costs cited in the audit report are being reallocated as closely as possible to the actual program activities for which they were incurred. All of the expenditures were made to promote the specific functions set forth in the state legislation

The Office has expended all Federal funds consistent with Federal law. Fiscal staff have been directed to reallocate these expenditures in a way that more closely follows the auditor's coding preferences. In the future, based on legislation passed during the 2005 Legislative session, the categories are far more specific, dollar amounts are assigned to each activity and those amounts were determined with input from the Office, and there is a separate amount for HAVA administration. The person responsible for resolution of this issue is Sue Swanson and it has been resolved as of June 30, 2005.

Payroll tracking for the HAVA program was the concern in Finding 3. The Office monitored payroll reconciliation reports to detect or correct errors. The reconciliation process was planned for the end of the biennium, which was after the audit period

Fiscal staff have been directed to generate reports that reflect the auditor's allocation coding preferences. The person responsible for resolution of this issue is Kathy Hjelm and it has been resolved as of June 30, 2005.

In the HHS grant project for polling place access discussed in Finding 4, the Office allocated EAID funds in such a way to maximize benefits to the public, through local government and to improve polling place accessibility as broadly as possible. Over \$170,000 in project funding was sent to local government and all of the administrative costs for the polling place accessibility project were absorbed by the Title I fund money. Following the auditor's recommendation would have resulted in less money being available to local governments and for polling place improvements and that money being delayed in disbursement. It should also be noted that premature draw-down results in the payment of interest to the Federal government.

There were no state funds used in the grant process. All HAVA activities in fiscal years 2003 and 2004 only use Federal funds. The EAID grant funds will be deposited in and will augment the other Federal funds in the HAVA Account as required by Laws 2003, First Special Session, chapter 7, and they are unavailable for direct expenditure by the Office or subrecipients. The person responsible for resolution of this issue is Kathy Hjelm and it will be resolved as of July 31, 2005.

Finally, with regard to the last finding (Finding 5), the Office of the Secretary of State did not contract with any vendor subject to suspension and debarment. The Office has now established a procedure to assure that the Federal suspension and debarment list is reviewed prior to contracting with any vendor when Federal funds are used. The person responsible for resolution of this issue is Kathy Hjelm and it has been resolved as of June 30, 2005.

In addition, legal staff have been directed to include this suspension and debarment language as standard in all future contracts where Federal funds are used. The persons responsible for resolution of this issue are Bert Black and Kathie Battle-Sayles and the issue has been resolved as of June 30, 2005.

I hope that you find this response useful in continuing our dialogue and working relationship. We look forward to future interactions as we move forward with the challenges of the next biennium including the implementation of additional Federal programs.

Sincerely,

*/s/ Mary Kiffmeyer*

Mary Kiffmeyer  
Secretary of State.

April 25, 2003

Election.com  
1001 Franklin Ave. Suite 212  
Garden City, NY 11530  
Attn: Jim Preston

Re: Invoices for Contract A32660

This is in response to the invoices we received from your office via fax on March 21, 2003 for services rendered during the months of July 2002 – February 2003. We are denying payment due to unsatisfactory performance.

The attached documentation outlines our concerns.

Please direct future communications on this matter to Alberto Quintela at 651-296-2309.

Sincerely,

Kathy Hjelm  
Fiscal & Administrative Services Manager

C: Alberto Quintela

# Election.Com Issues

## 1. Performance Issues – Slow processing; ODBC errors

Working with Election.com's technical staff, the following plan was put together last fall:

### Database Changes Phase I:

- A database review was done in December 2002. There are 700 to 800 indexes altogether in VEMS. Many of the fields have duplicate indexes. There are approximately 537 indexes that could be removed which will decrease the system from 18 gigabytes down to 11 gigabytes.

### Database Changes Phase II - Clustering Indexes:

- Compound Indexes – were added and are county specific
- Removed select stars.
- Dropped unused objects (About 20)

Election.com said they couldn't make any more database changes without "breaking the system".

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It took Linda about 2 weeks to verify all the March township elections. We encouraged all counties to set up their own elections. Some counties feel it is too difficult for them to understand. The Election Division can only do so much because they need the polling place information from the counties. Linda estimates that it will take her around 4 weeks to set up the Primary Election this fall.

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NRAB and Military voters had bad data because counties were incorrectly linking history to them. VEMS stills needs to be "tightened" to not allow erroneous data to be created.

- b. EC instructed us to run the Update Last Date Voted Utility before running reclassification. This would update any incorrect last voted dates, with a more recent date, and reduce the chance of incorrectly reclassifying the voter. But, the Utility in VEMS had a bug, so EC sent logic directly to Don to use. When Don ran it, 677 out of 862 records were updated with an older date from history. Don never got an explanation on this, so we bypassed the 677 records when reclassification was run. We suspect it could be due to unlinked elections. If so, VEMS needs to be "tightened" to not allow elections to be deleted. And EC needs to correct the Update Last Date Voted Utility.
- c. For the 2002 Reclassification, a date range of 6/25/01 to 10/17/01 had been identified to have incorrect "Date Registered" field for voters who had any update activity during this time. Supposedly, VEMS a new build was implemented on 10/17/01 to fix the date problem.

Bill Batcher had worked directly with election.com to receive a listing of the erroneous records. He "massaged" the file and approx. 250 voters were excluded from the Reclassification logic. No documentation was available on what steps were taken to identify and select these voters. The records were not corrected, and therefore, election.com stated that we needed to work with this problem again this year.

In the 2003 reclassification process, we discovered that VEMS is still not updating the "Date Registered" field correctly. But, we do not know the extent of the problem, because we do not know when it started - or was it never fixed properly? We are sure that the "date registered" field is not always updated when a new date when a change is made to a voter record. Election.com verified that the code is erroneous, and provided logic to run a script to identify the records. 1254 records were identified, but we are not sure of the logic they used to identify them or their accuracy. VEMS

## Election.Com Issues

needs to be corrected to properly update the Date Registered field. The EC needs to work with us to identify and correct all erroneous records.

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We shadowed the last new build on Jan. 31, and rejected it due to flaws in the Merge Utility and some of the reports. Initially, the target date was to have the new build tested and installed by Feb. 24. Instead, due to problems with Reclassification, all effort has been refocused to it. Therefore, we are behind schedule on implementation. We accepted the build on March 3 after shadowing it, but it still has not passed the technical acceptance.

Frequently, the election.com developer who is shadowing the system with us is unprepared, or unfamiliar with the system features because they were not given the information or that they were given different information than what MN received.

When election.com is developing/coding our requirements, then don't notify us to ask any questions. We don't have any interaction with them until the build is completed and we begin shadowing it.

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The printing of Rosters for large-scale elections (General, Primary and Township) is cumbersome and time-consuming. Therefore, we spent time and money with another vendor (Arran) to build a Roster printing process outside of VEMS using the PI Extract. EC recognizes this system limitation and is building a PI Extract equivalent in their .Net version.

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As of the end of February there were 27 open issues.

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## Election.Com Issues

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CFMS Contract No: A 32660  
Letter of Agreement  
Election.com

STATE OF MINNESOTA  
PROFESSIONAL AND TECHNICAL SERVICES CONTRACT

LETTER OF AGREEMENT

Whereas, the State of Minnesota "State" cancelled contract CFMS Contract No. A 32660 effective June 23, 2003 on the basis of Insufficient Funding;

Whereas, the State agrees to pay \$48,129.88 in full satisfaction of its obligations under this contract;

Whereas the State agrees to the continuation and protection of Intellectual Property rights and source code of the Contractor as defined in CFMS Contract No. A3266 for a period of five years from the date of the termination of the contract;

Whereas the State agrees that all personnel participants to this contract will not give either verbal or written statements to anyone as to the cancellation of this contract other than it was cancelled by reason of the State of Minnesota's budget cuts;

Whereas, Election.com "Contractor" agrees to payment of \$48,129.88 as full payment for services provided under this contract and hereby releases the State from any further claims;

Whereas, the Contractor agrees to provide to the State upon signature of this document the following:

1. A refresh of the Source Code that has been provided to the State of Minnesota on March 7, 2003, including all relevant and available documentation.
2. The following executables and source code to be added to the above:
 

Executable	Description	Source	Version
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*Proven payment in full - \$48,129.88*  
*Albert Junttila 6/26/03*  
*115630000*

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State of Minnesota

Election.com

By: Mary Kiffmeyer  
Title: Secretary of State  
Date: 6/20/03

By: Paul A. ...  
Title: CEO & President  
Date: 6/1/03

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*115630200*



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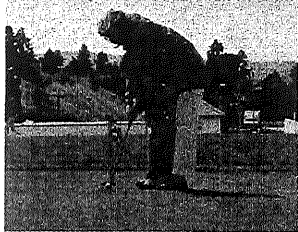
Title: Secretary of State

Date: 6/20/03

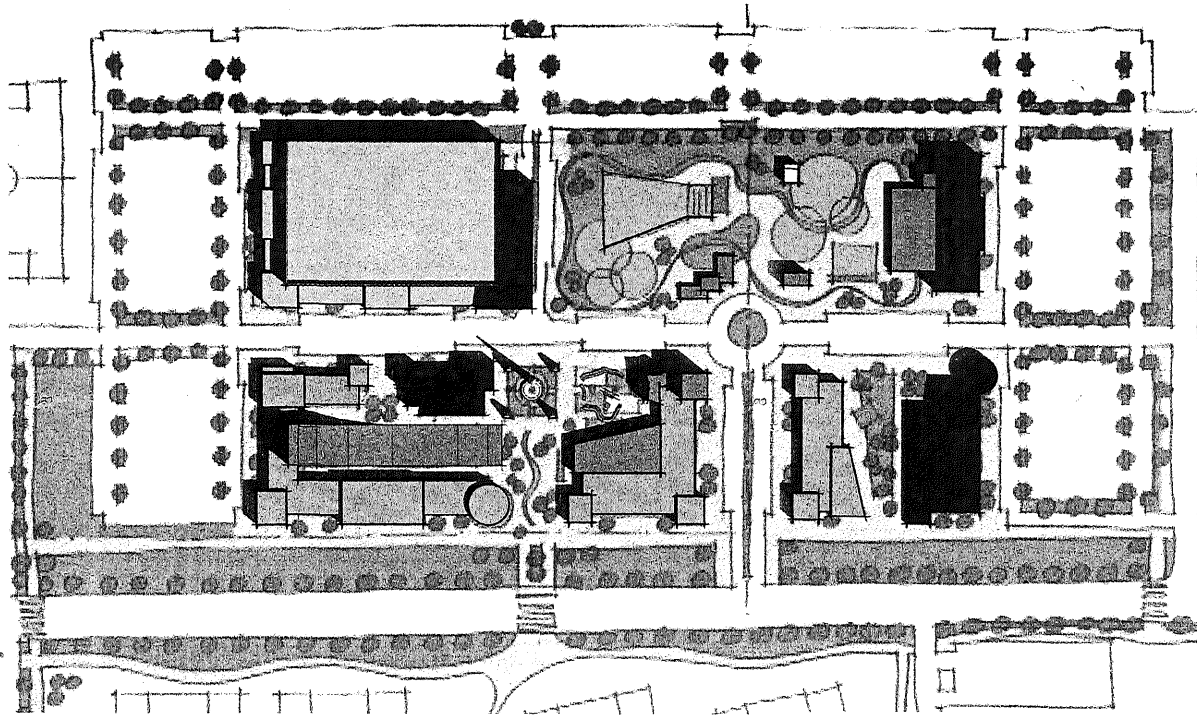
By: [Signature]

Title: CEO + President

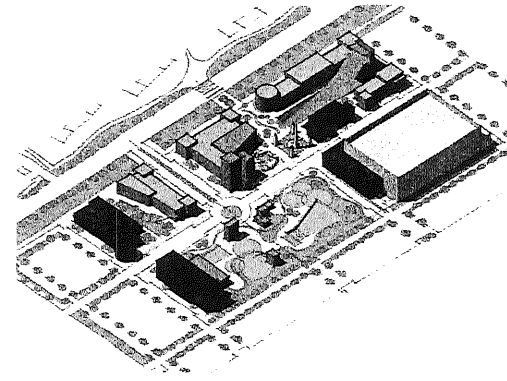
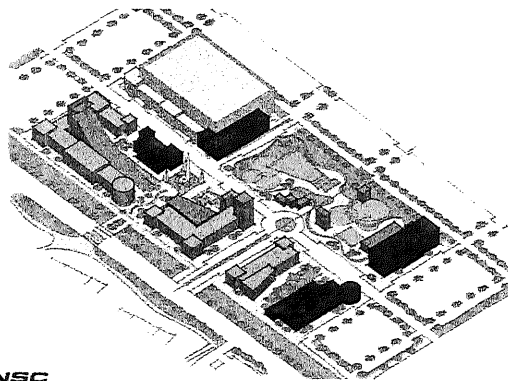
Date: 6/1/03



raining . recreation . sport . entertainment . leisure



- RETAIL & RESTAURANT**  
 RETAIL SPACES  
 RESTAURANTS
  
- COMMERCIAL ENTERTAINMENT**  
 MOVIE THEATRE  
 GAME WORKS  
 HOTEL  
 FITNESS CENTER
  
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 DRY SKI SLOPE  
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 AQUATIC BATHHOUSE  
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 WAVE POOL  
 SPLASH DECK  
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 ORTHOPEDIC CLINIC  
 MULTI-SPORT FIELDHOUSE  
 ACCELERATION MNNI  
 GOALIE SCHOOL  
 GOLF ACADEMY  
 TENNIS INSTRUCTION  
 BASEBALL CAMP  
 FOOTBALL CAMP  
 SOCCER CAMP  
 LACROSSE CAMP  
 SHOOTING RANGE



Sports Mall/  
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**EXTENDED  
SITE DEVELOPMENT**