

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

CIVIL NO.: 03-5019

NORTHERN CHEYENNE TRIBE,	)	
ROSEBUD SIOUX TRIBE,	)	
YANKTON SIOUX TRIBE,	)	
CROW CREEK SIOUX TRIBE, and	)	
DEFENDERS OF THE BLACK HILLS,	)	
	)	
Plaintiffs,	)	DEFENDANTS CITY OF STURGIS’
v.	)	AND STURGIS INDUSTRIAL
	)	EXPANSION CORPORATION’S
MEL MARINEZ, in his official capacity	)	RULE 12(h)(3) MOTION TO DISMISS
as United States Secretary of Housing and	)	
Urban Development, BLACK HILLS	)	
COUNCIL OF LOCAL GOVERNMENTS,	)	
STURGIS INDUSTRIAL EXPANSION	)	
CORPORATION, CITY OF STURGIS, and	)	
BLACK HILLS SPORTSMAN’S COMPLEX,	)	
INCORPORATED,	)	
	)	
Defendants.	)	

The City of Sturgis and the Sturgis Industrial Expansion Corporation, through Donald P. Knudsen of Gunderson, Palmer, Goodsell & Nelson, LLP, their attorneys, respectfully move the Court to issue an order dismissing Plaintiffs’ Third Amended Complaint for Preliminary and Permanent Injunction due to the fact that recent developments have made the lawsuit altogether moot. Filed simultaneously with this motion and incorporated herein by this reference is the Affidavit of Mr. Dale R. Hansen, Co-Chairman of the Board of Directors of SIEC. The Affidavit states that a decision has been made not to pursue the development or construction of the shooting range at the proposed site approximately four miles north of Bear Butte. Therefore, since Plaintiffs’ Complaint seeks injunctive relief to prevent the construction of the range, and since the range will not be constructed, all issues in the case are moot and there is no longer a live controversy over which this Court would have jurisdiction under Article III of the United States Constitution.

WHEREFORE City of Sturgis and SIEC respectfully request the Court to issue an order dismissing Plaintiffs' Third Amended Complaint for Preliminary and Permanent Injunction.

Respectfully Submitted,

GUNDERSON, PALMER, GOODSSELL  
& NELSON, LLP

BY:           /s/ Donald P. Knudsen            
Donald P. Knudsen  
Attorneys for Defendant Sturgis Industrial  
Expansion and City of Sturgis  
440 Mt. Rushmore Road, Third Floor  
P.O. Box 8045  
Rapid City, SD 57709-8045  
(605) 342-1078

**CERTIFICATE OF SERVICE**

I, Donald P. Knudsen, hereby certify that on the 9<sup>th</sup> day of January, 2004, I sent by first-class United States Mail, postage prepaid, a true and correct copy of Defendants City of Sturgis' and Sturgis Industrial Expansion Corporation's Rule 12(h)(3) Motion to Dismiss to:

James D. Leach  
Viken, Viken, Pechota, Leach & Dewell  
1617 Sheridan Lake Rd.  
Rapid City, SD 57702

Bonnie Ulrich  
Assistant United States Attorney  
PO Box 5073  
Sioux Falls, SD 57117

Jerry Johnson  
Timothy Becker  
Banks, Johnson, Colbath, Sumner & Kappelman  
PO Box 9007  
Rapid City, SD 57709

Michael Strain  
Morman Law Firm  
PO Box 729  
Sturgis, SD 57785

GUNDERSON, PALMER, GOODSSELL  
& NELSON, LLP

/s/ Donald P. Knudsen  
\_\_\_\_\_  
Donald P. Knudsen