

Programmatic Agreement

Page 1 of 7

**PROGRAMMATIC AGREEMENT  
AMONG  
THE ST. PAUL DISTRICT, CORPS OF ENGINEERS,  
THE MINNESOTA STATE HISTORIC PRESERVATION OFFICE,  
THE BOIS FORTE BAND OF OJIBWE,  
THE GRAND PORTAGE BAND OF OJIBWE,  
THE FOND DU LAC BAND OF OJIBWE  
AND  
U.S. STEEL  
CONCERNING  
U.S. STEEL'S PROPOSED EXPANSION OF THE KEETAC TACONITE MINE  
NEAR KEEWATIN, ITASCA COUNTY, MINNESOTA**

**WHEREAS;** the St. Paul District, U.S. Army Corps of Engineers (Corps) is evaluating an application for a Department of the Army permit (Permit) submitted by U.S. Steel for authorization under Section 404 of the Clean Water Act to discharge fill material into wetlands in connection with the expansion of the Keetac taconite mine near Keewatin in Itasca County, Minnesota.

**WHEREAS;** Expansion of the Keetac mine will include expansion of the mine pit, stockpile area, and the tailings basin, but will not require infrastructure improvements other than the expansion of these project features, which could be considered connected actions to the proposed project; and

**WHEREAS;** the Corps has coordinated a work plan with the Minnesota State Historic Preservation Office (SHPO) for the identification of historic structures, buildings, and archaeological resources, which included the area of potential effects (APE) and the scope of identification efforts for these property types; and

**WHEREAS;** the identification of historic structures, buildings, and archaeological resources was completed within the APE in accordance with the work plan. Only two properties were identified, a historic farmstead and the Bennett No. 2 Shaft Mine; and

**WHEREAS;** the SHPO has concurred that no additional identification efforts are necessary for archaeological sites or historic buildings and structures; and

**WHEREAS;** the Bennett No. 2 Shaft Mine has been evaluated and determined to be eligible for the National Register of Historic Places (NRHP) and is in the area of the proposed mine pit expansion and it is not feasible to avoid adversely affecting the shaft mine; and

**WHEREAS;** the SHPO has concurred that the Bennett No. 2 Shaft Mine is eligible for the NRHP and that avoidance is not feasible; and

**WHEREAS;** a mitigation plan has been developed for the Bennett No. 2 Shaft Mine in consultation with the Minnesota State Historic Preservation Office; and

**WHEREAS;** the historic farmstead will now be avoided by the project and was therefore not evaluated to determine its NRHP eligibility. The Corps shall condition any permit issued for the Keetac mine expansion to avoid the farmstead area; and

**WHEREAS;** the Corps has invited the Ojibwe Bands, who are located in northern Minnesota, to participate in consultation. The Grand Portage Band of Ojibwe, the Bois Forte Band of Ojibwe, and the Fond du Lac Band of Ojibwe (Ojibwe Bands) have expressed an interest in consultation; and

**WHEREAS;** the Corps has initiated consultation with the Ojibwe Bands and has coordinated the results of the archaeological and architectural surveys with the Ojibwe Bands; and

**WHEREAS;** the Ojibwe Bands and the Corps have worked together to develop a plan for the identification of historic properties of religious and cultural significance to the Bands, but will not be able to complete that identification efforts prior to the issuance of the final environmental impact statement and record of decision (ROD) for the project; and

**WHEREAS;** because the effects on historic properties cannot be fully determined prior to the Corps' ROD, the Corps has determined that a PA is appropriate. The SHPO and Ojibwe Bands have concurred in that determination; and

**WHEREAS;** the Corps has notified the Advisory Council on Historic Preservation (Council) of the adverse effect on the Bennett No. 2 Shaft Mine and the Corps intention to develop this PA. The Council has declined to participate in the resolution of adverse effect or development of this PA; and

**NOW THEREFORE;** the Corps, the SHPO, and the Ojibwe Bands agree that upon execution of this PA the Corps shall ensure that, should a Permit be issued for the Keetac Mine Expansion, the following stipulations are implemented in order to take into account the effect of the undertaking on historic properties.

## **STIPULATIONS**

Should a Permit be issued to U.S. Steel for the Keetac Mine expansion project, the Corps shall incorporate this programmatic agreement by reference as a special permit condition.

### **I. HISTORIC PROPERTIES OF RELIGIOUS AND CULTURAL SIGNIFICANCE TO THE CONSULTING OJIBWE BANDS.**

#### **A. Identification**

A plan for the identification of historic properties of religious and cultural significance to the consulting Ojibwe Bands shall be developed through consultation between the Corps and the Ojibwe Bands.

1. The plan shall include four interrelated steps.

- a. Archival background research to identify cultural features and natural landscape features, to include at a minimum the original government land office survey notes and maps on which the Trygg Maps are based, other historic maps of the project area and surrounding vicinity, relevant historic documents and literature.
- b. Implementation of a plan for interviews with Band members, which the Bands themselves will conduct, and site visits, which will be identified through the interview process.
- c. Implementation of a plan for the identification of plant communities. This work will be done to provide baseline data for the evaluation of project impacts to treaty resources and to facilitate the identification of historic properties.
- d. Conduct a field survey to locate the cultural and natural features identified during the research efforts outlined above.

#### B. Evaluation

1. The Corps shall consult with the Ojibwe Bands to determine eligibility recommendations for cultural properties identified.
2. A summary report shall be drafted by the Corps in consultation with the Ojibwe Bands that will provide a description of the identification efforts, the cultural properties identified, and recommendations of eligibility for the cultural properties identified.
3. The Corps shall provide the summary report and supporting documentation, to the SHPO, the Ojibwe Bands and other consulting parties for review and comment. If the Corps does not receive comment within 45 days, the Corps may assume concurrence with any determinations or recommendations.
4. If the SHPO or an Ojibwe Band disagrees with a determination by the Corps about a property's eligibility for the NRHP and further consultation pertaining to the property's eligibility is not productive, the Corps shall follow the provisions of the dispute resolution in Section IV of this agreement. If the dispute over a properties eligibility is not resolved, the Corps shall obtain a formal Determination of Eligibility from the National Park Service's Keeper of the National Register, whose decision shall be final.

#### C. Treatment of Historic Properties

1. If historic properties are identified, the Corps will follow the procedures described in 36 CFR Part 800.5 through 800.7 to assess the project's effects on those historic properties and to identify measures to avoid, minimize, or mitigate adverse effects including the development of a memorandum of agreement if a property is adversely affected.

## **II. IMPLEMENTATION OF MITIGATION PLAN FOR THE BENNETT NO 2. SHAFT MINE**

- A. U.S. Steel shall implement the January 2010 *Phase III Mitigation Research Design of the Bennett No. 2 Shaft Mine North of Keewatin, Itasca County, Minnesota, Site Number 21-IC-0356*.
- B. Implementation shall not be considered complete until the final report on the Phase III investigation has been submitted to the Corps by U.S. Steel and the Corps has completed its review and coordination of the final report with the SHPO.

## **III. NOTICE TO PROCEED**

U.S. Steel may not proceed with construction until notified in writing by the Corps that there are no unresolved concerns pertaining to historic properties. If areas have been identified where additional investigations or measures to avoid, minimize, or mitigate adverse effects are necessary, the Corps' notification shall specify the areas where construction may proceed and the nature of the unresolved concerns and the steps necessary to resolve those concerns.

## **III. INADVERTENT DISCOVERY**

- A. If previously unidentified historic properties or unanticipated effects to historic properties are discovered during Project activities, U.S. Steel shall immediately halt all project activities within a one hundred (100) foot radius of the discovery, notify the Corps of the discovery and implement interim measures to protect the discovery from looting and vandalism.
- B. Immediately upon receipt of the notification required in Stipulation III.A, the Corps shall inspect the construction site to determine the extent of the discovery and ensure that construction activities have halted, clearly mark the area of the discovery, implement additional measures, as appropriate, to protect the discovery from looting and vandalism, and notify the Consulting Bands and the SHPO.
- C. Upon receipt of notification, the Corps shall treat the discovery in accordance with 36 CFR § 800.13(b)(3) and (c).
- D. Treatment of Human Remains
  - 1. When the discovery contains human remains U.S. Steel shall comply with the provisions of Stipulation III A above and Minnesota Statute, Chapter 390 and notify the county coroner.
    - a. If the unidentified human remains are found outside of platted, recorded, or identified cemeteries and in contexts

which indicate antiquity of greater than fifty (50) years, the coroner shall notify the Minnesota Office of the State Archaeologist (OSA) in compliance with Section 307-08 of the Minnesota Private Cemeteries Act.

- b. Suspected human remains shall not be further disturbed or removed until disposition has been determined by the OSA consistent with the guidance titled *State Archaeologist's Procedures for Implementing Minnesota's Private Cemeteries Act*. (Anfinson, 2008).
2. At all times human remains must be treated with the utmost dignity and respect, and in a manner consistent with the ACHP's *Policy Statement on the Treatment of Human Remains, Burial Sites and Funerary Objects* (February 23, 2007).
- E. U.S. Steel shall ensure that the requirements of Stipulation VII are incorporated into all construction contracts.

#### **IV. DISPUTE RESOLUTION**

- A. Should the SHPO, or other parties to this agreement, have objections within 30 days after the receipt of any plans, documents, or reports submitted to them under the terms of this Programmatic Agreement, the Corps shall consult with the objecting party to resolve the objection. If the Corps determines that the objection cannot be resolved, the Corps shall forward all documentation relevant to the dispute to the Advisory Council on Historic Preservation for review of findings within the procedures and time periods defined in 36 CFR 800.5 c(3). The Corps will take into account any comment or recommendation received from the Council in reaching a final decision regarding the dispute.
- B. Any recommendation or comment provided by the Advisory Council on Historic Preservation will be understood to pertain only to the subject of the dispute. The responsibility of the Corps to carry out all actions under this agreement that are not the subject of the dispute will remain unchanged.

#### **V. AMENDMENTS**

- A. Any party to this Programmatic Agreement may request that it be amended, whereupon the parties will consult in accordance with 36 CFR Part 800.6(c)(7) to consider such amendment.
- B. Any other Federal agency that becomes involved in this Project through funding, permit, license, or other such activity requiring a Section 106 review pursuant to 36 CFR Part 800 may satisfy the requirements of Section 106 by becoming a signatory party to this agreement.

**VI. TERMINATION**

Any signatory party to this Programmatic Agreement may withdraw from it by providing thirty (30) days notice to the other parties, provided that the parties will consult during the period prior to withdrawal to seek agreement on amendments or other actions that would avoid withdrawal. In the event of termination, or withdrawal, the Corps will comply with federal regulation 36 CFR Part 800, Protection of Historic Properties.

**VIII. ANTI-DEFICIENCY PROVISION**

Any obligation of the Government set forth in this agreement is subject to and dependent on the appropriation and allocation of sufficient funds for that purpose.

**IX. SUNSET CLAUSE**

This Programmatic Agreement shall terminate if U.S. Steel withdraws its Section 404 permit application, or it shall terminate five years after the date of the Corps' permit decision regarding the proposed project.

Execution and implementation of this Programmatic Agreement evidences that the U.S. Army Corps of Engineers has satisfied their Section 106 responsibilities.

**SIGNATORY PARTIES**

ST. PAUL DISTRICT, U.S. ARMY CORPS OF ENGINEERS

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Colonel Jon L. Christensen, District Engineer

MINNESOTA STATE HISTORIC PRESERVATION OFFICER

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Ms. Nina Archabal, Minnesota State Historic Preservation Officer

**INVITED SIGNATORIES**

FOND DU LAC BAND OF OJIBWE

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Honorable Karen Diver, Chairperson

GRAND PORTAGE BAND OF OJIBWE

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Honorable Norman Deschampe, Chairman

BOIS FORTE BAND BAND OF OJIBWE

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Honorable Kevin Leecy, Chairman

U.S. Steel

BY: \_\_\_\_\_ DATE: \_\_\_\_\_