

**PROGRAMMATIC AGREEMENT
AMONG
THE ST. PAUL DISTRICT, CORPS OF ENGINEERS,
THE MINNESOTA STATE HISTORIC PRESERVATION OFFICE,
AND MINNESOTA STEEL INDUSTRIES, LLC
CONCERNING
THE MINNESOTA STEEL INDUSTRIES TACONITE MINE,
CONCENTRATOR, PELLET PLANT, DIRECT REDUCTION IRON PLANT,
AND STEEL MILL NEAR NASHWAUK, ITASCA COUNTY, MINNESOTA**

WHEREAS; the St. Paul District, U.S. Army Corps of Engineers (Corps) has received an application for a Department of the Army permit from Minnesota Steel Industries LLC. The application requests approval under Section 404 of the Clean Water Act to discharge fill material into wetlands to reactivate the former Butler Taconite mine and tailings basin near Nashwauk, in Itasca County. Project construction and mining operation would cover five locations within Itasca County, including the plant site; stockpile area; mine area; tailings basin; and tailings pipeline corridor (hereafter, “the project locations”). The plant site is located in Sections 3 and 10, T56N, R23W; and Sections 35 and 36, T57N, R23W. The stockpile area is within Sections 2, 3, 9 and 10, T56N, R23W; and Section 35, T57N, R23W. The mine area is located in Sections 2, 10, 11, and 15 T56N, R23W. The tailings basin is within Sections 4, 5, 8, 9, Section 17; and 18 T56N, R22W. The tailings pipeline corridor traverses Section 7, T 56N, R22W, and Sections 10, 11, and 12, T56N, R23W. The alternative tailings basin is located in Sections 4, 5, and 6, T56N, R23W; and Sections 32 and 33, T57N, R23W; and

WHEREAS; the federal undertaking, which is subject to review under the provisions of Section 106 of the National Historic Preservation Act, is the work, structure, or discharge that requires a Department of the Army permit; and

WHEREAS; the Corps defines that portion of the project under Federal control and for which the Corps has responsibility as the Permit Area. The Permit Area includes waters of the US and other waters directly affected by the authorized work or structures and upland areas directly affected as a result of authorizing the work or structures; and

WHEREAS; for the purposes of this project, the Permit Area will include the entire project area. The project area where construction and mining operations would occur cover five locations in Itasca County, including the plant site; stockpile area; mine area; tailings basin; and tailings pipeline corridor at the locations referenced above; and

WHEREAS; the proposed project is located near a chain of natural lakes and near previously identified Native American trails and habitation sites. Because the project area is in proximity to and encompasses portions of a chain of natural lakes northwest of the project area and was used by Native Americans when Europeans first settled in this area its potential for containing archaeological sites dating to the pre-contact, contact, or post-contact periods is heightened; and

WHEREAS; the proposed project is located on the Western Mesabi Iron Range, where mining and intensive shipment of iron ore began ca.1906. The lower grade or “wash” ores of the western area required mechanical processing to concentrate the ore. Along the

length of the Mesabi, features associated with the century-old industry include mine pits, mine dumps and tailings basins, road and rail alignments, mining plants and equipment, and miners' housing. Following the general decline of mining activity after World War II, various companies began to mine and process taconite, much of which had previously been piled in lean ore dumps. Taconite processing is large scale and highly mechanized, and produces huge amounts of waste materials, or tailings. Taconite tailing basins are flat and terraced, and often times reshaped or covered the dumps, pits, and other features associated with earlier ore production; and

WHEREAS; in 2005 the Corps of Engineers and State of Minnesota completed a Scoping EAW to serve as a scoping document for the Environmental Impact Statement. This document included results of a literature search conducted by the 106 Group Ltd. that consulted records on file at the Minnesota State Historic Preservation Office (SHPO) to identify potential historic properties and the extent of previous cultural resource survey coverage within the project area; and

WHEREAS; the literature/records search did not identify any known archaeological sites in the project area, but did identify one small pre-contact archaeological site adjacent to the project area; and

WHEREAS; the results of the literature/records search identified a potential historic mining landscape, which includes portions of the former operations of the Butler Brothers Mining Company (BBMC) that started about 1915 as one of the several smaller operators on the Range. The Butler Taconite operation was conducted from 1967 to 1985 with likely high impact on the previous mining landscape; and

WHEREAS; the results of the literature/records search, review of National Register Bulletin 42 (Guidelines for Identifying, Evaluating and Registering Historic Mining Properties) and consultation with Landscape Research LLC suggest that the more recent taconite mining operations, which were large scale, highly mechanized, and produced huge amounts of waste materials, are likely to have altered the dumps, pits, and other features associated with earlier ore production; and

WHEREAS; the Corps in consultation with the SHPO has determined that the reactivation of the Butler Taconite Mine and construction of a new processing facility has the potential to affect historic properties; and

WHEREAS; the proposed project is for the most part a build or no-build scenario that will not be funded to any large extent until the necessary authorizations are received. Given what is currently understood about potential historic properties based on the literature search, the Corps and the SHPO agree that a programmatic agreement is appropriate to satisfy the requirements of Section 106 for the Corps' permit decision; and

WHEREAS; the Corps has invited the Advisory Council on Historic Preservation (Council) to participate in the development of this agreement and the Council has declined to participate; and

WHEREAS; the Corps has invited the Minnesota Ojibwe Tribes, who are located in Northern Minnesota, to participate in consultation and the Grand Portage Chippewa, the

Red lake Band of Chippewa, and the Fond du Lac Band of Lake Superior Chippewa have expressed an interest in consultation;

NOW THEREFORE; the Corps and the Minnesota State Historic Preservation Office agree that construction of the facility may begin pursuant to the following provisions.

STIPULATIONS

A. Should a permit be issued, the Corps shall incorporate this programmatic agreement by reference as a special permit condition and ensure satisfaction of the provisions of this agreement. The objectives of this agreement are to:

1. Identify the geographic area or areas (area of potential effect) within which the proposed project may cause changes in the character or use of historic properties, if any such properties exist.
2. To identify any cultural properties that may be affected by the project and gather sufficient information to evaluate the eligibility of these resources for inclusion on the National Register of Historic Places (NRHP).
3. To use the information gathered for identified properties to determine whether they are eligible for inclusion in the NRHP.
4. If eligible properties are found, to assess the effect of the project on these historic properties.
5. If effects are adverse, to work with interested persons and agencies to seek ways to avoid or reduce the effects on historic properties.

B. The definitions of 36 CFR 800.16 are incorporated in this agreement by reference and shall be used in construing its meaning and intent.

I. Determination of Area of Potential Effect (A.P.E.)

A. Once preliminary project construction plans and specifications are developed, Minnesota Steel Industries, LLC shall define the project's A.P.E. in consultation with the SHPO and the Corps. The A.P.E. is the geographic area in which historic properties (archaeological resources, historic structures/buildings, historic mining landscapes, etc.) may be directly or indirectly affected by the activities within the permit area, such as land clearing, access road construction, mine excavation, mine pit dewatering and plant construction.

B. Minnesota Steel Industries, LLC shall coordinate final SHPO and Corps concurrence with the APE in writing and provide the Corps and the SHPO with copies of that documentation, which shall include a set of project plans with the APE clearly identified.

C. If concurrence with the Corps and the SHPO on the APE cannot be reached, the dispute will be handled under the provisions of Stipulation V, Dispute Resolution, below.

II. Identification of Cultural Properties

A. Minnesota Steel Industries, LLC shall conduct a Phase I survey within the A.P.E. to determine whether it is likely that the A.P.E. contains properties that may be eligible for inclusion on the NRHP and to collect adequate information to determine the scope of further data collection, if needed. The level of identification effort for the survey shall be determined in consultation with the Corps and SHPO and shall follow the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.

B. The survey may be conducted and reported based on property types and the reports submitted separately for review.

C. The Phase I survey report shall provide a description of all cultural properties identified, a discussion that addresses the properties' potential eligibility for listing on the National Register of Historic Places (NRHP) and recommended actions for further investigation of these properties

D. Minnesota Steel Industries, LLC shall provide the draft Phase I report/s to the Corps. The Corps shall review and comment on the draft Phase I report/s and any subsequent submittals of the report within 14 days. Minnesota Steel Industries, LLC shall revise the draft report, consistent with the Corps' comments, within 7 days of receipt of the comments and submit three copies of the revised draft report to the Corps.

Within 14 days of accepting a revised draft Phase I report, the Corps shall provide the draft report, along with the Corps' recommendations and/or determinations, to the SHPO and other consulting parties for review and comment. If the Corps does not receive comment within 30 days, the Corps may assume concurrence with any determinations or recommendations.

E. The Corps shall provide the comments of the SHPO and other consulting parties on the draft report to Minnesota Steel Industries, LLC. Minnesota Steel Industries, LLC shall revise the report in accordance with those comments and provide the Corps with a minimum of five copies of the revised report.

F. Should there be an objection to any Corps' recommendation or a request for consultation to resolve concerns pertaining to survey coverage, the Corps will consult to resolve the objection or satisfy the concerns. If the Corps determines that further consultation is not productive, the Corps will request the Council's comments in accordance with Stipulation V, Dispute Resolution, below.

G. Minnesota Steel Industries, LLC may not proceed with construction within a project location until notified in writing by the Corps that the Corps recommendations pertaining to identification of historic properties within that project location have been addressed. If the Corps deems that in certain portions of the project location additional data collection or investigation is required to comply with the Corps recommendations or

if there are unresolved concerns regarding the scope of the recommended investigations in a given portion of the project location, the Corps notification shall specify the areas within the project location where construction may proceed and any remaining areas where additional data collection, investigation or resolution of concerns is required.

III. EVALUATION OF NRHP ELIGIBILITY OF IDENTIFIED CULTURAL PROPERTIES

A. In accordance with the requirements of 36 CFR §800.4(c) et seq., Minnesota Steel Industries, LLC shall conduct a Phase II evaluation of the properties identified as potentially eligible for the NRHP under Section II above, in order to determine whether they are in fact eligible for the NRHP.

B. The evaluation shall be done in consultation with the SHPO and the Corps and shall follow the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation. The level of work effort and the historic contexts and criteria to be used in evaluating NRHP eligibility, in addition to the NRHP criteria, shall be determined in consultation with the Corps and SHPO. Where the Phase II evaluation concludes that a property is eligible for the NRHP, the evaluation report shall include a preliminary evaluation of the project's effects on the property and an evaluation of possible measures to avoid or reduce any identified adverse effects.

C. Minnesota Steel Industries, LLC shall provide the draft report to the Corps. The Corps shall review and comment on the draft report and any subsequent submittals of the report within 14 days. Minnesota Steel Industries, LLC shall revise the draft report, consistent with the Corps' comments, within 7 days of receipt of the comments and submit three copies of the revised draft report to the Corps.

D. The Corps shall provide the revised report, along with the Corps' determination of which properties are eligible for the NRHP, to the SHPO and other consulting parties for comment.

E. If the Corps determines that a property is not eligible for the NRHP and does not receive comment within 30 days from the SHPO, or any other party to this agreement, the Corps will assume concurrence with the determination, and Minnesota Steel Industries, LLC may construct that portion of the project which affects the property without further consultation.

If the Corps determines that a property is eligible for the NRHP and does not receive comment within 30 days from the SHPO or any other party to this agreement, the Corps will assume concurrence with the determination, and it shall conduct an assessment of adverse effects on the property as described in Section IV below. Minnesota Steel Industries, LLC shall not construct any portion of the project which affects the property without further consultation as described below.

If the SHPO, or other party to this agreement, 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, Minnesota Steel Industries, LLC shall obtain a formal Determination of Eligibility from the National Park Service's Keeper of

the National Register, whose decision shall be final.

F. Minnesota Steel Industries, LLC may not proceed with construction until notified in writing by the Corps that there are no unresolved concerns pertaining to the Corps' determination of eligibility for any properties identified. If the Corps deems that in certain portions of the project area additional evaluation of potentially eligible properties or assessment of effects on eligible properties is required to comply with the Corps recommendations or if there are unresolved concerns regarding the scope of the recommended investigations in a given area, the Corps notification shall specify the areas where construction may proceed and any remaining areas where additional evaluation of properties, assessment of effects or resolution of concerns is required.

IV. TREATMENT OF HISTORIC PROPERTIES

A. If historic properties are identified and deemed eligible for inclusion on the NHRP, the Corps will follow the procedures described in 36 CFR Part 800.5 through 800.7 to assess the project's effects on them and to identify measures to avoid or reduce adverse effects.

B. Minnesota Steel Industries, LLC may not proceed with construction within a project location until notified in writing by the Corps that there are no unresolved concerns pertaining to the Corps' assessment of effects on historic properties and measures required to avoid or reduce adverse effects within that project location. If areas have been identified within the project location where additional assessment or measures to avoid or minimize adverse effects are required or if there are unresolved concerns regarding the scope of the required measures to avoid or minimize adverse effects within those areas, the Corps' notification shall specify the areas within the project location where construction may proceed and any remaining areas where additional evaluation of effects or measures to avoid or reduce adverse effects or resolution of concerns is required.

V. 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 Council 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 Council 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.

VI. 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.

VII. 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 Minnesota Steel Industries, LLC 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 its Section 106 responsibilities for all aspects of this undertaking.

SIGNATORY PARTIES

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

BY: _____ DATE: _____
Colonel Michael Pfenning, District Engineer

MINNESOTA STATE HISTORIC PRESERVATION OFFICER

BY: _____ DATE: _____
Ms. Nina Archibal, Minnesota State Historic Preservation Officer

INVITED SIGNATORY

MINNESOTA STEEL INDUSTRIES, LLC

BY: _____ DATE: _____
Mr. John Elmore, President and CEO

CONCURRING PARTIES

FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA

BY: _____ DATE: _____
Honorable Karen Diver, Chairperson

GRAND PORTAGE BAND OF CHIPPEWA

BY: _____ DATE: _____
Honorable Norman Deschampe, Chairman

RED LAKE BAND OF CHIPPEWA INDIANS

BY: _____ DATE: _____
Honorable Floyd "Buck" Jourdain, Chairman

BOIS FORTE BAND OF CHIPPEWA

BY: _____ DATE: _____
Honorable Kevin Leecy, Chairman