

Appendix C
Programmatic Agreement

**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. 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 Minnesota Steel Industries mining operation will also require construction of the following infrastructure improvements; a 10 mile access road to the new facility, rail service that would include 8 miles of track to the facility and 6 to 10 miles of auxiliary track, a natural gas pipeline along a 21 mile route between the Blackberry source point and the mining facility, water and sanitary sewer services from the City of Nashwauk to the facility, and a power transmission line to the new facility; and

WHEREAS; construction of the infrastructure improvements may involve separate applications for a Department of the Army permit under Section 404 of the Clean Water Act. However, all of these improvements are directly related to the Minnesota Steel Industries LLC project described above and do not have utility independent of that project. Therefore the infrastructure improvements are addressed under the provisions of this agreement; and

WHEREAS; the five infrastructure improvements and the five areas for the mining operation referenced above will be referred to as the Project for the purposes of this agreement, 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, the Bois Forte 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

I. RESPONSIBILITIES

A. The Corps shall incorporate this agreement as a special condition of any Section 404 permit that may be issued to Minnesota Steel Industries, LLC for the plant site; stockpile area; mine area; tailings basin; and tailings pipeline corridor.

B. Should a Department of the Army permit be issued under Section 404 of the Clean water Act to Minnesota Steel Industries, LLC for the plant site; stockpile area; mine area; tailings basin; and tailings pipeline corridor, the Corps shall incorporate this programmatic agreement by reference as a special permit condition.

C. The Corps shall require review pursuant to the provisions of 36 CFR Part 800 for all infrastructure improvements, or connected actions, requiring authorization under a Department of the Army permit other than the Section 404 permit that may be issued to Minnesota Steel Industries, LLC for the plant site; stockpile area; mine area; tailings basin; and tailings pipeline corridor.

D. Minnesota Steel Industries, LLC shall be responsible for review pursuant to the provisions of 36 CFR Part 800 of any infrastructure improvement, connected action, or other Project related feature outside of the plant site; stockpile area; mine area; tailings basin; and tailings pipeline corridor, which is not submitted to the Corps for evaluation under a separate Section 404 permit application. This review shall also be subject to the provisions stipulated below.

II. IDENTIFICATION OF CULTURAL PROPERTIES

A. Minnesota Steel Industries, LLC shall notify the Corps of all infrastructure improvements, connected actions, or other Project related feature, which are outside of the plant site, stockpile area, mine area, tailings basin, or tailings pipeline corridor and do not require authorization under a separate Department of the Army permit.

B. Minnesota Steel Industries, LLC shall provide plans and specifications to the Corps for the plant site, stockpile area, mine area, tailings basin, tailings pipeline corridor and all infrastructure improvements, connected actions, or other Project related features which are outside of those areas and do not require authorization under a separate Department of the Army permit.

C. The Corps shall consult with the SHPO and other parties to this agreement to determine the Area of Potential Effects and the scope of identification efforts when plans and specifications are submitted.

D. If concurrence between the Corps, the SHPO and other consulting parties on the scope of identification efforts cannot be reached, the dispute will be handled under the provisions of Stipulation V, Dispute Resolution, below.

E. The Corps shall coordinate the scope of identification efforts with Minnesota Steel Industries, LLC, and Minnesota Steel Industries, LLC shall conduct a Phase I survey to identify 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.

F. 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.

G. Minnesota Steel Industries, LLC shall provide the draft Phase I 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 six copies of the revised draft report to the Corps.

H. The Corps shall provide the revised 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.

I. If the Corps receives comments from the SHPO or other consulting parties on the draft report, the Corps shall consider those comments and if the Corps agrees with those comments, Minnesota Steel Industries, LLC shall revise the report in accordance with those comments, which shall be provided by the Corps. If revised, Minnesota Steel Industries, LLC, shall provide the Corps with a minimum of six copies of the revised report.

J. Should the Corps have an objection to comments received, or 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.

K. Minnesota Steel Industries, LLC may not proceed with Project construction, or mining operations, until notified in writing by the Corps. If the Corps deems that in certain portions of the Project area additional data collection or investigation is required, 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 data collection, investigation or resolution of concerns is required.

III. EVALUATION OF NHRP ELIGIBILITY OF IDENTIFIED CULTURAL PROPERTIES

A. 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 Corps shall define the scope of the Phase II evaluation effort in consultation with the SHPO and consulting parties to this agreement.

C. 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.

D. Minnesota Steel Industries, LLC shall provide the draft Phase II 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 five copies of the revised draft report to the Corps.

E. 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.

F. If the Corps receives comments from the SHPO or other consulting parties on the draft report, the Corps shall consider those comments and if the Corps agrees with those comments, Minnesota Steel Industries, LLC shall revise the report in accordance with those comments, which shall be provided by the Corps. If revised, Minnesota Steel Industries, LLC, shall provide the Corps with a minimum of six copies of the revised report.

G. 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.

H. 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 V below. Minnesota Steel Industries, LLC shall not construct any portion of the Project which affects the property without further consultation as described below.

I. 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.

J. 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. Corps notification shall specify the areas where construction may proceed. The Corps may require Minnesota Steel Industries, LLC to conduct additional evaluation or assessment of effects to resolve any concerns as necessary.

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 until notified in writing by the Corps that there are no unresolved concerns pertaining to the Corps' assessment of effects on historic properties or measures required to avoid, reduce, or mitigate adverse effects on those properties. If areas have been identified where additional assessment or measures to avoid, minimize, or mitigate adverse effects are required, the Corps' notification shall specify the areas where construction may proceed and the measures required to resolve any remaining concerns.

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 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.

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.

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.

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.

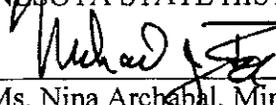
Execution and implementation of this Programmatic Agreement evidences that the U.S. Army Corps of Engineers has satisfied their Section 106 responsibilities.

SIGNATORY PARTIES

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

BY:  DATE: 13 AUGUST 2007
Colonel Jon L. Christensen, District Engineer

MINNESOTA STATE HISTORIC PRESERVATION OFFICER

BY:  DATE: 8/17/07
Ms. Nina Archabal, Minnesota State Historic Preservation Officer

INVITED SIGNATORY

MINNESOTA STEEL INDUSTRIES, LLC

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

CONCURRING PARTIES

FOND DU LAC RESERVATION BUSINESS COMMITTEE

BY: _____ DATE: _____
Honorable Karen Diver, Chairperson

GRAND PORTAGE RESERVATION BUSINESS COMMITTEE

BY: _____ DATE: _____
Honorable Norman Deschampe, Chairman

RED LAKE BAND OF CHIPPEWA INDIANS

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

BOIS FORTE BAND OF CHIPPEWA INDIANS

BY: _____ DATE: _____
Honorable Kevin Leecy, Chairman