

Appendix D
Proposed Amendment to Programmatic Agreement

**AMENDMENT #1 TO THE
MINNESOTA STEEL PROJECT PROGRAMMATIC AGREEMENT
AMONG
THE ST. PAUL DISTRICT, CORPS OF ENGINEERS,
THE MINNESOTA STATE HISTORIC PRESERVATION OFFICE,
AND THE SURFACE TRANSPORTATION BOARD
CONCERNING THE
MINNESOTA STEEL INDUSTRIES, LLC RAIL LINE CONNECTED ACTION
PROPOSED BY THE ITASCA COUNTY REGIONAL RAIL AUTHORITY
NEAR NASHWAUK, ITASCA COUNTY, MINNESOTA**

WHEREAS, the St. Paul District, U.S. Army Corps of Engineers (Corps) issued a Clean Water Act Section 404 permit on August 30, 2007, for the discharge of fill material into jurisdictional waters of the U.S., including wetlands, to Minnesota Steel Industries, LLC (Minnesota Steel) to facilitate the construction and operation of a taconite mine and steel production plant near Nashwauk in Itasca County, Minnesota; and

WHEREAS, the Minnesota Steel project 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 rail service infrastructure improvement involves a separate application to be submitted by the Itasca County Regional Rail Authority (ICRRA) for a Department of the Army permit under Section 404 of the Clean Water Act, and the rail service infrastructure improvement is directly related to the Minnesota Steel Industries LLC project described above and does not have utility independent of that project. Therefore, the rail service infrastructure improvement is addressed in this amendment to the Minnesota Steel project Programmatic Agreement (Amendment #1). The five proposed alternative rail line alignments that are under review are located in Sections 2, 3, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, and 21, T. 56N., R. 23W., Sections 13, 23, and 24, T. 56N., R. 24W., and Section 35, T. 57N., R. 23W., Itasca County, Minnesota; and

WHEREAS, the Corps invited the Advisory Council on Historic Preservation (Council) to participate in the development of the Minnesota Steel project Programmatic Agreement and the Council declined to participate; and

WHEREAS, the Corps invited the Minnesota Ojibwe Tribes, who are located in Northern Minnesota, to participate in consultation regarding the Minnesota Steel project permit review, 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 expressed interest in consultation. However, those tribes declined to sign the Minnesota Steel project Programmatic Agreement as concurring parties; and

WHEREAS, Minnesota Steel declined to sign the Minnesota Steel project Programmatic Agreement as an invited signatory; and

WHEREAS, the Surface Transportation Board (STB) is the lead federal agency in the preparation of an Environmental Assessment (EA) to support its decision making associated with the construction and operation of the proposed ICRRRA rail line to provide rail service to the Minnesota Steel project; and

WHEREAS, the Corps is a cooperating agency in the preparation of the EA to support its decision making associated with the construction and operation of the proposed ICRRRA rail line to provide rail service to the Minnesota Steel project; and

WHEREAS, the STB has contacted the Minnesota State Historic Preservation Office and the Office of the State Archaeologist, and based on a records search of the Minnesota Archaeological Inventory and Historic Structures Inventory, no previously recorded archaeological sites were identified within the project area; and

WHEREAS, based upon an archaeological review, Corps cultural resources staff has concluded that none of the five proposed alternative rail line alignment routes have a significantly greater or lesser likelihood of impacting archaeological sites; and

WHEREAS, to ensure that identification activity is adequate, an archaeological survey of the rail line alignment selected by the STB shall be conducted by the ICRRRA before construction work begins; and

WHEREAS, Amendment #1 has no impact on the Clean Water Act Section 404 permit issued to Minnesota Steel by the Corps;

NOW THEREFORE, the Corps, the Minnesota State Historic Preservation Office, and the Surface Transportation Board agree that construction of the rail service infrastructure improvement must be subject to the following provisions.

STIPULATIONS

Should a Department of the Army permit be issued under Section 404 of the Clean Water Act to the ICRRRA for the construction of a rail line to the Minnesota Steel project site, the Corps shall incorporate the requirements of Amendment #1 as a special permit condition.

Should a Department of the Army permit not be required for the construction of a rail line to the Minnesota Steel project site, Minnesota Steel Industries, LLC shall be responsible for review pursuant to the provisions of 36 CFR Part 800 as specified in the original Programmatic Agreement that was executed on August 16, 2007.

I. IDENTIFICATION OF CULTURAL PROPERTIES

- A. The ICRRA shall provide plans and specifications to the Corps for the rail line infrastructure improvement to the Minnesota Steel project site.
- B. The Corps shall consult with the Minnesota State Historic Preservation Office (SHPO) and the STB to determine the Area of Potential Effects and the scope of identification efforts after plans and specifications are submitted.
- C. If concurrence between the Corps, the SHPO, and the STB on the scope of identification efforts cannot be reached, the dispute will be handled under the provisions of Stipulation V, Dispute Resolution, below.
- D. The Corps shall coordinate the scope of identification efforts with the ICRRA, and the ICRRA shall conduct a Phase I survey to identify properties that may be eligible for inclusion on the National Register of Historic Places (NRHP) and to collect adequate information to determine the scope of further data collection, if needed.
- E. 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 NRHP and recommended actions for further investigation of these properties.
- F. The ICRRA 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. The ICRRA shall revise the draft report, consistent with the Corps' comments, within 7 days of receipt of the comments and submit four (4) copies of the revised draft report to the Corps.
- G. The Corps shall provide the revised draft report, along with the Corps' recommendations and/or determinations, to the SHPO and the STB for review and comment. If the Corps does not receive comment within 30 days, the Corps may assume concurrence with any determinations or recommendations.
- H. If the Corps receives comments from the SHPO or the STB on the draft report, the Corps shall consider those comments, and if the Corps agrees with those comments, the ICRRA shall revise the report in accordance with those comments, within 14 days of receiving comments from the Corps. If revised, the ICRRA shall provide the Corps with a minimum of four (4) copies of the revised report.
- I. Should the Corps have an objection to comments received from the SHPO or the STB, or there is 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.

II. EVALUATION OF NHRP ELIGIBILITY OF IDENTIFIED CULTURAL PROPERTIES

- A. The ICRRA shall conduct a Phase II evaluation of the properties identified as potentially eligible for the NRHP under Section I 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 the STB.
- 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. The ICRRA 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. The ICRRA shall revise the draft report, consistent with the Corps' comments, within 7 days of receipt of the comments and submit four (4) 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 the STB for review and comment.
- F. If the Corps receives comments from the SHPO or the STB on the draft report, the Corps shall consider those comments and if the Corps agrees with those comments, the ICRRA shall revise the report in accordance with those comments, within 14 days of receiving the comments from the Corps. If revised, the ICRRA shall provide the Corps with a minimum of four (4) 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 the STB, the Corps will assume concurrence with the determination, and the Corps will provide written authorization to the ICRRA to construct the project 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 the STB, the Corps will assume concurrence with the determination. The Corps shall conduct an assessment of adverse effects on the property as described in Section III below, and the ICRRA shall not construct the project without further consultation as described below.
- I. If the SHPO or the STB 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 ICRRA shall obtain a formal Determination of Eligibility from the National Park Service's Keeper of the National Register, whose decision shall be final.

III. TREATMENT OF HISTORIC PROPERTIES

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

IV. APPROVAL TO PROCEED

The ICRRRA may not proceed with construction of the rail line until notified in writing by the Corps that construction may proceed, and that there are no unresolved concerns pertaining to the Corps' assessment of effects on any identified historic properties or measures required to avoid, reduce, or mitigate adverse effects on those properties. The Corps may require the ICRRRA to conduct additional evaluation or assessment of effects to resolve any concerns as necessary.

V. DISPUTE RESOLUTION

A. Should the SHPO or the STB have objections within 30 days after the receipt of any plans, documents, or reports submitted to them under the terms of Amendment #1, 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 the 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 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

Any party to Amendment #1 may request that it be amended, whereupon the parties will consult in accordance with 36 CFR § 800.6(c)(7) to consider such amendment.

VII. TERMINATION

Any signatory party to Amendment #1 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 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

Amendment #1 shall terminate if the ICRRA withdraws its Section 404 permit application, or it shall terminate five years after the date of the Corps' permit decision regarding the proposed rail line project.

Execution and implementation of Amendment #1 evidences that the U.S. Army Corps of Engineers and the Surface Transportation Board have 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 Archibal, Minnesota State Historic Preservation Officer

SURFACE TRANSPORTATION BOARD

BY: _____ DATE: _____
Ms. Victoria Rutson, Chief, Section of Environmental Analysis

INVITED SIGNATORY

ITASCA COUNTY REGIONAL RAIL AUTHORITY

BY: _____ DATE: _____
Mr. Mark Mandich, Chairperson