

PROGRAMMATIC AGREEMENT

AMONG THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS,

THE MINNESOTA STATE HISTORIC PRESERVATION OFFICE,

THE NATIONAL PARK SERVICE,

AND THE MINNESOTA DEPARTMENT OF VETERANS AFFAIRS

REGARDING THE DEMOLITION OF BUILDING NO. 9

AND THE DESIGN AND CONSTRUCTION OF A REPLACEMENT BUILDING

AT THE MINNESOTA VETERANS HOME,

MINNEAPOLIS, MINNESOTA

WHEREAS, the Minnesota Department of Veterans Affairs (hereinafter "MnDVA") has applied for a grant from the United States Department of Veterans Affairs (hereinafter "VA") for an undertaking at the Minnesota Veterans Home campus in Minneapolis, Minnesota, that will include the demolition of Building No. 9 and the design and construction of a larger replacement building on said campus; and

WHEREAS, the Minnesota Soldiers Home Historic District is located within the jurisdictional limits of the 72-mile Mississippi National River and Recreation Area (hereinafter "MNRRA"), and 16 U.S.C., 460zz-3(b)(1) requires the National Park Service (hereinafter "NPS") to review Federal undertakings within the MNRRA to ensure that they are compatible with the MNRRA Comprehensive Management Plan, and the NPS has participated in the consultation and been invited to sign this Programmatic Agreement (hereinafter "Agreement") as a signatory; and

WHEREAS, the VA has been designated as the lead federal agency by the NPS pursuant to Section 800.2(a)(2) of the regulations (36 CFR 800) implementing Section 106; and

WHEREAS, the VA and MnDVA acknowledge that the Minnesota Soldiers' Home Historic District is listed on the National Register of Historic Places (hereinafter "NRHP") and that Building No. 9 is a contributing element to said historic district; and

WHEREAS, the MnDVA has determined that Building No. 9 is structurally deficient and poses a threat to human life-safety, and has vacated said building, that the cost of structural repairs to alleviate this condition are excessive, and there appear to be no feasible or prudent alternatives to its demolition; and

WHEREAS, the VA and MnDVA have initiated consultation with the Minnesota State Historic Preservation Office (hereinafter "SHPO"), pursuant to Sections 800.3-800.6 of the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (hereinafter "NHPA") of 1966, as amended; and

WHEREAS, the Advisory Council on Historic Preservation (hereinafter "ACHP") has been notified of this undertaking and the ACHP notified the MnDVA that it will not participate in the Section 106 consultation process; and

WHEREAS, the VA has notified and invited to participate in the Section 106 consultation the 11 federally-recognized American Indian tribes and THPOs in Minnesota and invited them to participate in the consultation and the Mille Lac Band of Ojibwe, the Leech Lake Band of Ojibwe, the Red Lake Band of Chippewa, and the Shakopee Mdewakanton Sioux (Dakota) Community responded that they have no cultural concerns; and

WHEREAS, the Minneapolis Park and Recreation Board (hereinafter "MPRB") is the owner of the land encompassed by the NRHP listed Minnehaha Historic District, which is situated immediately adjacent to the Minnesota Veterans Home campus and has a direct visual connection to Building No. 9, the MPRB was invited and participated in this consultation and has been invited to concur with this Agreement; and

WHEREAS, the Preservation Alliance of Minnesota, Preserve Minneapolis, and Nokomis East Neighborhood Association have participated in the consultation and have been invited to concur with this Agreement; and

WHEREAS, the United States Army Corps of Engineers, the Minnesota Department of Natural Resources, the Minneapolis Heritage Preservation Commission (hereinafter "HPC"), and the Longfellow Community Council were invited to participate in the consultation and declined; and

WHEREAS, the MnDVA has consulted with and considered the views of the public concerning the proposed demolition of Building No. 9 by holding a public meeting on January 15, 2009 to present information about the proposed undertaking and its effect on the historic property, pursuant to Sections 800.2(d)(1)-800.2(d)(2) of the regulations (36 CFR Part 800) implementing Section 106, and no objections to the proposed demolition were raised as part of that meeting; and

WHEREAS, through the consultation process the VA, NPS, MnDVA, and SHPO have determined that the demolition of Building No. 9 would constitute an adverse affect on the Minnesota Soldiers' Home Historic District; and

WHEREAS, through the consultation process, the VA, SHPO, NPS, and the MnDVA have agreed that mitigation for the adverse effect to historic properties associated with the demolition of Building No. 9 will be required; and

WHEREAS, the construction of a new building on the Minnesota Veterans Home campus to replace Building No. 9 will have unknown effects on historic properties that must be considered and accounted for during the site selection and design processes; and

WHEREAS, the Federal Construction grant approval process has defined limitations and timelines for compliance that stipulate that the design development phase for the new

construction needs to be approved prior to August 1, 2009 and that contractor bids and selection needs to occur prior to March 1, 2010; and

NOW, THEREFORE, the VA, SHPO, NPS, and MnDVA agree that this Agreement will be carried out with the following stipulations in order to take into account the potential effects of the undertaking on historic and archaeological properties.

STIPULATIONS

I. The VA will ensure that the following actions are carried out:

A. As mitigation for the demolition of the NRHP-listed Building No. 9, the MnDVA will:

1. Prepare a Minnesota Historic Property Record (hereinafter "MHPR"). The MHPR shall be prepared in accordance with the SHPO's *Minnesota Historic Property Record Guidelines* by professionals who meet the qualifications set forth in *The Secretary of the Interior's Professional Qualification Standards* (44 FR 44738-9) for architectural history. The completed MHPR shall be submitted to and accepted by the SHPO prior to the initiation of the demolition of Building No. 9.
2. Prior to the demolition of Building No. 9, significant historic elements must be salvaged from Building No. 9 for possible incorporation into the design of the new development. Elements to be salvaged shall include examples of the inscribed concrete capitals; the two exterior light fixtures and handrails from the west entry stairs; the cornerstone; the west entry doors, their casings and surrounds; and features from the main lobby including the doors, directories, light fixture, and samples of the wall and floor finishes. An attempt to incorporate these features into the design of the new development shall be made pursuant to Stipulation I.A.4.ii below.
3. Prepare an article in consultation with the SHPO for *The Minnesota Preservationist*, the journal of the Preservation Alliance of Minnesota. The article and accompanying photographs shall document how water proofing can damage historic brick buildings, using Building No. 9 as a case study to show what happens if waterproofing is applied to a brick building. The article shall be submitted to SHPO for concurrence and shall be published within 12 months of the signing of this PA.
4. Incorporate the following elements into the site selection and design for the new development:
 - i. The creation of a compatible and historically sensitive entry into the Minnesota Veterans Home campus to mitigate for the loss of Building No. 9, which served as the visual terminus to the bridge over Minnehaha Creek, the primary means of access to the campus, during the period of significance for the historic district.

- ii. An attempt shall be made to incorporate the features salvaged from Building No. 9 pursuant to Stipulation I.A.2 into the design of the new development. Historic elements that are not incorporated into the design of the new development can be stored, reused, or disposed of at the discretion of the MnDVA.
- iii. An interpretive element that commemorates and tells the story of Building No. 9.

B. For the proposed design of the new development:

1. The MnDVA shall consult with the SHPO and NPS to determine an appropriate location for the new development and develop a design for the new building and its associated improvements. The new development shall be sited and designed in accordance with *The Secretary of the Interior's Standards for the Treatment of Historic Properties* and the MNRRRA Comprehensive Management Plan. The design for the new building, including the site selection and placement, shall give consideration to creating a compatible and historically sensitive entry into the Minnesota Veterans Home campus to mitigate for the loss of Building No. 9, which served as the visual terminus to the bridge over Minnehaha Creek, the primary means of access to the campus, during the period of significance for the historic district. The final design for the new building and its associated improvements will be submitted to the SHPO and NPS for concurrence before construction can commence.
2. Should the new development result in an adverse effect to a historic or archaeological property that cannot be avoided, the MnDVA shall consult with the SHPO, VA, and the NPS to determine and implement the appropriate mitigation.
3. For the proposed new development, the MnDVA will hold two public meetings to obtain comments on the effects of the proposed new development on historic and archaeological properties. The first meeting shall be held after the completion of the pre-design phase for the proposed new development to allow the public to comment on the proposed location and design of the new development and its potential effects on historic properties. The second public meeting shall be held after schematic design is completed, but before design development is completed, to allow the public to provide additional comment on the location and design of the proposed new building and its associated improvements, as well as on any potential effects the proposed development may have on historic and archaeological properties and on possible mitigation for any potential adverse effects to historic and archaeological properties. For both meetings, the MnDVA shall give public notice announcing the date, time, and location of such meetings and distribute notices directly to potentially concerned individuals and organizations.

II. Unanticipated Discoveries

A. The MnDVA shall adhere to the following process and ensure that construction documents contain the following provisions for the treatment of unexpected discoveries:

1. In the event that a previously unidentified archaeological resource is discovered during ground disturbing activities, the MnDVA shall immediately notify the SHPO, VA, and the NPS. All construction work involving subsurface disturbance will be halted in the area of the resource and in the surrounding area where further subsurface remains can reasonably be expected to occur. The MnDVA, the SHPO, and the NPS, or an archeologist meeting *The Secretary of the Interior's Professional Qualifications Standards* (48 FR 44738-9), immediately will inspect the work site and determine the area and the nature of the affected archeological property. The SHPO and NPS shall have an opportunity to be involved in the development and implementation of an appropriate treatment plan. Construction work may then continue in the project area outside the site area.
2. Within five (5) working days of the original notification of discovery, the MnDVA will consult with the SHPO and the NPS to determine the NRHP eligibility of the previously unidentified resource. The SHPO and NPS will collaborate and respond within five (5) business days of receipt of the documentation. The documentation may be submitted electronically. Potentially eligible historic or archaeological properties will be evaluated using NRHP criteria in accordance with *36 CFR 800.4(c)*. If the SHPO or the NPS determines that the resource meets the National Register Criteria for Evaluation (36 CFR Part 60.6), the MnDVA shall ensure compliance with Section 800.13(b) (3) of the ACHP's Regulations. The SHPO and NPS collaborate and shall provide comments on any treatment plan submitted within five (5) business days of receipt. If the SHPO or the NPS fails to comment, the MnDVA may assume concurrence and implement the plan. Work in the affected area shall not proceed until the development and implementation of an appropriate treatment plan; or the determination is made that the located resource is not eligible for inclusion on the NRHP.

III. Human Remains

A. The MnDVA shall adhere to the following process and ensure that construction documents contain the following provisions for the treatment of human remains:

1. Human remains and associated funerary objects encountered during the course of actions taken as a result of this Agreement shall be treated in the manner consistent with provisions of State of Minnesota law.

2. In the event that the human remains encountered are likely to be of Native American origin, whether from the precontact or historic period, the MnDVA will immediately notify the 11 federally-recognized American Indian tribes and THPOs in Minnesota, the Minnesota State Archaeologist, and the NPS. The treatment of American Indian human remains and associated funerary objects will be determined in consultation with the interested tribes and THPOs. All reasonable efforts will be made to avoid disturbing Native American gravesites and associated artifacts. To the extent possible, the MnDVA will ensure that the public is excluded from viewing any Native American gravesites and associated artifacts. No photographs of any Native American gravesites and/or associated funerary objects will be released to the press or to the public.

IV. Amendment and Termination

Revisions, amendments and modifications to this Agreement may be made upon written approval of the primary signatories. If any of the primary signatories to this Agreement determine that an amendment is necessary, the signatory will immediately request an amendment to the Agreement. Such an amendment will become effective on the date of approval.

V. Dispute Resolution

Should any party to this Agreement, within the time periods set forward in this Agreement, object in writing to the terms of this Agreement, the VA and the MnDVA shall consult with the SHPO and NPS to resolve the objection. If the SHPO determines that the objection cannot be resolved, the VA shall request the further comments of the ACHP pursuant to 36 CFR Part 800.5 (e).

If at any time during implementation of the stipulations in this Agreement should an objection pertaining to this agreement be raised by a member of the public, the MnDVA shall notify all parties to this Agreement and take the objection into account, consulting with the objector and, should the objector so request, with any of the parties to this Agreement resolve the objection.

VI. Duration of the Agreement

This Agreement shall become effective when signed by the last signatory and shall remain in effect until December 31, 2012 or until the completion of all tasks stipulated in this Agreement. If the tasks are not completed by this date, the VA or the MnDVA may make a request to the SHPO to extend or renegotiate the terms of this Agreement. No extension or modification will be effective unless approved by the primary signatories in writing.

This Agreement is applicable solely to the primary and concurring signatories and is not intended to confer any right or benefit on any private person or party not a signatory to this Agreement.

Execution of this Agreement by the VA, SHPO, NPS, and MnDVA, and the implementation of its terms, demonstrates that the VA and the NPS and MnDVA have afforded the ACHP an opportunity to comment on the demolition of Building No. 9 and an opportunity to comment on the effects that the proposed new development will have on historic and archaeological properties and that the VA will take into account the effects the new development will have on historic and archaeological properties.

UNITED STATES DEPARTMENT OF VETERANS AFFAIRS

By: James F. Burris M.D. Date: 5/21/2009
James F. Burris, M.D.
United States Department of Veterans Affairs, Chief, Geriatrics

MINNESOTA STATE HISTORIC PRESERVATION OFFICE

By: Nina Archibal Date: 5/29/09
Nina Archibal
Minnesota Historical Society, State Historic Preservation Officer

NATIONAL PARK SERVICE

By: Paul Labovitz Date: 4/17/09
for Paul Labovitz
Mississippi National River and Recreation Area, Superintendent

Invited Signatories:

MINNESOTA DEPARTMENT OF VETERANS AFFAIRS

By: Gilbert Acevedo Date: 4/8/09
Gilbert Acevedo
Minnesota Department of Veterans Affairs, Deputy Commissioner

Concurring Parties:

MINNEAPOLIS PARK AND RECREATION BOARD

By: Judd Rietkerk Date: 6-1-2009
Judd Rietkerk
Minneapolis Park and Recreation Board, Planning Director

PRESERVATION ALLIANCE OF MINNESOTA

By: Bonnie McDonald Date: 4/17/09
Bonnie McDonald
Preservation Alliance of Minnesota, Executive Director

PRESERVE MINNEAPOLIS

By: Lee Ann Gustafson Date: 7/14/09
Lee Ann Gustafson
Preserve Minneapolis, Vice President

NOKOMIS EAST NEIGHBORHOOD ASSOCIATION

By: George Jelatis Date: 17 Apr 2009
George Jelatis
Nokomis East Neighborhood Association, Board Chair