

MEMORANDUM OF AGREEMENT

BETWEEN

THE DEPARTMENT OF VETERANS AFFAIRS

AND

THE MINNESOTA STATE HISTORIC PRESERVATION OFFICER

SUBMITTED TO THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
PURSUANT TO 36 C.F.R. SECTION 800.6(b)(iv)

REGARDING THE CONSTRUCTION OF A WIND TURBINE
ON THE CAMPUS OF THE ST. CLOUD MEDICAL CENTER
AND

REGARDING THE MODIFICATION OF ROADS AND ADDITION OF PARKING ON THE
CAMPUS OF THE ST. CLOUD MEDICAL CENTER

WHEREAS, the Department of Veterans Affairs (VA) St. Cloud Medical Center (SCMC) proposes to construct a wind turbine on its campus and the campus has been determined eligible for the National Register of Historic Places (NRHP); and

WHEREAS, the Department of Veterans Affairs (VA) St. Cloud Medical Center (SCMC) proposes to expand parking and related roadways under two separate construction projects on their campus known as Repair/Upgrade Roads throughout Campus, Phase VIII, and Road Repair, Phase IX; and

WHEREAS, the SCMC, in consultation with the VA Federal Preservation Office (FPO) and the Minnesota State Historic Preservation Office (SHPO), has established the area of potential effect, as defined at 36 CFR 800.2(c) to be the construction zone for the turbine (direct effect), as well as an area extending approximately a mile to a mile and a half in all directions that includes the entire St. Cloud Medical Center campus (indirect, visual effect) (see map A); while the area of potential effect for the parking and roads projects are limited to the SCMC campus; and

WHEREAS, the SCMC has determined that the proposed Wind Turbine construction will have an adverse effect on the NRHP eligible SCMC campus, two groups of historic sites (Pan-Town-on-the-Mississippi and the Great Northern Railway, St. Cloud Car Shops), and the Fasen Round Barn, while the roads and parking projects will have an adverse effect only on the SCMC campus; and

WHEREAS, the SCMC has consulted with the Minnesota SHPO in accordance with Section 106 of the National Historic Preservation Act (16 USC 470f) and it's implementing regulations (36 CFR 800) to resolve the adverse effect of the construction of the wind turbine and parking and roads together under this MOA; and

WHEREAS, the SCMC has invited the Advisory Council on Historic Preservation (ACHP) to participate in the consultation and the ACHP has declined to be a consulting party; and

WHEREAS, the SCMC has invited the City of St. Cloud and the St. Cloud Heritage Preservation Commission to participate in the consultation and they have stated they see no negative impact to properties outside the SCMC; and

WHEREAS, the SCMC contracted for an archaeological survey of the turbine construction site and no archaeological remains or sites were identified;

NOW, THEREFORE, the SCMC the Minnesota SHPO and the ACHP agree that, upon acceptance of this Memorandum of Agreement by the ACHP and upon the SCMC's decision to proceed with construction of the wind turbine, and the parking and roads projects Phases VIII and IX they shall ensure that the following stipulations are implemented in order to take into account the effects of the construction of the wind turbine on historic properties.

STIPULATIONS

The SCMC shall ensure that the following stipulations are implemented:

1. The SCMC and the Minnesota SHPO will develop and execute a Programmatic Agreement (PA) that will govern future maintenance and renovation on the SCMC campus. It is intended that this PA will define what constitutes an "undertaking" under Section 106, and what constitutes a maintenance project, thus proactively streamlining the Section 106 approval process for many types of activities.

Stipulation 1 shall be completed by July 31, 2011.

2. The SCMC in consultation with the Minnesota SHPO will develop and execute a Master Planning Document that will govern future capital projects (activities) on the SCMC campus. The Master Planning Team shall include at least one historian or architectural historian meeting the professional qualifications of 36 CFR Part 61. It is intended that this Master Plan will develop strategies to assure that current and future capital projects both preserve the existing historic elements of the campus as well as strive to restore historic elements that may have been damaged through time. Consideration will be given to parking structures and public transit incentives, to facilitate the long term mitigation of past damage of the historic landscape through the removal of some surface parking lots.

Stipulation 2 shall be completed by December 31, 2013.

3. VA will prepare and submit the National Register Nomination for the campus. This will include historical research and field work. A draft will be provided to SHPO and the VA FPO for review and comment prior to finalizing. The nomination shall be prepared by at least one historian or architectural historian meeting the professional qualifications of 36 CFR Part 61.

4. Unanticipated Discovery

A. Historic Buildings, Structures, and/or Objects

In the event that unanticipated effects on historic buildings, structures, and/or objects are found during the implementation of the MOA, SCMC will stop any work that may adversely affect the buildings, structures, and/or objects or that may foreclose opportunities to avoid such adverse effects. SCMC shall consult with the SHPO and the FPO to determine the appropriate course of action to comply with Section 106. If necessary, the required signatories shall review the terms of the MOA and determine whether revisions are needed.

B. Archaeological Resources

In the event that a previously unidentified archaeological resource is discovered during ground disturbing activities, SCMC will halt all construction work involving subsurface disturbance in the area of the resource and in the surrounding area where further subsurface deposits may reasonably be expected to occur. An archaeologist meeting the Secretary of Interior's Professional Qualifications Standards (36 CFR 61) will immediately inspect the work site and determine the extent and the nature of the affected archaeological property. The archaeologist may consult the SHPO and other parties as deemed appropriate by the archaeologist in setting the boundaries of the archaeological resource. Construction work may then proceed in the project area outside of the archaeological site boundaries.

Within two (2) working days of the discovery, the SCMC shall notify the VA National Energy Business Center, FPO and SHPO. The notification shall describe SCMC's assessment of the National Register eligibility of the property and proposed actions to resolve the adverse effect (if any). The SHPO and FPO shall respond within two (2) working days of notification and construction may resume when the SHPO agrees. SCMC shall take into account the SHPO's recommendations regarding National Register eligibility and proposed actions, and then carry out appropriate actions. SCMC shall provide SHPO and FPO with a report of these actions once they are complete.

C. Human Remains

SCMC will ensure that human remains and associated funerary objects encountered during the course of actions taken as a result of this MOA shall be treated in a manner consistent with the provisions of the *Native American Graves Protection and Repatriation Act* (25 U.S.C. 3001) and the *ACHP Policy State Regarding Treatment of Burial Sites, Human Remains and Funerary Objects* (2007).

5. Dispute Resolution

Should any signatory to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, SCMC shall consult with such party to resolve the objection. If SCMC determines that such objection cannot be resolved, SCMC will:

- A. Forward all documentation relevant to the dispute, including the SCMC's proposed resolution, to the ACHP. The ACHP shall provide SCMC with its advice on the resolution of the objection within thirty (30) calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, SCMC shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories, and provide them with a copy of this written response. SCMC will then proceed according to its final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) calendar day period, SCMC may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, SCMC shall prepare a written response that takes into account any timely comments regarding the dispute from the signatory parties to the MOA, and provide them and the ACHP with a copy of such written response.
- C. SCMC's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

6. Amendments

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

7. Duration

This MOA will be null and void if its stipulations are not carried out within five (5) years from the date of its execution. At such time, and prior to work continuing on the undertaking, SCMC shall either (a) execute an agreement document pursuant to 36 CFR Part 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR Part 800.7. Prior to such time, SCMC may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation 6 above. SCMC shall notify the signatories as to the course of action it will pursue.

8. Termination

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation 8, above. If within thirty (30) calendar days an amendment cannot be reached, any signatory may terminate the agreement document upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on the undertaking, SCMC must either (a) execute an MOA pursuant to 36 CFR Part 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR Part 800.7. SCMC shall notify the signatories as the course of action it will pursue.

Execution of this MOA by the SCMC and the SHPO, acceptance by the ACHP, and implementation of its terms evidences that SCMC has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

SIGNATORIES:

St. Cloud Veterans Affairs Medical Center:




BARRY I. BAHL
Medical Center Director

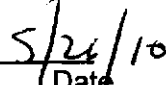


Date

Minnesota State Historic Preservation Officer:



BRITTA BLOOMBERG
Deputy State Historic Preservation Officer



Date