

**Memorandum of Agreement
Regarding
Removal of Building 8, Veterans Affairs Medical Center,
Tomah, WI**

COPY

Whereas the United States Department of Veterans Affairs manages the Tomah Veterans Affairs Medical Center in Tomah, Wisconsin (VAMC Tomah), and

Whereas VAMC Tomah includes the site of the former Tomah Indian Industrial Arts School, a place of cultural and historical significance to many Indian tribes that is eligible for inclusion in the National Register of Historic Places as a historic district ; and

Whereas Building 8 at VAMC Tomah, a former farmhouse and staff quarters, contributes to the significance of the Tomah Indian Industrial Arts School, and

Whereas Building 8 has gone unoccupied and unused for many years, has fallen into extreme disrepair, has been determined by VAMC Tomah to be unfit for human habitation and to present a life/safety issue for patients, visitors, and staff; and

Whereas in accordance with Section 111 of the National Historic Preservation Act (NHPA), VAMC Tomah has consulted with the Advisory Council on Historic Preservation (ACHP) and determined that there is no feasible adaptive use for Building 8; and

Whereas VAMC Tomah has determined that Building 8 must be removed, and that removal of Building 8 will have an adverse effect on the historic district representing the Tomah Indian Industrial Arts School; and

Whereas in accordance with Section 106 of the NHPA, VAMC Tomah has consulted with the Ho-Chunk Nation, the Oneida Nation, the Lac du Flambeau Tribe, the Wisconsin State Historic Preservation Officer (SHPO), and the Advisory Council on Historic Preservation(ACHP) to seek ways to resolve the adverse effects of removing Building 8, and

Whereas VAMC Tomah has also invited the Bad River Band of Lake Superior Chippewa Indians, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, the Menominee Indian Tribe of Wisconsin, the Red Cliff Band of Lake Superior Chippewa, the Forest County Potawatomi Indian Community, the Mohican Nation, the Mole Lake Sokaogon Chippewa Community of Wisconsin, the St. Croix Chippewa Indians of Wisconsin, the Lac Vieux Desert Band of Lake Superior Chippewa Indians, the Sac and Fox Nation, the Kickapoo Tribe of Oklahoma, the Prairie Band Potawatomi Nation, and the Monroe County Historical Society to consult about ways to resolve the adverse effects of removing Building 8, and having received no comments, invited them to concur in this Memorandum of Agreement (MOA);

Now, therefore, it is mutually agreed that VAMC Tomah will implement the following measures to resolve the adverse effects of removing Building 8.

Stipulations:

- I. **Documentation:** In continuing consultation with the parties to this agreement, within sixty days after execution of this memorandum of agreement (MOA), VAMC Tomah will contract for and initiate a program to document the history, architecture, and general character of Building 8 and its surroundings, including but not limited to:
- A. Compilation, digitization, and study of the documentary history of the Tomah Indian Industrial School and Building 8.
 - B. Compilation and conservation of existing photographs, plans, records, and other documents pertinent to the building's history and architecture.
 - C. Historical and architectural documentation of Building 8, meeting Historic American Buildings Survey (HABS) Level II standards and current National Park Service (NPS) standards and guidelines, as published in the Federal Register (Vol. 68, No. 139) on July 21, 2003, pages 43159-43162.
 - D. Archaeological inspection and study of the ground within approximately fifty feet of Building 8 by personnel under the supervision of a qualified historical archaeologist (See Stipulation IV.A), to identify and protect or recover sensitive material and information; this inspection will include subsurface testing and/or remote sensing to identify buried features and material.
 - E. Monitoring the building's demolition by personnel under the supervision of a qualified specialist in architectural preservation (See Stipulation IV.B), to identify and recover historical and cultural material and information that may be present within the structure of the building itself. The monitor will be authorized to halt or redirect demolition as needed to permit recovery of information and material.
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- F. Monitoring the work provided for in Stipulations I.D and E by a representative of the tribal parties to this agreement (who may also serve as the archaeological and/or architectural historical monitor if he/she meets the applicable standards of the Secretary of the Interior (See http://www.nps.gov/history/local-law/arch_stnds_9.htm)), designated by the tribes after consultation among themselves.
 - G. Providing copies of all documentation compiled pursuant to stipulations I.A-F above to all consulting parties to this MOA who request such copies.

- II. ***Dismantlement/Demolition.*** VAMC Tomah will ensure that Building 8 is demolished/dismantled with care, in cooperation with the monitors stipulated above, in a manner that protects any culturally sensitive areas identified in the program stipulated above, and that facilitates documentation and recovery of historically, architecturally, and culturally significant information and material. VAMC Tomah will ensure that the following standards and guidelines are met:
- A. No tracked vehicles may be employed in the demolition/dismantlement.
 - B. Disturbance of the ground surface around Building 8 will be kept to a minimum.
 - C. Where consistent with worker and public safety, and where the costs of doing so are not disproportionate to the probable value of the information to be preserved, dismantlement using hand tools will be preferred over demolition using heavy mechanized equipment.
 - D. Where substantial parts of the building (e.g. sections of roof, wall, floor, ceiling), are removed as units, they will be set aside and inspected/documented by monitors before disposal.
 - E. Monitors will be given every reasonable opportunity to inspect the building's structure and interior as it is dismantled/demolished, to recover information, artifacts, and architectural elements, and to document their observations.
 - F. The demolition/dismantling process will be documented on videodisc or its equivalent, with copies of such documentation provided to all parties to this MOA who request such copies.
- III. Reporting, Curation, and Repatriation
- A. The results of the monitoring and documentation stipulated above, combined with the results of the work provided for in Stipulation I, will be used as the basis for a summary report or reports meeting relevant professional standards, and provided to all parties to this MOA who request it.
 - B. Artifacts, architectural features, and other material recovered during the work stipulated above will be managed as follows:
 - i. VAMC Tomah will cause archaeological specimens and associated data to be conserved by an institution or institutions meeting the applicable standards set forth at 36 CFR Part 79, unless one of the stipulations set forth below justifies another form of disposal.

- ii. With the concurrence of the consulting parties, VAMC Tomah may use, or authorize others to use, architectural material salvaged from Building 8 in the repair and maintenance of other buildings on VAMC Tomah campus, or it may safely stockpile such material for future use;
- iii. With the concurrence of the consulting parties, VAMC Tomah may use, or authorize others to use, architectural and archaeological material in exhibits, memorials, and similar facilities on VAMC Tomah campus and/or elsewhere;
- iv. VAMC Tomah will repatriate all Native American cultural items, and any Native American human remains that may be encountered, to culturally associated tribes in accordance with a Plan of Action developed in consultation with the tribes pursuant to the Native American Graves Protection and Repatriation Act and its implementing regulations (43 CFR 10);
- v. To the extent permitted by federal law, at the request of any tribe historically associated with the Tomah Indian Industrial School and its vicinity, and with the concurrence of other tribes participating in the activities stipulated in this agreement, VAMC Tomah will transfer recovered archaeological, architectural, historical and other material to such tribe.
- vi. Material determined by VAMC Tomah not to be subject to one or more of the above sub-stipulations i through v, may be disposed of as VAMC Tomah deems appropriate.

IV. Participation and Education

- A. VAMC Tomah will ensure that in implementing the programs described above, every effort is made to facilitate participation in such programs by tribal members and by interested veterans residing or in treatment at VAMC Tomah.
- B. In continuing consultation with the parties to this agreement, and coordinated with programs under consideration to interpret the overall history of the Tomah Indian Industrial School for the public, VAMC Tomah will commit up to \$5,000.00 to development of appropriate public interest material (such as parts of publications, exhibits, and video) interpreting and memorializing the role and significance of Building 8.

V. Professional Qualifications

- A. VAMC Tomah will ensure that all archaeological work carried out pursuant to this agreement is supervised by an individual or individuals meeting the Secretary of the Interior's Professional Qualifications

Standards for Archaeology (See http://www.nps.gov/history/local-law/arch_stnds_9.htm) and possessing specialized competence in historical archaeology.

- B. VAMC Tomah will ensure that all work relating to the documentation of Building 8's history and architecture, including monitoring demolition/dismantlement, is supervised by an individual or individuals meeting the Secretary of Interior Professional Qualification Standards (See http://www.nps.gov/history/local-law/arch_stnds_9.htm) in Architecture, Historic Architecture, or Architectural History.
- C. The qualifications of tribal monitors under stipulation I.F above will be determined and applied by the tribes.
- D. VAMC Tomah will consult the tribes during its procurement of contractors to perform archaeological and historical studies and monitoring under this agreement, and will make every effort permitted by law to accommodate tribal preferences in contractor selection.

VI. *Dispute Resolution*

- A. Should any party to this agreement object in writing to VAMC Tomah regarding any action carried out or proposed with respect to the undertaking or implementation of this agreement, VAMC Tomah shall consult with the objecting party to resolve the objection. If after initiating such consultation VAMC Tomah determines that the objection cannot be resolved through consultation, VAMC Tomah shall forward all documentation relevant to the objection to the ACHP, including VAMC Tomah's proposed response to the objection. Within 30 days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:
 - 1. Advise VAMC Tomah that the ACHP concurs in VAMC Tomah's proposed response to the objection, whereupon VAMC Tomah will respond to the objection accordingly;
 - 2. Provide VAMC Tomah with recommendations, which VAMC Tomah shall take into account in reaching a final decision regarding its response to the objection; or
 - 3. Notify VA that the objection will be referred for comment pursuant to 36 CFR 800.7(a)(4), and proceed to refer the objection and comment. VA shall take the resulting comment into account in accordance with 36 CFR 800.7(c)(4) and Section 110(l) of NHPA.
- A. Should the ACHP not exercise one of the above options within 30 days after receipt of all pertinent documentation, VAMC Tomah may

assume the ACHP's concurrence in its proposed response to the objection.

- B. VAMC Tomah shall take into account any ACHP recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; VAMC Tomah's responsibility to carry out all actions under this agreement that are not the subjects of the objection shall remain unchanged.
- C. At any time during implementation of the measures stipulated in this agreement, should an objection pertaining to this agreement or the effect of the undertaking on *historic properties* be raised by a member of the public, VAMC Tomah shall notify the 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 to resolve the objection.

VII. ***Duration.*** If the terms of this agreement have not been implemented by January 1, 2012, this agreement shall be terminated. In such event VAMC Tomah shall so notify the parties to this agreement, and if it chooses to continue with the undertaking, shall re-initiate review of the undertaking in accordance with 36 CFR Part 800.

VIII. ***Amendments and Termination.***

- A. Any party to this agreement may propose to the agency that the agreement be amended, whereupon VAMC Tomah shall consult with the other parties to this agreement to consider such an amendment. 36 CFR 800.6(c)(1) shall govern the execution of any such amendment.
- B. If VAMC Tomah determines that it cannot implement the terms of this agreement, or if another party to this agreement determines that the agreement is not being properly implemented, such party may propose to the other parties to this agreement that it be terminated.
- C. The party proposing to terminate this agreement shall so notify all parties to this agreement, explaining the reasons for termination and affording them at least 30 days to consult and seek alternatives to termination. The parties shall then consult.
- D. Should such consultation fail, VAMC Tomah or any other party to this agreement may terminate the agreement by so notifying all parties.
- E. Should this agreement be terminated, the agency shall either:
 - i. Consult in accordance with 36 CFR 800.6 to develop a new agreement; or

ii. Request the comments of the ACHP pursuant to 36 CFR 800.7.

Execution of this agreement and implementation of its terms evidence that VA has afforded the ACHP an opportunity to comment on the removal of Building 8, and that VA has taken into account the effects of the removal of Building 8 on historic properties.

DEPARTMENT OF VETERANS AFFAIRS

By: Jerald D. Mohman Date: 9/4/09

WISCONSIN STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____

HO-CHUNK NATION

By: _____ Date: _____

LAC DU FLAMBEAU TRIBE

By: _____ Date: _____

ONEIDA NATION

By: _____ Date: _____

CONCUR:

BAD RIVER BAND OF LAKE SUPERIOR CHIPPEWA INDIANS

By: _____ Date: _____

LAC COURTE OREILLES BAND OF LAKE SUPERIOR CHIPPEWE INDIANS OF WISCONSIN

By: _____ Date: _____

MENOMINEE TRIBE OF WISCONSIN

By: _____ Date: _____

RED CLIFF BAND OF LAKE SUPERIOR CHIPPEWA

By: _____ Date: _____

FOREST COUNTY POTAWATOMI INDIAN COMMUNITY

By: _____ Date: _____

MOHICAN NATION

By: _____ Date: _____

MOLE LAKE ŠOCAOGON CHIPPEWA COMMUNITY OF WISCONSIN

By: _____ Date: _____

ST. CROIX CHIPPEWA INDIANS OF WISCONSIN

By: _____ Date: _____

LAC VIEUX DESERT BAND OF LAKE SUPERIOR CHIPPEWA
INDIANS

By: _____ Date: _____

MONROE COUNTY HISTORICAL SOCIETY

By: _____ Date: _____

ii. Request the comments of the ACHP pursuant to 36 CFR 800.7.

Execution of this agreement and implementation of its terms evidence that VA has afforded the ACHP an opportunity to comment on the removal of Building 8, and that VA has taken into account the effects of the removal of Building 8-on historic properties.

COPY

DEPARTMENT OF VETERANS AFFAIRS

By: James D. Mohrman Date: 9/4/09

WISCONSIN STATE HISTORIC PRESERVATION OFFICER

By: [Signature] Date: 9/21/09

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: John W. Taylor Date: 9/15/10

HO-CHUNK NATION

By: _____ Date: _____

LAC DU FLAMBEAU TRIBE

By: _____ Date: _____

ONEIDA NATION

By: _____ Date: _____

CONCUR:

BAD RIVER BAND OF LAKE SUPERIOR CHIPPEWA INDIANS

By: _____ Date: _____

LAC COURTE OREILLES BAND OF LAKE SUPERIOR CHIPPEWE INDIANS OF WISCONSIN

By: _____ Date: _____

MENOMINEE TRIBE OF WISCONSIN

By: _____ Date: _____

- d. Should such consultation fail, VA or any other party to this programmatic agreement may terminate the programmatic agreement by so notifying all parties.
- e. Should this programmatic agreement be terminated, VAMC Tomah shall comply with the provisions of 36 CFR 800, Subpart B with respect to each undertaking that would otherwise be managed in accordance with this programmatic agreement.

VII. Duration

This PA will be terminated twenty (20) years from the date of its execution. Prior to such time, VAMC Tomah may consult with the other signatories to reconsider the terms of the PA and amend it in accordance with Stipulation VI above.

~~Execution of this programmatic agreement and implementation of its terms evidence that VAMC Tomah has afforded the ACHP reasonable opportunities to comment on the management of the Medical Center, and that VAMC Tomah is taking into account the effects of the Medical Center's management on historic resources.~~

DEPARTMENT OF VETERANS AFFAIRS

By: _____ Date: _____

WISCONSIN STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____

HO-CHUNK NATION THPO

By: W. Chubb Date: 09/10/10

LAC DU FLAMBEAU TRIBE

By: _____ Date: _____

ONEIDA NATION

By: _____ Date: _____

ii. Request the comments of the ACHP pursuant to 36 CFR 800.7.

Execution of this agreement and implementation of its terms evidence that VA has afforded the ACHP an opportunity to comment on the removal of Building 8, and that VA has taken into account the effects of the removal of Building 8 on historic properties.

DEPARTMENT OF VETERANS AFFAIRS

By: _____ Date: _____

WISCONSIN STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____

HO-CHUNK NATION

By: _____ Date: _____

LAC DU FLAMBEAU TRIBE

By: Jerome B. Big John Date: 3-2-10

ONEIDA NATION

By: _____ Date: _____

CONCUR:

BAD RIVER BAND OF LAKE SUPERIOR CHIPPEWA INDIANS

By: _____ Date: _____

LAC COURTE OREILLES BAND OF LAKE SUPERIOR CHIPPEWE INDIANS OF WISCONSIN

By: _____ Date: _____

MENOMINEE TRIBE OF WISCONSIN

By: _____ Date: _____

Memorandum of Agreement: VAMC Tomah, Removal of Building 8

[2009]

COPY

RED CLIFF BAND OF LAKE SUPERIOR CHIPPEWA

By: Larry Balber Date: 9-15-09

FOREST COUNTY POTAWATOMI INDIAN COMMUNITY

By: _____ Date: _____

MOHICAN NATION

By: _____ Date: _____

MOLE LAKE SOCAOGON CHIPPEWA COMMUNITY OF WISCONSIN

By: _____ Date: _____

ST. CROIX CHIPPEWA INDIANS OF WISCONSIN

By: _____ Date: _____

LAC VIEUX DESERT BAND OF LAKE SUPERIOR CHIPPEWA INDIANS

By: _____ Date: _____

MONROE COUNTY HISTORICAL SOCIETY

By: _____ Date: _____

(c) COPY

RED CLIFF BAND OF LAKE SUPERIOR CHIPPEWA

By: _____ Date: _____

FOREST COUNTY POTAWATOMI INDIAN COMMUNITY

By: _____ Date: _____

MOHICAN NATION

By: _____ Date: _____

MOLE LAKE SOCAOGON CHIPPEWA COMMUNITY OF WISCONSIN

By: *[Signature]* Date: *9-14-09*

ST. CROIX CHIPPEWA INDIANS OF WISCONSIN

By: _____ Date: _____

LAC VIEUX DESERT BAND OF LAKE SUPERIOR CHIPPEWA INDIANS

By: _____ Date: _____

MONROE COUNTY HISTORICAL SOCIETY

By: _____ Date: _____

