

**MEMORANDUM OF AGREEMENT
AMONG
THE U.S. DEPARTMENT OF VETERANS AFFAIRS
NATIONAL CEMETERY ADMINISTRATION,
THE TEXAS STATE HISTORIC PRESERVATION OFFICER,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING
THE REMOVAL AND REPLACEMENT OF
TWO GERMAN PRISONERS OF WAR HEADSTONES AT THE
FORT SAM HOUSTON NATIONAL CEMETERY
SAN ANTONIO, BEXAR COUNTY, TEXAS**

WHEREAS, the U.S. Department of Veterans Affairs (VA) National Cemetery Administration (NCA) proposes to remove and replace two (2) German Prisoners of War (POWs) headstones (Georg Forst and Alfred P. Kafka) with standard government-issued markers matching those prevalent at Fort Sam Houston National Cemetery, 1520 Harry Wurzbach Road, San Antonio, Bexar County, Texas (Project); and

WHEREAS, in accordance with 36 CFR § 800.3(a), NCA has determined that the Project is a federal action that meets the definition of an undertaking per 36 CFR § 800.16(y), and is the type of activity that has the potential to cause effects on historic properties, and therefore subject to review under Section 106 of the National Historic Preservation Act (NHPA), as amended, 54 USC Section 306108, and its implementing regulations, 36 CFR Part 800 – Protection of Historic Properties; and

WHEREAS, in accordance with 36 CFR § 800.2(c)(1), NCA has consulted with the Texas State Historic Preservation Officer (TX SHPO), within the Texas Historical Commission (THC); and

WHEREAS, in accordance with 36 CFR § 800.2(c)(2 through 5), NCA has invited the following to be consulting parties (CPs): Shoshone-Bannock Tribes of the Fort Hall Reservation, Couchatta Tribe of Louisiana, Mescalera Apache Tribe, Apache Tribe of Oklahoma, Comanche Nation, Oklahoma, Wichita & Affiliated Tribes (Wichita, Keeche, Waco & Tawakonie), Oklahoma, Alabama Couchatta Tribe of Texas, The City of San Antonio, Office of Historic Preservation, a Certified Local Government (CLG), Veterans Service Organizations (VSOs), and various local, state and Federal organizations (Attachment 1); and only the Jewish War Veterans VSO has elected to participate; and

WHEREAS, in accordance with 36 CFR § 800.2(d), NCA provided the public with information about the Project and its effects on historic properties and sought comment and input, through notices posted to the NCA National Cemeteries Public Review Documents website and received no public comments (<https://www.cem.va.gov/ea.asp>);

https://www.cem.va.gov/docs/notice/POW_Headstone_Notice_to_the_Public_of_Historic_Property_Adverse_Effect.pdf

https://www.cem.va.gov/docs/notice/POW_Headstone_Descriptions_and_Images.pdf; and

WHEREAS, in accordance with 36 CFR § 800.4(a)(1), NCA, in consultation with the TX SHPO, has determined the undertaking's area of potential effects (APE) to be the entirety of the Fort Sam Houston National Cemetery (Attachment 2); and

WHEREAS, in accordance with 36 CFR § 800.4(b), NCA, in consultation with the TX SHPO, has identified the Fort Sam Houston National Cemetery, listed in the National Register of Historic Places (NRHP) (Reference Number 16000065), as a historic property within the APE that may be affected by the undertaking; and

WHEREAS, in accordance with 36 CFR § 800.5(a), NCA has found, and the TX SHPO has concurred, that the undertaking will have an adverse effect on the historic property as the Project will alter characteristics that qualify it for inclusion in the NRHP in a manner that will diminish the integrity of the property's design, materials, feeling, and association; and

WHEREAS, in accordance with 36 CFR § 800.6, NCA has consulted to resolve the adverse effect; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), NCA has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect finding, providing the specified documentation, and the ACHP in a letter dated July 2, 2020, has chosen to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

NOW, THEREFORE, NCA, the TX SHPO, and the ACHP agree that the adverse effect will be resolved through execution of this Memorandum of Agreement (MOA) pursuant to 36 CFR § 800.6(b)(2), and that the Project will be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

NCA will ensure that the following measures are carried out:

I. INTERPRETATION

- a. NCA will retain and preserve one historic headstone as part of its History Collection.
- b. NCA will pursue development of an agreement with a museum or other appropriate repository to exhibit the other headstone with interpretive information as part of a contextual theme addressing POW burials in National Cemeteries.
- c. NCA will install interpretive signs at all VA cemeteries where foreign-enemy POWs are interred to provide historical context to the interment of foreign nationals and POWs from World War I and World War II in these cemeteries within two (2) years from the date of this MOA's execution.

- d. NCA will develop online exhibit content to be published on the NCA History Program and Fort Sam Houston National Cemetery websites to explain the history of World War I and II POW camps in the United States and context of the headstones and their replacements within one (1) year from the date of this MOA's execution.
- e. NCA will develop a booklet—connected to the 75th Anniversary of the end of World War II—on foreign national burials in VA cemeteries that will include a section on burial of enemy POWs within one (1) year from the date of this MOA's execution. The booklet will be available in and digital formats.

II. MITIGATION REVIEW

- a. NCA shall provide the TX SHPO, through the TX SHPO's eTRAC electronic submission system, with an initial draft of the proposed content for fulfillment of Stipulations I.c. through I.e..
 - i. The TX SHPO shall have 30 calendar days upon initial receipt of each draft to comment and/or request additional information regarding the content.
 - ii. NCA shall take timely comments provided by the TX SHPO into consideration and respond to any questions prior to finalizing the content.

III. DURATION

This MOA will expire (a) upon completion of the Project and Stipulations I and II above, once the signatories are notified of said completion, or (b) if its terms are not carried out within five (5) years from the date of its execution. Prior to such time, NCA may consult with the signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation V. below.

IV. DISPUTE RESOLUTION

- a. 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, NCA will consult with such party to resolve the objection. If NCA determines that such objection cannot be resolved, NCA will:
 - i. Forward all documentation relevant to the dispute, including NCA's proposed resolution, to the ACHP. The ACHP will provide NCA with its advice on the resolution of the objection within 30 calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, NCA will prepare a written response that takes into account any timely advice on comments regarding the dispute from the ACHP, signatories and consulting parties, and provide them with a copy of this written response. NCA will then proceed according to its final decision.

- ii. If the ACHP does not provide its advice regarding the dispute within the 30-day period, NCA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, NCA will prepare a written response that takes into account any timely comments regarding the dispute from the signatories and consulting parties to the MOA and provide them and the ACHP with a copy of such written response.

V. AMENDMENT

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 signatories is filed with the ACHP.

VI. TERMINATION

- a. If a signatory to this MOA determines that its terms will not or cannot be carried out, that party will immediately consult with the other signatories to attempt to develop an amendment per Stipulation V. above. If within 30 calendar days (or another period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.
- b. Once the MOA is terminated, and prior to work continuing on the undertaking, NCA must either (a) execute a MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. NCA will notify the signatories as to the course of action it will pursue.

VII. AVAILABILITY OF FUNDS

NCA's obligations under this MOA are subject to the availability of appropriated funds, and the stipulations of this MOA are subject to the provisions of the Anti-Deficiency Act, 31 USC § 1341. NCA will make reasonable and good faith efforts to secure the necessary funds to implement its obligations under this MOA. If compliance with the Anti-Deficiency Act alters or impairs NCA's ability to do so, it will consult with the other signatories in accordance with the amendment and termination procedures in Stipulations V. and VI., above.

EXECUTION of this MOA by NCA, the TX SHPO, and the ACHP and implementation of its terms evidence that NCA has taken into account the effects of this Project on historic properties and afforded the ACHP an opportunity to comment.

SIGNATORIES

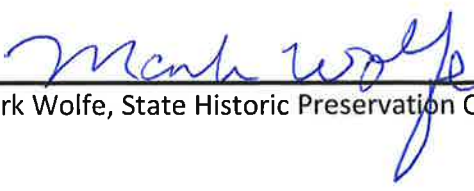
National Cemetery Administration



12/17/20

Ronald Walters, Principal Deputy Under Secretary for Memorial Affairs Date

Texas Historical Commission



Mark Wolfe, State Historic Preservation Officer

12/13/2020
Date

Advisory Council on Historic Preservation



12/18/2020

John M. Fowler, Executive Director

Date

Attachment 1
Invited Consulting Parties

TEXAS

City of San Antonio
Alabama-Coushatta Tribe of Texas
Apache Tribe of Oklahoma
Comanche Nation, Oklahoma
Couchatta Tribe of Louisiana
Mesaclero Apache Tribe of the Mescalero
Reservation, New Mexico
Tonkawa Tribe of Indians of Oklahoma
Wichita and Affiliated Tribes (Wichita,
Keechi, Waco & Tawakonie), Oklahoma
Preservation Texas
Conservation Society of San Antonio
German Consulate General, Texas
German-Texan Heritage Society
Texas German Society
U.S. Army, Fort Sam Houston Museum

NATIONAL

Action Reconciliation Service for Peace
(German)
American Association for State & Local
History
American Ex-Prisoners of War
American Jewish Committee
American Legion
Anti-Defamation League
AmVets
B'nai B'rith International
Disabled American Veterans
German-American Heritage Center & Museum
German War Graves Commission
(Volksbund Deutsche Kriegsgraberfursorge)
Jewish War Veterans of the USA
Military Officers Association
Military Religious Freedom Foundation
National Council on Public History
National Trust for Historic Preservation
National World War II Museum
Retired Enlisted Association
Southern Poverty Law Center
U.S. Holocaust Memorial Museum
Veterans of Foreign Wars
Vietnam Veterans of America

Attachment 2
Area of Potential Effects
Map of Fort Sam Houston National Cemetery

FORT SAM HOUSTON NATIONAL CEMETERY

1520 HARRY WURZBACH ROAD, SAN ANTONIO, TEXAS 78209

