

**MEMORANDUM OF AGREEMENT
BETWEEN THE

NATIONAL CEMETERY ADMINISTRATION,
DEPARTMENT OF VETERANS AFFAIRS
AND THE
KENTUCKY HERITAGE COUNCIL

FOR THE
RELOCATION, CONSERVATION AND REPLICATION
OF THE
BLOEDNER CIVIL WAR MONUMENT, IN CAVE HILL NATIONAL CEMETERY,
JEFFERSON COUNTY, KENTUCKY**

WHEREAS, the National Cemetery Administration (NCA), Department of Veterans Affairs (VA), as a federal agency, is responsible for assuring compliance with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470) and pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (NHPA), (16 U.S.C. 470f); and

WHEREAS, the Kentucky Heritage Council (Kentucky SHPO) is responsible for the protection of historic resources within the Commonwealth; and

WHEREAS, the Bloedner monument is located in NCA's Cave Hill National Cemetery, within the larger private Cave Hill Cemetery at 701 Baxter Avenue, Louisville, Kentucky, is individually listed on the National Register of Historic Places (NRHP), is the nation's oldest Civil War monument, is in an advanced state of deterioration, and will be subject to further material loss if it is not immediately relocated from Cave Hill National Cemetery and professionally conserved; and

WHEREAS, the NCA has secured funding to relocate and conserve the Bloedner monument, and issued a contract to Heritage Preservation, Inc. to complete this service, thereby making the project an undertaking subject to review under Section 106 of NHPA and 36 CFR Part 800.5; and

WHEREAS, the VA has determined that the project will have an adverse effect on the Bloedner monument, and has consulted with the Kentucky SHPO pursuant to 36 CFR Part 800, regulations; and

WHEREAS, the VA has consulted with the Kentucky SHPO to identify the relevant consulting parties, including Indian tribes, and has invited the consulting parties to participate in this action; and,

WHEREAS, the VA has invited the Advisory Council on Historic Preservation (ACHP) to participate in the consultation pursuant to 36 CFR Part 800.6(a)(1), and it has declined to participate;

NOW, THEREFORE, the VA and Kentucky SHPO agree that the project shall be accomplished in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

VA shall ensure that the following stipulations are carried out:

I. MITIGATION

- A. The Bloedner monument shall be relocated to a temporary custodial facility as defined by 36 CFR 79, Section 79.4(j), before January 31, 2009. It will be stored and treated on site by a professional conservator(s) who will be approved by the VA Federal Preservation Officer, in consultation with the Kentucky SHPO. The monument shall remain at the temporary custodial facility for no longer than three (3) years.
- B. The NCA shall fund the relocation of the Bloedner monument to the temporary custodial facility through its contractor, Heritage Preservation Inc., and its two subcontractors, Conservation Solutions, Inc. and Starett Crane and Rigging, by January 31, 2009. C. Heritage Preservation, Inc. will work with the Kentucky SHPO to develop a custodial services contract with the temporary custodial facility to store the Bloedner monument, and allow conservation treatment as needed. A conservation treatment proposal will be submitted to NCA by Conservation Solutions, Inc., to prevent further deterioration. Conservation treatment will not proceed until written permission is secured from the Senior Historian, NCA.
- D. The NCA will fund the construction of a replica of the monument, including interpretive signage to indicate its status as a replica. This replica is to be placed in the monument's current location in Cave Hill National Cemetery by September 30, 2009.
- E. VA will install a temporary sign at the cemetery explaining the absence of the Bloedner monument within 24 hours of removing it from Cave Hill National Cemetery. The VA, Kentucky SHPO and stakeholders shall work together to determine the exact appearance of the replica monument, and organize a public unveiling of it. A qualified monument maker or sculptor shall hand-carve the new monument.
- F. The NCA will work with the Kentucky SHPO to prepare an historic context, which will summarize the historic significance of the monument. The VA will make this context available to the public in electronic and downloadable formats from its website by April 2009.
- G. The relocation of the Bloedner monument is considered an urgent matter and NCA was unable to meet the requirements in 36 CFR 60.14, "Changes and revisions to properties listed in the National Register [of Historic Places (NRHP)]," in advance of relocating the object. VA has written to the Keeper (Keeper) of the NRHP about this omission and the Keeper has determined that as the relocation is a mitigation measure, the monument will not be de-listed, and once the monument is placed at its long-term location, VA will provide the Keeper with new location information.
- H. The VA will ensure that the development of interpretive signage, in Stipulation I.D and I.J., will be carried out by a professional architectural historian or historic archaeologist who meets or exceeds the qualifications for professionalism set forth in the Secretary of the Interior's Standards for Archaeology and Historic Preservation (48 FR 44738-9) and the Kentucky SHPO Specifications. The VA shall afford the Kentucky SHPO an opportunity to review and comment on this individual, as well as the language of the interpretive signage.
- I. The VA will work with the Kentucky SHPO, ACHP and other consulting parties to identify a secure, environmentally controlled custodial facility for long-term care (hereinafter known as

the long-term custodial facility) as defined by 36 CFR 79, Section 79.4(j), where the original Bloedner monument shall reside upon its relocation from the short-term custodial facility. The VA, Kentucky SHPO and long-term custodial facility (to be determined) will coordinate a public unveiling of the original.

- J. The Bloedner monument shall be relocated from the short-term custodial facility to its long-term custodial facility by a qualified firm, yet to be determined.
- K. VA will work with the Kentucky SHPO to develop a custody agreement with the long-term custodial facility to assure regular inspections and conservation as needed. Shall it become necessary to relocate the monument again, the VA will consult with the SHPO to develop a plan on how to proceed. The NCA History Program will serve as VA's point of contact for the custody agreement. The custody agreement shall require that the long-term custodial facility place the Bloedner monument on public display, that it will submit an annual condition report to NCA, and that interpretive signage is installed which is compliant with the Americans with Disabilities Act. The long-term custodial facility may conduct non-invasive studies of the monument with written permission from the NCA Senior Historian.

II. AMENDMENTS AND TERMINATION

- A. Amendments: If any signatory to this Agreement determines that its terms will not or cannot be carried out or that an amendment to its terms must be made, that party shall immediately consult with the other parties to develop an amendment. The amendment will be effective on the date both the VA and the Kentucky SHPO have signed the Agreement. If the signatories cannot agree to appropriate terms to amend the Agreement, any signatory may terminate the Agreement in accordance with Stipulation II.B, below.
- B. Termination: If the Agreement is not amended following the consultation set out in Stipulation II.A, it may be terminated by any signatory and the VA shall have 120 business days to relocate the monument if that is a result of the termination. If the Agreement is terminated for any reason, the agency official shall comply with subpart B of 36 CFR Part 800 with regard to the undertaking.

III. DISPUTE RESOLUTION

Should either party to this Agreement object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, VA shall consult with the objecting party to resolve the objection. If VA determines that such objection(s) cannot be resolved:

- A. VA will forward all documentation relevant to the dispute to the ACHP in accordance with 36 CFR Section 800.2(b)(2). Upon receipt of adequate documentation, the ACHP shall review and advise VA on the resolution of the objection within 30 business days. Any comment provided by the ACHP, and all comments from the parties to the Agreement, will be taken into account by VA in reaching a final decision. VA will provide written notice to all parties within 60 business days.
- B. If the ACHP does not provide comments regarding the dispute within 30 business days after receipt of adequate documentation, VA may render a decision regarding the dispute. In reaching its decision, VA will take into account all comments regarding the dispute from the parties to the Agreement.

- C. VA's responsibility to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged. VA will notify all parties of its decision in writing before implementing that portion of the project subject to dispute under this stipulation. VA's decision will be final.

IV. DURATION

This Agreement shall become effective upon execution by VA and the Kentucky SHPO and it shall continue in full force and effect for three (3) years, or until it is amended or terminated as provided in Stipulation II. The Agreement may be extended for an additional term upon the written agreement of the signatories.

EXECUTION of this Memorandum of Agreement and implementation of its terms are evidence that VA has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

DEPARTMENT OF VETERANS AFFAIRS

By:



William Tuerk, Under Secretary for Memorial Affairs
National Cemetery Administration

12-9-08

Date

KENTUCKY STATE HISTORIC PRESERVATION OFFICER

By:



Mark Dennen, Acting SHPO, Kentucky Heritage Council

12/11/08

Date

Signatories

Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420

Kentucky State Historic Preservation Office, 300 Washington Street, Frankfort, Kentucky 40601