

DEPARTMENT OF VETERANS AFFAIRS

Medical Center
1101 Veterans Drive
Lexington, KY 40502-2236



In Reply Refer To: 596/138LD - HHP

**MEMORANDUM OF AGREEMENT
BETWEEN THE
UNITED STATES DEPARTMENT OF VETERANS AFFAIRS VETERANS HEALTH
ADMINISTRATION
AND THE
KENTUCKY HERITAGE COUNCIL
REGARDING THE DEMOLITION OF BUILDINGS 23, 24, 33, 38 AND 100 AT VAMC,
LEXINGTON, KENTUCKY**

WHEREAS the United States Department of Veterans Affairs Veterans Health Administration (VHA) proposes to demolish buildings 23, 24, 33, 38 and 100 and reestablish grasses and landscaping on the building sites (undertaking). These Buildings have through their abandonment degraded to the extent that the structures are considered hazardous, and the goal of the project is to protect the health safety and welfare of the public at VA Lexington Medical Center; and

WHEREAS the (VHA) Lexington campus was listed on the National Register of Historic Places March 28, 2012 as a Historic District. Building 33 is a non-contributing element and Buildings 23, 24, 38 and 100 are contributing elements to the district; and

WHEREAS the undertaking consists of the demolition of Buildings 23, 24, 38 and 100 and the reestablishment of grasses and landscaping; and

WHEREAS VHA, in consultation with the Kentucky Heritage Council (KHC), Kentucky's State Historic Preservation Office, has defined this project's Area of Potential Effects (APE), as defined in 36 CFR Section 800.16(d), to be the current VA medical campus historic district; and

WHEREAS VHA, in consultation with the KHC, has found that the buildings, are within the APE of the Project; and

WHEREAS VHA, in consultation with KHC, has determined, pursuant to 36 CFR Section 800.5(a), the demolition of Buildings 23, 24, 38 and 100 will be an adverse effect; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), VHA has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation, and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

WHEREAS the VHA, has notified and invited federally recognized Eastern Band of the Cherokee to participate in Section 106 consultation for the undertaking. They opted not to participate; and

NOW, THEREFORE, VHA and the KHC agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

VHA shall ensure that the following measures are carried out:

I. VHA MITIGATIONS

- A. Buildings 23, 24, 38 and 100 shall be digitally photographed before demolition. Prior to demolition, the buildings will be documented with digital photographs showing full views of all exterior elevations, views of any unique or character-defining architectural elements, and any other historic, character-defining features on the interior and exterior. Photographs shall be submitted on an archival CD-R or DVD-R. The National Park Service's current guidelines for digital photography, including labeling, file names and formats shall be followed.
- B. A campus wide archaeological survey shall be completed within 1 year of execution. The resulting report(s) shall be provided to the VA Federal Preservation Office (FPO) and KHC for review and comment. Final reports will be filed with the KHC and the FPO. Any recovered artifacts will be curated in a repository meeting federal curation requirements.
- C. A campus wide historic preservation plan (HPP) shall be prepared within 1 year of execution. The HPP will include campus design guides to establish the guiding principles for new construction or renovation. The HPP will be prepared following the guidelines developed by the FPO office. Preliminary draft and final drafts will be provided to the FPO and KHC for review and comment. Final HPP will be filed with the KHC and the FPO.
- D. VHA shall arrange for VA-focused historic preservation training for key medical center staff to be presented by FPO and KHC within 18 months of execution.
- E. VHA shall retain the services of a preservation professional(s) meeting the Secretary of the Interior's professional qualification standards in applicable disciplines, as well as the SHPO's professional qualification standards as outlined in the current version of "Specifications for Conducting Fieldwork and Preparing Cultural Resource Assessment Reports" (available online at <http://heritage.ky.gov/siteprotect/>) to carry out all stipulations.

II. UNANTICIPATED DISCOVERIES

- A. In the course of conducting work on the Project or any other activity on the Property that involves disturbance of the ground, VHA shall not intentionally or knowingly remove or disturb or cause to be removed or disturbed any archaeological, or other cultural artifacts, relics, remains, or objects of antiquity. Any such artifacts, relics, remains, or objects of antiquity constitute federally owned property under the control of the VHA.

- B. In the event that a previously unidentified archaeological resource is discovered during such activities, VHA shall ensure that all work involving subsurface disturbance in the immediate area of the resource is stopped immediately and in the surrounding area where further subsurface resources may reasonably be expected to occur (the "Site"), and shall immediately notify SHPO. VHA shall then, within ten (10) days of such notice, obtain a Qualified Archaeologist to inspect the Site to determine whether further investigations are warranted. Following the inspection by the Qualified Archaeologist, VHA and SHPO shall consult and determine, within three (3) business days following the completion of such inspection, whether to conduct any archaeological work that may be necessary, and if so, how such archaeological work shall be accomplished. Construction work may continue in the Project area outside the Site.
- C. If, following the inspection by the Qualified Archaeologist, VHA determines that the previously unidentified archaeological resource is eligible for listing in the NRHP, VHA shall submit to SHPO an assessment of the Site's eligibility and a Treatment Plan prepared by VHA to avoid, minimize, or mitigate any adverse effect on the resource. The Treatment Plan shall be prepared and implemented in accordance with the Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation. SHPO shall provide VHA comments on the eligibility of the resource for listing in the NRHP and the Treatment Plan within 14 calendar days of receipt. VHA shall then take into account SHPO's comments regarding NRHP eligibility and the Treatment Plan, and provide consolidated comments to ACHP. VHA shall carry out appropriate actions in accordance with the Treatment Plan. If it is later determined by SHPO and VHA that the archaeological resource on the Site does not meet the criteria for eligibility in the NRHP (36 CFR § 60.4), VHA shall provide SHPO with a written report on actions taken pursuant to the Treatment Plan within thirty (30) calendar days following the resumption of work on the Site.
- D. If human remains are identified on the Property by any action taken pursuant to this Agreement, VHA shall consult and notify SHPO within 3 Business Days and shall develop and implement a plan for the appropriate treatment of those remains in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA) (25 USC § 3001 et. seq. as appropriate) and the Archaeological Resources Protection Act (ARPA) (16 § USC 470aa et. seq.) and their respective regulations. The plan shall include provisions for in-place preservation, excavation, and analysis, in accordance with a data recovery plan approved pursuant to this Agreement, and disposition of the remains as appropriate. VHA shall, in good faith, consult with the relevant parties in accordance with applicable law. The VHA shall then submit the plan to SHPO for review and comment prior to its implementation.

III. MONITORING AND REPORTING

Annually following the execution of this MOA until it expires or is terminated, VHA shall provide all parties to this MOA a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in VHA's efforts to carry out the terms of this MOA.

IV. 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, VHA shall consult with such party to resolve the objection. If VHA determines that such objection cannot be resolved, VHA will:

A. Forward all documentation relevant to the dispute, including the VHA's proposed resolution, to the ACHP. The ACHP shall provide VHA with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, VHA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, and signatories, and provide them with a copy of this written response. VHA will then proceed according to its final decision.

B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, VHA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, VHA shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.

C. VHA'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.

V. 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.

VI. 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 V, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on the undertaking, VHA must either (a) execute an 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. VHA shall notify the signatories as to the course of action it will pursue.

VII. DURATION

This MOA will expire if its terms are not carried out within two (2) years from the date of its execution. Prior to such time, VHA may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation V above.

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

SIGNATORIES:

UNITED STATES DEPARTMENT OF VETERANS AFFAIRS, LEXINGTON MEDICAL CENTER

Signed by:  Date: 12/18/14

Name and Title: Emma Metcalf, MSN, RN
Director

KENTUCKY HERITAGE COUNCIL

Signed by:  Date: 12-24-14

Name and Title: Director and SUPO
(Typed or printed)