

MEMORANDUM OF AGREEMENT  
AMONG  
THE U.S. DEPARTMENT OF VETERANS AFFAIRS  
NATIONAL CEMETERY ADMINISTRATION,  
THE UTAH STATE HISTORIC PRESERVATION OFFICER,  
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING  
THE REMOVAL AND REPLACEMENT OF  
GERMAN PRISONER-OF-WAR HEADSTONE AT  
FORT DOUGLAS POST CEMETERY  
SALT LAKE CITY, SALT LAKE COUNTY, UTAH

**WHEREAS**, the U.S. Department of Veterans Affairs (VA) National Cemetery Administration (NCA) proposes to remove and replace one German Prisoner of War (POW) headstone (Paul Eilert), which is inscribed with a highly offensive symbol (a swastika), with a standard government-issued headstone at Fort Douglas Post Cemetery, Fort Douglas Boulevard, Salt Lake City, Salt Lake County, Utah (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 Utah State Historic Preservation Officer (UTSHPO), within the Utah Division of State History (UDSH); and

**WHEREAS**, in accordance with 36 CFR § 800.2(c)(2 through 5), NCA has invited the following to be consulting parties (CPs): Northwestern Band of the Shoshone Nation, Shoshone-Bannock Tribes of the Fort Hall Reservation, Ute Tribe of the Uintah and Ouray Reservation, The Salt Lake City Historic Landmarks Commission, 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, Fort Douglas Military Museum, and Robert Goldberg, private citizen, have 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_Notice_to_the_Public_of_Historic_Property_Adverse_Effect.pdf)

[https://www.cem.va.gov/docs/notice/POW\\_Headstone\\_Descriptions\\_and\\_Images.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 UT SHPO, has determined the undertaking's area of potential effects (APE) to be the entirety of the Fort Douglas Post Cemetery (Attachment 2); and

**WHEREAS**, in accordance with 36 CFR § 800.4(b), NCA, in consultation with the UT SHPO, has identified the Fort Douglas Post Cemetery, listed in the National Register of Historic Places (NRHP) (Reference Number 70000628), 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 UT 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 initially elected to apply conservation techniques to the original headstone in a reversible manner that would obscure the swastika in order to avoid an adverse effect; however, the approved conservation treatment was vandalized shortly after installation and repeated unauthorized attempts to remove the treatments may permanently damage the headstone, therefore NCA has now elected to replace the headstone; 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 UT 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 remove the original historic headstone and replace it with a government-furnished white marble headstone without offensive iconography. Text on the replacement headstone will be consistent with those of the other German POWs buried in the POW section of the cemetery.
- b. NCA will retain the Paul Eilert headstone in the NCA History Collection for study, conservation and potential exhibit as appropriate.

- c. NCA will install interpretive signs at all 23 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 website to explain the history of World War I and II POW camps in the United States and context of the Paul Eliert headstone within one (1) year from the date of this MOA's execution.
- e. NCA will develop a booklet—connected to the 75<sup>th</sup> 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 print and digital formats.

## II. MITIGATION REVIEW

- a. NCA shall provide the UT SHPO with an initial draft of the relevant proposed content, including the booklet noted in I.e and interpretive signage to be installed in the Fort Douglas Post Cemetery, for fulfillment of Stipulations I.c. through I.d.
  - i. The UT SHPO shall have 30 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 UT 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 is 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 UT 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.

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SALT LAKE CITY, SALT LAKE COUNTY, UTAH

SIGNATORY

National Cemetery Administration

Ronald E. Walters 111677  Digitally signed by Ronald E. Walters  
111677  
Date: 2022.01.27 10:02:44 -05'00'

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Ronald Walters, Principal Deputy Under Secretary for Memorial Affairs

Date

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SIGNATORY

Utah Division of State History

**Christopher W.  
Merritt**



Digitally signed by Christopher  
W. Merritt

Date: 2022.01.27 09:12:36 -07'00'

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Dr. Christopher Merritt, Ph.D, RPA , State Historic Preservation Officer

Date

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SIGNATORY

Advisory Council on Historic Preservation



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Reid J. Nelson, Executive Director, Acting

2/1/2022

Date



Attachment 1  
Invited Consulting Parties

**UTAH**

University of Utah	National World War II Museum
Fort Douglas Military Museum	Retired Enlisted Association
Northwestern Band of Shoshoni Nation	Southern Poverty Law Center
Shoshone-Bannock Tribes of the Fort Hall Reservation	U.S. Holocaust Memorial Museum
Ute Tribe of the Uintah and Ouray Reservation	Veterans of Foreign Wars
German American Society of Utah	Vietnam Veterans of America
Preservation Utah	
Salt Lake City Historic Landmarks Commission	
German Consulate General, Utah	

**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

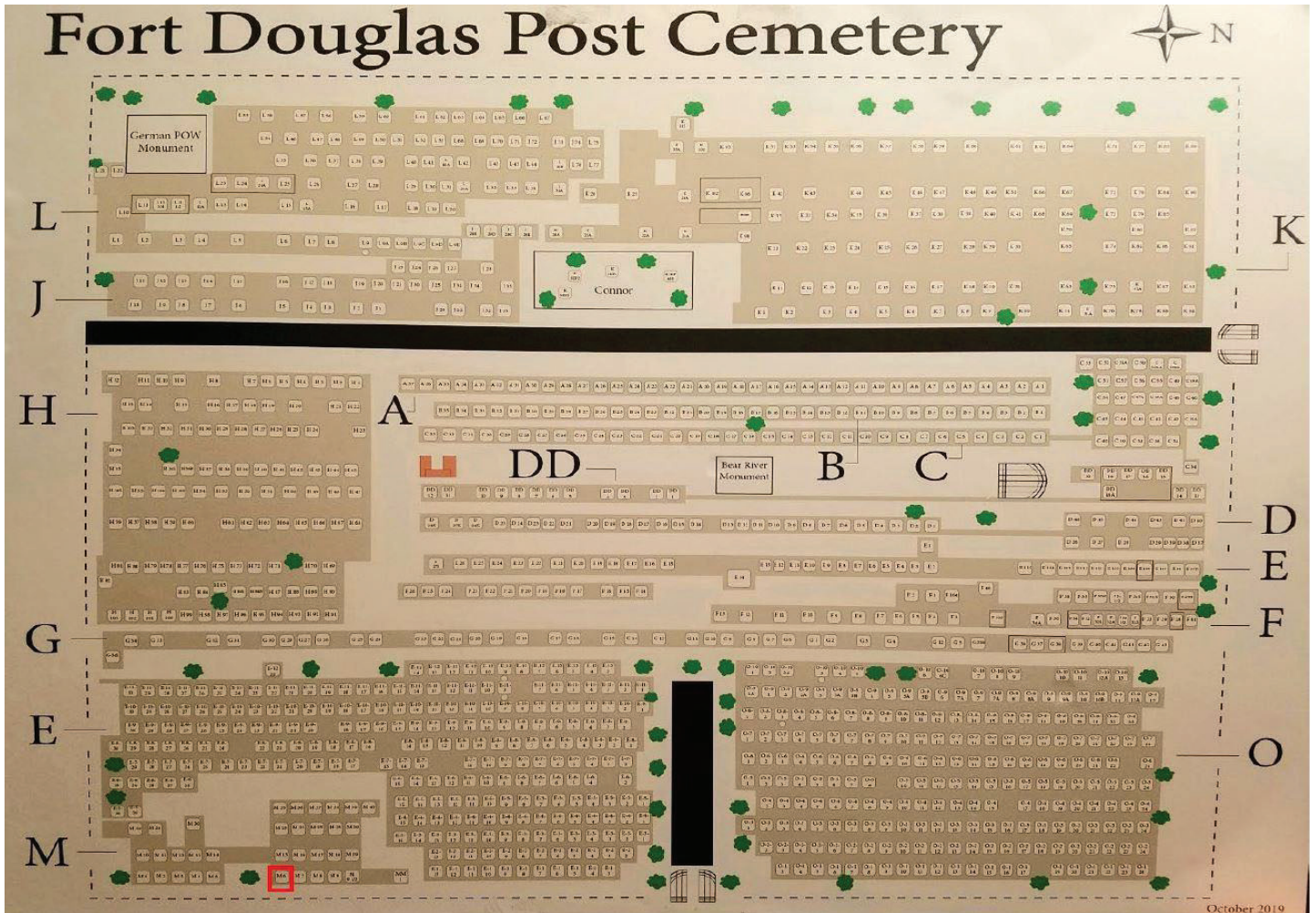
Military Officers Association

Military Religious Freedom Foundation

National Council on Public History

National Trust for Historic Preservation

Attachment 2  
Area of Potential Effect  
Fort Douglas Post Cemetery



Subject Headstone Location Marked in Red Square