

**MEMORANDUM OF AGREEMENT
AMONG THE U.S. ARMY CORPS OF ENGINEERS, LOUISVILLE DISTRICT,
THE KENTUCKY STATE HISTORIC PRESERVATION OFFICER, AND
LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT**

**REGARDING
PROPOSED LEGACY BUSINESS PARK DEVELOPMENT
FAYETTE COUNTY, KENTUCKY
LRL-2021-00714-sea**

WHEREAS, Lexington Fayette Urban County Government (Applicant) has submitted a Department of the Army (DA) Section 404 of the Clean Water Act (CWA) Nationwide Permit (NWP) No. 39 verification request to the U.S. Army Corps of Engineers, Regulatory Division (Corps) for impacts to jurisdictional waters of the U.S. (undertaking) associated with proposed construction of the Legacy Business Park commercial development, Fayette County, Kentucky; and

WHEREAS, the Applicant proposes to permanently discharge fill into 230 linear feet of an intermittent stream and 0.039 acre of wetland, and temporarily discharge fill into 20 linear feet of a second intermittent stream; and

WHEREAS, the proposed discharge of fill into jurisdictional waters would require a DA Permit (undertaking; Corps ID No. LRL-2021-00714-sea) and the Corps has defined the undertaking's Permit Area pursuant to 33 CFR Part 325 Appendix C as the discharge of fill into jurisdictional waters and any access, staging, and borrow areas associated with the impacts; and

WHEREAS, the Corps has coordinated the cultural resources review pursuant to Section 106 of the National Historic Preservation Act of 1966 (NHPA), as amended (54 USC 300101 et seq.: Historic Preservation; formerly 16 U.S.C. 470f); and

WHEREAS, archaeological survey and Phase II testing conducted as part of the cultural resources review recorded site 15Fa408, a multi-component site with precontact and historic-period components; and

WHEREAS, the Corps has consulted with the Kentucky Heritage Council/State Historic Preservation Office (SHPO), pursuant to 36 C.F.R. Part 800, regulations implementing the NHPA; and

WHEREAS, the Corps and SHPO concur that archaeological site 15Fa408 meets the criteria for inclusion in the National Register of Historic Places (NRHP) under Criterion D, information potential; and

WHEREAS, the Corps invited the following federally recognized Native American Tribes (Tribes) to consult on the proposed undertaking: Cherokee Nation, Eastern Band of Cherokee Indians, United Keetoowah Band of Cherokee Indians, Eastern Shawnee, Shawnee, Absentee Shawnee, Osage Nation, Delaware Tribe, and the Delaware Nation, and the Osage Nation accepted the invitation to consult; and

WHEREAS, the proposed Legacy Business Park development would result in destruction of site 15Fa408; and

WHEREAS, in accordance with 36 C.F.R. §800.5(d)(2) and 33 C.F.R. §325, Appendix C(7)(d), and the Interim Guidance issued by the Corps on 25 April 2005, the Corps has determined that the proposed undertaking would have an Adverse Effect on site 15Fa408 and SHPO has concurred with the Adverse Effect finding;

WHEREAS, the Applicant has participated in the development of this Memorandum of Agreement (MOA) and been invited to sign the MOA as an Invited Signatory; and

WHEREAS, the Osage Nation declined to participate in the development of this Memorandum of Agreement (MOA) and to sign the MOA, but requested to remain as a consulting party; and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), the Corps has notified the Advisory Council on Historic Preservation (ACHP) of its Adverse Effect determination, provided the specified documentation, and the ACHP has chosen not to participate in the consultation pursuant to 36 C.F.R. § 800.6(a)(1)(iii);

NOW, THEREFORE, the Corps and the SHPO agree 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, and further agree that these stipulations will govern the undertaking and all of its parts.

Stipulations

The Corps will condition the DA permit, if issued, to ensure that the following stipulations are implemented:

I. ARCHAEOLOGICAL SITE 15Fa408

- A. All archaeological investigations, personnel, and archaeological reports must conform to the Secretary of the Interior's (SOI) "Standards and Guidelines for Archaeology and Historic Preservation (48 F.R. 44716, Sept. 1983) and the most recent version of "Specifications for Conducting Fieldwork and Preparing Cultural Resources Assessment Reports," issued by the Kentucky Heritage Council. Prior to commencement of construction activities within the boundaries of archaeological site 15Fa408, the Applicant will ensure that the adverse impact to 15Fa408 is mitigated through implementation of the Phase III data recovery plan prepared by the Applicant's cultural resources agent, Cultural Resource Analyst, Inc, (CRA) and approved by the Corps and the SHPO. The data recovery plans are attached to the MOA as Appendix A.
- B. During the Phase III data recovery process, the Applicant will provide bi-weekly field progress reports to the Corps, who will distribute the reports to SHPO. Should the Corps or SHPO feel that anything in the bi-weekly updates needs to be addressed by additional field work, the Corps will immediately notify the Applicant and CRA for their consideration.
- C. Within three (3) weeks of completion of fieldwork, the Applicant will provide the Corps with a management summary describing the results of the Phase III excavations at 15Fa408. The summary will describe the extent of the completed Phase III excavation work and review key findings at a level of detail sufficient for Corps and SHPO to agree that a sufficient level of work has been completed. Upon receipt, the Corps will distribute a copy of the management summary to the SHPO.
 1. The Corps and SHPO will provide comments on the management summary within fourteen (14) days of receipt.

2. Upon approval of the management summary by the Corps and SHPO, construction activities may commence within the site boundary.
- E. After completion of the archaeological fieldwork, the Applicant will provide the Corps with data analysis and report progress updates twice per year. Updates will be submitted to the Corps on 1 June and 1 December, until such time as a report describing the results of excavation at 15Fa408 have been completed and accepted as final by the Corps and SHPO. The Corps will distribute the progress reports to the SHPO. During review of the bi-annual progress reports, if the Corps or SHPO identify any issues that need to be addressed prior to final approval, those parties will relay such issues to the Applicant for consideration. Within twenty-four (24) months of completion of fieldwork, the Applicant will submit one (1) digital copy of the draft report completed by the cultural resources consultant. The Corps will distribute the draft reports to SHPO for review and comment.
1. The SHPO will provide the Corps with comments on the draft report within forty-five (45) days of receipt of the report.
 2. The Corps will compile the comments from the SHPO and, along with the Corps' comments, provide them to the Applicant.
 3. The Applicant will ensure that its archaeological consultant incorporates comments on the draft report into the final revised report and provide one (1) digital copy of the final report to the Corps within sixty (60) days of receipt of comments. The Corps will provide a digital copy of the final report to the SHPO and the Osage Nation upon receipt.

II. ADDITIONAL MITIGATION

- A. The Applicant will contract with a SOI-qualified cultural resources consultant to create three (3) signs to be placed along Legacy Trail. The signs should address the precontact history of Fayette County, archaeological findings at the site, and lifeways of the historic-period inhabitants including enslaved individuals.
1. Within sixty (60) days of completion of the Phase III data recovery report, and submittal of the report to the Corps, the consultant will provide a proposal detailing text for the sign themes to the Corps. The Corps will distribute the proposal to the SHPO for review and comment. A map showing the proposed location of the signage will be submitted with the proposed text.
 - a. No information or subjects considered sensitive or inappropriate to Native American Tribes will be included in the signage.
 - b. The Corps and SHPO will provide comments on the proposed signage subject matter and locations within thirty (30) days of receipt of the proposal.
 2. The consultant will incorporate the comments and provide a revised proposal to the Corps within thirty (30) days of receipt of comments. The Corps will distribute the revised proposal to the SHPO for review and approval.

- a. The Corps and SHPO will provide comments on the final signage subject matter and locations within 14 business days of receipt of the final proposal.
- b. Following approval of the final proposal, the consultant may initiate development of the historical signage.

III. TREATMENT OF HUMAN REMAINS AND ITEMS OF RELIGIOUS AND CULTURAL IMPORTANCE

The Corps will enforce the following stipulations until such time as all ground disturbing activities associated with the proposed undertaking have been completed.

- A. If human remains, funerary objects, sacred objects, burial furniture, or objects of cultural patrimony are encountered during project field investigations or construction activities, the Corps will comply with all provisions outlined in Section III-C of this MOA.
- B. If items of religious and cultural importance to any Federally recognized Tribe are encountered or collected, the Corps will comply with all provisions outlined in the appropriate Federal acts, statutes, guidance, provisions, etc. and any decisions regarding the treatment of items of religious and cultural importance will be made in consultation and concurrence with the Federally recognized Tribes.
- C. Plan for Inadvertent Discoveries of Native American Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony.
 1. The Applicant, any contractor, their agents, representatives, or employees who knows or has reason to know that he or she has inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony must immediately notify the Corps by phone of the inadvertent discovery. Should human remains be discovered, the Fayette County Sheriff's Office (859-252-1771) and the Fayette County Coroner (859-455-5700) must also be immediately contacted, as per Kentucky state law. If the Fayette County Coroner and Fayette County Sheriff find that the human remains do not constitute a crime scene and if they determine that there is no need for a legal inquiry or a criminal investigation, then the Corps will proceed with consultation.
 2. Upon encountering potential human remains, funerary objects, sacred objects items of cultural patrimony, or funerary objects during mass earthmoving or other construction-related ground disturbing activities, the Applicant will ensure that the construction contractor immediately stops work within a thirty-one (31)-meter (100 ft) radius buffer zone around the point of discovery. The Applicant will then contact the Project Archeologist and the Human Skeletal Analyst (HSA). The HSA will examine the skeletal material. If the HSA determines that it is human, the HSA will notify the Fayette County Sheriff, the Fayette County Coroner, and the Corps. If such remains or objects are uncovered during controlled archaeological excavation work, further excavation will stop within a three (3)-meter (10-ft) radius around the discovery. The Corps will ensure that the Applicant implements additional measures, as appropriate, such as installation of a fence providing a 50 foot buffer to the excavation area to protect the discovery from looting and vandalism, but will not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery until the discovery has been determined to non-criminal in nature, non-Native American historic-era, and/or the Corps has completed consultation with Federally-recognized Tribes.

3. If the human remains are determined to be historic-era non-Native American, the remains will be excavated by a team under the direction of the HSA. The Corps will determine additional steps to be taken regarding analysis of the remains, identification of relatives, and reburial.
4. If the human remains are determined to be prehistoric or historic-era Native American, the Corps will notify Federally recognized Tribes with an interest in the geographic area within twenty-four (24) to forty-eight (48) hours and determine an appropriate course of action in consultation with interested Tribes and the signatories of the Memorandum of Agreement covering the undertaking .
5. The Corps will also notify Federally recognized Tribes with an interest in the geographic area within twenty-four (24) to forty-eight (48) hours of the discovery of Native American human remains, funerary objects, sacred objects, items of cultural patrimony, or burial furniture.
6. Concurrently, the Corps will notify the SHPO by telephone and email within forty-eight (48) to seventy-two (72) hours of the discovery of Native American human remains or funerary objects and inform them of the steps already taken to address the discovery.
7. Other than for crime scene investigation, no intentional excavation, examination, photographs, public access, publicity, or analysis of human remains suspected of being Native American, funerary objects, sacred objects, items of cultural patrimony, or burial furniture will be conducted by the Applicant's archaeological consultant, the Corps' archaeologists, or any other professional without first consulting with Federally recognized Tribes and securing permission from the Federally recognized Tribes.
8. The Corps archaeologist, in consultation with the Applicant's archaeological consultant, the SHPO, as appropriate, and the Federally-recognized Tribes, will have seven (7) working days to determine the degree to which Native American human remains were disturbed, and, if possible, assess their potential age, cultural affiliation, and identity, without any further disturbance. Upon making their determination, or at the end of the seven (7) days, whichever comes first, the Corps will notify the SHPO and the Federally recognized Tribes of its findings. This notification must include pertinent information as to kinds of human remains, funerary objects, sacred objects, or items of cultural patrimony discovered inadvertently, their condition, and the circumstances of their inadvertent discovery.
9. The SHPO, as appropriate, and the Federally recognized Tribes will have seventy-two (72) hours to respond verbally followed by written response via U.S. mail and/or electronic mail. The response should specify each entity's intention to conduct or decline further consultation.
10. The Corps will consult with the Federally recognized Tribes or identified lineal descendant regarding additional measures to avoid and protect or mitigate the adverse effect of the project on the Native American human remains and grave site. These measures may include:
 - a. formal archaeological evaluation of the grave site;

- b. exploration of potential alternatives to avoid the human remains or grave; and
 - c. development and implementation of a mitigation plan by the Corps in consultation and concurrence with the Federally recognized Tribes, including procedures for disinterment and re-interment.
11. The Corps, in consultation with the Federally recognized Tribes and other interested parties such as living lineal descendants, may consult with a qualified physical anthropologist, forensic scientist, or other experts as may be needed to examine and assess the inadvertent discovery. Unless the remains were inadvertently removed, the evaluation will be conducted at the site of discovery. The consulting expert will be allowed to draw and measure the exposed remains and associated funerary objects. No photographs or digital images will be permitted. Drawings and other records will be curated at a State-approved curation facility in Kentucky. Drawings cannot be published in any form or shown as part of scholarly presentations without the written permission of the Federally recognized Tribes assuming responsibility for the remains or nearest living lineal descendant.

A report of findings describing the background history leading to and immediately following the reporting and resolution of an inadvertent discovery will be prepared in consultation with Federally recognized Tribes, including the Federally recognized Tribes assuming responsibility for the remains. This report must meet the SOI's Standards and Guidelines for Archeology and Historic Preservation (49 FR 44716). Each such report will be distributed to the SHPO, as appropriate, and to Federally recognized Tribes.

IV. POST-REVIEW DISCOVERY

- A. If, during the implementation of the undertaking a previously unidentified cultural resource is encountered, the Applicant will ensure that the construction contractor stops work within a 100-foot radius of the newly identified cultural resource and will immediately notify the Corps.

The Corps will notify the SHPO, Federally recognized Tribes with a geographic interest in the area, and other consulting parties, as appropriate, within forty-eight (48) hours. The Applicant will implement interim measures to protect the discovery from looting and vandalism. Construction may continue outside the buffer zone.

1. Within seventy-two (72) hours of receipt of this notification of the discovery, the Corps archaeologist will inspect the work site to determine the extent of the discovery and ensure that work activities have halted within the 100-ft radius buffer zone and ensure the area is clearly marked and measures have been taken to protect the discovery.
2. The Corps will provide an assessment of the site's NRHP eligibility to the SHPO, Federally recognized Tribes, and the ACHP, as appropriate, within seven (7) working days of the discovery.
3. The SHPO, the ACHP, Federally recognized Tribes, and other consulting parties, as appropriate, will have seven (7) working days following notification to concur or disagree with the Corps' determination of the NRHP eligibility of the discovery.

4. If the find is determined to be potentially significant, the Corps will consult with the SHPO, the Federally recognized Tribes, and other consulting parties, as appropriate, regarding the appropriate measures for site treatment pursuant to 36 CFR § 800.6(a).
 5. If the Corps archaeologist, in consultation with the SHPO, the Federally recognized Tribes, and other consulting parties, as appropriate, determines the find is isolated, completely disturbed by construction activities, will not be further disturbed by construction activities, or does not meet the criteria for inclusion in the NRHP, construction may resume within the 100-ft radius buffer zone.
- B. If the unanticipated discovery is potentially Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony, the Corps will comply with the provisions detailed in Stipulation III above. All other unanticipated discoveries will be treated in accordance with Stipulation IV.

V. DISPUTE RESOLUTION

- A. Should any Signatory, Invited Signatory, or concurring party object at any time in writing to the Corps regarding any action carried out or proposed with respect to the undertaking or to the manner in which the terms of this MOA are implemented, the Corps will consult with such party to resolve the objection. The Corps also will notify the other Signatory, Invited Signatories, and concurring parties to this MOA of such objection, and provide them the opportunity to participate in any consultations to resolve the objection. If the Corps determines that such objection cannot be resolved, the Corps will forward all documentation relevant to the dispute, including the Corp's proposed resolution, to the ACHP. Within thirty (30) days after receipt of all pertinent documentation, the ACHP will exercise one of the following options:
1. Advise the Corps that the ACHP concurs in the Corps' proposed response to the objection, whereupon the Corps will respond to the objection accordingly; or
 2. Provide the Corps with recommendations, which the Corps will take into account in reaching a final decision regarding its response to the objection. Prior to reaching a final decision on the dispute, the Corps will prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, Signatories, Invited Signatories, and concurring parties, and provide them with a copy of this written response.
 3. Should the ACHP not exercise one of the above options within thirty (30) days after receipt of all pertinent documentation, the Corps may assume the ACHP's concurrence with the Corps' proposed response to the objection. The Corps will prepare a written response that takes into account any timely comments regarding the dispute from the Signatories, Invited Signatories, and concurring parties to the MOA, and provide them with a response.
 - a. The Corps will then proceed with its final decision.
- B. The Applicant's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remains unchanged.

VI. TERMINATION

- A. If the Corps determines that it cannot implement the terms of this MOA, or if a Signatory or Invited Signatory determines that the MOA is not being properly implemented, such party may propose to the other signatories to this MOA that it be terminated, in accordance with 36 C.F.R. §800.6(c)(1) and (8).
- B. The Corps will so notify all parties to this MOA of the proposal to terminate, explain the reasons for termination and afford the parties at least thirty (30) days to consult and seek alternatives to termination. The parties will then consult.
- C. If after the expiration of thirty (30) days (or such greater time period as may be agreed upon by all Signatories and Invited Signatories) an agreement to avoid termination cannot be reached, the Corps or other Signatory or Invited Signatory may terminate this MOA by so notifying all parties in writing.
- D. Should this MOA be terminated, the Corps will either:
 - 1. Consult in accordance with 36 C.F.R. §800.6 to develop a new MOA; or
 - 2. Request the comments of the ACHP pursuant to 36 C.F.R. §800.7.

VII. AMENDMENTS

- A. Any Signatory or Invited Signatory to this MOA may propose to the Corps that the MOA be amended, whereupon the Corps will consult with the other parties to this MOA to consider such an amendment; execution of any such amendment will be governed by 36 C.F.R. §800.6(c)(1). The signatures of all of the Signatories and Invited Signatories will be required for any amendment hereto to be effective.

VIII. DURATION

- A. If the DA permit is not issued or the proposed project is not constructed, this MOA will be considered null and void. If the terms of this MOA have not been implemented within three (3) years of the date the DA permit was issued the Corps, prior to the expiration of the 3-year term, may consult with the other Signatory and Invited Signatories to reconsider the terms of the MOA, including the 3-year time limit, and amend it in accordance with Stipulation VII above.
- B. This MOA will be effective upon signature of all Signatories and Invited Signatories and filing with ACHP and will remain in effect until the earliest of the following occurs: all of its terms are satisfied, the 3-year implementation period has expired, or it is amended or terminated and replaced.
- C. Execution of this MOA and implementation of its terms will evidence that the Corps has afforded the ACHP an opportunity to comment on the proposed undertaking and its effects on historic properties, and that the Corps has taken into account the effects of the undertaking on historic properties.

SIGNATORIES:

U.S. ARMY CORPS OF ENGINEERS LOUISVILLE DISTRICT

Signed by handwritten signature or electronically:



Eric Reusch
Chief, Regulatory Division

7/24/2024

Date

KENTUCKY STATE HISTORIC PRESERVATION OFFICER

Signed by handwritten signature or electronically:

Craig A. Potts, Director, Kentucky Heritage Council
And Kentucky State Historic Preservation Officer

Date

Signed by hand-written signature or electronically:

Legal Counsel
Tourism, Arts, and Heritage Cabinet

Date

INVITED SIGNATORY:

Lexington Fayette Urban County Government

Signed by handwritten signature or electronically:

Name, Designated Signatory

Date

Title

Memorandum of Agreement
Legacy Business Park,
Fayette County, KY
LRL-2021-00714-sea

APPENDIX A

Scope of Services for Archaeological Data Recovery at Site 15Fa408 for the Legacy Business Park in Fayette County, Kentucky (revised)

May 29, 2024

Submitted to:

Molly Foree Cummins

Third Rock Consultants, LLC | 2526 Regency Road | Suite 180 | Lexington, KY 40503

Office: (859) 977 2000 | Cell: (859) 445-1682 | www.thirdrockconsultants.com

mforee@thirdrockconsultants.com

The Lexington-Fayette Urban County Industrial Development Authority, Inc. (IDA)
Legacy Business Park
Fayette County, Kentucky
Lexington West 7.5' Quad

Introduction

Site 15Fa408 was first discovered during a 2023 survey conducted by Cultural Resource Analysts, Inc. (CRA) for the proposed Legacy Business Park development project in Fayette County, Kentucky. Following the survey, the site could not be assessed for its eligibility for inclusion in the National Register of Historic Places (NRHP), and further work was recommended (Niquette and Johnson 2023). At the request of Molly Foree Cummins of Third Rock Consultants, LLC (henceforth, Third Rock), phase II NRHP evaluation investigations were conducted at Site 15Fa408 between January 8 and February 5, 2024. Based on the results of the NRHP evaluation excavations, the site is recommended eligible for inclusion in the NRHP. An on-site meeting with United States Army Corps of Engineers (USACE) and Kentucky Heritage Council (KHC) personnel along with representatives of Gresham Smith and the Lexington Fayette Urban County Government (LFUCG) was conducted on January 30, 2024, and it was verbally agreed by USACE and KHC that Site 15Fa408 is eligible for inclusion in the NRHP and that further work is warranted. During that same meeting, a management summary was requested at the conclusion of the phase II testing of the site, to be followed by a work plan for the phase III data recovery investigations, both of which would be submitted to Third Rock and then USACE for review. The management summary was submitted to Third Rock on February 14, 2024, and this document serves as the phase III data recovery work plan. The phase II testing was conducted under Office of State Archaeology (OSA) Antiquities Act Permit Number 2024-04 pursuant to Kentucky Revised Statute (KRS) 164.720, and the data recovery investigations will be conducted under the same permit assuming the work will be conducted within the same calendar year.

Project Background

Site 15Fa408, which is 15,414 sq m (161,459 sq ft) in size as measured in QGIS is an early nineteenth- to early twentieth-century farmstead/residence (Niquette and Johnson 2023). A light scatter of non-diagnostic precontact lithics and two Woodland pottery sherds also have been recovered, but no intact precontact deposits have been identified. The site is situated on a ridgetop within undissected uplands in a plowed agricultural field. It extends approximately 145 m north to south and 165 m east to west. A high density of artifacts was recovered, and two possible features were recorded during the phase I survey of the site (Niquette and Johnson 2023:89–100).

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On December 15, 2023, a geophysical survey using electromagnetic induction (EMI) was conducted, indicating high potential for the presence of buried archaeological deposits and/or features, several of which were likely associated with former structures. Utilizing the EMI survey results data, the NRHP evaluation excavations of Site 15Fa408 were conducted between January 8 and February 5, 2024. The testing of the site included the excavation of six 1-x-1 m test units and eight strip blocks totaling 829.7 sq m. Five of the test units (TUs 1–5) were placed in locations to sample various parts of the site based on the geophysical survey results as well as high probability areas, and TU 6 was excavated specifically to sample a trash pit feature (Feature 4). TU 2 also sampled a feature (Feature 8), but this was inadvertent as the feature was not discovered until the unit excavation was in progress. A total of 11 features and nine postholes were recorded during NRHP evaluation of the site. The features included an early nineteenth-century hammer-dressed limestone building foundation and central chimney base associated with former slave quarters (Features 1 and 2) that actually could date as early as the late eighteenth century; a late nineteenth-century fill/gravel deposit in a shallow depression (Feature 3) capping a large posthole (PH 6) and a small posthole (PH 8); a large late eighteenth-/early nineteenth-century trash pit (Feature 4); a hammer-dressed limestone foundation associated with a late eighteenth-/early nineteenth-century dwelling (Feature 5); a twentieth-century drainage trench (Feature 6); the remains of a twentieth-century artifact concentration adjacent to a line of bricks (Feature 7); a cellar (Feature 8) associated with the former late eighteenth-/early nineteenth-century dwelling (Feature 5); a disturbed limestone foundation with a possible cellar containing voids and a high density of mid-twentieth-century artifacts (Feature 9); a late nineteenth- to early twentieth-century artifact concentration in a depression that may have been located beneath a small outbuilding at one time (Feature 10); and an ash and coal deposit within a rectangular stain that may have actually been a large posthole associated with Feature 3/PH 6. Based on the archaeological data and the preliminary archival research conducted for the phase I survey, it is averred that the house/cellar (Features 5 and 8) was the former dwelling of Henry Gilbert, who resided there with his family in 1850 and 1860 (United States Bureau of the Census [USBC] 1850, 1860, Washington, D.C.), and the slave quarters structure (Features 1 and 2) was the residence of five enslaved persons in 1850, and seven enslaved persons in 1860 (USBC Slave Schedule [SS] 1850, 1860). Based on the archaeological data recorded during the phase II field investigations, the site dates to at least the early nineteenth century and possibly as early as the late eighteenth century. The owners and occupants of the site that resided there before the Gilbert family are currently unknown. With the fieldwork for the current project being concluded, in-depth archival research is being conducted in order to elucidate the ownership and occupation history of the site.

Data Recovery Goals/Research Questions

Phase III data recovery at Site 15Fa408 is anticipated to mitigate adverse effects to the site by the proposed Legacy Business Park project. Data yielded from the investigations may address research questions pertinent to this site including (but not limited to):

- It remains unclear when the property was first settled. Archaeological evidence associated with the structures identified during the NRHP evaluation of the site suggests that the house and slave quarters were constructed by at least the early decades of the nineteenth century, but it is possible that the house was built earlier (1790s). Not all of the house and slave quarter foundations were exposed, and only a small portion of the cellar associated with the house was sampled with a test unit. No builder's trenches were identified during the NRHP evaluation of Site 15Fa408, and further exposure of the building foundations may result in the discovery of builder's trenches that could contain important material evidence of the house and slave

quarters construction. There also appears to be the possibility that the house was originally a small, one- or two-room cabin that was then incorporated/replaced by the larger structure. Hence, a goal of the data recovery efforts would be to more clearly ascertain the construction dates of the house and slave quarters. The presence of other possible outbuildings and their construction dates also would be ascertained, if found.

- What was the spatial layout of the farm in terms of the house, slave quarters, and other outbuildings and/or activity areas? Were there fences separating activity areas? How did this change over time and were there differences before and after the Civil War?
- What were the daily lifeways of the enslaved individuals and those of the slaveholder's family in the decades before the Civil War? Excavations in the interiors and exteriors of the structures via unit excavation and stripping/feature excavation may reveal artifacts/features that could provide insight into activities within and outside of the structures. It also would be interesting to ascertain differences in activities in the front vs rear and side yards of both structures.
- Were there differences in domestic artifacts, such as ceramic tablewares, between what was used in the house vs the slave quarters? Were there other notable differences in the overall assemblages between the two structures? With the exception of what was sampled in Feature 8 (cellar) with TU 2, all of the other artifacts were recovered from the plan view and backdirt in Blocks 2 and 4. If there are differences and/or similarities, what can they tell us about consumerism, availability of certain goods, were there preferences for certain items (value, symbolism)? Is there any evidence of various occupations/roles of the enslaved individuals that can be gleaned from the slave quarters deposits?
- Were there any pit cellars or small pits below the floor of the slave quarters where certain items may have been hidden from the slaveholders? Is there any evidence of African-derived items or manipulation of European American material culture? Any evidence of curing and magic ritual and/or ritual objects?
- A high density of faunal remains were recovered during the testing of Site 15Fa408, but since such a high density of these remains were recovered from secondary contexts and/or the plan views of the structures, they may not be as reliable for providing detailed data on food preferences, preparation, and consumption as those possibly recovered from intact deposits. Data recovery excavations may reveal detailed information of foodways at the site. Were there differences between what was consumed by the slaveholder's family vs what was consumed by the enslaved persons? Were there changes over time?
- Were there changes to the landscape and the spatial arrangement of outbuildings and activity areas after the Civil War vs before? Since the completion of the phase I report, an in depth look at the 1880 federal census indicates that the Gilbert family continued to reside on the property that year, and that they had five Black and "Mulatto" (i.e., biracial) servants. When Henry Gilbert died in 1897, and his widow moved to Lexington, what happened to these servants?
- Who resided at the site following the Gilbert occupation? Phase I survey archival research and available historic map data indicate that George Wainscott resided there by 1891 followed by M. Young in 1904, but neither could be discovered in the census records. Were the slave quarters still used to house servants and/or tenants? How/why was the site abandoned?
- How does the archaeological data recovered from Site 15Fa408 compare with similar sites in Fayette County and Central Kentucky more broadly? Data recovery research would allow for

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not only a discussion of the daily lifeways of the former site occupants, but comparisons with other archaeological sites in the area may shed light on the settlement and history of the area from a broader perspective.

- Only a very light density of precontact artifacts was recovered during the NRHP evaluation of the site, and all had been recovered from historic contexts. While the precontact component is not considered eligible, if precontact artifacts or features are discovered during the data recovery investigations, the precontact component of Site 15Fa408 will be discussed with regard to similar sites at the local and/or regional level. Whether precontact deposits/features are discovered during the data recovery investigations or not, an overview of the precontact history of the area will be included in the final report.

Data Recovery Work Plan

Data recovery is anticipated for Site 15Fa408 as presented in the submitted management summary (Faberson Hurst 2024). The purpose of the data recovery plan is to collect sufficient information to answer the research questions presented above and to mitigate the impacts of the construction of the proposed business park. Based on the results of the original phase I survey in 2023 and the phase II investigations in January and early February 2024, data recovery will involve historic documentation (archival research and secondary historic research), unit excavation, mechanical stripping, and feature excavation.

Data Recovery Field Methods

Approximately 3,100 sq m of mechanical stripping is proposed for the data recovery excavations to explore high probability areas for the presence of intact, buried features as well as to reopen/expand the exposure of previously recorded/sampled phase II features (Features 1, 2, 4, 5, 8, and 9). The field director will monitor the stripping as it is conducted. A backhoe with a smooth-edged bucket will be used with extra care taken to prevent the disturbance of shallow Features 1, 2, 5, and 8. Once the topsoil is removed, the surface of each strip block will be shovel scraped to examine it for features.

Concurrently with the mechanical stripping, the excavation of 25 1-x-1 m test units will be utilized to sample the interiors and exteriors of the former dwelling and slave quarters (including any hearths) as well as to sample the rear yards and minimally, the front yards.

We anticipate that no more than 10 large historic features, 15 small-medium historic features, and 15 postholes, will be sampled or excavated. In the event that precontact features or deposits are discovered, they will also be properly excavated and recorded to the same standards as the historic features and deposits. A total station will be used to record excavation and feature locations within the site, and the phase III map data will be tied in with the phase II mapping. Flotation samples will be taken of primary feature contexts, such as privies, trash pits, or intact cellar deposits. No more than 12 flotation samples for the features are anticipated.

Photogrammetry of significant features and drone photography of the site will be conducted following the exposure of buried features and completion of the data recovery investigations.

Archival and Secondary Historic Research

In-house and out-of-house archival historic research is recommended for Site 15Fa408. The archival research for the phase II and phase III projects will be combined. The purpose of archival and historic research is to provide more specific data on the occupational history of the site as well as

address the research questions presented above.

Meetings and Coordination

It is anticipated that there will be one on-site meeting with CRA, USACE, and KHC.

Phase III Laboratory Analysis

Cultural material recovered from the data recovery excavations will be returned to the laboratory for cleaning, analysis, and cataloging following standard practices. Based on the results of the phase I survey as well as preliminary counts of the phase II investigation, it is anticipated that up to 15,000 historic artifacts will be recovered during the data recovery investigations. This phase of the work will also include preparation of flotation samples. It has been estimated that a maximum of 25 features and 15 postholes will be excavated, which are estimated to produce up to 120 liters of flotation samples to be processed (float, sort for artifacts, and catalog) at the laboratory. We propose the Ethnobotanist analyze only samples with good temporal and spatial contexts, about 8 samples (80 liters).

Report Preparation

The results of the phase II NRHP evaluation of Sites 15Fa408 and 15Fa409, and the phase III data recovery results of Site 15Fa408 will be documented in a detailed written report. The report will conform to *Specifications for Conducting Fieldwork and Preparing Cultural Resource Assessment Reports* issued by the Kentucky State Historic Preservation Office. A detailed management summary of the phase III data recovery results will be submitted within three weeks of the completion of fieldwork. The final draft will be submitted to USACE for review within 18 months of the completion of fieldwork. The final report can be submitted within 20 working days of the receipt of USACE comments on the draft report. In addition to the report, CRA will submit to OSA revised site forms.

Data Recovery Schedule

CRA can initiate field research within 20 business days of NTP, depending on current scheduling. The field research will be completed in approximately 40 business days, not including any possible delays due to unsafe (such as heat stress) or inclement weather conditions.

CRA Project Personnel

Project Manager: Jonathan P. Kerr, RPA

Field Director/PI/Report: Tanya Faberson Hurst, PhD, RPA

Laboratory Processing: Robert McCain

Historic Materials Analysis: Tanya Faberson Hurst, PhD, RPA

Ethnobotanical Analysis: Renee Bonzani, PhD

Faunal Analysis: Robert McCain, RPA

Photogrammetry/drone imagery: Jeremy Menzer, PhD

Cost Proposal

CRA can complete the scope of work on a time and materials basis for a fee not to exceed \$594,151.00. This includes the entirety of the phase III work (\$536,343.00) and the remaining phase II work, such as the artifact analyses for both sites and reporting on the results at Site 15Fa409 (\$57,808.00). The remaining authorized funds in the current Work Order (013019-042) is \$136,507.05, requiring the addition of \$457,643.95 to complete the data recovery investigations and reporting of the phase II and III results.

Project invoices will be submitted monthly. Terms are payment in full within 30 calendar days of the receipt of Cultural Resource Analysts, Inc., invoice. A late fee of 1.5% per month on unpaid balance will be applied. In the event that the client does not honor these terms of payment, the client agrees to pay any additional collection, attorney, court and or interest charges.

The following assumptions have been made when preparing the scope of work and estimated cost for this project. These are not intended to be all-inclusive, and it is recognized that unforeseen changes and circumstances may result during the course of the project. Should these situations arise, CRA will, in a timely manner, address specific scope or budget issues with the client to reach an agreement for any needed contract modifications and additional compensation per our standard rate schedule.

- In the event of inclement weather or other adverse conditions, archaeological fieldwork will be delayed until conditions render it safe to resume the excavations. CRA's heat safety protocol requires all field directors to follow National Institute for Occupational Safety and Health (NIOSH) regulations.
- The survey area will be cleared (mowed) in advance of CRA's arrival.
- There will be no issues or delays in obtaining access to the project area.
- No more than approximately 3,100 sq m will need to be mechanically stripped, and no more than 25 1-x-1 m units will need to be excavated.
- No more than 10 large historic features, 15 small-medium historic features, and 15 postholes will be sampled or excavated.
- No more than 12 flotation samples for the features are anticipated.
- No more than 15,000 artifacts will be recovered.
- Any adjustments made to the work plan at the request of USACE or KHC that will increase the data recovery level of effort will require a change order.
- The strip blocks and units will be backfilled, but the area will not require seeding and strawing.
- The installation of silt fencing will not be required.
- Only one on-site meeting with USACE and KHC will be required. Formal meetings with clients, agencies, tribes or others are beyond the scope of this proposal.
- Any additional safety training outside of CRA's safety protocols and in-house training or drug testing is not included.

References Cited

Faberson Hurst, Tanya

2024 Management Summary of National Register of Historic Places Evaluations of Sites 15Fa408 and 15Fa409 for the Legacy Business Park in Fayette County, Kentucky. Cultural Resource Analysts, Inc., Lexington, Kentucky.

Niquette, Richard Mason, and Rose E. Johnson

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2023 *An Archaeological Survey of the Legacy Business Park in Fayette County, Kentucky*. Contract Publications Series 23-190. Cultural Resource Analysts, Inc., Lexington, Kentucky.