

PROGRAMMATIC AGREEMENT  
AMONG  
FORT CAMPBELL, KENTUCKY  
KENTUCKY STATE HISTORIC PRESERVATION OFFICER  
TENNESSEE STATE HISTORIC PRESERVATION OFFICER  
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
FOR THE  
PRIVATIZATION OF FAMILY HOUSING AT  
FORT CAMPBELL, KENTUCKY

**WHEREAS**, Fort Campbell pursuant to the Military Housing Privatization Initiative (P.L. 104-106, 110 Stat. 544, Title XXVIII, Subtitle A, Section 2801), which amends 10 U.S.C. 169 by addition of a new subchapter, IV – Alternative Authority for Acquisition and Improvement of Military Housing has determined to privatize family housing at Fort Campbell, Kentucky, through the Residential Communities Initiative (RCI) (Undertaking); and

**WHEREAS**, under the RCI the Army has selected Actus Lend Lease LLC, to implement the privatization of current and future family housing assets at Fort Campbell, as a member with the Army in a limited liability company that will be known as Fort Campbell Family Housing LLC (FCFH). The privatization of the housing at Fort Campbell will result in the transfer of a long-term interest in the construction, demolition, renovation, rehabilitation, operation, and maintenance of housing and other ancillary facilities at Fort Campbell largely independent of direct government control but intended for the primary use of soldiers and families; and

**WHEREAS**, Fort Campbell has determined that implementation of the Undertaking has the potential to adversely effect Historic Properties (as defined in Section I.B below) eligible for the National Register of Historic Places (NRHP), as identified in Attachment A, and has consulted with the Kentucky State Historic Preservation Officer (KY SHPO), the Tennessee State Historic Preservation Officer (TN SHPO), and the Advisory Council on Historic Preservation (ACHP) in accordance with sections 106 and 111 of the National Historic Preservation Act (the Act), as amended, (16 U.S.C. 470 et.seq.) and its implementing regulations found at 36 CFR Part 800 (2000); and

**WHEREAS**, the Area of Potential Effect (APE) for the RCI program at Fort Campbell includes existing Fort Campbell housing areas and areas proposed for development of new housing and supporting amenities (Attachment A); and

**WHEREAS**, Fort Campbell has conducted an inventory of Historic Properties and completed an Integrated Cultural Resources Management Plan (ICRMP) identifying properties considered eligible for the National Register of Historic Places within this APE; and

**WHEREAS**, the effects of demolition of World War II temporary buildings within the APE of this Undertaking are already taken into account under an existing Programmatic Agreement among the Department of Defense, the National Conference of State Historic Preservation Officers (NCSHPO), and the ACHP and no further action shall be required with respect to such buildings; and

**WHEREAS**, potential effects to all Capehart and Wherry Era housing on Fort Campbell has been taken into account through an Army-wide Program Comment by the Advisory Council on Historic Preservations and there is no further preservation or consultation requirements for these housing areas pursuant to the Act. The Draft Design Guidelines for Capehart and Wherry Era Housing were considered during preparation of the RCI Community Development and Management Plan and no further action shall be required with respect to such housing units; and

**WHEREAS**, Clarksville Base Historic District (Historic District), as depicted on Attachment A, is considered eligible for inclusion in the National Register of Historic Places for associations with the storage and maintenance of nuclear weapons early in the Cold War era. Fort Campbell proposes to allow FCFH a permit to use a part of the perimeter trail at Clarksville Base Historic District as a portion of pedestrian trail and related facilities between two of the family housing areas; and

**WHEREAS**, Fort Campbell has provided the public an opportunity to comment on the stipulations of this agreement and has considered the public's views; and

**WHEREAS**, Fort Campbell has provided a copy of this Agreement to federally recognized Indian tribes listed in Attachment B with potential concerns for properties of traditional religious or cultural importance in the Fort Campbell area and has notified the tribes of the potential for future consultation pursuant to Stipulation VIII of this Agreement;

**NOW THEREFORE**, Fort Campbell, the Kentucky and Tennessee State Historic Preservation Officers, and the ACHP 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**

Fort Campbell will ensure that the following measures are carried out:

- I. NATIONAL REGISTER OF HISTORIC PLACES
  - A. Fort Campbell has determined the NRHP eligibility for properties within the Area of Potential Effect of the Undertaking in accordance with Section 110(a)(2) of the NHPA and the respective State Historic Preservation Officers have concurred with these determinations. Fort Campbell will make available an information package concerning the NRHP eligibility of these properties to FCFH. This information package will describe the NRHP eligible structures and buildings, historic landscapes, and archeological sites that may be present within and adjacent to existing

housing developments and areas proposed for development of housing and supporting amenities as identified in Attachment A.

- B. Based on analysis of the residential infrastructure, Fort Campbell has determined in consultation with the KY SHPO and the TN SHPO that, except for the properties identified on Attachment A, no other existing buildings, structures, objects, districts or landscapes affected by the Undertaking are now eligible for listing in the National Register of Historic Places under NRHP criteria A, B, C or D (36 C.F.R. 60.4) (hereinafter "Historic Properties"). Fort Campbell will conduct a periodic historic architectural survey for all buildings, structures, and landscapes on Fort Campbell property that have reached fifty years of age since the previous survey. These periodic surveys will occur at five-year intervals. Any new Historic Properties recognized as such under NRHP criteria A, B, C or D (36 C.F.R. 60.4) through this process and administered by FCFH will be subject to the provisions of this agreement and added to Attachment A. This stipulation does not limit any other evaluation and possible nomination that may occur at the discretion of the FCFH or consistent with the requirements of 36 CFR 60, as long as FCFH coordinates with the Fort Campbell Cultural Resources Management Program staff in the preparation of the nomination package and in appropriate nomination procedure.

## II. CONVEYANCY ACTIVITIES

- A. Fort Campbell may convey long-term interests in family housing units and ancillary improvements to FCFH by real estate instrument, at this time proposed to be a Ground Lease. Fort Campbell will ensure that the Ground Lease shall contain such terms and conditions as necessary and appropriate to meet the requirements of Sections 106 and 111 of the Act to provide for adequate consideration and treatment of Historic Properties that may be affected by the RCI program. The terms and obligations of this Programmatic Agreement will be incorporated by reference into the Ground Lease.
- B. Ground Lease:
  - 1. Before execution of any conveyance or finalization of the Ground Lease for the Undertaking, Fort Campbell shall provide FCFH all previously compiled information on any Historic Properties within the APE to guide FCFH in the management and use of the properties. The Ground Lease shall indicate that the Historic Properties are subject to alternate and more stringent management requirements set forth in Section II. B(3) below.
  - 2. There is no current anticipation that the Undertaking will result in a substantial alteration or demolition of the Historic Properties identified on Attachment A. Fort Campbell will ensure that the Ground Lease prohibits alteration or demolition of Historic Properties without completion of agreed upon actions or further coordination with some exemptions (See Stipulation II.B.3.b).
  - 3. In regard to preservation and upkeep of the Historic Properties, the Ground Lease shall require FCFH, to either:
    - a. Conform to the management standards and guidelines for treatment of Historic Properties established by the Secretary of Interior ("The Secretary of the Interior's

Standards for the Treatment of Historic Properties", 36 CFR Part 68). FCFH is encouraged to conform to the Secretary of the Interior's Standards for Treatment of Historic Properties through development and implementation of management plans for each of the Historic Properties in consultation with the respective SHPO. These plans should be revised periodically and in the event of changed circumstances.

OR;

- b. Perform an economic analysis to justify why it would not be economically feasible for FCFH to preserve or maintain specific Historic Properties in accordance with the "The Secretary of the Interior's Standards for the Treatment of Historic Properties". FCFH will submit the economic analysis and its recommended course of action for the Historic Properties in question to the Fort Campbell Cultural Resources Management Program (CRMP) for review and consultation with the respective SHPO. The SHPO will be given a 30-day opportunity to review and comment on the economic analysis and recommended course of action. If the SHPO agrees in writing with the economic analysis findings and the treatment recommendation, FCFH will proceed with the action. If the SHPO disagrees with the economic analysis or the proposed course of action and an acceptable compromise cannot be reached, the Installation, supported by FCFH, and the SHPO will then participate in consultations in accordance with the procedures outlined in 36 CFR 800.
4. The Ground Lease shall require FCFH to have access to and utilize "Qualified Staff" on an as needed basis, for the development of rehabilitation plans, development of historic property management plans, to review and screen proposed projects and work requirements that affect the Historic Properties, and to assist FCFH with Fort Campbell CRMP and SHPO consultations. For the purposes of this agreement "Qualified Staff" is defined as an individual that meets the Secretary of the Interior's Historic Preservation Professional Qualification Standards (as proposed at 62 FR 3307-33723) for Historical Architect, Historical Landscape Architect, or other appropriate profession.
5. The Army will monitor the activities of FCFH and the activities of its property management agent, as they execute the maintenance and upkeep of the Historic Properties to insure compliance with the historic preservation provisions of the Ground Lease.
6. In the case of an emergency FCFH will perform those actions necessary for the protection of the Historic Properties with on-site monitoring by Qualified Staff. FCFH is not required to consult with Fort Campbell or with the respective SHPO in advance of emergency actions affecting Historic Properties. Where possible, such emergency measures will be undertaken in a manner that is consistent with the Secretary of Interior's Standards for Rehabilitation. FCFH will notify Fort Campbell CRMP, who will notify SHPO, the following execution of all emergency measures affecting Historic Properties. This stipulation applies only to undertakings initiated within 30 days of the emergency and as a response to the emergency. If the response to emergency conditions requires no Design/Build Agreement or Ground

Lease modifications, FCFH must act in conformance with contract terms previously reviewed by the SHPO and there is not new federal undertaking as defined in the Agreement.

7. The Ground Lease shall include an inadvertent discovery clause as follows. "In the event of discovery of archeological materials during any activity associated with the CDMP, FCFH shall immediately stop work in the area of the discovery and notify Fort Campbell, Cultural Resources Management Program point of contact. FCFH shall protect the discovery until Fort Campbell has complied with the National Historic Preservation Act, 36 CFR 800.13(b) and any other legal requirements."
  8. The Ground Lease shall include provisions that provide for Army review and approval of any successors to ensure that they meet or exceed original RFQ source selection criteria for the developer/partner.
  9. Renewal or any material modifications to the Ground Lease shall be subject to consultation among the signatories to determine whether such renewal or material modification constitutes a new federal undertaking subject to the provisions of the National Historic Preservation Act.
- C. The Army will report to the SHPO on the status of the Historic Properties in an annual asset management report to be prepared by FCFH. This report will include information on the current condition of the Historic Properties, actions taken by the FCFH to maintain the properties in accordance with agreed upon standards, and descriptions of problems encountered that could affect the integrity or upkeep of the Historic Properties.
- D. Fort Campbell shall document existing interior and exterior conditions at contributing quarters and at contributing landscapes in the Historic Properties areas within three years of execution of the Agreement. Still photographs shall constitute this record and three copies of the documentation shall go one each to FCFH, Fort Campbell and the respective SHPO. This record will serve as a reference throughout the term of the Agreement and Fort Campbell will provide it to the parties in a hard copy format. Fort Campbell may supplement the record to maintain accuracy and to document modifications to historic properties.
- E. The Installation Commander of Fort Campbell shall ensure that any permits for use of the perimeter areas of Clarksville Base Historic District by FCFH for the construction and maintenance of a trail network and ancillary facilities or any other purposes will require timely consultations between FCFH and the Cultural Resources Management Program (CRMP) at Fort Campbell. The CRMP will review proposed actions to determine the effect of the action on the Historic District. If the CRMP makes a determination of no adverse effect, FCFH will be notified and allowed to proceed with the action; the determination and action will be reported in the annual report. If the CRMP makes a determination of adverse effect that cannot be resolved during discussions with FCFH, the Installation, supported by FCFH will consult with the Tennessee State Historic Preservation Office, using the procedures at 36 CFR 800 or any alternative procedures currently in effect at the time of consultation.
- F. Tax Credits
1. Fort Campbell will also inform the FCFH, that Historic Properties may also offer potential advantages in tax benefits under current law. The Tax Reform Act of 1986 (P.L. 99-514; Internal Revenue Code, Section 47) currently offers a 20-percent tax credit for the certified

rehabilitation of certified historic structures. Fort Campbell shall encourage FCFH to explore this benefit via the established application process with the SHPO and National Park Service (NPS) before the start of rehabilitation projects.

2. Any application for historic tax credits shall require review by the SHPO and NPS. These reviews are part of existing procedures available and applicable to any entity or individual that owns historic properties. When FCFH takes advantage of the processes to apply for and receive historic tax credits, the parties to this Agreement concur that these systems should operate in addition to Design/Build Agreement provisions.

### III. PROJECT REVIEW and CONSULTATION REGARDING HISTORIC PROPERTIES

- A. FCFH will submit to the Fort Campbell CRMP point of contact project plans for all proposed projects that may effect the Historic Properties recognized as such under this Programmatic Agreement that are not exempt in accordance with Section IV hereof. Coordination of this project review may be facilitated through the Fort Campbell Public Works Business Center. The CRMP point of contact will review the project and plans and respond within 15 working days with a determination that the project is either consistent with agreed historic property management plans, exempt from further review, or, if the project plans effecting the Historic Properties do not conform to the Secretary of the Interior's Standards for the Treatment of Historic Properties, that further review and consultation with the respective SHPO is needed. If further review and consultation with a SHPO is needed, FCFH will provide all necessary documentation needed to complete the further consultations using procedures consistent with 36 CFR 800 or with any alternate procedures currently in effect for Fort Campbell. Such review and consultation with a SHPO shall be promptly commenced and shall be completed no later than 30 days after the Installation provides all necessary documentation needed to complete the further consultation.
- B. Mitigation measures agreed upon during review and consultation will be incorporated into project plans and implementation of projects.
- C. Certain actions of FCFH specified in Stipulation IV of this Programmatic Agreement will be exempt from project review in order to expedite the implementation of routine matters which by their nature pose very minimal or no potential to affect Historic Properties. Further project or plan review is not required if the project is covered by one of the listed exemptions. Specific projects that have been implemented using these exemptions should be described in the annual report required in stipulation II.C.1., along with description of how the exemptions were determined to apply.

### IV. EXEMPT ACTIVITIES

- A. The following activities are exempt from CRMP and SHPO consultations:
  1. General operation and maintenance, rehabilitation and/or renovation of existing improvements (other than the Historic Properties identified in Attachment A) and new construction, provided such new construction is not "visible" from the specific historic housing units identified in Attachment A. The parties acknowledge that the meaning of the term "visible", as used in the prior sentence, will be quantified separately with respect to each of the historic housing units identified in Attachment A in the applicable historic

property development plan which shall be developed for such historic housing unit in consultation with the applicable SHPO in accordance with Stipulation II.B.3(a).

2. Temporary installation of facilities to provide access to Historic Properties by disabled persons, provided these changes make no permanent modification to contributing architectural or landscape elements.
3. Activities that conform to conditions for a Federal historic preservation tax credit.
4. Implementation of the terms of an approved historic properties management plan.
5. Any change to the mechanical systems, kitchen, bathroom or basement spaces of Historic Properties, as long as such change does not affect any significant exterior or interior historic-character defining element.
6. Roadway and parking lot repair, resurfacing, or reconstruction that takes place within the previously maintained roadway or parking lot surfaces.
7. Maintenance, repair, or replacement in-kind of existing sidewalks and curbs, not including historic pavements such as bricks or cobblestones.
8. Routine foot-trail maintenance that does not involve new ground disturbance.
9. Replacement in-kind, matching the configuration, material, size, detail, color and condition of the historic fabric or landscaping.
10. Refinishing in-kind, such as painting or covering surfaces with the same materials and in the same color.
11. Energy conservation measures that are not visible or do not alter or detract from the qualities that make a resource eligible for the National Register, that include but are not limited to the following:
  - a. Modifications to HVAC control systems, or conversions to alternative fuels.
  - b. Insulation in roofs, crawl spaces, ceilings, attics, wall, floors, and around pipes and ducts.
  - c. The installation of storm doors or windows, or insulated double or triple glazing, which match the size, color, profile and other distinguishing characteristics of the historic door or window.
  - d. Caulking and weather-stripping, provided the color of the caulking is consistent with the appearance of the building.
  - e. Replacement or modification of lighting systems when the modifications do not alter or detract from the significance of the property.
  - f. Removal of asbestos-containing materials, provided that the removal does not alter or detract from the qualities that make the resource eligible to the National Register, or provided that replacement is made in-kind both in color and appearance of non-asbestos containing materials.
12. Routine maintenance including landscaping, grass cutting and tree trimming.

B. Activities not listed above shall be completed as directed in Stipulation II.B.3.

#### V. FISCAL REQUIREMENTS AND SOURCES

The stipulations of this Agreement are subject to the provisions of the Anti-Deficiency Act. If compliance with the Anti-Deficiency Act alters or impairs Fort Campbell's ability to implement the stipulations of this

Agreement, Fort Campbell will consult in accordance with the dispute resolution, amendment or termination stipulations as specified in stipulations VI, and VII.C.

VI. DISPUTE RESOLUTION

- A. Should the respective SHPO or the ACHP object within 30 days to any plans or other documents provided by the Installation for review pursuant to this Agreement, the Installation, supported by FCFH, will consult with the objecting party to resolve the objection. If the Installation determines it cannot resolve the objection, the Installation shall promptly forward to the ACHP all dispute-relevant documentation. Within 30 days after receipt of documentation, the ACHP will either:
1. Provide the Installation with recommendations, which the Installation will take into account in reaching a final decision regarding the dispute; or
  2. Notify the Installation that it will or will not comment pursuant to 36 C.F.R. 800.7(c). The Installation will take into account any comment the ACHP provides in response to such request and do so in accordance with 36 C.F.R. 800.7(c)(4) with reference to the subject of the dispute.
- B. Any recommendation or comment the ACHP provides pertains only to the subject of the dispute. The Installation's responsibility to carry out all other actions under this Agreement, other than those disputed, will not change.

VII. EFFECTIVE DATE, DURATION, AMENDMENT AND TERMINATION

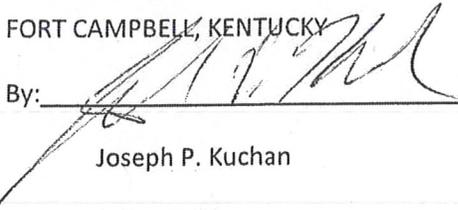
- A. This Programmatic Agreement is effective on the last date that all signatories sign. The Army will comply with all terms and stipulations from that date forward.
- B. This Programmatic Agreement will be incorporated into the Ground Lease as an exhibit and will become an integral part of the Ground Lease. The Programmatic Agreement will become applicable to FCFH after FCFH has executed and delivered the Ground Lease. The Ground Lease is expected to be a 50 year lease, with an option to renew that lease for 25 more years upon mutual agreement of the Army and FCFH.
- C. If a change occurs in the Undertaking that creates new circumstances that Fort Campbell must address, or, if Fort Campbell is unable to carry out the terms of this Agreement, any party to this Agreement may request an amendment in accordance with 36 CFR Part 800.6(c)(7).
- D. Should the parties to this Agreement not agree on an amendment or in the event of Fort Campbell's failure to comply with the stipulations of this Agreement prior to execution of a Ground Lease, this Agreement shall be terminated. In such an event, Fort Campbell shall not execute a Ground Lease that has the potential to adversely affect Historic Properties until applicable stipulations of the Agreement are met or it obtains alternative documentation from the ACHP that it has met the requirements of the Act.
- E. This Agreement will be in effect so long as the Ground Lease is in effect, unless previously terminated under the provisions of D. above. If the term of the Ground Lease is extended beyond the 75 year period specified in B. above, the parties to this Agreement will consult on the need to renew or amend this Agreement at the time that the Ground Lease is being considered for such extension.

VIII. CONSULTATION WITH FEDERALLY RECOGNIZED INDIAN TRIBES

Federally recognized Indian tribes with potential concerns for properties of traditional religious or cultural importance in the Fort Campbell area which are interested in developing consultation procedures for projects relating to Historic Properties recognized as such under this Programmatic Agreement may consult with the Installation to develop such procedures pursuant to 36 C.F.R. 800.2(c)(2)(ii)(E).

Execution of this Programmatic Agreement and implementation of its terms evidence that Fort Campbell has afforded the ACHP an opportunity to comment on the undertaking to privatize family housing at Fort Campbell, and its effect on historic properties, and that Fort Campbell has taken into account the effects of the undertaking on historic properties.

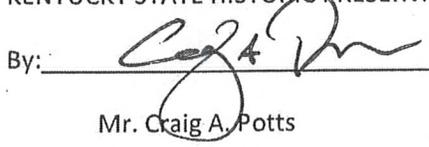
FORT CAMPBELL, KENTUCKY

By:  \_\_\_\_\_

Date: 16 FEB 2019

Joseph P. Kuchan  
Colonel, IN  
Commanding USAG

KENTUCKY STATE HISTORIC PRESERVATION OFFICER

By:  \_\_\_\_\_

Date: 5-30-18

Mr. Craig A. Potts  
State Historic Preservation Officer

TENNESSEE STATE HISTORIC PRESERVATION OFFICER

By: \_\_\_\_\_

Date: \_\_\_\_\_

Mr. E. Patrick McIntyre, Jr.  
State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: \_\_\_\_\_

Date: \_\_\_\_\_

Mr. Reid Nelson  
Executive Director

Execution of this Programmatic Agreement and implementation of its terms evidence that Fort Campbell has afforded the ACHP an opportunity to comment on the undertaking to privatize family housing at Fort Campbell, and its effect on historic properties, and that Fort Campbell has taken into account the effects of the undertaking on historic properties.

FORT CAMPBELL, KENTUCKY

By: 

Date: 16 FEB 2019

Joseph P. Kuchan

Colonel, IN

Commanding USAG

KENTUCKY STATE HISTORIC PRESERVATION OFFICER

By: \_\_\_\_\_

Date: \_\_\_\_\_

Mr. Craig A. Potts

State Historic Preservation Officer

TENNESSEE STATE HISTORIC PRESERVATION OFFICER

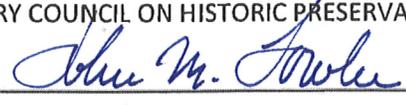
By: 

Date: 3-11-2018

Mr. E. Patrick McIntyre, Jr.

State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: 

Date: 11/6/18

Mr. ~~Reid Nelson~~ **JOHN M. FOWLER**

Executive Director

Fort Campbell Family Housing LLC has reviewed the above terms and stipulations of the Programmatic Agreement. We acknowledge that the above terms and stipulations will become a part of the Ground Lease and that, subject to the terms and provisions of the Ground Lease, they will become binding on Fort Campbell Family Housing LLC, as lessee under the Ground Lease, upon the execution and delivery of the Ground Lease by the Army and Fort Campbell Family Housing LLC following the approval of Congress of the RCI project at Fort Campbell.

FORT CAMPBELL FAMILY HOUSING LLC

By: FCFH MANAGING MEMBER LLC

its managing member

By: ACTUS LEND LEASE HOLDINGS LLC,

its sole member

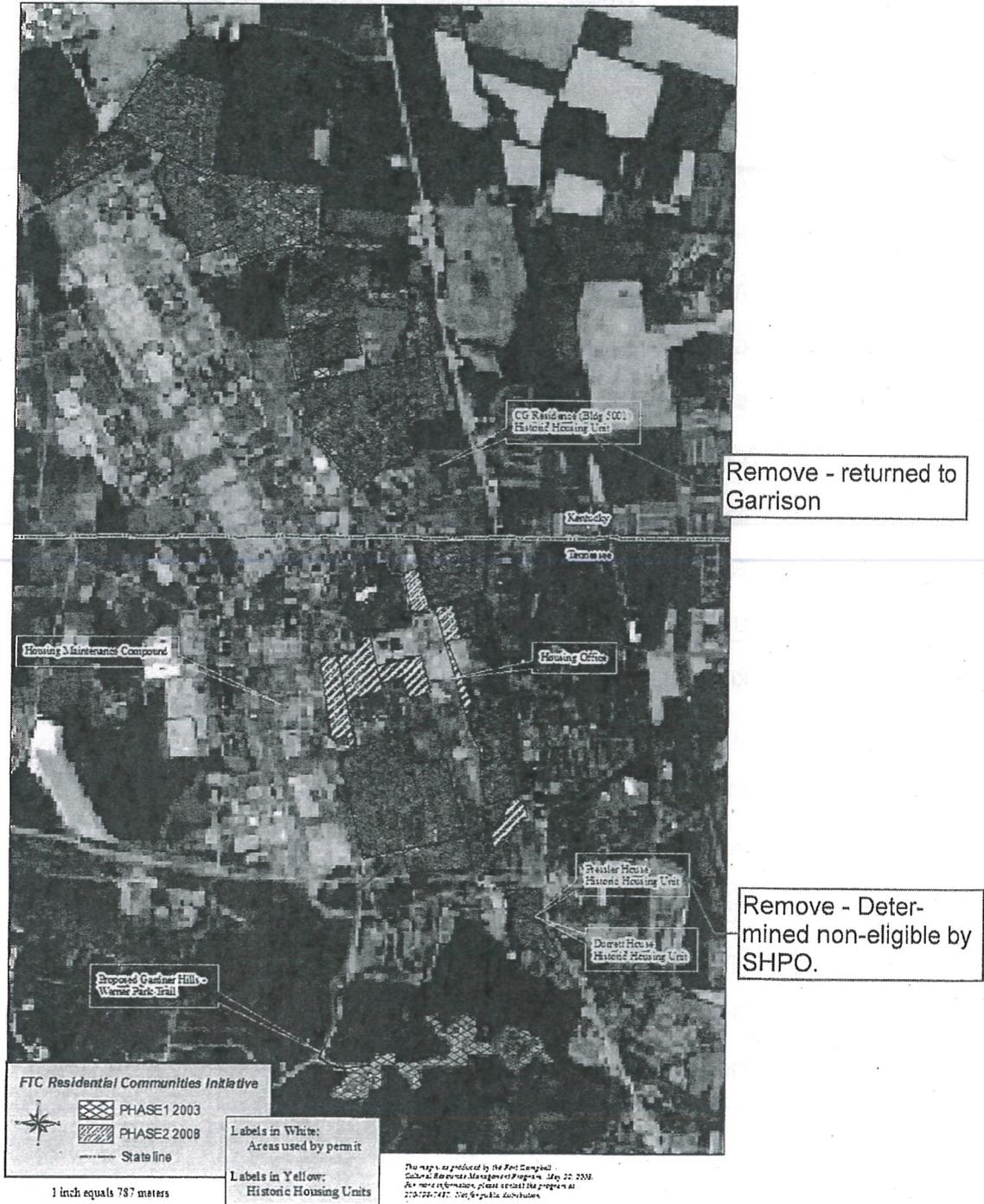
By: \_\_\_\_\_

Name:

Title:

# ATTACHMENT A

## PRIVATIZATION OF FAMILY HOUSING AT FORT CAMPBELL, KENTUCKY



ATTACHMENT B

TRIBAL CONTACTS FOR POTENTIAL CONSULTATION

Residential Communities Initiative at Fort Campbell

Absentee Shawnee Tribe of Oklahoma

Alabama-Coushatta Tribal Council

Alabama-Quassarte Tribal Town

Cherokee Nation of Oklahoma

Chickasaw Nation of Oklahoma

Coushatta Tribe

Eastern Shawnee Tribe of Oklahoma

Eastern Band of Cherokee Indians

United Keetoowah Band of Cherokee

Kialegee Tribal Town

Loyal Shawnee

Muscogee Creek Nation of Oklahoma

Poarch Band of Creek Indians

Seminole Tribe of Florida

Seminole Nation of Oklahoma

Shawnee Tribe

Thiophlocco Tribal Town