



**STATE OF TENNESSEE  
COMPTROLLER OF THE TREASURY**

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**TENNESSEE HISTORICAL COMMISSION  
AND  
TENNESSEE WARS COMMISSION**

**Performance Audit Report**

August 2018

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**Justin P. Wilson, Comptroller**



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August 10, 2018

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The Honorable Beth Harwell  
Speaker of the House of Representatives  
The Honorable Mike Bell, Chair  
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and  
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and  
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and  
The Honorable Shari L. Meghreblian, Ph.D.,  
Commissioner  
Tennessee Department of Environment and  
Conservation  
312 Rosa Parks Avenue  
Nashville, Tennessee 37243

Ladies and Gentlemen:

We have conducted a performance audit of selected programs and activities of the Tennessee Historical Commission and the Tennessee Wars Commission for the period July 1, 2015, through June 6, 2018. This audit was conducted pursuant to the requirements of the Tennessee Governmental Entity Review Law, Section 4-29-111, *Tennessee Code Annotated*.

Our audit disclosed certain findings, which are detailed in the Audit Conclusions section of this report. Management of the Department of Environment and Conservation, the Tennessee Historical Commission, and the Tennessee Wars Commission have responded to the audit findings; we have included the responses following each finding. We will follow up the audit to examine the application of the procedures instituted because of the audit findings.

This report is intended to aid the Joint Government Operations Committee in its review to determine whether each commission should be continued, restructured, or terminated.

Sincerely,

A handwritten signature in black ink that reads "Deborah V. Loveless".

Deborah V. Loveless, CPA  
Director

DVL/dww  
18/016b



**Division of State Audit  
Tennessee Historical Commission and  
Tennessee Wars Commission  
Performance Audit**

*Our mission is to make government work better.*

## AUDIT HIGHLIGHTS

The Tennessee Historical Commission's mission is to encourage the inclusive, diverse study of Tennessee's history for the benefit of future generations; to protect, preserve, interpret, operate, maintain, and administer historic sites; to mark important locations, persons, and events in Tennessee history; to assist in worthy publication projects; to review, comment on, and identify projects that will potentially impact state-owned and non-state-owned historic properties; to locate, identify, record, and nominate to the National Register of Historic Places all properties that meet national register criteria, and to implement other programs of the National Historic Preservation Act of 1966 as amended.

The Tennessee Wars Commission's mission is to preserve Tennessee's military history by coordinating the planning, preservation, and promotion of structures, sites, and battlefields in Tennessee; and by acquiring or providing funds for the acquisition of battlegrounds, cemeteries and other historic properties in Tennessee associated with the French and Indian War, Revolutionary War, War of 1812, Mexican War, and the Civil War.

We have audited the Tennessee Historical Commission and the Tennessee Wars Commission for the period July 1, 2015, through June 6, 2018. Our audit scope included a review of internal controls and compliance with laws, regulations, policies, procedures, and provisions of contracts or grant agreements in the following areas:

- state-owned historic sites,
- the Tennessee Heritage Protection Act,
- the Tennessee Historical Commission structure and responsibilities, and
- the Tennessee Wars Commission annual report.

**Scheduled Termination Date:**

June 30, 2019

## KEY CONCLUSIONS

### Findings

- The Tennessee Historical Commission should formalize its relationship with nonprofits and maintain proper oversight of the state-owned historic sites (page 8).

- The Tennessee Historical Commission does not have an interagency contract with the Department of Environment and Conservation to formalize the services and assistance it depends upon to perform its duties (page 14).
- The Tennessee Wars Commission has not prepared a statutorily required annual report since 2013 (page 19).

**Observation**

The following topic is included in this report because of its effect on the operations of the Tennessee Historical Commission and the citizens of Tennessee: Members of the Tennessee Historical Commission should undergo training to understand and fulfill their legal duties under the Tennessee Heritage Protection Act (page 16).

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# INTRODUCTION

## AUDIT AUTHORITY

This performance audit of the Tennessee Historical Commission and the Tennessee Wars Commission was conducted pursuant to the Tennessee Governmental Entity Review Law, Title 4, Chapter 29, *Tennessee Code Annotated*. Under Section 4-29-240, both commissions are scheduled to terminate June 30, 2019. The Comptroller of the Treasury is authorized under Section 4-29-111 to conduct a limited program review audit of the commissions and to report to the Joint Government Operations Committee of the General Assembly. This audit is intended to aid the committee in determining whether each commission should be continued, restructured, or terminated.

## BACKGROUND

### Clover Bottom Mansion



Source: Auditor photo.

The Tennessee General Assembly created the Tennessee Historical Commission pursuant to Chapter 98 of the Public Acts of 1969, codified in Section 4-11-102 et seq., *Tennessee Code Annotated*. Administratively attached to the Department of Environment and Conservation and located at Clover Bottom Mansion in Nashville, the commission has the statutory responsibility for administering funds made available from public sources for historical purposes, developing criteria for the evaluation of state historic sites that the state should acquire, operating historical properties owned by the state, reviewing changes to historical properties of other state agencies, and

maintaining the Tennessee Register of Historic Places.

The commission's mission is to

- encourage the inclusive, diverse study of Tennessee's history for the benefit of future generations;
- protect, preserve, interpret, operate, maintain, and administer historic sites;
- mark important locations, persons, and events in Tennessee's history;
- assist in worthy publication projects;
- review, comment on, and identify projects that will potentially impact state-owned and non-state-owned historic properties; and
- locate, identify, record, and nominate to the National Register of Historic Places properties that meet the national register's criteria, and implement other programs of the National Historic Preservation Act of 1966 as amended.

The commission is composed of 24 citizen members appointed by the Governor to 5-year terms and 5 ex-officio members:

- the Governor or the Governor’s designee,
- the State Historian,
- the State Archaeologist,
- the Commissioner of the Department of Environment and Conservation, and
- the State Librarian and Archivist.

The commission has an executive committee and standing committees for audit, finance, historic sites, historical markers, publications, and the Tennessee Wars Commission. There are no statutory meeting requirements, but the Historical Commission’s bylaws specify three meetings a year and require attendance by a majority of members to constitute a quorum. The commission’s membership is statutorily required to meet certain requirements relative to academic background, age, and race. The commission has 16 staff members.

The commission’s state programs include historical markers, publications, state-owned site assistance, and grant monitoring. Federal programs resulting from the National Historic Preservation Act include surveying the state for historic buildings, nominating properties to the National Register of Historic Places, reviewing federal projects that could have an adverse effect on historic sites, working with owners of property on the national register to get tax incentives, providing technical assistance to certified local governments, and assisting with federal preservation grants.

**Clover Bottom Mansion**



Source: Auditor photo.

## **LEGISLATION: THE TENNESSEE HERITAGE PROTECTION ACT**

The Tennessee Heritage Protection Act of 2016 (the Act<sup>1</sup>), Section 4-1-412, *Tennessee Code Annotated*, grants certain powers to the Tennessee Historical Commission. The Act states that, except as otherwise provided, “no memorial regarding a historic conflict, historic entity, historic event, historic figure, or historic organization that is, or is located on, public property, may be removed, renamed, relocated, altered, rededicated, or otherwise disturbed or altered.” Further, the Act states that “a public entity exercising control of a memorial may petition the commission for a waiver” of this prohibition. (The waiver form is a three-page questionnaire with a checklist of required attachments, including proof that the memorial is on public property and is controlled by the petitioning entity; reports detailing the type of change proposed and the basis for requesting

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<sup>1</sup> The Act was originally created and passed in 2013 by the General Assembly; a subsequent amendment renamed the Act to the Tennessee Heritage Protection Act of 2016.

the waiver; a list of names and addresses of interested parties for notice requirements; proof of publication; and photographs of the memorial).

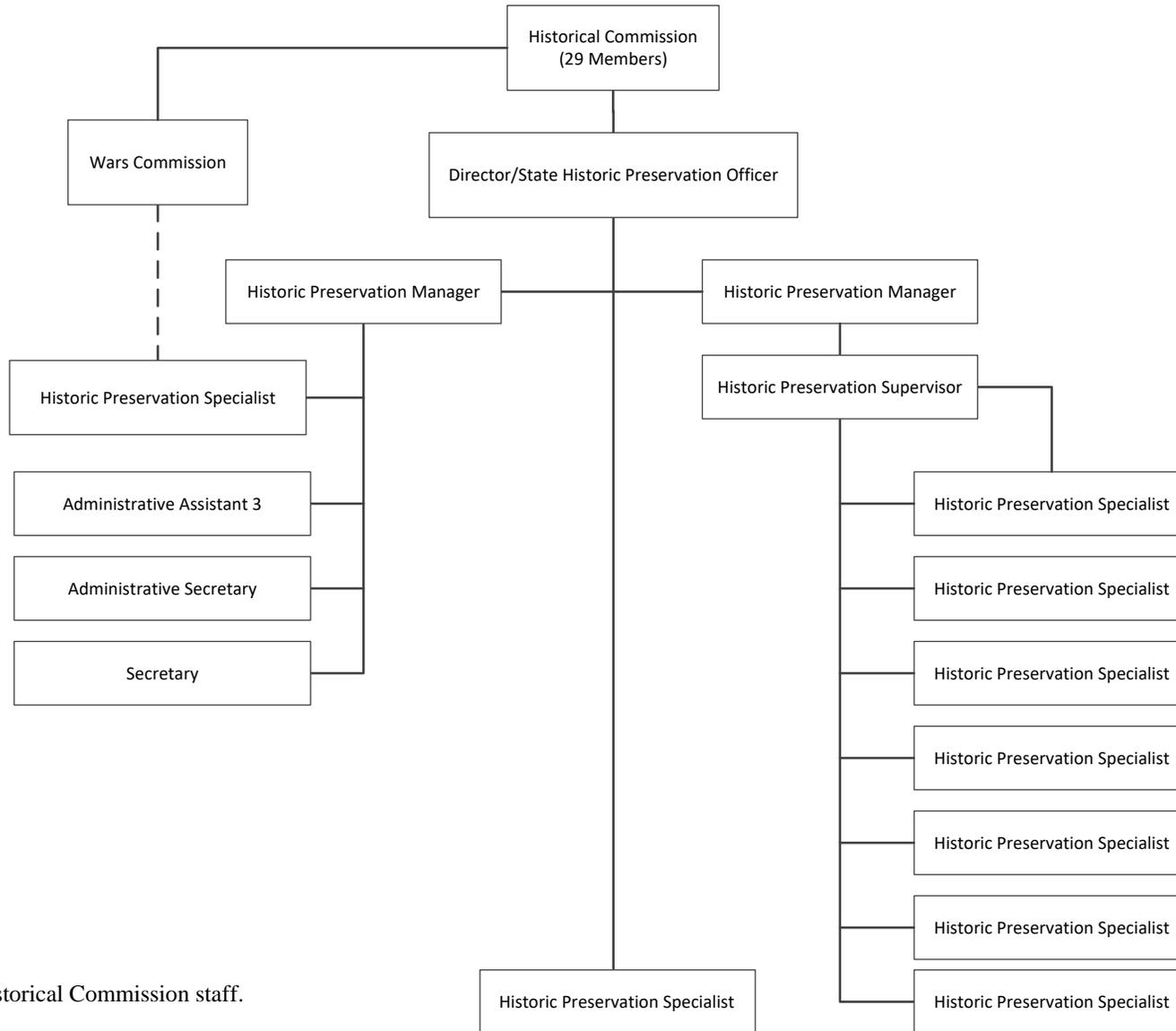
The 2016 amendment to the Act provided further definition to the term “historic memorial”; added public notification and other requirements to the petition process; added a process for appeal to the Davidson County chancery court; and increased the margins for approving a waiver from a simple majority of those present and voting to a two-thirds vote of the entire membership.

Additionally, changes to Section 4-1-412, *Tennessee Code Annotated*, signed into law on May 21, 2018, prohibit a county, municipality, metropolitan government, or other political subdivision of the state from selling, transferring, or otherwise disposing of a memorial, or public property containing a memorial, without the governmental entity first obtaining a waiver from the commission. It gives the commission the authority to receive and consider complaints alleging violations of the Act, sets requirements for hearings on such complaints, and requires determinations of violation by the commission to be transmitted to the Department of Economic and Community Development; it also precludes a public entity that violates this section from entering into grant contracts administered by the Historical Commission or the Department of Economic and Community Development for five years. The amendment also makes explicit that the Uniform Administrative Procedures Act applies to the Act when there is no conflict.

## **TENNESSEE WARS COMMISSION**

The Tennessee General Assembly created the Tennessee Wars Commission pursuant to Chapter 824 of Public Acts of 1994, codified as Section 4-11-301 et seq., *Tennessee Code Annotated*, to coordinate the planning, preservation, and promotion of the structures, buildings, sites, and battlefields of Tennessee associated with the French and Indian War, the Revolutionary War, the War of 1812, the Mexican-American War, and the American Civil War. According to Section 4-11-303, the Tennessee Historical Commission “is designated to be the Tennessee Wars Commission.” The business of the Wars Commission is conducted at the regular meetings of the Historical Commission, as there is not a separate Wars Commission membership. One Historical Commission staff member works on behalf of the Wars Commission and reports to the assistant director for state programs for the Historical Commission.

**Tennessee Historical Commission and Tennessee Wars Commission**  
**Organizational Chart**  
**As of June 2018**



Source: Tennessee Historical Commission staff.

## AUDIT SCOPE

We have audited the Tennessee Historical Commission and the Tennessee Wars Commission for the period July 1, 2015, through June 6, 2018. Our audit scope included a review of internal controls and compliance with laws, regulations, policies, procedures, and provisions of contracts or grant agreements in the following areas:

- state-owned historic sites,
- the Tennessee Heritage Protection Act,
- the Tennessee Historical Commission structure and responsibilities, and
- the Tennessee Wars Commission annual report.

Historical Commission management is responsible for establishing and maintaining effective internal control and for complying with applicable laws, regulations, policies, procedures, and provisions of contracts and grant agreements for both commissions.

We conducted our audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## AUDIT CONCLUSIONS

### STATE-OWNED HISTORIC SITES

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The Tennessee Historical Commission supports and oversees 17 state-owned historic sites purchased between 1941 and 2007. Sixteen of the sites are listed on the National Register of Historic Places. The sites are managed by either state entities or nonprofit associations. While the state owns the historic land and buildings, it contracts the day-to-day operations of the sites with nonprofit associations. The management agreements (see **Appendix 1**) between the state and the nonprofits outline some of the standards and requirements related to site operations, including administrative requirements. Through the management agreements, which are renewed annually, the commission administratively controls the use of historic sites to protect Tennessee's historic resources.

The commission provides the nonprofits financial support in the form of grants, direct appropriations, assistance with maintenance projects, and training, as well as general assistance with improving site operations. Commission management also requires the nonprofit site directors to participate in the American Association for State and Local History's Standards and Excellence Program for History Organizations; the site directors earn certificates for each phase of the program they complete. The sites must also participate in the association's Visitors Count

program, which provides demographic analysis of visitors and program development. For fiscal year 2018, the commission awarded a total of \$715,059 in grants to the nonprofits to manage the state-owned sites (see **Table 1**).

**Table 1**  
**Historic Sites, Operator and Grant Awards**  
**For Fiscal Year Ending 2018**

<b>Site</b>	<b>Historic Site</b>	<b>Location</b>	<b>Operating Entity</b>	<b>Purchase Date</b>	<b>National Register Listing Date<sup>2</sup></b>	<b>State Grant Award</b>
1	Alex Haley Home	Henning	Alex Haley Museum Association	1986	1978	<b>\$65,038.45</b>
2	Battle of Nashville Monument <sup>3</sup>	Nashville	Historical Commission and Department of Transportation	Before 1947	Not listed	-
3	Burra Burra Mine	Ducktown	Ducktown Basin Museum	1988	1983	<b>\$55,000.00</b>
4	Carter House	Franklin	Battle of Franklin Trust	1951	1966	<b>\$60,179.76</b>
5	Chester Inn	Jonesborough	Heritage Alliance of Northeast TN and Southwest VA	1989	1997	<b>\$42,000.00</b>
6	Cragfont	Castalian Springs	Historic Cragfont Inc.	1958	1970	<b>\$54,909.69</b>
7	Hotel Halbrook	Dickson	Governor Frank G. Clement Railroad Hotel and Historical Association	1990	1990	<b>\$35,000.00</b>
8	Hawthorn Hill <sup>4</sup>	Castalian Springs	Bledsoe's Lick Historical Association	2007	2013	-
9	Marble Springs	Knoxville	Governor John Sevier Memorial Association	1941	1971	<b>\$62,761.70</b>
10	Rock Castle	Hendersonville	Friends of Rock Castle	1969	1970	<b>\$55,593.64</b>

<sup>2</sup> The National Register of Historic Places is administered by the National Park Service through the U.S. Department of the Interior. The national register is the nation's list of cultural resources that are considered worthy of preservation. National register nominations must be made through each state's historic preservation office. In Tennessee, the Tennessee Historical Commission has the responsibility to make national register nominations. The commission's State Review Board meets three times a year to recommend properties for listing in the register.

<sup>3</sup> The monument is maintained by the Historical Commission, and the grounds are maintained by the Department of Transportation.

<sup>4</sup> Included with Wynnewood site.

11	Rock House	Sparta	Daughters of the American Revolution	1941	1973	<b>\$12,439.79</b>
12	Rocky Mount	Piney Flats	Rocky Mount Historical Association	1959	1970	<b>\$85,025.06</b>
13	Sabine Hill <sup>5</sup>	Elizabethton	Sycamore Shoals State Park	2007	1973	-
14	Sam Davis Memorial <sup>6</sup>	Pulaski	Giles County Historical Society	1941	1989	<b>\$43,775.08</b>
15	Sam Houston Schoolhouse	Maryville	Sam Houston Memorial Association	1945	1972	<b>\$43,775.08</b>
16	Tipton-Haynes House	Johnson City	Tipton-Haynes Historical Association	1944	1970	<b>\$65,072.73</b>
17	Wynnewood	Castalian Springs	Bledsoe's Lick Historical Association	1971	1971	<b>\$75,263.37</b>

Source: Tennessee Historical Commission staff and the National Register of Historic Places.

As noted in each management agreement, the commission describes its responsibility and role as the “repository for standard site information, updated with any revisions.” The agreement further specifies that the commission will maintain files for each historic property to include the following information obtained from the operating entity:

- reports required under operating grants;
- bylaws and charter;
- collections and deaccession policies;
- long-range plans for a minimum of five years;
- a written disaster plan;
- an inventory list;
- a staff directory and job descriptions;
- a board member directory, job descriptions, dates of board meetings, and copies of meeting minutes;
- advance notification of large special events relating to the site;
- proof of insurance coverage on contents;
- proof of comprehensive public general liability insurance;
- proof of special event or other specialty insurance; and

<sup>5</sup> Managed by Sycamore Shoals State Park.

<sup>6</sup> This Sam Davis Memorial in Pulaski commemorates his execution site and is not a part of the Sam Davis Home in Smyrna.

- a termite protection letter.

By obtaining and maintaining the detailed information for each historic site, the commission can ensure the operating entity (either the nonprofit or the state entity) is fulfilling its responsibility to properly preserve and protect the Tennessee historical properties.

## **Audit Results**

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**Audit Objective:** Did commission management maintain the data repository as described in the management agreement with nonprofits?

**Conclusion:** No, commission management did not ensure that the repository was maintained in accordance with the management agreement (see **Finding 1**).

### Methodology To Achieve Objective

We interviewed commission staff and reviewed documentation relating to the state-owned historic sites. We also attended training provided for the nonprofits that operate the sites. In addition, we reviewed applicable statutes and researched best practices for maintaining historic sites.

### **Finding 1 – The Tennessee Historical Commission should formalize its relationship with nonprofits and maintain proper oversight of the state-owned historic sites**

#### Management Agreements

The Tennessee Historical Commission’s management agreements with nonprofit sites are nonbinding—an agreement that cannot be enforced by law. Commission management communicated their expectations for important items, such as insurance coverage, labor laws, and site operations, via these informal agreements (see **Appendix 1**). However, by using nonbinding management agreements, the commission creates a risk to the state and its historic assets because the commission has no legal recourse if the nonprofit does not follow the expectations set forth in the agreements. Failing to secure legally binding agreements with the nonprofits increases the risk that the state’s historical sites will be unprotected and that the commission will fail to fulfill its mission to protect historic sites.

#### *Overall File Review Results*

From our review of the commission’s repository files,<sup>7</sup> we selected certain critical documents to review, such as collection and deaccession<sup>8</sup> policies, written disaster plans, inventory lists, and proofs of insurance. We found that all the commission’s files contained a signed

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<sup>7</sup> The documents selected were not applicable to 3 of the 17 sites because the sites were either covered under another site’s operating agreement, were managed by a state park, or consisted of only a monument.

<sup>8</sup> Deaccession is the process of removing an artifact from a site’s collection.

management agreement but lacked some of the critical documents required by the management agreement (see **Table 2**). Based on our discussions with commission management, and as a result of our audit and our inquiries regarding the insufficiency of the files, management directed commission staff to begin obtaining missing documents in April 2018, with the plan to complete the process by June 30, 2018. Commission staff stated that the site management director needs help, and the executive director requested an additional position for fiscal year 2019 to help with state-owned historic sites. The site management director has focused on maintenance backlogs at the historic sites and has not prioritized the management agreements.

After the end of our fieldwork, the site management director provided us with additional information he received from the sites. We reviewed the information and determined that only three sites submitted the required documentation by the June 30 target date. We will assess compliance during the next audit of the commission.

**Table 2**  
**Tennessee Historical Commission**  
**Results of File Review**

<b>Critical Documents Selected for Review</b>	<b><i>Number of Files Missing Critical Documentation</i></b>	<b>Missing %</b>
<i>Inventory list</i>	7 of 14	50%
<i>Written disaster plan</i>	14 of 14	100%
<i>Collection and deaccession policies</i>	11 of 14	79%
<i>Proof of insurance</i>	5 of 14	36%

The American Alliance of Museums describes stewardship as

the careful, sound and responsible management of that which is entrusted to a museum’s care. Collections are held in trust for the public and made accessible for the public’s benefit. Effective collections stewardship ensures that the objects the museum owns, borrows, holds in its custody and/or uses are available and accessible to present and future generations. A museum’s collections are an important means of advancing its mission and serving the public.

Best practice recommends that, as with any museum property, the commission in its oversight/stewardship role must ensure that the buildings and the objects contained within the state historic sites are properly catalogued and safeguarded.

Inventory

At some of the historic sites, the state owns the objects; at others, the associated nonprofit owns the objects. For the 14 historic site files we reviewed, we found that 7 inventory lists (50%) were missing from the commission’s files; the remaining 7 lists on file were outdated. Specifically, we found that one inventory list was dated 1986 without indication of a more current list. In another case, we could not determine whether the inventory list was current as it was missing the date altogether. Furthermore, we found that site operators provided inventory lists that were

inconsistent and incomplete. For example, the inventory formats varied from simple lists to more detailed lists with forms and photographs for each item, and some items had missing values, acquisition dates, and sources.

We reviewed chapter four of the National Park Service's *Museum Handbook* to determine why annual inventories are important. The handbook recommends yearly collections inventories to be completed by the end of the fiscal year. The inventory should include full counts of controlled items (those with a high dollar value, firearms, items on loan from another facility, and items with a high risk of theft or damage); random counts of catalogued items; and a random count of uncatalogued accessions. The count should be conducted by the custodian of the collection and an individual with no duties related to the collection. The handbook also recommends photographing items as part of the cataloging process.

Without consistent and up-to-date inventories, the historic site operators do not know what they have and would not know if an item was lost. The commission should develop inventory guidelines and provide them to the site operators.

### Disaster Plan

For the 14 site files we reviewed, none included a written disaster plan. The American Alliance of Museums describes the disaster preparedness and emergency response plan as follows:

Museums care for their resources in trust for the public. It is therefore incumbent upon them to ensure the safety of their staff, visitors and neighbors, maintain their buildings and grounds, and minimize risk to the collections that they preserve for future generations. A current, comprehensive disaster preparedness and emergency response plan helps a museum to assess and manage risk, protect human life, and recover from natural and manmade disasters. Creating a plan and training museum staff, governing authority members, and volunteers on their roles within it ensures that a museum will be equipped to handle even the worst-case scenarios.

The commission should work with the historic site operators to develop written disaster plans and ensure that the plans are regularly updated.

### Collections and Deaccession Policies

For the 14 site files we reviewed, we found that 11 files (79%) were missing collection and deaccession policies. We consulted the American Alliance of Museums standards to obtain guidance on these policies. The alliance notes,

Collections advance the museum's mission while serving the public. Because collections are held in trust for the public and are made accessible for the public's benefit, the public expects museums to maintain the highest legal, ethical and professional standards. To demonstrate these standards, museums should create a collections management policy that outlines the scope of a museum's collection, explains how the museum cares for and makes collections available to the public, and

clearly defines the roles of the parties responsible for managing the museum's collections.

The commission should ensure that each historic site operator develops collection and deaccession policies.

### Proof of Insurance

For the 14 site files we reviewed, we found that 5 files (36%) were missing proof of insurance coverage for contents and comprehensive general public liability coverage. Proof of insurance is needed to provide evidence that the nonprofits operating the historical sites have plans to safeguard the public, the historic buildings, and the collections that they operate on behalf of the commission.

The commission should stress the importance of maintaining proof of insurance and ensure that current proof is on file.

### Risk Assessment

Based on our review of the commission management's Financial Integrity Act risk assessment, we found that while management identified the risk of abuse, misuse, or mismanagement of historic properties in its annual risk assessment, it did not identify risks or mitigating controls related to damage or loss of state-owned artifacts located at the historic sites. The commission should include this as part of its risk assessment to lessen the likelihood of loss or damage to state-owned artifacts.

### *Overall Effect of Not Ensuring Site Operators Safeguard the Historic Site and Property*

The state-owned historical sites are important reminders of the state's past that serve to educate the people of today and future generations about life in Tennessee and the state's role in the history of the United States. If the commission does not provide proper oversight of the nonprofit associations that operate the sites, the commission faces an increased risk of not preserving and protecting these sites. In order for the commission to ensure nonprofits are actively safeguarding the state's historical properties, it must ensure the agreements are fully enforceable as evidenced by the commission acquiring, maintaining, and reviewing the sufficiency of the documents required by the agreements.

### **Recommendation**

Management of the commission should enter into formal binding contracts with all nonprofits that clearly delineate all parties' authorities, responsibilities, and fiscal relationships related to the day-to-day operations of the historic sites. Management should seek guidance by reaching out to the state's contracting agency, the Central Procurement Office, to formalize the relationship between the commission and the nonprofits.

Each year, the commission should ensure that it acquires, maintains, and reviews the sufficiency of all information required from the nonprofits through binding agreements. The commission must review the documentation to ensure the nonprofits are safeguarding the historic

sites as required. The commission should also ensure that the nonprofits understand the importance of maintaining critical documentation.

### **Management's Comment**

We concur in part with this finding, as we believe that the commission maintains proper oversight. The referenced management agreements are not statutorily required and were the initiative of the commission as a response to overseeing the non-profit entities and non-state employees charged with managing historic state properties. At the time the agreement was developed, the Department of Environment and Conservation's legal counsel advised not making it into a formal contract. The commission will develop the agreement into a formal contract. Under the direction of the commission, much progress has been made with the non-profits that run the state sites. A required annual meeting of the state sites has been implemented, and enrollment in professional museum programs has been instituted. Standardized entrance signage at the sites with the Tennessee Historical Commission logo has been placed in the past five years to indicate that the state historic sites are under the authority of the agency. The limitations on current information in the files reflects the commission having only one staff person to administer 17 sites and approximately 110 buildings and oversee the allocation of the maintenance fund, oversee capital projects, and review the administration of the sites. Just as significant is the variation in staff capacities for the individual non-profits that run the sites. The additional information is in the process of being gathered from all sites and as of August 6, 2018, 75% of the files have been submitted, with the balance expected in the near future. The commission has identified additional staff support for the Historic Sites Program as a critical need for years. This fiscal year a new position to help create a cemetery program will be used in part to provide much-needed assistance to the State Historic Sites Program. However, to alleviate the concern of the lack of proper oversight of the state-owned historic sites, the commission will be asking again that a new Historic Preservation Specialist position be established to work with the non-profit entities and the non-state employees charged with managing historic state properties.

### **TENNESSEE HERITAGE PROTECTION ACT**

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In 2013, the Tennessee General Assembly enacted the Tennessee Heritage Protection Act (the Act), Section 4-1-412, *Tennessee Code Annotated*. The Act prohibited the relocation, removal, alteration, renaming, rededication, or other disturbance of historical items on public property unless the Tennessee Historical Commission approved a waiver. (See legislation summary regarding the Act on page 2.) Before the Act's passage, the commission was not responsible for making administrative decisions and had not previously promulgated rules. Since the commission has no legal counsel staff, it relies on the Department of Environment and Conservation's legal staff for assistance in administering the law. For activities of the commission as a result of the Act, see the timeline on the following page.

**Table 3**  
**Tennessee Heritage Protection Act, Timeline of Activities**

Date	Event
April 1, 2013	The Tennessee Heritage Protection Act of 2013 is enacted.
October 16, 2015	The Historical Commission meets and approves 13 criteria for consideration of waiver petitions.
March 7, 2016	The City of Memphis files a petition for waiver for the removal of the Nathan Bedford Forrest statue.
March 11, 2016	The 2016 amendment to the Heritage Protection Act passes.
October 13, 2016	Middle Tennessee State University files a petition for waiver to rename the Forrest Hall building.
October 21, 2016	The commission denies the City of Memphis' petition for waiver filed on March 7, 2016.
November 4, 2016	The City of Memphis files a petition for declaratory order, claiming the criteria used in the waiver denial to be invalid.
September 13, 2017	The City of Memphis files a petition for declaratory order based on the inapplicability of the 2013 Heritage Protection Act over the Nathan Bedford Forrest statue.
October 9, 2017	Friends of Fort Negley file a petition for declaratory order for the protection of land adjacent to Fort Negley.
October 13, 2017	During a commission meeting, members vote to confirm the invalidity of their denial of the City of Memphis' waiver filed on March 7, 2016. In a second vote on the waiver, they deny it again. The commission approves modified criteria for the rulemaking process.
November 9, 2017	The commission has a special telephonic meeting to consider whether to decide a contested case (the Fort Negley petition, filed October 9, 2017) and whether to hear the case sitting with an administrative law judge (ALJ) or to refer to an ALJ to hear alone. The commission votes to refer to ALJ alone with an option for the commission's review.
December 9, 2017	The commission has a rulemaking hearing before the Government Operations Committee.
January 19, 2018	The commission has a special telephonic meeting to consider whether to review or let stand an initial order from ALJ dismissing the petition for declaratory order filed September 13, 2017, regarding the applicability of the 2013 Act to the Nathan Bedford Forrest statue.
February 16, 2018	The commission denies Middle Tennessee State University's petition for waiver in a hearing with an ALJ.
April 5, 2018	Descendants of Nathan Bedford Forrest and Sons of Confederate Veterans Camp #215 file an amended petition for declaratory order regarding the illegality of transferring Memphis parks to Memphis Greenspace, Inc.
April 16, 2018	The City of Chattanooga files a petition for waiver to move World War II memorials for street and storm water projects.
May 18, 2018	The commission has a special telephonic meeting to consider whether to decide a contested case (the amended SCV and Forrest descendants' petition, filed April 5, 2018) and whether to hear the case sitting with an ALJ or to refer to an ALJ to hear alone. The commission votes to refer to the ALJ alone, with an option for the commission's review.
May 21, 2018	The 2018 amendment to the Heritage Protection Act passes, increasing the commission's duties. <sup>9</sup>

Source: Obtained from the Historical Commission and the Department of Environment and Conservation's Office of General Counsel.

<sup>9</sup> See page 2 for a summary of the Act and subsequent amendments.

## **Audit Results**

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**1. Audit Objective:** Did the Historical Commission analyze its legal and administrative needs and formally request assistance from the Department of Environment and Conservation?

**Conclusion:** No, the commission did not analyze its legal and administrative needs and has not pursued a formal agreement with the department even though it depends on some of the department's services to fulfill its duties (**see Finding 2**).

**2. Audit Objective:** Did commission members receive adequate training on the legal aspects of their duties under the Tennessee Heritage Protection Act?

**Conclusion:** No, commission members were not provided training to handle the potential legal requirements in administering the Act. (See **Observation 1**.)

### Methodology To Achieve Objectives

To gain an understanding of the commission's duties and responsibilities, we reviewed commission meeting minutes and reports, and we interviewed commission staff and the commission chairman. We interviewed general counsel for the Department of Environment and Conservation and attorneys involved with the commission's work; attorneys representing the Office of the State Attorney General; and other departmental staff who perform services for the commission. We attended commission meetings and watched videos of meetings and a rulemaking hearing. We reviewed waiver petitions, other legal documents filed in connection with petitions for waiver, and legislation passed in 2018 relative to the commission.

### **Finding 2 – The Tennessee Historical Commission does not have an interagency contract with the Department of Environment and Conservation to formalize the services and assistance it depends upon to perform its duties**

The Tennessee Historical Commission is administratively attached to the Tennessee Department of Environment and Conservation. The department provides administrative services to the commission including technical maintenance of the commission's webpages and some content management, such as updating public notice pages, as well as legislative liaison services; and legal services. Given the relationship between the two entities, both entities failed to formalize these services through a formal interagency contract.

In recent months, the commission experienced increased media attention as a result of the Tennessee Heritage Protection Act. Simultaneously, department management decided to stop providing the commission communication services, including press releases and media handling in 2017. Without a formal contract, the commission was left with no grounds to protest the department's decision to stop the services that the commission needed.

Based on our discussions with all parties, we found that, given the commission's need for legal services to implement the Heritage Protection Act, the department has committed three attorneys from its Office of General Counsel to assist the commission with legal matters.

From our review of the commission's meeting minutes and legal transcripts, we found lengthy passages in which commission members call on the department's legal counsel to explain the issues to them. Additionally, the minutes provided evidence that commission members needed assistance in wording motions to refer matters to an administrative law judge (ALJ). The department's attorneys guided the commission through the rulemaking process and worked to determine if the commission's hearings of petitions could take place before an ALJ. Without the services provided by the department's Office of General Counsel, the commission would not be able to fulfill its duties under the Heritage Protection Act.

### **Recommendation**

The commission should negotiate an interagency contract with the department to obtain all services needed to fulfill its duties and responsibilities with the assistance of the Governor's Office or the Governor's designee. The commission's process should involve reevaluating the commission's essential needs, identifying how it is currently using its resources, and planning for the additional duties and resources brought on by recently passed legislation.

### **Management's Comments**

#### **Tennessee Historical Commission**

We concur in part with the finding. The commission has a contract with the Tennessee Department of Conservation that predates the department's consolidation and has served as the interagency agreement with the Department of Environment and Conservation since its adoption. The commission has enjoyed a strong working relationship with the department and the department has provided important administrative services. As the report indicates, there was a situation last year where communications support was withdrawn. Conversations are currently in progress between the department and the commission to update the agreement to reflect the range of services provided.

#### **Department of Environment and Conservation**

We concur that the Tennessee Historical Commission and Tennessee Department of Environment and Conservation should have a current, operational interagency agreement to formalize the delivery of support services and assistance provided to the commission by the department. The most recent agreement document was a Memorandum of Understanding (MOU) signed on October 27, 1987, between the commission and the department's predecessor agency, the Department of Conservation, that no longer captures the scope of service and work provided to the commission by the department. The department and the commission are developing a new agreement outlining how the commission is "administratively attached" to the department, reflecting services that will be provided to the commission by the department.

**Observation – Members of the Tennessee Historical Commission should undergo training to understand and fulfill their legal duties under the Tennessee Heritage Protection Act**

Tennessee Historical Commission staff provide newly appointed commissioners with an introductory handbook to familiarize them with the commission’s functions and their duties. The handbook includes Section 4-1-412, *Tennessee Code Annotated*, the Tennessee Heritage Protection Act, and a copy of the waiver form and requirements that applicants must provide with petitions. However, commission staff stated that they do not have the legal expertise to give commissioners training on legal aspects of the waiver process.

Because the Tennessee Heritage Protection Act covers a variety of memorials in the state, the number and kinds of petitions that will come before the commission is unknown. Commission members will be tasked with hearing complaints alleging violation of the act under 2018 legislation, which will be another new experience. Members should have some training on legal aspects of their actions, as well as opportunities to ask questions about processes that are unfamiliar to them. New commissioners would benefit from lessons learned during previous hearings. Although some commission members have reached out to Department of Environment and Conservation attorneys with questions, formal training would provide an opportunity for all members to hear the answers.

The commission should include a formal request for legal training in its interagency contract with the department’s Office of the General Counsel. The training should be sufficient to educate commission members regarding their duties and responsibilities in administering the Tennessee Heritage Protection Act.

**TENNESSEE HISTORICAL COMMISSION STRUCTURE AND RESPONSIBILITIES \_\_\_\_\_**

**Membership**

The Tennessee Historical Commission is composed of 24 citizen members appointed by the Governor to 5-year terms and 5 ex-officio members: the Governor or the Governor’s designee; the State Historian; the State Archaeologist; the Commissioner of Environment and Conservation or the Commissioner’s designee; and the State Librarian and Archivist. Section 4-11-102, *Tennessee Code Annotated*, requires that

- at least three members have an academic background in history or historic preservation, or both; and
- the members be equally divided between the three grand divisions of the state.

Statute also says the Governor “shall strive to ensure that at least one (1) person serving on the commission is sixty (60) years of age or older and that at least one (1) person serving on the commission is a member of a racial minority” and “there should be a conscientious effort” to appoint members inclusive of African Americans and of Native American ancestry.

The commission has an executive committee composed of the chair, two vice-chairs, and the chairs of the standing committees. The six standing committees (audit, finance, historic sites, historical markers, publications, and Wars Commission) have three members each. The standing committees present reports to the full Historical Commission at meetings.

### Meetings

To comply with the Tennessee Open Meetings Act, Section 8-44-101 et seq., *Tennessee Code Annotated*, the commission provides members of the public with adequate notice of its meetings and records the minutes of its meetings.

There are no statutory meeting requirements, but the commission's bylaws specify three meetings a year. The commission met three times in both 2015 and 2016. In 2017, the commission met four times.<sup>10</sup> As of June 6, 2018, the commission has met three times in 2018.<sup>11</sup> The commission considers attendance by more than half of its members to be a quorum.

### Conflict-of-interest Policy

The commission has adopted a conflict-of-interest policy. The commission requires all Governor-appointed members to sign the policy upon appointment. In addition to describing circumstances under which a member could have a potential conflict, the policy also states that members should seek the advice of the Department of Environment and Conservation's Office of General Counsel if they have any questions.

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## **Audit Results**

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**1. Audit Objective:** Did the Historical Commission appointees meet statutory requirements for membership composition?

**Conclusion:** Yes, commission appointees met the membership requirements in statute; however, one Governor-appointed vacancy remains unfilled since October 2017.

**2. Audit Objective:** Did the commission have a quorum at its meetings?

**Conclusion:** The commission had a quorum at meetings; however, one ex-officio member, the State Librarian and Archivist, did not attend the last five meetings from October 2017 through May 2018.

**3. Audit Objective:** Did the commission comply with the Tennessee Open Meetings Act for public notice and meeting minute requirements?

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<sup>10</sup> One of the meeting was telephonic.

<sup>11</sup> Two of the meetings were telephonic.

**Conclusion:** Yes, the commission provided adequate public notice and recorded minutes of its meetings as required by the Act.

**4. Audit Objective:** Did the commission have a conflict-of-interest policy and did members sign the disclosures?

**Conclusion:** Yes, a conflict-of-interest policy was in place, and the Governor-appointed commission members completed conflict-of-interest disclosure statements.

#### Methodology To Achieve Objectives

We obtained the commission's membership information and conflict-of-interest policy and disclosures from the department's Director of Internal Audit. We interviewed the chair of the commission, the commission's Executive Director and staff, and the department's Office of General Counsel. We reviewed minutes of the commission's meetings for the period July 1, 2015, through June 6, 2018.

### **TENNESSEE WARS COMMISSION ANNUAL REPORT**

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The Tennessee Wars Commission Programs Director<sup>12</sup> coordinates the planning, preservation, and promotion of structures, buildings, sites, and battlefields in Tennessee related to specific wars and conflicts beginning with the French and Indian War and ending with the Civil War. Preservation efforts include administering grants from state funds and coordinating with federal grants funding entities. As part of promotion efforts, the Wars Commission has published several brochures providing information about Civil War sites in Tennessee, as well as a video on preserving Tennessee's civil war battlefields for use in public school libraries and history classes.

#### **Audit Results**

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**Audit Objective:** Did the Programs Director for the Wars Commission file the statutorily required annual report of its accomplishments?

**Conclusion:** No, the commission's Programs Director has not filed the annual report since 2013 (see **Finding 3**).

#### Methodology To Achieve Objective

To determine whether the Wars Commission has filed an annual report of its accomplishments, we interviewed Historical Commission and Wars Commission staff and reviewed Wars Commission webpages.

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<sup>12</sup> The Department of Human Resources classifies this title as the Historic Preservation Specialist. See the organizational chart on page 4.

**Finding 3 – The Tennessee Wars Commission has not prepared a statutorily required annual report since 2013**

According to Section 4-11-305, *Tennessee Code Annotated*, “the commission shall file an annual report with the governor and the speakers of the respective bodies of the general assembly containing a summary of the accomplishments of the commission during the preceding year and the plans of the commission for the following year.” The report available on the Tennessee Wars Commission webpage is dated October 2013 and was written by the former Programs Director. The current Programs Director has been in the position since October 2016. We requested the required annual reports for 2016 and 2017 from the Programs Director, who provided a report on activities and accomplishments for 2017 that was presented at the June 2018 meeting of the Historical Commission; however, he did not provide a report for 2016. Because the Programs Director has not prepared a report since 2013, in violation of the statute, the General Assembly and the public do not have up-to-date information on the Wars Commission’s activities.

**Recommendation**

The Programs Director should prepare an annual report as required by statute; provide the report to the Governor and house and senate speakers; and update the Wars Commission webpage to provide the public with the most recent report.

**Management’s Comment**

We concur with the finding. The Wars Commission program director submits a report three times a year to the Tennessee Historical Commission at their February, June, and October meetings. The Governor has a representative at the meetings who receives the reports. The regular reports will form the basis of the statutorily required annual report and will be submitted to the Governor and to the House and Senate speakers, and the Commission will update the Wars Commission webpage to include the report.

## APPENDICES

### APPENDIX 1 Management Agreement Between the Tennessee Historical Commission and Nonprofit State Historical Site Operators



#### 2017-18 Rules, Regulations, Policies, and Procedures Management Agreement For Non-Profit Partner Managing Organizations of the Tennessee Historical Commission State-Owned Historic Sites

- A. The Managing Non-Profit Organizations must be a 501(c)3 that:
1. Adheres to federal laws, ordinances, rules, and regulations, including but not exclusive to:
    - a. Filing required forms (Form 990 et al)
    - b. Complying with Department of Labor laws
    - c. Following political activity and lobbying rules, outlined for a 501(c)3
  2. Adheres to state laws, ordinances, rules, and regulations, including but not exclusive to:
    - a. Secretary of State, registration as a Charitable Organization and submitting required forms
    - b. Charitable Solicitations Act
    - c. Rules of Department of General Services, Administration Division, Chapter 0690-4-1, Solicitation (i.e., no political solicitation on state property—fundraisers, meet-and-greets, etc.)
    - d. Tennessee Department of Revenue, to include collecting and reporting sales tax on goods sold
    - e. Tennessee Department of Labor and Workforce Development, to include posting required State Posters and maintaining Workers Compensation Insurance, if required by law (5 or more employees)
    - f. Public accountability signage as a recipient of taxpayer funding
    - g. State Building Commission Bylaws, Policy, and Procedures
    - h. Tennessee Non-smokers Protection Act
    - i. Tennessee Code Annotated, Title 39, Chapter 17, Offenses Against Public Health, Safety and Welfare, Part 13 Weapons, and TCA § 39-17-1351
    - j. Rules of Tennessee Department of Environment and Conservation, Bureau of Environment, Division of Air Pollution Control, Chapter 1200-3-4, Open Burning
- B. The Tennessee Historical Commission (THC) is to be the Repository for standard site information, and updated with any revisions:
1. Reports as required by Operating Grant Contract
  2. By-laws and Charter
  3. Collections and De-accession Policies
  4. Long-Range Plans, minimum period of five (5) years, with revisions on an as-needed basis
  5. Written Disaster Plan

6. Inventory Listing
7. Main key (at minimum) with notice of location of additional keys (if applicable), alarm codes, & names/numbers of other key holders
8. Staff Directory and staff job descriptions
9. Board Members Directory, board member job descriptions, dates of board meetings, and submission of board meeting minutes
10. Advance notification of large special events, i.e., fundraisers, relating to the site
11. Audit information, as completed
12. Proof of insurance coverage on contents
13. Proof of Comprehensive Public General Liability Insurance, including but not limited to, bodily injury, property damage, contractual liability, products liability, completed operations and owner's protective liability with combined single limits of \$500,000 per occurrence with a minimum aggregate of \$1,000,000
14. Proof of Special Event or other specialty insurance as utilized

C. Citation of State ownership shall be standard:

1. Exterior signage at site and all references to the site must include "State Historic Site" as a part of the site's name or a byline. New signage to be phased in as funding allows.
2. All forms of public notice (notices/flyers/postcards, informational pamphlets, press releases, research reports, signs, newsletters, websites, ads) shall include the following written statement, "This project is funded under an agreement with the Tennessee Department of Environment and Conservation, Tennessee Historical Commission."
3. Newscasts and articles must include the phrase "A Tennessee Historical Commission State-Owned Historic Site."
4. Tennessee Historical Commission logo shall be included, space permitting

D. General Services to be provided by Managing Non-Profit Organizations:

1. Physically open the site to the public
2. Accurate site interpretation
3. Fundraising to cover additional operating expenses
4. Termite protection, with current letter of protection or copy of contract on file at THC
5. Retain a qualified Executive Director or Site Manager to manage day-to-day operations
6. Maintain the buildings and site in a clean, neat, and operationally functional condition

E. THC Mandatory Requirements:

1. Approval Needed for the following:
  - a. Undergoing any site-provided maintenance above minor, non-historic fabric altering repairs, with Non-Profit any site-provided maintenance to follow Secretary of Interior's Standards
  - b. Any digging or ground disturbance, contact Tennessee Division of Archaeology
  - c. Entering into a sub-contract or lease of state property
  - d. Filming on site, as allowed by THC and per permits provided by State of Tennessee Film Commission
  - e. Naming buildings, in whole or in part, to commemorate, memorialize, or dedicate to any individual or group
  - f. Using the historically interpreted interior museum spaces of historic buildings for engagements or activities other than a museum
2. Attendance at any called meeting of the THC State Historic Sites

F. Managing Non-Profit Organizations are strongly encouraged to do the following:

1. Maintain membership in a professional history/preservation organization that provides on-going educational expertise to staff and/or board
2. Provide health insurance and other benefits
3. Cross marketing of other THC State Historic Sites (brochures)
4. Attend conferences and training opportunities where possible
5. Send a site representative to attend at least one Tennessee Historical Commission meeting annually. The THC meets once in each grand division over the course of a year.

We, the undersigned, as non-state employees entrusted with property owned by the State of Tennessee, have read the **2017-18 Rules, Regulations, Policies, and Procedures Management Agreement for Non-Profit Partner Managing Organizations of the Tennessee Historical Commission State-Owned Historic Sites** and understand the rules and responsibilities detailed therein.

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Site Manager/Director

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Board Chair/President

**APPENDIX 2**  
**Tennessee Historical Commission Members**  
**As of July 16, 2018**

<b><u>Members Appointed by Governor</u></b>	<b><u>Grand Division Represented</u></b>
Ernie Bacon	Middle
Elizabeth A. Campbell	Middle
Allen F. Carter, Vice-Chair	East
Dr. Douglas Cupples	West
Dr. Kent Dollar	Middle
Sam D. Elliott	East
Jeremy S. Harrell	Middle
Yolanda (Loni) Harris	West
Toye Heape	Middle
Alpha B. (Tiny) Jones	Middle
Bill Landry	East
Lucy W. Lee	Middle
William Lyons	East
Linda Moss Mines	East
Dr. Reavis L. Mitchell, Jr., Chairman	Middle
Joanne Cullom Moore	West
Keith Norman	West
Beverly C. Robertson	West
Don Roe	West
David “Ray” Smith	East
Joe Swann	East
Judge David Tipton	East
Vacant <sup>13</sup>	West
Derita Coleman Williams, Vice-Chair	West

<b><u>Ex-Officio Members</u></b>	
Governor	Governor Bill Haslam
Commissioner, Tennessee Department of Environment and Conservation	Commissioner Shari Meghreblian
State Archaeologist	Mike Moore
State Historian	Dr. Carroll Van West
State Librarian and Archivist	Charles A. Sherrill

<sup>13</sup> This position has been vacant since October 2017.

### APPENDIX 3

#### Financial Information for Fiscal Years Ending June 30, 2017, and June 30, 2018

The Tennessee Historical Commission's business unit code in Edison is 32704.

#### Tennessee Historical Commission Fiscal Year 2017 Budget and Actual Expenditures and Revenues

Tennessee Historical Commission		FY 2017 Recommended Budget*	FY 2017 Actual Expenditures and Revenues**
<b>Expenditures</b>	Payroll	\$1,046,500	\$979,900
	Operational	2,217,600	3,499,000
	<b>Total</b>	<b>\$3,264,100</b>	<b>\$4,478,900</b>
<b>Revenues</b>	State	\$2,684,500	\$3,390,400
	Federal	529,600	1,069,600
	Other	50,000	18,900
	<b>Total</b>	<b>\$3,264,100</b>	<b>\$4,478,900</b>

\*Source: Tennessee State Budget, Fiscal Year 2016-2017.

\*\*Source: Tennessee State Budget, Fiscal Year 2018-2019.

#### Tennessee Historical Commission Fiscal Year 2018 Budget and Estimated Expenditures and Revenues<sup>14</sup>

Tennessee Historical Commission		FY 2018 Recommended Budget*	FY 2018 Estimated Expenditures and Revenues**
<b>Expenditures</b>	Payroll	\$1,142,200	\$1,211,400
	Operational	4,434,000	4,815,400
	<b>Total</b>	<b>\$5,576,200</b>	<b>\$6,026,800</b>
<b>Revenues</b>	State	\$3,080,300	\$3,430,900
	Federal	529,600	529,600
	Other	1,966,300	2,066,300
	<b>Total</b>	<b>\$5,576,200</b>	<b>\$6,026,800</b>

\*Source: Tennessee State Budget, Fiscal Year 2017-2018.

\*\*Source: Tennessee State Budget, Fiscal Year 2018-2019.

<sup>14</sup> The fiscal year ending June 30, 2018, was not closed during the time of our audit; therefore, we presented the estimated revenues and expenditures for that time period.