

BEFORE THE TENNESSEE HISTORICAL COMMISSION

IN THE MATTER OF:

**METROPOLITAN BOARD OF PARKS
AND RECREATION**

Petitioner,

**Petition for Waiver to allow the City to
Implement the Fort Negley Master Plan**

Case. No 04.47-236164A

FINAL ORDER

This matter came before the Tennessee Historical Commission (“Commission”) upon a Petition for Waiver filed by Metropolitan Board of Parks and Recreation (“the Board”) seeking a waiver to allow the implementation of the 2022 Fort Negley Master Plan (the “Plan”). Pursuant to Tenn. Code Ann. § 4-5-307, the Tennessee Historical Commission provided formal notice of a hearing to be held regarding this matter. Accordingly, the Commission held a hearing on April 26, 2024, at 9:00 a.m., in the presence of Administrative Law Judge Steve Darnell and in the presence of the Commission members. The Petitioner was present and represented by Tessa Ortiz-Marsh, Attorney for the Metropolitan Government of Nashville and Davidson County (“Metro”). After the conduct of the evidentiary hearing, and considering the pleadings filed by Metro and argument presented by counsel at the conclusion of the evidentiary hearing, the Commission sitting with Judge Darnell found as follows:

Findings of Facts

1. Fort Negley was the largest inland stone fortification built during the Civil War.
2. The City of Nashville acquired the Fort Negley property in 1928.
3. Fort Negley is a public park owned by Metro. The Board supervises, controls and operates Metro's Park system, including Fort Negley.
4. Fort Negley was added to the National Register of Historic Places in 1975.
5. In February of 2018, Metro entered into an Agreed Order that stipulated that the Metro owned property that includes the site of Fort Negley is a "Memorial" as defined in the Tennessee Heritage Protection Act.
6. The intent of the Plan is to restore, enhance, and preserve Fort Negley and the surrounding park property. Implementation of the Plan involves alterations or disruptions to the Fort Negley site.
7. This Plan and its implementation builds on the significance of this historic site and honors it with appropriate infrastructure and interpretation, fully aligning with the Tennessee Heritage Protection Act's presumption in favor of memorial preservation. To that end, all site alterations and disturbances recommended in the plan have been conceived carefully to be consistent with the *Secretary of the Interior's Standards for the Treatment of Historic Properties*.

Conclusions of Law

1. Pursuant to Tenn. Code Ann. § 4-5-307, and the Tennessee Heritage Protection Act of 2016 found at Tenn. Code Ann. § 4-1-412, the Tennessee Historical Commission provided formal notice of the commencement of a final hearing upon the above-referenced matter regarding the implementation of the Plan. A final hearing was held, in accordance with Tenn. Code Ann. §

4-1-412(c), in the presence of Administrative Law Judge Steve Darnell and in the presence of the Tennessee Historical Commission on April 26, 2024, at 9:00 a.m.

2. The procedures of this final hearing have been established as provided in Tenn. Code Ann. § 4-1-412 and have been conducted in a manner consistent with the provisions of the Uniform Administrative Procedures Act governing contested cases, when such provisions are not in conflict with Tenn. Code Ann. § 4-1-412.

3. In order for a waiver to be granted by the Historical Commission, the public entity seeking the waiver shall demonstrate by clear and convincing evidence that a material or substantial need for a waiver based on historical or other compelling public interest exists; provided, that if a memorial is designated as a national historic landmark or listed on the national register of historic places, there shall be a presumption in favor of preserving the memorial.

4. At the hearing, the Historical Commission may grant a petition for waiver, in whole or in part, by a two-thirds (2/3) vote of the entire membership of the Commission by roll call vote. The Commission may include reasonable conditions and instructions to ensure that a memorial is preserved and remains publicly accessible to the greatest extent possible.

5. Pursuant to the Rules of the Tennessee Historical Commission found at Chapter 0400-70-01:

- (1) When an entity petitions the Tennessee Historical Commission for a waiver relative to Tennessee heritage protection, the Tennessee Historical Commission shall evaluate the following considerations when rendering a decision:
 - a. Whether the proposed change serves the public interest;
 - b. Whether the proposed change has any commercial overtones;
 - c. Whether the proposed change has a reasonable relationship to the site;

- d. Whether the proposed change has demonstrated support or opposition from local residents;
- e. If a change in name or rededication is proposed, whether the change is in conformance with the character of the existing names or dedications in the area;
- f. If a change in name or rededication is proposed, whether the change is duplicative of other nearby site names or dedications;
- g. Whether the proposed change is offensive or has a derogatory or defamatory implications;
- h. Whether the proposed change detracts from or enhances the commemoration of the conflict, event, entity, figure, or organization previously commemorated;
- i. Whether the proposed change is expected to have a significant positive or negative economic impact;
- j. Whether the proposed change could cause confusion for visitors interested in the site;
- k. Whether the proposed change diminishes or enhances the historic integrity of the site;
- l. Whether the proposed change is relative to a historic site or memorial on the National Register of Historic Places or a national historic landmark; and
- m. If a relocation is proposed, whether the new location is appropriate.

(2) The enumeration of the considerations in paragraph (1) of this rule does not prevent the Tennessee Historical Commission from taking into account of other considerations.

Rule 0400-70-01-.01.

6. The Act applies to Fort Negley because the site is a “Memorial” as defined in the Act.

7. The Act requires Metro, as a public entity, to receive a waiver of subdivision (b)(1) in order to implement the Plan due to necessary alteration of the Fort Negley site.

8. Implementation of the Plan will materially and substantially support the preservation of Fort Negley and the compelling public interest in honoring the historical significance of the site.

9. Based on consideration of all the pleadings and oral argument in this matter, the Commission determines that compelling historical and public interest exists in the implementation of the Plan, which includes alteration and disruptions to the Fort Negley site.

10. This conclusion of law is based on a finding that Fort Negley is a "Memorial" as defined by the Act, a waiver of the Act is warranted, and that a compelling historical and public interest exists to allow for implementation of the Plan.

Policy Reasons for this Decision

1. Approving the waiver satisfies both the historic or other compelling public interest requirements of the Tennessee Heritage Protection Act.

Order

The Petition for Waiver is hereby **GRANTED** this 26th day of April, 2024. It shall be effective one hundred twenty (120) calendar days after notice of the Commission's determination is posted on the web site of the Commission. Tenn. Code Ann. § 4-1-412(c)(8)(B).

TENNESSEE HISTORICAL COMMISSION

By: 
Derita Coleman Williams
Chairperson
Tennessee Historical Commission

Approved as to form and legality:



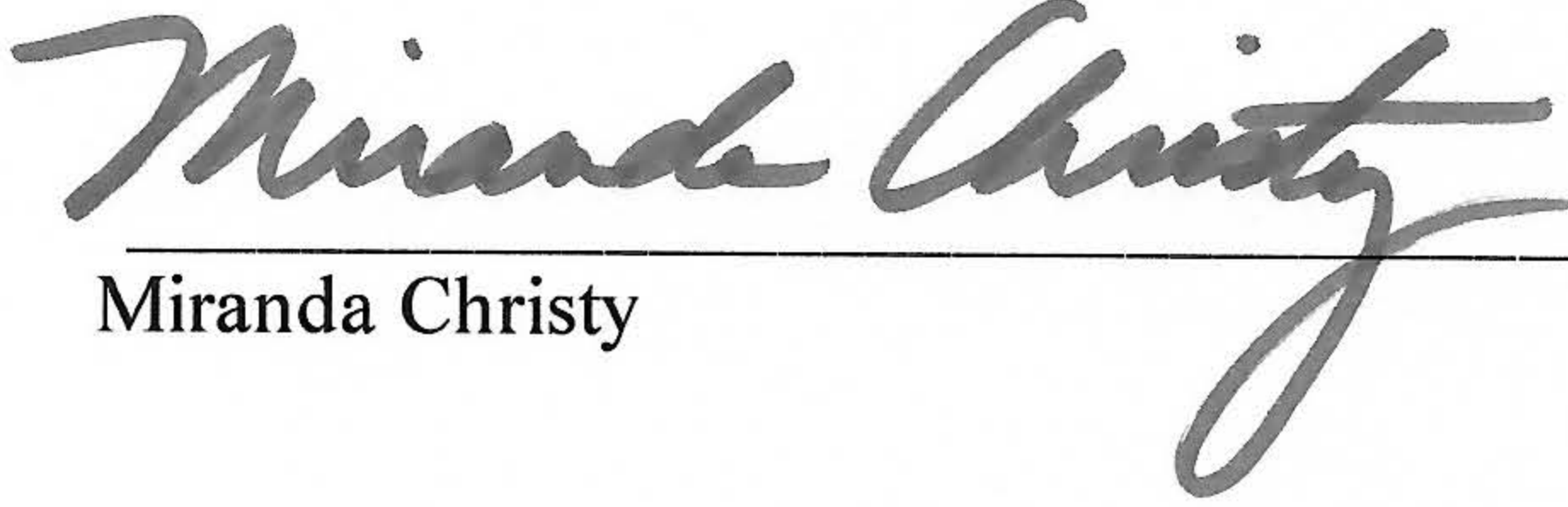
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**Filed in the Administrative Procedures Division, Office of the Secretary of State this
____ day of May, 2024.**

Administrative Procedures Division

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was served upon Macy Forrest Amos, Attorney for the Metropolitan Government of Nashville and Davidson County via email to macy.amos@nashville.gov on this 15th day of May, 2024.



Miranda Christy