

Testimony of Dr. Fred L. McGhee before the Committee on Culture, Recreation and Tourism
Austin, TX July 9, 2008

Distinguished members of the Committee on Culture, Recreation and Tourism, my name is Fred McGhee and I am here to offer public comment on the transfer of historical sites from the Texas Parks and Wildlife Department to the Texas Historical Commission. I have no issue with the transfer of these sites per se, however I do wish to testify about what I see as some serious deficiencies within the THC that lead me to question their capacity to effectively manage these sites in keeping with applicable state and federal law. My concerns are somewhat similar those expressed in the public comments on HB7 as well as HB12, but differ in some important respects. I do not expect that what I am about to say will have a great impact on the transfer of the historic sites themselves, but I do appreciate your taking the time to listen to me and for allowing these comments to be placed on the public record.

By profession I am an African-American archaeologist and deep sea diver, which is to say that I study the branch of historical archaeology that concerns itself with the African Diaspora whether the site is located on land or underwater. I have worked as a professional archaeologist in Texas and in the Hawaiian Islands for a number of years, both as a federal government employee and in the private sector, and have recently started preliminary work on planned projects in the Republic of Trinidad & Tobago, although I have other research interests as well, particularly in Germany. I am one of about fifteen African Americans in the United States with a Ph.D. in archaeology, and am presently the only one working full time in the private sector. My consulting company is the only African American owned and operated archaeology company in the United States. I am also a distinguished veteran of the United States Navy, with over twelve years of service as an enlisted man, midshipman, and as an officer, where I became one of the first African-American deep sea diving officers in U.S. Navy history in 1991.

In the time that I have observed and worked with the THC—a time span of about thirteen years—I have had the chance to watch the agency grow, undertake some projects of a significant nature, and adjust to changing winds and political tides. I take no pleasure in saying what I am about to say, because I am in substantial agreement with the Sunset Advisory Commission when it said in its February 2006 staff report that “Texas Has a Continuing Need for the Texas Historical Commission.” I also think that many employees of the commission are aware of some of the shortfalls and challenges that plague the agency and have expressed what I consider to be a sincere desire to make changes.

Nonetheless, I can no longer remain silent about some of the practices of this agency, practices which have become habits of thought that are dishonest, unprincipled, and in many cases unlawful.

What I would like to make clear in my testimony is my belief in the following: The THC’s mandate to protect and preserve this state’s historic resources and to serve as a heritage tourism based springboard for economic development in Texas has fallen out of balance. The agency has fundamentally abdicated its responsibility to regulate certain types of development under Section 106 of the National Historic Preservation Act, and repeatedly kowtows to politically connected local officials and influential politicians of *both* parties in ways that are harmful to local communities and that endanger some of our most important historic sites, particularly cemeteries and burial grounds.

The agency has for years denied any element of intent, but the evidence at this point is no longer plausibly deniable. Whether benign neglect or intentional, the THC’s behavior has become deeply troubling to populations in the state that have borne the disproportionate consequences of the agency’s unwillingness to properly preserve *all* of the state’s unique and precious heritage. The decisions or non-decisions made by the THC have had and continue to have a disproportionately negative effect on the state’s American Indian and African American heritage and have been profoundly hurtful, disregardful, disrespectful, discourteous, and fundamentally unjust.

Lack of compliance with state and federal law is one thing. But there is an attitude, a set of assumptions, and a habit of mind that explains much of the THC’s regulatory behavior.

In my work as a scholar, I have for years talked about the fact that the experiences of African Americans and Native Americans in Texas will not fit neatly into customary “Gone to Texas” paradigms, and that there is not one “Story of

Texas” but many such stories. For example although Texas has a unique and regrettable history of racial violence, *not one* marker in Texas commemorates a lynching. Is that because so few lynchings took place on Texas soil? The opposite is in fact true; Texas was in a class by itself, even by southern standards, in the degree of racial violence practiced and countenanced by government and citizens at every level.

Is it because historical facts such as this would not be considered a money making tourist attraction? Who has made such a judgment? Why? Cities throughout the American south such as Charleston, South Carolina, as well as elsewhere are commemorating slave markets, auction blocks, jails, massacres and so on not only because this is the *actual* history of the country but because savvy heritage experts know that the American public is tired of the same old pale, male, and stale caricatures extolling “great men” that have characterized historical representation in Texas and elsewhere for too long. In 2004 Texas joined Hawaii, California and New York as the next “minority majority” state, but you wouldn’t know it driving around the Lone Star State and examining what the “state agency for historic preservation” presents as the state’s official heritage.

The growing issue of what to do to protect the state’s threatened cemeteries and archaeological sites from encroaching urban development requires an active state historic preservation agency that properly regulates according to state law and fulfills its mandate to uphold the federal National Historic Preservation Act. The scope of the problem was revealed in an article in Monday’s Dallas Morning News by David McLemore titled “The present is catching up to Texas’ old cemeteries, historic sites” in which the author notes that there are more than 50,000 old cemeteries in Texas, the majority of them small, isolated sites that range from abandoned 19th century family graves to long-forgotten Indian burial mounds. What the author does not note is that many burial sites in Texas *are* documented but have been desecrated or improperly managed, with crucial THC support or benign neglect. Examples include: Old Bear Creek Cemetery in Arlington, Allen Parkway Village burial ground in Houston, Jeff Davis Hospital in Houston, now the site of the Houston branch of the Federal Reserve Bank of Dallas, Houston Cemetery in Hempstead, First Street Cemetery in Waco, the Central State Prison Farm Cemetery in Sugarland, and the Callo del Oso Karankawa burial ground in Corpus Christi.

One factor the THC refuses to face and do anything about is the fact that many of these cemeteries were historically segregated and remain so *to the present day*. The Texas Funeral Services Commission estimates that over 25 *known* cemeteries in Texas continue to be segregated, including the just mentioned Hempstead cemetery which was recently the subject of an unflattering piece about the sad history of tensions that have and continue to characterize race relations in Waller County, the home of Jared Ellison Groce the largest slaveowner among Stephen F. Austin’s “old three hundred.”

In another individual case, the Allen Parkway Village cemetery in Houston, the THC helped to orchestrate the desecration and destruction of one of the most important urban neighborhoods in Texas, not just the cemetery which was a part of it. One of the many unfortunate things about this sordid experience is that the public *had answers* for almost all of the challenges, historic preservation related or otherwise, that came up during the redevelopment process, but were condescendingly shirked almost every time. I will not comment on recent happenings at the First Street Cemetery in Waco because I do not have first hand experience with it, but feel certain that my colleague Dr. Griggs can furnish you with a necessary perspective that helps fill in the gaps in the stories you may have been told by the City of Waco and the THC, if previous precedent continues to apply.

Which leads me to my chief recommendation and hope. It is my sincere hope that you do not take the statements of the THC and most municipal project proponents at face value without also listening to the other stakeholders involved, who might have a different and necessary perspective on the supposed benefits of the project or projects being proposed. It has been my experience that the THC speaks with a forked tongue on many of these matters: they tell YOU one thing, they tell people like ME another, and they tell the PUBLIC something else once again. This is NOT simple assertion on my part. This is a fact, and is easily established by looking at the public record, and is bolstered by an even cursory examination of the internal record. The solution, to my mind, is as follows:

- 1.) Send a message to the THC to apply Section 106 without fear or favor, regardless of who sponsors the undertaking.
- 2.) Stop applying state law to federal law. “Economic Impacts” are not part of the Section 106 process. Whoever got the idea that archaeologists, historians, and architects are qualified to pass judgment on

complicated political matters entailed in urban redevelopment clearly got it wrong. The only thing that should matter in resource management decisions is whether a historic property meets the criteria for “historicity” outlined in federal law.

- 3.) Become actively engaged in regulating and enforcing the letter *and the spirit* of state and federal historic preservation law. This also requires breaking free of conventional wisdom. For instance, NAGPRA, the Native American Graves Protection and Repatriation Act, *does* apply on private land in certain circumstances. The amount of disbelief I often encounter from THC and TxDOT archaeologists on this point is astounding and disturbing, so please allow me to definitively read it into the Texas public record: *Many federal historic preservation and civil rights laws such as the NHPA and NAGPRA are not based on who owns the land but on federal involvement.*
- 4.) When the THC does perform its regulating functions, the THC should cease the laissez-faire approach that is based upon a flawed “legal sufficiency” analysis concocted by political operatives whose motives have more to do with ideology than with any grounded understanding of how “property rights” actually intersect with environmental or heritage protection.

I appreciate the committee’s time and patience, and hope that you will ask the tough questions going forward, hold the THC accountable, and appropriate taxpayer resources in a manner that protects and preserves the heritage of all of the state’s people. I would be glad to answer any questions.