

**IN THE SUPERIOR COURT OF CHATHAM COUNTY**

**STATE OF GEORGIA**

<b>BROTHERLY LOVE, INC., d/b/a</b>		
<b>THE WEEPING TIME COALITION,</b>		
<b>Petitioner,</b>		
<b>v.</b>		<b>Civil Action # SPCV21-01042-CO</b>
<b>MAYOR AND ALDERMAN OF CITY OF</b>		
<b>SAVANNAH, GEORGIA, et al.,</b>		
<b>Respondents.</b>		

**THE SALVATION ARMY’S**  
**MOTION TO DISMISS AND/OR FOR SUMMARY JUDGMENT**

The Salvation Army (“TSA”) hereby moves the Court to dismiss in its entirety the complaint of Brotherly Love, Inc., d/b/a The Weeping Time Coalition (“WTC”) and/or to dismiss or grant summary judgment as to portions of the complaint, pursuant to OCGA §§ 9-11-12(b) and 9-11-56. In support of this motion, TSA shows the Court the following:

**Introduction.**

This matter arises from the City of Savannah’s grant of a special use permit to the Housing Authority of Savannah (“HAS”), as the then owner of property at 2305 Augusta Avenue, Savannah (the “Property”), allowing the Property to be used as a transitional shelter. The special use permit was approved by City Council on April 8, 2021, with the condition that an archaeological study be obtained “to determine or demonstrate the property is not part of the location commonly known as ‘The Weeping Time.’” City Council Meeting Minutes for April 8, 2021 (“Minutes”), attached as Exhibit to City’s 1<sup>st</sup> Supplemental to Pre-Hearing Report, p. 10, para. f-2. TSA subsequently purchased the Property with the intention of constructing a transitional shelter thereon.

The City obtained an archeological study, commonly known as the Brockington Survey, from the City's "primary archaeological services contractor," previously approved by the City. Writ of Mandamus, Exhibit C. The Brockington Survey concluded that the Property "was not associated with the Weeping Time." WTA's "Writ of Mandamus," Exhibit A, p. 59. The Brockington Survey was "thorough" and conducted in accordance with the Georgia Standards and Guidelines for Archaeological Surveys. *Id.*, Exhibit F. According to the Georgia State Archaeologist, the proposed activity on the Property, i.e., construction of the shelter, "does not trigger any state or federal cultural resource protection laws at this time." *Id.*, Exhibit E. The condition of the City's grant of the special use permit, i.e., obtaining an archeological survey demonstrating that the Property was not associated with the Weeping Time event, was thus satisfied.

The minutes of the April 8, 2021, City Council meeting do not contain a single reference to the Georgia Historic Preservation Act ("GHPA"), to the State Historic Preservation Office ("SHPO"), or to any requirement of review of the archaeological study pursuant thereto. Minutes, pp. 6-11. Nor do the minutes indicate any requirement that City Council approve or confirm the study once it was obtained. *Id.* Rather, City Council placed compliance with the condition of obtaining an archaeological study "under the purview of the City Manager's authority." *Id.*, p. 10, para. f-1. Therefore, obtaining the survey satisfied the condition of the special use permit, and review by the Georgia State Archaeologist provided more assurance, rather than less, of compliance with the City Council's condition.

**Statement of the Case.**

Via its original "Writ of Mandamus," filed on October 4, 2021, WTC seeks first a writ of mandamus requiring the City to submit the Brockington Survey to the State Historic Preservation

Office for review, to enjoin the City from issuing permits to TSA, and for a declaratory judgment that the condition of the special use permit was not met, because the Brockington Survey was not submitted to the SHPO. WTC further complains of violations of or lack of compliance with the National Historic Preservation Act (“NHPA”) and the GHPA and seeks injunctive relief on that basis as well. Second Amendment to Complaint. Then in its Third and Fourth Amendments, WTC concocts and alleges a “Civil Conspiracy,” while also alleging breach of fiduciary duty against the City and HAS, ostensibly “aided and abetted” by TSA.

**Untimely Collateral Attack on Zoning Decision.**

At its heart, TWC’s action is an effort to challenge the City’s April 8, 2021, zoning decision to approve conditionally the special use permit. Such challenges were required to be brought within thirty days of the date of the decision, or the court is without jurisdiction to hear them. *Village Centers, Inc. v. DeKalb County*, 248 Ga. 177, 179, 281 S.E.2d 522, 524 (1981). (Cf., OCGA § 5-3-7, adopted in 2022.) WTC filed this action in October of 2021, well beyond the deadline to bring any action to oppose the grant of the special use permit.

WTC’s original complaint seeks, *inter alia*, to enjoin the City from granting permits or approvals to TSA, in direct contradiction of the City’s approval of the special use permit. The First Amendment to Complaint asks the Court to require the defendants to “take no further action with respect to the subject property until the provisions of NHPA and GHPA are fully complied with.” WTC’s civil conspiracy and fiduciary breach allegations are also tied directly to the issuance of the special use permit. WTC clearly seeks to avoid and effectively annul the special use permit through its claims under NHPA and GHPA.

However, “a party dissatisfied with a zoning decision must appeal to the superior court; it cannot circumvent the review process by instituting an untimely collateral attack on the zoning

decision.” *Fortson v. Tucker*, 307 Ga. App. 694, 696, 705 S.E.2d 895, 896 (2011). In *Fortson*, the untimely collateral attack took the form of alleged “fraud, wilful misrepresentation, conspiracy, nuisance, negligent failure to perform ministerial duties, and [federal] civil rights violations.” In rejecting these collateral attacks, *Forston* relied on *Mayor & Aldermen of the City of Savannah v. Savannah Cigarette, etc.*, 267 Ga. 173, 476 S.E.2d 581 (1996) (inverse condemnation action), and on *Hillberg v. Spalding County*, 281 Ga. App. 768, 637 S.E.2d 163 (2006) (petition for writ of certiorari/complaint for declaratory judgment, claiming that the subject zoning action was void). Because WTC’s claims constitute an untimely collateral attack on a zoning decision, this Court is without jurisdiction to address those claims, and WTC’s complaint should be dismissed.

**Submission of Brockington Survey to SHPO Not Required.**

There is no factual basis whatsoever for any claim by WTC dependent on its fabricated requirement for submission of the Brockington Survey to the SHPO. As noted above, the City Council simply did not impose any such requirement in its grant of the special use permit. Rather, the condition of the special use permit was simply that an archaeological survey be obtained that demonstrated the Property was not part of the Weeping Time location.<sup>1</sup> The Savannah Code of Ordinances expressly allows special use permits to be granted with conditions, which is precisely what City Council did, specifically citing the City’s Zoning Ordinance, Chapter 3, Section 10, Subsection 9. Minutes, p. 10, para. f-1. A copy of the referenced Chapter is attached hereto as Exhibit A. Nothing in the City’s Code, in the subject minutes, or in the GHPA (OCGA § 44-10-20, *et seq.*) requires that the Brockington Survey be submitted to the SHPO for approval. WTC’s

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<sup>1</sup> WTC’s allegation that the special use permit was conditioned on a subsequent “determination” by City Council that the property is not the Weeping Time site is simply unsupported by the City Council minutes. First Amendment to Complaint, para. 24. The condition was, quite simply, that an *archaeological study* be obtained that *demonstrates or determines* that fact. Minutes, p. 10, paras. f-1 and f-2. This condition was plainly satisfied by the Brockington Survey.

claims based on such a non-existent requirement are entirely without merit, and summary judgment denying all such claims is appropriate.

**No Violation of the NHPA.**

“[A]ll courts agree that under the plain language of the NHPA, non-federal agencies are not liable for violations of the NHPA. [Cits.]” *Edgerton v. City of St. Augustine, Fla.*, 2023 WL 4687563, at \*29 (M.D. Fla., 2023). “Non-federal agencies are not liable for violations of the NHPA. *See W. Mohegan Tribe & Nation of N.Y. v. New York*, 246 F.3d 230, 232 (2d Cir.2001) (“[T]he law makes it clear that the violations of the NHPA can only be committed by a federal agency.”) (citations omitted).” *Preservation Coalition of Erie Cnty. v. Federal Transit Admin.*, 356 F.3d 444, 455 (C.A.2 (N.Y.) 2004). A federal agency for these purposes is defined as “each authority of the Government of the United States,” with exceptions not relevant here. 54 USC § 300301 and 5 USC § 551.

None of the defendants herein could possibly be considered federal agencies for purposes of the NHPA, and therefore none can be liable for violation thereof as a matter of law. As alleged by WTC, the City is a municipal corporation of the State of Georgia. Writ of Mandamus, para. 2. As further alleged by WTC, HAS is a public housing authority under the Georgia Housing Authority Law (see OCGA § 8-3-4), and TSA is a Georgia non-profit corporation. First Amendment to Complaint, paras. 2B. and 2C. No delegation of legal responsibility for compliance with section 106 of the NHPA, as authorized pursuant to 36 CFR § 800.2, has been made by HUD or any other federal agency to the HAS, to its Executive Director, or to any other employee or representative of HAS. Affidavit of Earline W. Davis, Exhibit B hereto. As a Georgia municipal corporation, a Georgia public body politic, and a private Georgia corporation, the City, HAS, and

TSA are not federal agencies and so cannot, as a matter of law, commit any violation of the NHPA. Summary judgment should be granted against all claims by WTC based on the NHPA.

**No Violation of the GHPA.**

“The General Assembly adopted the HPA to establish a uniform procedure for use by counties and municipalities in enacting ordinances protecting, inter alia, districts which have special historical value.” *Buckler v. DeKalb Cnty. Bd. of Com'rs*, 299 Ga. App. 465, 466, 683 S.E.2d 22, 24 (2009). OCGA § 44-10-20, *et. seq.* Specifically, OCGA § 44-10-26 establishes the requirements for the City to adopt an ordinance to designate historic properties or historic districts. The statutes do not *require* the adoption of any such ordinance as to any particular property. After any such historic designation, no material change in the property’s appearance can be made without the owner obtaining a certificate of appropriateness, procedures for and methods of enforcement of which are established in the Act. OCGA §§ 44-10-27, 44-10-28, 44-10-30, and 44-10-31. No allegation has been made or can legitimately be made by WTC that the property at issue herein has been designated as historic or is in a historic district. There is no provision of the GHPA that could possibly have been violated by the City’s grant of the special use permit or by HAS’s sale of the property to TSA.

Moreover, as previously argued by HAS in its pending motion to dismiss, no private right of action exists under the GHPA. TWC concedes that no express, private cause of action is provided by the Act, which is *fatal* to its claim. *Somerville v. White*, 337 Ga. App. 414, 416, 787 S.E.2d 350, 352 (2016). *Somerville* relied extensively on *Alexander v. Sandoval*, 532 U.S. 275, 286, 121 S. Ct. 1511, 149 L.Ed.2d 517 (2001), in holding that the court must determine whether a statute displays an intent to create a private action and remedy, which must be reflected in the plain language of the statute, which is “determinative.” “In the absence of such textual support, ‘a cause

of action does not exist and courts may not create one, no matter how desirable that might be as a policy matter, or how compatible with the statute.” *Somerville*, 337 Ga. App. at 417, 787 S.E.2d at 353, citing *Sandoval*, 532 U.S. at 286–87(II).

The GHPA specifically provides for two possible causes of action: (1) an appeal to Superior Court from a decision on issuance or denial of a certificate of appropriateness (OCGA § 44-10-28(j)), and (2) an action by the governing body to prevent a change in appearance of a historic property or district not in conformity with the Act (§44-10-30). The GHPA contains no language whatsoever that could possibly be construed as supporting the existence of a private right of action for violation thereof. Under the *Sandoval* rationale, as applied by the Georgia Court of Appeals in *Somerville*, the lack of any expression in the GHPA of statutory intent to create a private right of action for redress of an alleged violation thereof is fatal to any such purported right of action. All claims by WTC that rely on violation of the GHPA should be dismissed for failure to state a claim upon which relief may be granted.

#### **No Viable Claim for Breach of Fiduciary Duty.**

WTC alleges that HAS and the City owe fiduciary duties to black citizens to protect historical and cultural resources under NHPA/GHPA. WTC bases its assertion that such fiduciary duties exist on *Quechan Indian Tribe v. United States*, 535 F. Supp. 2d 1072 (S.D. Cal. 2008). *Quechan* and other cases recognizing a fiduciary relationship between the federal government and Indian tribes focus on the unique legal relationship between them, e.g., “the fact that the government ‘assume[d] such elaborate control over forests and property belonging to Indians.’ [Cit.]” *Morongo Band of Mission Indians v. F.A.A.*, 161 F.3d 569, 574 (9<sup>th</sup> Cir. 1998). Moreover, this relationship creates a fiduciary obligation only on federal agencies: “federal agencies owe a fiduciary duty to all Indian tribes.” *Quechan Tribe of Fort Yuma Indian Reservation v. U. S. Dept.*

*of Interior*, 755 F. Supp. 2d 1104, 1110 (S.D. Cal. 2010). These federal cases regarding the relationship between the United States and tribal people provide no support for WTC's contention that a fiduciary relationship exists here. There is simply no legal basis or authority upon which to find such a relationship in this case.

Moreover, as discussed above, neither the City, HAS, nor TSA is or could possibly be considered a federal agency, so none of the defendants could possibly have obligations of any kind, much less fiduciary obligations, arising from NHPA. NHPA's requirements apply only to federal agencies. *Preservation Coalition, supra*. It is nonsensical and unavailing to argue that failure to comply with a federal statute could be a breach of trust by an entity to which that statute simply does not apply.

Similarly, it is absurd to contend that a breach of fiduciary duties could be committed by the City or HAS in connection with GHPA. As noted above, GHPA puts no obligations on the City whatsoever, merely authorizing it to designate historic properties by ordinance and then to require and evaluate certificates of appropriateness. GHPA does not require the adoption of any ordinance as to any particular property. Even further removed from any such potential breach is HAS, which is not governed by or otherwise implicated by GHPA in any way. Nothing in GHPA could be said to create a fiduciary obligation, nor could any failure to comply with GHPA's dictates constitute a breach of any such obligation. WTC's claim of breach of fiduciary duty should be dismissed.

**No "Civil Conspiracy" Liability.**

"[W]here civil liability for a conspiracy is sought to be imposed, the conspiracy of itself furnishes no cause of action." *Woodruff v. Hughes*, 58 S.E. 551, 553 (1907). "To recover damages for a civil conspiracy claim, a plaintiff must show that two or more persons, acting in concert,



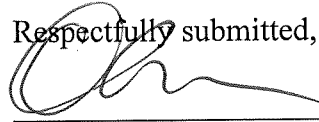
engaged in conduct that constitutes a tort. Absent the underlying tort, there can be no liability for civil conspiracy.” (Citations and punctuation omitted.) *Mustaqeem–Graydon v. SunTrust Bank*, 258 Ga. App. 200, 207(6), 573 S.E.2d 455 (2002). Therefore, unless WTC can point to a tortious or otherwise unlawful act committed in accordance with its absurd conspiracy theory, there can be no liability based on its allegation of civil conspiracy. As shown above, none of WTC’s claims are viable, since it can show no breach of any legal duty on the part of any defendant. Under the quoted legal authorities, adding a conspiracy allegation cannot breathe life into WTC’s fatally flawed allegations. WTC’s civil conspiracy claim should be dismissed, since they do not state a claim upon which relief may be granted.

**Conclusion.**

WTC’s claims constitute an untimely collateral attack on a zoning decision of the City of Savannah, and as such they should be dismissed for lack of jurisdiction. In addition, summary judgment should be awarded against WTC’s claims that the Brockington Survey be submitted to the SHPO, since there are no factual or legal bases for such a requirement. Given that no defendant is a federal agency and that HAS has not been delegated NHPA authority by any federal agency, there can be no NHPA violation, and summary judgment should be granted against any WTC claim based on such a violation. The GHPA places no obligations on the City which could have been violated via the special use permit grant, and the GHPA does not support any private right of action by WTC, so WTC’s claims relying on the GHPA should be dismissed. WTC’s claim of breach of fiduciary duty should also be dismissed, since no such duty exists, including under the NHPA and the GHPA. Finally, because “civil conspiracy” is not itself a cause of action and because WTC has not alleged any underlying, viable tort claim, the conspiracy claim should also be dismissed.

This 13th day of March, 2024.

Respectfully submitted,



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# EXHIBIT A

# CODE OF ORDINANCES SAVANNAH, GEORGIA

## DIVISION II

### PART 8- PLANNING AND REGULATION OF DEVELOPMENT<sup>[1]</sup>

## CHAPTER 3. - ZONING (EFFECTIVE SEPTEMBER 1, 2019)

### ARTICLE 3.0 APPLICATION AND REVIEW PROCEDURES

#### 3.10 Special Use Permit

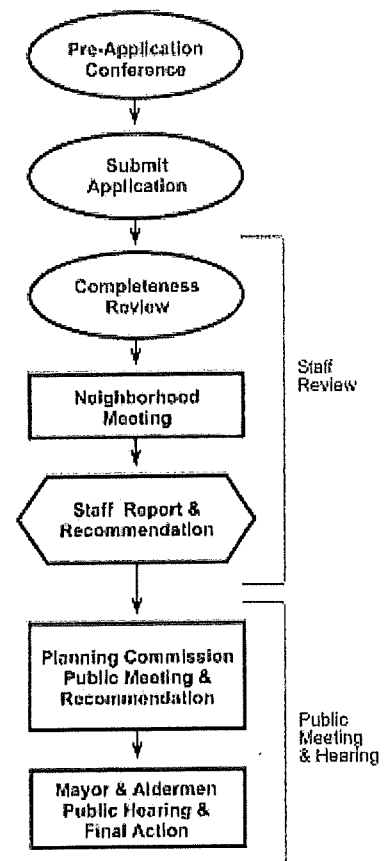
##### 3.10.1 Applicability

All applications for a special use permit approval shall comply with the requirements of this Section.

##### 3.10.2 General Provisions

- a. Special uses within each zoning district are uses that would not be appropriate generally or without restriction but which, if controlled as to number, area, location or relation to other uses may be appropriate in a particular zoning district.
- b. A special use permit shall be required for all special uses (identified with an "S" designation) as set forth in the permitted use table in Sec. 5.4, Principal Use Table or as part of a use condition in Article 8.0, Use Standards.
- c. Specific use standards may be applicable to the approved special use.
- d. Any use or activity on the property not specifically permitted by Article 5.0, Base Zoning Districts, or the special use permit as modified, shall be deemed unlawful and subject to Article 12.0.

#### Special Use Permit Procedure



##### 3.10.3 Reserved

### **3.10.4 Reserved**

### **3.10.5 Reserved**

### **3.10.6 Review by the Planning Commission**

#### **a. Consideration by Planning Commission**

An application for a special use permit shall be considered by the Planning Commission at a public hearing, prior to a public hearing by the Mayor and Aldermen.

#### **b. Standards and Criteria**

The Planning Commission shall evaluate the proposed special use permit based upon the standards in Sec. 3.10.8, Review Criteria for Special Use Permits.

#### **c. Planning Commission Recommendation**

A recommendation shall be prepared and forwarded to the Mayor and Aldermen after consideration of the review criteria required by Sec. 3.10.8. The recommendation which shall indicate if the Special Use Permit should be:

- i. Approved as submitted by the applicant;
- ii. Approved as recommended by the Planning Director;
- iii. Continued to the next meeting or to a date certain;
- iv. Approved with modifications and/or conditions; or
- v. Denied.

### **3.10.7 Action by the Mayor and Aldermen**

Within seven (7) days of the Planning Commission's recommendation, the Planning Director shall forward the recommendation of the Planning Commission to the Mayor and Aldermen for final action.

#### **a. Public Hearing**

- i. Within seven (7) days of receiving the Planning Commission recommendation, the Mayor and Aldermen shall notify the applicant of the scheduled date for the public hearing.
- ii. The Mayor and Aldermen shall hold a minimum of one (1) hearing to consider the proposed special use permit after receiving the recommendation.

#### **b. Standards and Criteria**

The Mayor and Aldermen shall evaluate the proposed special use permit based upon the standards in Sec. 3.10.8, Review Criteria for Special Use Permits.

#### **c. Action by the Mayor and Aldermen**

After consideration of the review criteria required by Sec. 3.10.8, the Mayor and Aldermen shall make one of the following decisions:

- i. Approve Special Use Permit as submitted by the applicant;
- ii. Approve Special Use Permit as recommended by the Planning Commission;
- iii. Continue to the next meeting or to a date certain;
- iv. Approve Special Use Permit with modifications and/or conditions; or
- v. Deny Special Use Permit.

### **3.10.8 Review Criteria for Special Use Permits**

When reviewing a special use permit request, the review authority shall consider the following criteria:

- a. Whether the special use is consistent with the intent, goals, strategies, policies, guiding principles and programs of the Comprehensive Plan and other adopted plans;

- b. Whether specific use standards for the special use, if any, as provided in Article 8.0, Use Standards, can be achieved;
- c. Whether the special use is detrimental to the public interest, health, safety, welfare, function, and appearance of the adjacent uses or general vicinity by reason of any one or more of the following: the number, area, location, height, orientation, intensity (such as traffic, noise, odor, hours of operation), or relation to the neighborhood or other adjacent uses;
- d. Whether the subject property is adequate in shape and size to accommodate the special use;
- e. Whether adequate public facilities are available to serve the proposed use, including, but not limited to: water; sanitary sewer; stormwater drainage facilities; public safety and emergency facilities; roadway capacity; vehicular ingress and egress; or, that the applicant will provide adequately for such services and for placement in an appropriate location.
- f. Whether the special use will result in the destruction, loss, or damage of any feature determined by the review authority to be of natural, cultural, scenic or historic importance.

### **3.10.9 Additional Conditions, Restrictions and Safeguards**

Additional conditions, restrictions and safeguards may be imposed by the Mayor and Aldermen on the special use permit approval in order to protect public health, safety and welfare. If any amendment to a development plan will conflict with any condition of an approved special use permit, the amendment to the development plan shall not be permitted unless an amendment to the special use permit is first approved,

### **3.10.10 Limitations on Filing of Special Use Request**

If the Mayor and Aldermen deny an application for a special use permit, the applicant shall not resubmit such application for the same property for a period of twelve (12) months from the date of the decision by the Mayor and Aldermen.

### **3.10.11 Violation of a Special Use Permit**

Violations of a special use permit shall be subject to enforcement as outlined in Article 12.0.

# EXHIBIT B

**IN THE SUPERIOR COURT OF CHATHAM COUNTY  
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**BROTHERLY LOVE, INC., d/b/a  
THE WEeping TIME COALITION,  
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**MAYOR AND ALDERMAN OF CITY OF  
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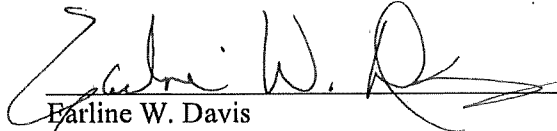
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**Civil Action # SPCV21-01042-CO**


**AFFIDAVIT OF EARLINE W. DAVIS**

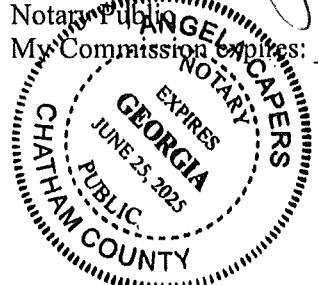
Personally appeared before the undersigned attesting officer, duly authorized to administer oaths, Earline W. Davis, who, having been duly sworn, on oath states and deposes as follows:

1. I am of the age of majority and competent to testify, and the matters stated herein are within my personal knowledge.
2. I am the Executive Director of the Housing Authority of Savannah and have served in that capacity for more than sixteen years.
3. As Executive Director of the Housing Authority of Savannah, I have knowledge of all communications and interactions between the Housing Authority and any federal agency, including the United States Department of Housing and Urban Development (“HUD”).
4. The Housing Authority of Savannah has never received any delegation from HUD or from any other federal agency of the legal responsibility for compliance with section 106 of the National Historic Preservation Act, as authorized pursuant to 36 CFR § 800.2. No such delegation has been made by HUD or any other federal agency to the Housing Authority of Savannah, to me as Executive Director or to any other employee or representative of the Housing Authority of Savannah.

  
Earline W. Davis

Sworn to and subscribed before me,  
this 22<sup>ND</sup> day of February, 2024.

  
Notary Public  
My Commission Expires: June 25<sup>th</sup>, 2025





IN THE SUPERIOR COURT OF CHATHAM COUNTY

STATE OF GEORGIA

<b>BROTHERLY LOVE, INC., d/b/a</b>	]	
<b>THE WEeping TIME COALITION,</b>	]	
	]	
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	]	
<b>MAYOR AND ALDERMAN OF CITY OF</b>	]	
<b>SAVANNAH, GEORGIA, et al.,</b>	]	
	]	
<b>Respondents.</b>	]	

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**THE SALVATION ARMY'S**  
**RULE 6.5 STATEMENT**

The Salvation Army (“TSA”) submits the following statement pursuant to Uniform Superior Court Rule 6.5 and in support of its alternative prayers for summary judgment in the forgoing motion:

1. The following material facts are undisputed:

A. The Savannah City Council simply did not impose any such requirement for submission of its archaeological study to the State Historic Preservation Office (“SHPO”) in its grant of the special use permit. Rather, the condition of the special use permit was simply that an archaeological survey be obtained that demonstrated the Property was not part of the Weeping Time location. The Savannah Code of Ordinances expressly allows special use permits to be granted with conditions, which is precisely what City Council did, specifically citing the City’s Zoning Ordinance, Chapter 3, Section 10, Subsection 9. Nothing in the City’s Code, in the subject minutes, or in the GHPA (OCGA § 44-10-20, *et seq.*) requires that the Brockington Survey be submitted to the SHPO for approval.

B. None of the defendants herein are federal agencies for purposes of the NHPA, and therefore none can be liable for violation thereof as a matter of law. As alleged by WTC, the City is a municipal corporation of the State of Georgia, HAS is a public housing authority under the Georgia Housing Authority Law, and TSA is a Georgia non-profit corporation. No delegation of legal responsibility for compliance with section 106 of the NHPA, as authorized pursuant to 36 CFR § 800.2, has been made by HUD or any other federal agency to the HAS, to its Executive Director, or to any other employee or representative of HAS.

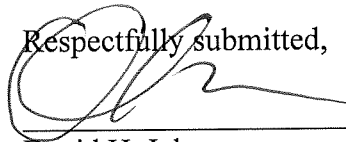
2. TSA's theories of defense entitling it to summary judgment are as follows:

A. Summary judgment should be awarded against WTC's claims that the Brockington Survey be submitted to the SHPO, since there are no factual or legal bases for such a requirement.

B. Given that no defendant is a federal agency and that HAS has not been delegated NHPA authority by any federal agency, there can be no NHPA violation, and summary judgment should be granted against any WTC claim based on such a violation.

This \_\_\_\_\_ day of March, 2024.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

This is to certify that I have this date served Counsel for all parties with a copy of the foregoing by placing a copy of same in a properly addressed envelope with sufficient postage thereon and depositing same in the United States Mail.

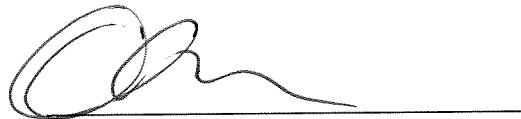
This 13<sup>th</sup> day of March, 2024.

Persons served:

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