



United States Department of the Interior

National Park Service

Midwest Region
601 Riverfront Drive
Omaha, Nebraska 68102-4226



48-00034(MWR-P/G)

JUL 23 2009

Ms. Blythe Semmer
Program Analyst
Advisory Council for Historic Preservation
1100 Pennsylvania Avenue, NW., Suite 803
Washington, D.C. 20004

Dear Ms. Semmer:

The National Park Service (NPS) administers the Land and Water Conservation Fund (L&WCF) program. Under the authority of the L&WCF Act (P.L. 88-578, as amended), the NPS may make grants available to States as the grantee, and through States to local jurisdictions as sub-grantees. Upon acceptance of L&WCF assistance, the grantee and sub-grantee forever agree to encumber the parkland under Section 6(f)(3) of the L&WCF Act. This section states:

“No property acquired or developed with assistance under this section shall, without the approval of the Secretary, be converted to other than public outdoor recreation uses. The Secretary shall approve such conversion only if he finds it to be in accord with the then existing comprehensive statewide outdoor recreation plan and only upon such conditions as he deems necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location.”

When circumstances arise whereby L&WCF encumbered parklands are needed for a use other than public outdoor recreation, they are considered and processed by the NPS in accordance with 36 Code of Federal Regulations (CFR) Part 59.3, entitled “Conversion Requirements.” Although not specifically listed in the CFR as a requirement for conversion approval, the NPS requires compliance with Section 106 of the National Historic Preservation Act (NHPA) prior to the approval of a section 6(f)(3) conversion request.

In September of 1967, the city of Waco (City), as a sub-grantee of the Texas Parks and Wildlife Department (TPWD), entered into a L&WCF grant agreement to provide outdoor recreation by acquiring 4.62 acres to complete the 35-acre Lake Brazos Recreation Area and construction of a service storage building, concessions building, restrooms and shower facilities, camping units, picnic units, fishing piers, hiking trails and walks, roads, parking facilities, and utilities.

In 2007, the City provided approval to commence construction for an expansion of the Texas Rangers Hall of Fame and Museum located within the boundary of the L&WCF-assisted Lake Brazos Recreation Park (also known as Fort Fisher Park). This activity was reported to the NPS and TPWD in 2008, at which time both agencies agreed that the structures comprising the Texas Rangers Hall of Fame and Museum and any related new construction constitute a conversion to other than public outdoor recreation use under section 6(f)(3).



A Memorandum of Agreement (MOA) is being developed in this matter and will be limited to the federal undertaking within the area of potential effect (APE) for which the NPS has jurisdiction. The NPS defines the APE under L&WCF jurisdiction as the footprint of the 16.72 acres within Lake Brazos Recreation Area that were encumbered in the original L&WCF grant and now proposed for conversion (see enclosure 1).

Two potential historical properties have been identified associated with the Lake Brazos Recreation Area. One is an archeological deposit and the other is a cemetery; both located partially within the L&WCF-assisted park area. The archeological site is a Waco dump deposit dating from the early 20th Century. The cemetery is the Waco First Street Cemetery.

It is the NPS' determination that the dump deposit site is not significant to historic, prehistoric or cultural resources and, therefore, is not eligible for the National Register of Historic Places. The NPS believes the affected Waco First Street Cemetery is eligible for listing in the National Register of Historic Places under all four National Register criteria. It meets Criterion A in the areas of Settlement and Community Planning and Development for its association with the early history and growth of Waco. The property is also eligible under Criterion B as the resting place of numerous persons of transcendent importance to the community, including some of the first settlers of Waco, members of the Texas legislature, and numerous African-Americans of local importance. The property meets Criterion C in the area of art, for its excellent collection of monuments featuring vernacular funerary design. Finally, the cemetery meets Criterion D, in the area of Ethnic Heritage/Black, as excavations at the site have yielded information about African-American culture and burial customs, and would likely yield even more information upon further excavation.

The expansion (e.g., construction of two buildings and associated utilities) of the Texas Rangers Hall of Fame and Museum located within Lake Brazos Recreation Park has effected the Waco First Street Cemetery. Future ground disturbance could further effect the cemetery. Specifically, the NPS determined that the existing graves associated with the Waco First Street Cemetery will be adversely effected by the NPS approving the conversion of parklands to expand the Texas Rangers Hall of Fame and Museum. The NPS and consulting parties agree that a MOA is the appropriate mechanism to address measures to lessen or mitigate the effects of this undertaking. Accordingly, a draft MOA was circulated to all consulting parties seeking their input.

The NPS received comments from the Advisory Council for Historic Preservation (ACHP), THC, the city of Waco, Mr. Willard Brown, Mr. Melvin Dotson, Dr. John Griggs, and Dr. T. Bradford Willis. Although a public notice soliciting comments was also effected, these are the only comments received. Following is a summary of the consulting party comments:

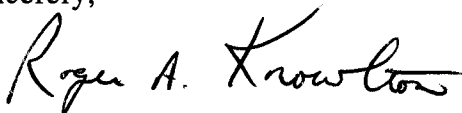
- Instead of specific measures to be included in a mitigation plan, include these measures as stipulations in the MOA, with appropriate timeframes for completion and task assignments to more efficiently address adverse effects on the First Street Cemetery.
- Designation of the cemetery as a Historic Texas Cemetery and erection of a commemorative plaque describing the cemetery's history and significance.

- Removal of selected roads currently over the cemetery, except for access to comply with Fire Code requirements.
- Collection of archival information on the cemetery and inclusion of this information in the genealogy section of the Waco-McLennan County Public Library and at the Waco City Secretary's Office.
- Add a new stipulation for a fence to be built around the remaining cemetery to prevent activities in the area that are inconsistent with a cemetery and the removal of the fence separating the marked and unmarked (predominately African American) portions of First Street Cemetery.
- Add a stipulation as to punitive sanctions against the city of Waco in the event that the City either fails to implement all provisions of the section 106 MOA as adopted and/or such provisions are not implemented within the stipulated time frame.
- The MOA should include a discovery stipulation specifying a procedure should any previously unidentified archaeological sites or human remains be discovered in the course of project implementation. Also, a stipulation referencing the professional qualifications for agency staff and contractors responsible for implementing the terms of the MOA should be included.
- The MOA should account for any adverse effects at both the "converted" and "replacement" parcels of the conversion. If the land to be substituted for these 16.782 acres under the terms of the L&WCF grant is not yet identified, the MOA should include a process whereby any potential effects to historic properties could be assessed in the future once that parcel is identified by the city of Waco.

Enclosed is the revised draft MOA attempting to address comments from agencies and members of the public. If you choose to comment on this document, please forward all comments to the NPS by close of business August 7, 2009.

Any questions you have may be directed to me at 402-661-1558. Thank you.

Sincerely,



Roger Knowlton

Enclosures 5

Map

THC letter to NPS dated 12-17-08

Griggs to NPS, background, 07-20-08

NPS letter to THC dated 02-02-09

Revised Draft MOA

Similar correspondence has been sent to:

Dr. Larry D. Groth, City Manager, P.O. Box 2570, Waco, Texas 76702

Mr. Tim Hogsett, Director, Recreation Grants Branch, Texas Parks and Wildlife Department,
4200 Smith School Road, Austin, Texas 78744

Dr. Jim Bruseth, Director, Archeology Division, Texas Historical Commission, P.O. Box 12276,
Austin, Texas 78711

Mr. Rusty Black, Director, Parks and Recreation Department, City of Waco, P.O. Box 2570,
Waco, Texas 76702-2570

Mr. Byron Johnson, Director, Texas Ranger Hall of Fame & Museum, P.O. Box 2570, Waco,
Texas 76702-2570

Mr. Michael R. Bradle, President, American Archaeology Group LLC, 208 West Second Street,
Lampasas, Texas 76550

Dr. John Griggs, P.O. Box 355, Chappell Hill, Texas 77426

Dr. T. Bradford Willis, MSD, 1615 Wooded Acres Drive # F, Waco, Texas 76710

Mr. Melvin Dotson, 2404 Mitchell, Waco, TX 76708

Mr. Willard Brown, P.O. Box 7037, Waco, Texas 76714