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National Park Service
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601 Riverfront Drive
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Dr. Jim Bruseth
Texas Historical Commission
P.O. Box 12276
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Proposed Treatment Plan for Inadvertently Discovered Human Remains at Texas Ranger Museum,
41ML238

Dear Mr. Knowlton and Dr. Bruseth,

On December 14, 2009, PBS&J archaeologists working for the City of Waco discovered what appears to be the grave shaft of an infant or child in an area southwest of the historic property boundary of First Street Cemetery (Figure 1). The discovery was made during planned archeological monitoring of an electrical utility line. Archaeologists encountered a shaft stain and wood, but did not expose any bone. Immediately after discovery, all ground disturbing activity in this area was stopped, and the burial was covered with plastic and a layer of soil. Under the terms of the existing Memorandum of Agreement (MOA) between the National Park Service (NPS), the Texas Historical Commission (THC), and the City of Waco (City), PBS&J notified Dr. Jim Bruseth at the Texas Historical Commission within 48 hours of this discovery.

The MOA stipulates that upon notification, the City and THC are to devise a treatment plan for any inadvertently discovered remains (Section I, subsection h). According to the MOA, this plan will follow the Advisory Council of Historic Preservation's (ACHP) "Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects" (see attached) and the applicable sections of the Texas Health and Safety Code (Section 711 deals with cemeteries and graves). Since this discovery is located on land that is undergoing the Land and Water Conservation Fund (L&WCF) conversion process, Section 106 of the National Historic Preservation Act applies. NPS serves as the lead federal agency for purposes of Section 106 review. In addition, THC is the governing agency for the Texas State Health and Safety Code as it applies to historic properties. After consulting with THC, the City presents the following treatment plan for your review and approval.

Background

PBS&J archaeologists have been working at the First Street Cemetery since April, 2008 under Antiquities Code of Texas Permit #4878. During that time, they have archaeologically excavated burials from areas where planned utilities are to be installed. This excavation was limited to burials located within the APE of the utility lines, which varied according to the size of the utility line and the minimum amount of space around each line necessary for installation. When this information was unavailable, archaeologists used an arbitrary width of 60 centimeters (23.62 inches). Burials excavated outside this APE were removed if they would be impacted by creating a safety slope per OSHA regulations for trench safety, if they had been previously impacted, or if bone had been exposed (per THC's directive).

Although there is a section of First Street Cemetery that is fenced and contains funerary monuments, the area where PBS&J has been working is outside this fenced section. Historical research has shown that several different cultural groups chose to use First Street Cemetery, which was Waco's first public cemetery. Unfortunately, physical boundaries that may have separated different cultural groups have disappeared, and oral history indicates that such a separation may not have always existed. Without markers or records to provide information about the cultural affiliation of individuals interred within this cemetery, it is impossible to associate individuals with a specific cultural group prior to exhumation. As a result, identification of and consultation with descendent groups prior to exhumation is not feasible. This situation applies to the recently discovered burial, which is located on the west side of the fenced cemetery in an area that the City of Waco acquired ownership of in 1967 from the Southern Pacific railroad. This possible grave is located in an area that historic maps and research indicate was used for a street car or railroad purposes in the late 1800s and early 1900s. The area does not appear to have been part of the land acquired and used for cemetery purposes (see attached maps).

ACHP Policy Statement

According to the ACHP's policy statement, there are eight principles that the federal agency should adhere to when dealing with burial sites; these principles are discussed below in relation to the proposed treatment of this discovery.

Principle #1 discusses treating burial sites, human remains, and funerary objects with respect. More specifically, the guidelines advise working with descendant communities and culturally affiliated groups to determine appropriately respectful treatment. As stated above, no specific cultural groups can be associated with unmarked burials within the First Street Cemetery prior to exhumation, and the recently discovered burial is in a location where no other burials have yet been found.

Principle #2 calls for consultation, or the "early and meaningful exchange of information" regarding the treatment of burial sites. Interested parties were initially identified and included during the MOA development process. These parties should review and comment on the proposed treatment plan prior to NPS final approval.

Principle #3 deals with Native American consultation. Since this burial cannot be specifically associated with a particular cultural group, it will be treated with respect and dignity afforded to all human burial sites and no Native American consultation will occur.

Principle #4 says that avoidance is the preferred option when dealing with human remains, and that among the options that should be considered is the idea of preservation of the burial site in place. The City has considered avoidance of this burial by shifting the current line around this burial or by moving the line to an entirely different location. The main constraint in both of these approaches is the presence of other buried utilities and right-of-way (ROW) limitations. It is not feasible for the City to reroute the existing line to go around the burial because the PVC conduit being installed will have high voltage copper electrical cables pulled through it, and in order to work properly and safely, this wire cannot bend. Unfortunately, moving the line further west is prohibited because there is a sewer manhole located in very close proximity to the existing line. Moving the line further east is also not recommended because it means moving it closer to the fenced cemetery where there are known, marked burials. Moving the line across the existing street to the west is also problematic because it is next to the I-35 access road, and begins to get close to or into TxDOT-owned ROW. Another problem with moving the line at all is that it is possible more unmarked burials could be discovered in another location. At the current location, approximately 121.9 meters (400 feet) of the line have already been excavated, and this is the only burial that has been encountered.

There is another complication with avoidance or preservation in place for this burial. The MOA stipulates that the treatment plan should follow both the ACHP guidelines and the applicable sections of the Texas Health and Safety Code. According to THC's interpretation of the Texas Health and Safety Code, permanent structures or fixtures cannot be placed over a known burial site; this burial sits underneath the pavement of a road that is used to enter the City's Texas Ranger Hall of Fame and Museum property. If the burial were to be left intact, repaving the road over it would violate the Texas Health and Safety Code.

Principle #5 states that when human remains must be exhumed, the removal should be careful, respectful, and follow the approach developed during consultation. Although there are no descendant communities that have been identified for consultation, interested parties were identified and included during the MOA writing process. These parties should review and comment on the proposed treatment plan prior to NPS final approval.

Principle #6 says the federal agency makes the final decision on how to proceed in regard to the treatment of this burial. It also stipulates that the federal agency has to comply with all applicable laws, including state law. As such, the Texas Health and Safety Code applies to this burial, and will make it difficult, if not impossible, to preserve in place.

Principle #7 says that the federal agency should use consultation in developing treatment plans for inadvertent discoveries of human remains, burial sites, and funerary objects. During the creation of the existing MOA, consultation was part of the document's development process, and the document includes specific language about notification and creation of treatment plans in the event of an inadvertent discovery of human remains. Interested parties should review and comment on the proposed treatment plan prior to NPS final approval.

Principle #8 discusses instances where there are no rules in place concerning disposition of human remains and funerary objects. It focuses primarily on consulting lineal descendants and if none, the descendant community. In this case, the burial is one of over a hundred unmarked burials identified at this site. It is not possible to identify lineal descendants, or as discussed above, to identify a descendant community.

Texas Health and Safety Code

Chapter 711 of the Texas Health and Safety Code (as amended in 2009) contains provisions governing cemeteries and human burial. According to Section 711.035, utilities, streets, pipelines, etc. cannot be placed over a dedicated cemetery without the express approval of the cemetery organization or two-thirds of the owners of the plots in the cemetery. Although First Street Cemetery has had its dedication removed by a court action in 1968 under the prior law, the MOA stipulates a certain portion of the cemetery will be rededicated (Section I, subsection a), and THC has consistently interpreted this law to mean that no permanent structures or fixtures can be knowingly placed over a burial site. The burial inadvertently discovered in December, 2009 is located underneath a street that is necessary for access to the Texas Ranger Hall of Fame and Museum, and the street will have to be repaved.

Proposed Treatment Plan

In consideration of adherence to the ACHP principles detailed above, as well as to the Texas Health and Safety Code, the proposed treatment of the inadvertently discovered assumed burial is to exhume the burial. Due to the logistical restrictions of relocating the Phase III power line in addition to the legal requirements of the Texas Health and Safety Code, the burial will need to be exhumed. Under the Texas Health and Safety Code, it cannot remain in place even if the line were to be completely abandoned because it lies underneath an existing road that is necessary to gain admittance to the City's museum property and will need to be repaved. The burial will be removed and handled with respect, will be thoroughly documented, and will not undergo any sort of destructive analysis. Prior to removal, interested parties (previously identified in the MOA process) will be asked to review and comment on this plan. After removal, the remains will be stored in a secure location at the Texas Ranger Hall of Fame and Museum with the other burials from the utility improvement areas that have been exhumed to date. These remains will be reinterred with other individuals from First Street Cemetery at Rosemound, a perpetual care cemetery in the City of Waco.

At this time, we respectfully request your comments on this treatment plan for the inadvertently discovered burial located at the First Street Cemetery. We look forward to hearing from you.

Sincerely,



Nesta J. Anderson, Ph.D.