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Mr. Roger A. Knowlton  
Outdoor Recreation Planner  
Partnerships/Grants  
US Department of the Interior  
National Park Service, Midwest Region  
601 Riverfront Drive  
Omaha, Nebraska 68102-4226

Dear Mr. Knowlton:

The National Park Service (NPS) has requested comments on the draft MOA developed as part of the Section 106 process at Fort Fisher Park/First Street Cemetery, Waco, Texas. I submit my comments under protest for the following reasons:

- According to 36CFR800, the purpose of an MOA is to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize or mitigate adverse effects on historic properties. I and other consulting parties involved in the Section 106 process have been asked to comment on the resolution of adverse effects that have not even been defined by the NPS.
- The consulting parties have been asked to comment on ways to avoid, minimize or mitigate adverse effects, yet since the Section 106 review was announced in July of 2008, construction and adverse effects to the property have continued.
- The consulting parties have been asked to comment on ways to avoid, minimize or mitigate adverse effects to a historic property whose boundaries have not yet been defined.
- A revised APE map was just released today by the NPS. The map contains errors (e.g., the boundaries of the section labeled "area covered by L&WCF grant" are incorrect – the boundaries should include the section of First Street Cemetery marked in blue – and the map fails to delineate the original surveyed boundaries of the historic property, which is First Street Cemetery). I do not have time to adequately express my comments on this map, which was only provided to one consulting party.
- The NPS has ignored repeated requests from consulting parties and the Advisory Council on Historic Preservation for information relating to the Section 106 review and has ignored a Freedom of Information Act request that I submitted on April 21, 2009 for information relating to the Section 106

review. The requested information is necessary to develop meaningful comments on the draft MOA.

My comments on the draft MOA are as follows:

- Stipulate that all construction activities and any other impacts to the NRHP eligible property will halt pending the completion of the Section 106 process pursuant to 36CFR800.1(c), the Secretary of the Interior's Standards and Guidelines for Federal Agency Historic Preservation Programs, and the ACHP Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects. I realize the NPS may not have the legal authority to order a halt in construction. However, if this stipulation is included and the City of Waco (COW) fails to comply, the NPS and ACHP would have the authority to reject the proposed conversion.
- Stipulate that the NPS will initiate a Section 110(k) investigation covering the period from July 9, 2008 (the date of the announcement of the Section 106 process) to the present. Documents I have recently obtained from the Texas Historical Commission (THC) through the Open Records Act reveal that impacts/adverse effects (including but not limited to the exhumation of burials) were ongoing from July, 2008 through at least March, 2009. The documents also demonstrate that THC was not only aware of continued impacts and exhumations after July 9, 2009, but that the THC provided oversight and advice.
- Explain why NAGPRA does or does not apply at First Street Cemetery. Preliminary forensic anthropological data in my possession suggests that some individuals exhumed from First Street Cemetery may be Native American. I have raised this issue repeatedly to state and federal agencies, yet I have never received a reply.
- The draft MOA suggests "a formal rededication of the cemetery." This should be clarified. Is the suggestion that the cemetery be formally "rededicated" as a cemetery under Texas law, or is the proposed "rededication" solely a symbolic act? If the suggestion is to legally rededicate the cemetery, the NPS should explain its reasoning. While an attempt was made to remove the dedication in 1968 through a court order, human remains in the cemetery were not relocated as ordered, and the property remains a dedicated cemetery. Further, pursuant to state law and guidelines published by the Texas Historical Commission, I have filed notice of an "unknown or abandoned cemetery" within the boundaries of the APE for this undertaking. That filing has been processed and recorded by the McLennan County clerk's office (instrument no. 2009013029). Given that the cemetery is already a dedicated cemetery, why would the NPS and THC propose that it be "rededicated"? Rather than stipulate a "rededication," the draft MOA should clarify that the cemetery is a dedicated cemetery under Texas law.
- Ongoing impacts to the cemetery appear to violate Section 711.010 of the Texas Health and Safety Code, which pertains to unknown or abandoned

cemeteries. The MOA should stipulate that construction within the cemetery will be halted until potential violations of Section 711.010 of the Texas Health and Safety Code have been addressed by a court of law.

- Provide a description and map with the boundaries of the historic property (not simply the project APE since the APE includes some land that was not part of First Street Cemetery). The boundaries of the historic property should follow the original surveyed boundaries of First Street Cemetery.
- Stipulate that the historic property will be fenced to prevent parking on unmarked graves.
- Stipulate the removal of the fence separating the marked and unmarked (predominately African American) portions of First Street Cemetery. This fence was erected during or after the construction of Fort Fisher Park and has no historical significance.
- NPS correspondence indicates that the historic property will be adversely affected, but the adverse effects are not qualified or quantified as required by 36CFR800.4, 800.5 and 800.11. The MOA should discuss all adverse effects, with "...specific descriptions of the undertaking's effects on historic properties and an explanation of why the criteria of adverse effect were found applicable or inapplicable," as required by 36CFR800.11. Pursuant to 36CFR800.11(a), I would also request that the ACHP determine whether the NPS has met documentation standards relating to adverse effects and that the ACHP provide its views to the agency official and the consulting parties.
- One example of an adverse effect in 36CFR800.5 is: "Transfer, lease, or sale of property out of Federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance." While the draft MOA mentions plans to "rededicate" the cemetery, there is no wording that would specifically prohibit further adverse effects within the cemetery once the undertaking is complete. The MOA should include "adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance."
- Clarify what is meant by "decision regarding the disposition of remains under the new education building." Documents I have obtained through the Texas Open Records Act suggest that this matter is already closed and that the bodies are to remain in place. If any real options are on the table, they need to be stated. If, as the public documents suggest, the issue is closed and there are no real options other than to leave the bodies in place, then this stipulation should be removed from the MOA and replaced with a statement explaining which agency has decided to leave human remains under the new building.
- Stipulate that the COW will correct public misstatements by acknowledging the following in writing: 1) that Melvin Wood/Dotson did participate in the relocation of headstones from lower First Street Cemetery as a COW employee in the spring and summer of 1968, 2) that the COW has no documentation to prove that the remains of Shepart Mullens (an ex-slave

who later became a Texas legislator) were disinterred when his grave marker was relocated.

- Stipulate that all U.S. military grave markers relocated in 1968 will be restored to their original locations pursuant to the policies of the Veteran's Administration (see <http://www.cem.va.gov/hm/hmrepl.asp>). The original locations of these markers can be determined from the map of the cemetery made in 1967 or 1968.
- Specify that each set of human remains exhumed from the cemetery will be reinterred in an individual grave, with a marker.
- Rebury all individuals within the original surveyed boundaries of First Street Cemetery. According to documents obtained from the THC through the Open Records Act, certain areas along the river have been found not to contain graves. These areas fall within the original surveyed boundaries of First Street Cemetery and could be utilized for the reburial of exhumed remains.
- Stipulate that the COW will publish an apology for desecrating Waco's first public cemetery. The apology should recognize that the affected portion of the cemetery was utilized predominately by Waco's African-American population.
- The NPS should provide the documentation requested by the consulting parties and ACHP (e.g., historic property boundaries and descriptions of adverse effects), and the NPS should provide the opportunity for consulting parties to provide additional comments/recommendations relating to the draft MOA after releasing the information.

In closing, I would also like to voice my support for the recommendations made by Dr. Brad Willis, Mr. Willard Brown, and Mr. Melvin Dotson. I am grateful to the NPS for the opportunity to participate in the Section 106 process.

Sincerely,

John Griggs, Ph.D.