



6.3.7 Recommended Determination Findings for Public Parks and Recreational Areas

A direct use of and temporary use of 2.5 acres of Elm Fork Greenbelt (750 square feet of actual ground space with the balance of the occupancy being air rights) is required for implementation of the proposed project. However, there is no feasible and prudent alternative to the use of the parkland and a process to incorporate all possible planning to minimize harm has been established.

6.4 HISTORIC SITES

No historic sites were identified in the project area. Historic sites include architectural and archaeological resources. In accordance with FTA regulations, Section 4(f) requirements are applicable only to significant historic sites (i.e., those sites on or eligible for the **National Register of Historic Places** [NRHP] or sites otherwise determined significant by the FTA administrator) (23 CFR Section 771.135[e]).

Description of Historic Sites

No historic sites have been identified within the project area. Please refer to FEIS Section 5.13 for details on cultural resources.

Impacts to Historic Sites

No historic sites have been identified within the project area.

Coordination Process

Consultation with the State Historic Preservation Officer (SHPO) and other cultural resources stakeholders has been conducted and is described in Section 5.13, Cultural Resources, and in the Section 106 documentation. In response dated May 31, 2006, SHPO has concurred with the finding that the project will have no effect on historic properties. A copy of all SHPO correspondence is included in FEIS Appendix D.

6.5 LAND AND WATER CONSERVATION FUND ACT SECTION 6(f)(3) CONSIDERATIONS

Section 6(f)(3) of the **Land and Water Conservation Fund Act** (LWCF Act) (16 USC Section 4601-4) contains provisions to protect federal investments in park and recreation resources and the quality of those assisted resources. The law recognizes the likelihood that changes in land use or development may make park use of some areas purchased with LWCF funds obsolete over time, particularly in rapidly changing urban areas, and provides for conversion to other use pursuant to certain specific conditions.

Section 6(f)(3) - 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.

This requirement applies to all parks and other sites that have been the subject of LWCF grants of any type, and includes acquisition of park land and development or rehabilitation of park facilities. A review of the LWCF grants database and consultation with Texas Parks and Wildlife Department (TPWD) and City of Dallas staff members indicate that in the vicinity of the proposed project at LWCF grant funds were used to acquire the park land.

1971/72 – Trinity River Greenbelt; 232.958 acres; grant #48-00134

Formal consultation with the TPWD and the City of Dallas has been initiated to obtain information regarding the LWCF-assisted property in the Elm Fork Greenbelt that is subject to Section 6(f)(3) restrictions. Initial telephone communication and e-mail correspondence was directed to TPWD on



July 7, 2006 and to City of Dallas on July 25, 2006. TPWD and City of Dallas have provided DART with the details regarding Grant# 48-00134, which are included in Section 6.7 and Appendix D of this FEIS. Subsequently, DART consulted with the City of Dallas on September 16, 2006 and April 10, 2008. Additionally, DART consulted with NPS on April 10, 2008. Consultation among the parties continues.

6.5.1 Land and Water Conservation Fund-Assisted Property in Trinity River Greenbelt

For Grant #48-00134, LWCF funds were provided for acquisition of 232.958 acres for the Trinity Greenbelt on either side, north or south, of Storey Lane. In the maps provided by TPWD, the area required by the proposed project appears to be contained within the property acquired using LWCF funds.¹

6.5.2 Effects on Land and Water Conservation Fund-Assisted Property

In order to build an elevated structure/bridge across the Trinity River, support columns to support the elevated structure/bridge would be placed in the Elm Fork Greenbelt. Construction activities would include clearing ground and boring holes for the construction of support columns and abutments of the bridge. Additionally, construction equipment and personnel will be present at the site. In addition to the land required for the support columns, the land under the deck would also be acquired by DART to obtain air rights necessary for operation of the project. The elevated structure/bridge would be placed 50 feet to the north of Spur 482 to comply with TxDOT requirements for any future widening of its facility. The proposed project would require approximately 2.5 acres of the Elm Fork Greenbelt; however, only approximately 750 square feet of actual ground space would be occupied. The balance of the area would be air rights.

Based on an examination of grant documents and maps provided by the TPWD and City of Dallas, it appears that the land required for the project was acquired with the assistance of LWCF funds.

Since the area under consideration does not have an active recreational use and is generally devoid of trails, parks, and recreation amenities, there would be no disruption of existing recreational activities. In addition, DART is committed to ensuring the area beneath the proposed bridge/elevated structure remains available for public outdoor recreation use, and will consult with the City of Dallas to ensure that any future plans for park development are incorporated into the design for the elevated structure/bridge at this location. As there are no active recreation uses of the property in question, no construction-period effects on recreation are anticipated, and generally under NPS policy there is a 1-year limit on temporary non-conforming uses of property subject to Section 6(f)(3).

6.5.3 Section 6(f)(3) Conversion Requirements

When an area acquired or developed with LWCF assistance will be used for other than public outdoor recreation use, this use constitutes a conversion under Section 6(f)(3). The elevated structure/bridge pier encroachments into LWCF-assisted property would be subject to the conversion requirements of Section 6(f)(3). These requirements are specified at 36 CFR 59.3 and Section 675.9.3.B(1) of the NPS manual for LWCF grant compliance. The requirements can be summarized as follows. Also provided in *italics* is the proposed project's status and response regarding compliance with the requirements:

1. Alternatives Evaluation: The project proponents must examine any other practical alternatives to conversion of the LWCF-assisted property. Factors considered in the alternatives evaluation would include such considerations as engineering constraints, right-of-way issues, environmental impacts, and community concerns.

¹ See Section 6.7 and Appendix D for documents provided by Ms. Roxane Eley, Grants Administrator, Recreation Grants Branch, State Parks division, Texas Parks and Wildlife Department to Ms. Shilpa Trisal via surface mail on July 24, 2006.



The project planning and development process has sought to utilize every available feasible design technique to minimize or eliminate the need to use the protected Section 6(f) land. See avoidance alternatives discussion provided under Section 6.3.4 of this FEIS. The US Department of Interior in consultation with NPS has concurred that there is no feasible or prudent alternative to the proposed action. (See letter in Section 6.7 and Appendix D of this FEIS.) Formal consultation with the NPS, TPWD and the City of Dallas continues.

2. Appraisals of Fair Market Value: Appraisals of the fair market value of both the conversion property and proposed replacement property must be obtained.

DART will acquire fee simple ownership or a permanent easement of 2.5 acres of the Elm Fork Greenbelt from the City of Dallas at a fair market price to be determined through independent appraisal. A similar appraisal will be conducted for any replacement property.

3. Identification and Evaluation of Replacement Property: The project proponents must identify proposed replacement properties that are of reasonably equivalent usefulness and location as the property being converted. This includes: (a) a determination of the recreational needs being fulfilled by the facilities at the converted property, and the types of outdoor recreation resources and opportunities available; and (b) an assessment of the property proposed for substitution for its suitability to meet recreation needs which are at least similar in magnitude and impact to the user community as the conversion property.

DART has identified a 2.95 acre parcel directly adjacent to parkland being acquired. This property is reasonably equivalent in usefulness and location as the property being converted. Coordination with the NPS, City of Dallas and Texas Parks and Wildlife indicates that this parcel would adequately serve the replacement property requirements. DART is committed to ensuring that area beneath the proposed bridge/elevated structure remains available for public outdoor recreation use, and will consult with the City of Dallas to ensure that any future plans for park/trail development are incorporated into the design for the elevated structure/bridge at this location. Pursuant to this, DART has proposed that a portion of the conversion land could be rededicated back to the City for park uses. DART would retain use through license agreement or easement. Currently, the conversion property is not an active recreation area. There are no outdoor recreational resources and opportunities available and it does not currently serve any recreational purpose or fulfill any recreational need. Since this property is infrequently used and visited, there are signs of trash collection and general signs of disuse and vandalism.

4. Eligibility Determination: The project proponents must document how the property proposed for substitution meets the eligibility criteria for LWCF-assisted acquisitions.

DART will comply with the eligibility criteria for LWCF-assisted acquisitions as follows: DART will obtain title or adequate control and tenure of the proposed substitution property; if the seller is a public agency the substitution property identified would not have been acquired by the seller for recreation; the substitution property would not have been managed for recreational purposes while in public ownership; the substitution property would not have been acquired using federal assistance for the original acquisition by the public agency unless the federal assistance was provided by the supplemental programs allowed by the Act; the selling public agency would receive payment for land transferred to another public agency; all requirements for appraisal,



history of conveyances and evidence of title would be adhered to; and if the selling agency is Federal fair market value will be paid.

5. Partial Impact Consideration: The project proponents must document the impact of partial park land acquisition on the remaining site, with the focus of this assessment on whether the unconverted property remains recreationally viable.

The proposed project would require approximately 2.5 acres of the LWCF-assisted property; however, only approximately 750 square feet of actual ground space would be occupied. The balance of the area would be air rights. The LWCF assistance was provided for a site 232.958 acres in area, the proposed project would only require approximately 2.5 acres, which is 1.07 percent of the total LWCF property or even much less because the actual on-ground space would only be 750 square feet. The support columns for the bridge/elevated structure would not disrupt passage under the bridge/elevated structure; any future trails would easily be accommodated the bridge/elevated structure. As indicated earlier, DART is committed to ensuring the area beneath the proposed bridge/elevated structure remains available for public outdoor recreation use, and will consult with the City of Dallas to ensure that any future plans for park/trail development are incorporated into the design for the elevated structure/bridge at this location. Given the small size of acquisition and nature of project, (i.e., a bridge structure with least intrusion on ground), the acquisition required by the project will have no adverse impact on the recreational viability of the remaining site.

6. Agency Coordination/Section 4(f): The project proponents must consult with the applicable federal agencies, including any Section 4(f) consultation required if the proposed project involves funding and/or approvals from the U.S. Department of Transportation.

DART with the Federal Transit Administration (FTA) has conducted a Section 4(f) assessment which has been distributed to all appropriate local, state, and regional agencies for review and comment. Please see sections 6.1 through 6.6 of this FEIS. The project will comply with all applicable NEPA regulations.

7. Environmental Evaluation: The project proponents must provide environmental documentation in accordance with the NEPA procedures promulgated by NPS and CEQ.

A Draft Environmental Impact Statement (DEIS) and Final Environmental Impact Statement (FEIS) has been prepared for the project. DART has coordinated this effort with NPS, and the U.S. Department of Interior. The NPS has confirmed that this FEIS will serve as the NEPA compliance vehicle for NPS.

8. State Intergovernmental Review: The project proponents must comply with any required state intergovernmental clearinghouse review necessitated by the proposed property conversion.

The project will comply with any required state intergovernmental clearinghouse review requirements.

9. Statewide Outdoor Recreation Plan Consistency: The project proponents must document how the proposed conversion is in accordance with any applicable statewide recreation plans.

DART will consult TPWD and NPS regarding the adequacy of the replacement property such that it complies with the State's Outdoor Recreation Plan Policies.



NPS has indicated that the Section 6(f)(3) conversion process should take place subsequent to completion of the Section 4 (f) and EIS process. Coordination with the City of Dallas, TPWD and NPS continues.

6.6 TEXAS PARKS AND WILDLIFE CODE, CHAPTER 26

Chapter 26 of the Texas Parks and Wildlife Code was established to protect parks, recreational and scientific areas, wildlife refuges, and historic sites from being used or taken by the state or local agencies for public projects. Chapter 26 is similar to Section 4(f) of the *Department of Transportation Act of 1966* in its requirements, except that Texas law requires a public hearing for any use or taking of protected land. As indicated in Section 6.3.7 of this document, the recommended FTA determination is that there is no feasible and prudent alternative to the use of the parkland and a process to incorporate all possible planning to minimize harm has been established.

Since the project would result in acquisition of parkland, the project will comply with provisions of Chapter 26 of the Texas Parks and Wildlife Code. DART has initiated the coordination process with the City of Dallas to advertise and hold a public hearing.

6.7 SECTION 4(f) AND SECTION 6(f) CORRESPONDENCE

The following pages in Chapter 6 include all correspondence regarding Section 4(f) and Section 6(f) evaluation (also in Appendix D):