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February 7, 2020

Via email

Ms. Eliza Paul, P.E.
Houston District Engineer
Texas Department of Transportation
P.O. Box 1386
Houston, Texas 77251

**Re: North Houston Highway Improvement Project [NHHIP] – CSJ 0912-00-146 –
Draft Community Impacts Assessment and Draft Cumulative Impacts Technical
Report**

Dear Ms. Paul,

Following are the Houston Parks Board's [HPB] comments regarding TxDOT's recent release of the Draft Community Impacts Assessment and Draft Cumulative Impacts Technical Report of the NHHIP. These comments add to the record of previously submitted NHHIP comments provided by Houston Parks Board, the Coalition to Make I-45 Better and the July 27, 2017 and July 20, 2018 letters provided by counsel Irvin and Connor.

Throughout the environmental review of the NHHIP, HPB has endeavored to cooperate with TxDOT to properly identify significant impacts posed by the project and seek alternatives to or ways to mitigate those impacts as required by law. However, despite numerous meetings and formal comments from HPB detailing significant impacts to parks posed by the project, each draft of environmental impact statement [EIS] documents fails to acknowledge those impacts. Without an acknowledgment of known significant impacts there is no basis for proper evaluation of those impacts. With TxDOT's continuing failure to recognize relevant impacts to parks and open space under NEPA and Section 4(f) of the Federal Transportation Law, Houston Parks Board continues to have serious concerns about the proposed plans for NHHIP and the integrity of the process. Therefore, HPB restates its previous requests that TxDOT resubmit the DEIS as a comprehensive document and reopen the DEIS for public comment.

I. Procedural Deficiencies

1. National Environmental Policy Act

As stated in HPB's March 13, 2019 comments on past technical report releases and Irvin and Connor's July 20, 2018 letter, all the technical reports issued since the release of the Draft EIS [DEIS] should have been included in the DEIS itself. The

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purpose of the DEIS is to provide comprehensive disclosure that informs public understanding of the project, subsequent public comment and agency decision making. Community Impacts and cumulative impacts are integral to the basic understanding of the project as were the separately released visual and noise impact reports. It is only through full and complete disclosure that the public, involved and interested agencies can fully understand the proposed project and its potential impacts. Therefore, the DEIS process is not closed until all the information is presented comprehensively and the public has a chance to comment on that information. As we have commented previously, TxDOT should resubmit the DEIS in full, including subsequently released technical reports, and reopen DEIS public hearing process.

Full and comprehensive disclosure is not just a procedural requirement. Complete, comprehensive, disclosure allows for better understanding of the project as a whole. When information is released piece meal, issues tend to be viewed in isolation. Attempts are made to address issues individually rather than address the project as a whole. Though issued in isolation and very late in the process, the Community Impacts Assessment, together with the Cumulative Impacts Technical Report, do provide a stark summary of the project's disruptive impact on Houston. The more complete disclosures heighten the need for a better understanding of the project and more informed decision making.

2. 49 U.S.C Section 303 U.S. Department of Transpiration (Section 4(f)):

As fully reviewed in Irvin and Connor's July 27, 2017 letter, Section 4(f) represents a federal statutory requirement independent of NEPA. Under the statute, a transportation project requiring the use of publicly owned land of a public park or recreation area may be approved only if –

- (1) There is no prudent and feasible alternative to using that land: and
- (2) The program or project includes all possible planning to minimize harm to the park, recreation area....

Those requirements can effectively be waived but only upon a finding of "de minimis impact" (49 U.S.C. Section (c) (d) by the project sponsor in consultation with the local officials with jurisdiction over the parks.

The project sponsor must also follow a rigorous process under the 4(f) federal regulations:

§774.3 Section 4(f) approvals.

The Administration may not approve the use, as defined in §774.17, of Section 4(f) property unless a determination is made under paragraph (a) or (b) of this section.

(a) The Administration determines that:

(1) There is no feasible and prudent avoidance alternative, as defined in §774.17, to the use of land from the property; and

(2) The action includes all possible planning, as defined in §774.17, to minimize harm to the property resulting from such use; or

(b) The Administration determines that the use of the property, including any measure(s) to minimize harm (such as any avoidance, minimization, mitigation, or

enhancement measures) committed to by the applicant, will have a *de minimis* impact, as defined in §774.17, on the property.

(c) If the analysis in paragraph (a)(1) of this section concludes that there is no feasible and prudent avoidance alternative, then the Administration may approve, from among the remaining alternatives that use Section 4(f) property, only the alternative that:

(1) Causes the least overall harm in light of the statute's preservation purpose. The least overall harm is determined by balancing the following factors:

(i) The ability to mitigate adverse impacts to each Section 4(f) property (including any measures that result in benefits to the property);

(ii) The relative severity of the remaining harm, after mitigation, to the protected activities, attributes, or features that qualify each Section 4(f) property for protection;

(iii) The relative significance of each Section 4(f) property;

(iv) The views of the official(s) with jurisdiction over each Section 4(f) property;

(v) The degree to which each alternative meets the purpose and need for the project;

(vi) After reasonable mitigation, the magnitude of any adverse impacts to resources not protected by Section 4(f); and

(vii) Substantial differences in costs among the alternatives.

(2) The alternative selected must include all possible planning, as defined in §774.17, to minimize harm to Section 4(f) property.

In addition, the harm may result from not just direct impact, but constructive use of the protected space.

§774.15 Constructive use determinations.

(a) A constructive use occurs when the transportation project does not incorporate land from a Section 4(f) property, but the project's proximity impacts are so severe that the protected activities, features, or attributes that qualify the property for protection under Section 4(f) are substantially impaired. Substantial impairment occurs only when the protected activities, features, or attributes of the property are substantially diminished.

Constructive use can occur from projected noise impacts, including the "enjoyment of an urban park where serenity are significant attributes" (Section 774.15 (d)(3)(iv)). It also applies where substantial impairment to the visual qualities of the protected site or the project "substantially detracts from the setting of a Section 4(f) property which derives its value in substantial part due to its setting".

Therefore avoiding impacts to parks and recreation areas are federal policy and a substantive requirement of approving any transportation project, including the NHHIP project. The project

may not be approved without full disclosure of the impacts and a detailed analysis of how to minimize and mitigate impacts, if not avoidable in the first place.

II. NHHIP Impacts to Parks

While the NHHIP poses significant impacts throughout its reach, park impacts are most acute in Segment 3. HPB has thoroughly identified the park impacts throughout prior submissions. Yet the Community Impact Technical Report Assessment asserts no impact to parks:

No parks are located in the proposed right-of-way of the Preferred Alternative in Segment 3; therefore, the proposed project is not expected to have direct impacts on park facilities. The design of the Preferred Alternative was modified to avoid acquisition of the property from Linear Park and Freed Art & Nature Park.

The statement must first be addressed within the context of Bayou Greenways 2020 and the White Oak Bayou Greenway in particular. The record remains clear (see Irvin and Connor letter July 27, 2017) that Bayou Greenways 2020 is a major City of Houston parks and open space initiative to create an extensive network of “parkland, trails and natural areas along the major bayous.” (Findings Section 1.1., Interlocal Agreement for Bayou Greenways 2020, July 3, 2013). Under the same findings, “all Bayou Greenways within the City limits will be open to the public” for a range of recreation activities. Under the Interlocal Agreement between the HPB and the City of Houston, all land acquired for Bayou Greenways 2020 is transferred to the city parks inventory and the Director of Houston Parks and Recreation Department [HPARD] retains approval over all greenway design. Bayou Greenways is funded, in part, by \$100 million from a 2012 city parks bond supported by 68% of the vote. Similarly, the October 24, 2013 City of Houston “Bayou Greenways 2020 Economic Development Agreement with the Houston Parks Board, Inc. recites that “The Greenways are a “public/private project with the purpose of creating an integrated system of connected linear parks with walking, running and bicycle trails along the nine (9) major bayous within the City limits.” The White Oak Bayou Greenway is specifically cited within the Interlocal and Economic Development Agreement and Houston Parks Board maintains the White Oak Bayou Greenway as a linear park using HPARD maintenance staff. Therefore, as officials with local jurisdiction, the Houston City Council through the Houston Parks and Recreation Department have identified Bayou Greenways 2020 as an integral component of the City’s overall park system, including its system of individual parks.

Curiously, the Community Impact Assessment attributes Bayou Greenways more accurately earlier in its analysis.

In section 3.3.1, open space areas along “bayou greenways’ are characterized as a clearing or undeveloped area that is accessible to the public with little or no obstruction to the view of the skyline. Bayou greenways are being developed as a public-private initiative spearheaded [sic] by the Houston Parks Board, and involve the construction of bikeways and amenities such as landscaping and benches along the bayous, and linking the City of Houston’s parks existing stretches of linear parks, trails and larger traditional parks.

Yet when it comes time to assess impacts under Section 5.4.3.1, White Oak Bayou Greenway is not recognized as parkland. Rather it is characterized as open space whose primary purpose is

for “drainage and flood control.” Elsewhere it is characterized as merely a transportation project.

In this case, as is the case of almost all Bayou Greenways 2020, White Oak Bayou Greenway is an open space park system incorporating land owned by the City of Houston, the Harris County Flood Control District, TxDOT and Union Pacific Rail Road. It is managed under multiple agreements with all constituent owners to achieve a unique, cooperative, unified, public park and recreation system. Its organizational beauty is derived from adding the public recreation use to otherwise single use public land. As section 3.1.1 of the Community Impact Assessment notes, the White Oak Greenway within the NHHIP impact zone features trails, landscaping, and stunning views of downtown Houston. Trees along the southern side of the bayou effectively block the views of existing I-10 within the downtown view scape. This particular stretch is considered the White Oak Bayou Greenway gateway to downtown. It now also features an additional gateway to the University of Houston Downtown northern campus with a new B-Cycle stop. It is heavily used by runners, walkers, bikers, birders and students who value the park space it provides.

As TxDOT’s own drawings show, the rerouted I-45 and I-10 will destroy the tree line on the south side of the bayou, bringing the two freeways directly to the edge of the bayou itself. Seven new overpasses totaling some 20 lanes will cross directly over the greenway. The view shed to downtown will be destroyed. Bird habitat will be destroyed. The natural ground plain supporting wild flower fields will be destroyed. As noted in previous comments, the project will result in a net loss of 18 acres of park land and open space (including giving credit for removing the piece of I-10 adjoining UHD). All the public park space along the greenway, including public open space under TxDOT jurisdiction, contributes to the park experience. Occupying that space with new freeway structures, directly and constructively impacts the White Oak Bayou Greenway requiring full 4(f) review as well as impact acknowledgement under NEPA. The Community Impact Assessment’s suggestions of overpass column adjustments during the design phase fails to acknowledge the underlying impact. These measures do not satisfy the required exploration of alternatives and mitigation. The severity of the impacts require a complete reevaluation of the approach to NHHIP, including alternatives to the project’s basic routing to avoid impact to White Oak Bayou Greenway in the first place.

TxDOT’s analysis also fails at the individual park level. Slightly adjusting ramp locations at Freed Nature Park or Linear park from passing directly over the park to just nicking the edge of the park represent distinctions without differences. Both constructively occupy the park both visually and through noise impacts, especially a nature park such as Freed. Nor, as detailed in HPB’s March 13, 2019 review of the visual and noise technical reports, did TxDOT even measure noise levels at the local parks along the greenway. Other parks along the greenway, such as Hogg Park are similarly impacted. Though no readings were taken at Hogg Park, noise level readings farther away suggest likely noise impacts far above TxDOT accepted park noise criteria at all parks along the Segment 3 route.

As stated earlier, throughout its prior comments, HPB attempted to help constructively guide the conversation about park impacts and mitigation. Without even describing it as mitigation, a full Little White Bayou Greenway would surely add a valuable resource to the City of Houston. TxDOT’s proposals to bridge Little White Oak Bayou at Woodland Park, Patton Street and I-610 could help facilitate that greenway. However, all these issues must be approached comprehensively from a basic acknowledgement of the issues. The original impacts of

interstate highway construction have caused decades of hardship, not only to Little White Oak Bayou, but to individual communities that have suffered repeated flooding from the Little White Oak Bayou culverts under the existing interstates. They also back up garbage on the bayous and their existing impervious surfaces contribute to storm water runoff. TxDOT should be addressing these long standing impacts resulting from the original highway anyway, without resort to the NHHIP. In addition to fixing existing storm water problems, a fully funded Little White Oak Bayou Greenway is a meritorious project without the NHHIP. Those are projects worthy of TxDOT time and resources.

III. Conclusion

While our comments have focused on park impacts, we do recognize that parks are a part of a broader set of community impacts of great concern to the people who live in the communities most impacted by the original I-45 alignment and the proposed NHHIP. In particular, the displacement of residents and businesses as well as flooding, air quality and other environmental concerns are critical issues to be addressed by a more complete and thoughtful analysis of alternatives as required by the NEPA process. HPB supports comments by Air Alliance and others recognizing the deficiencies in the NEPA process and the need to reissue a comprehensive DEIS that provides full, comprehensive, disclosure of impact and reevaluation of project alternatives to avoid those impacts, while providing meaningful mitigation to unavoidable impacts.

At the same time we are heartened by Mayor Turner's NHHIP engagement process that is the most comprehensive and thoughtful engagement process to date: a process that is informing the public and decision makers of the comprehensive impacts of the NHHIP process as well as an exploration of alternatives. We urge TxDOT to listen carefully to the conversations taking place in that process.

Yours truly,



Beth White
President and CEO

Attachments:

1. Resubmission of prior attachments regarding White Oak Bayou Greenway impacts.

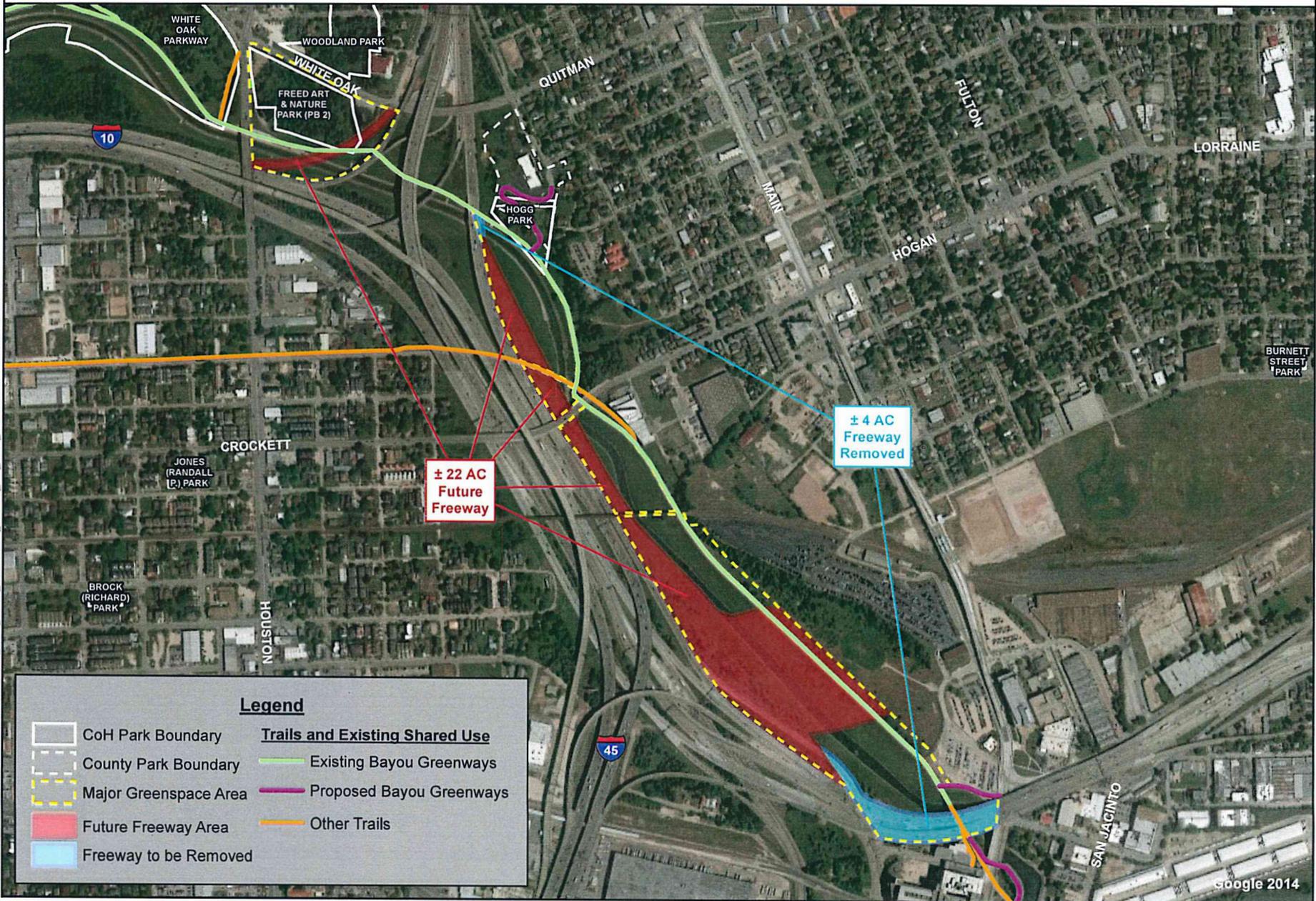
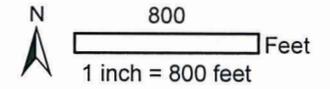
List of prior North Houston Highway Improvement Project submissions:

1. December 3, 2013 Houston Parks Board Letter to Texas Department of Transportation, Houston District Re: North Highway Improvement Project
2. May 29, 2015, Houston Parks Board Letter to Texas Department of Transportation, Houston District Re: North Highway Improvement Project
3. July 26, 2017 Houston Parks Board Letter to Quincy Allen, P.E., Texas Department of Transportation, Houston District Re: North Houston Highway Improvement Project – Draft Environmental Impact Statement Review with Exhibits

4. July 27, 2017 I-45 Coalition Letter to Mr. Quincy Allen, P.E., Houston District Engineer, Texas Department of Transportation Re: North Houston Highway Improvement Project – Draft Environmental Impact Statement Review
5. July 27, 2017 Irvine & Connor Letter to Mr. Quincy Allen, P.E., Texas Department of Transportation, Houston District North Houston Highway Improvement Project Draft Environmental Impact Statement Review
6. August 18, 2017 Elected Officials Letter to Quincy Allen, P.E., District Engineer, Texas Department of Transportation, Houston District Re: North Houston Highway Improvement Project
7. July 20, 2018 Irvine & Connor Letter to Texas Department of Transportation Houston District Office, Director of Project Development Re: North Houston Highway Improvement Project - Technical Reports Review with Exhibits A-E
8. March 13, 2019 Houston Parks Board Letter to Mr. Quincy Allen, P.E., Houston District Engineer, Texas Department of Transportation Re: North Houston Highway Improvement Project [NHHIP] - CSJ 0912-00-146 - Addendum 1 to Visual Impact Assessment Report / Draft Noise Technical Report

White Oak Bayou Greenway

Segment WO01: After I-45 Expansion

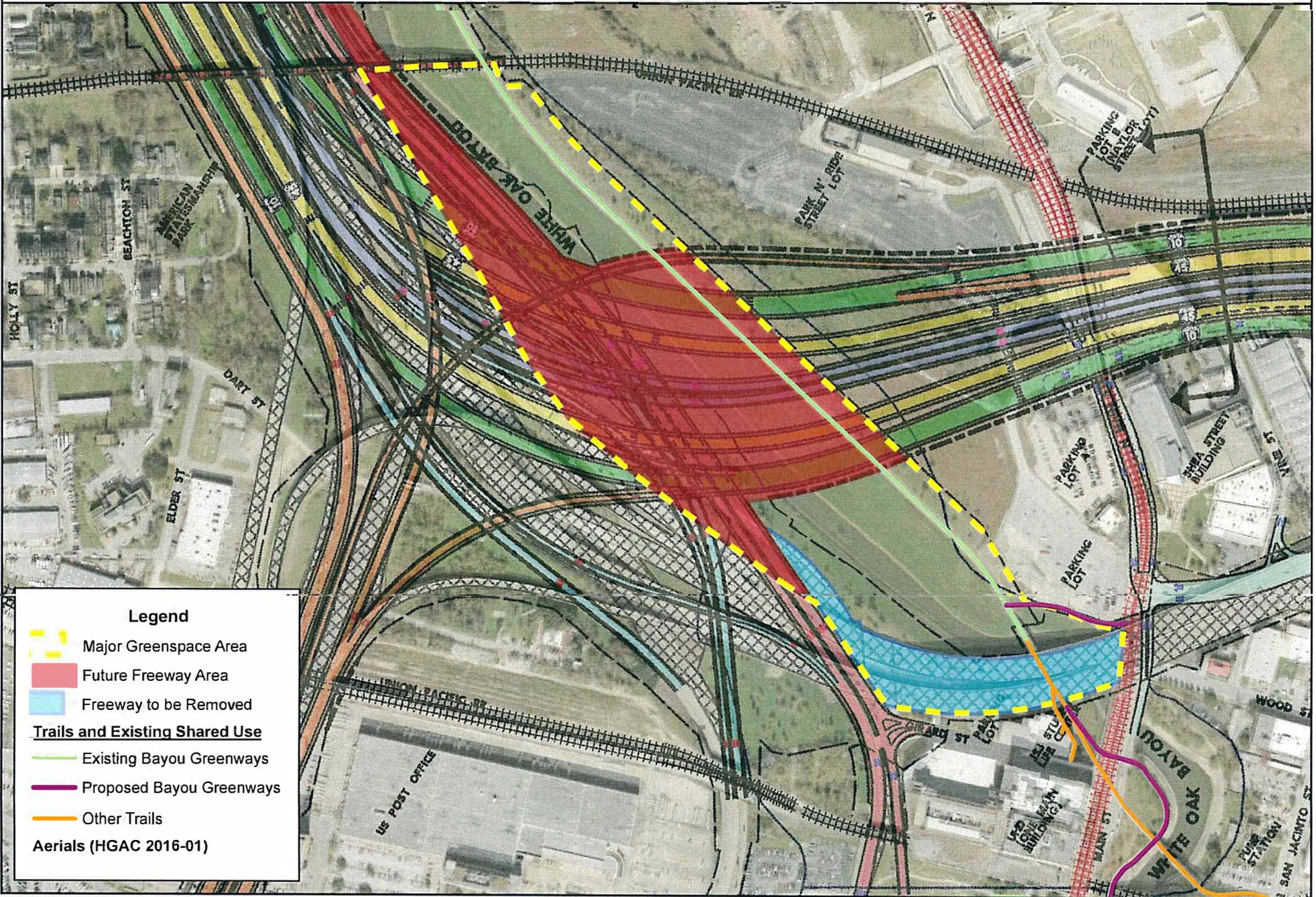
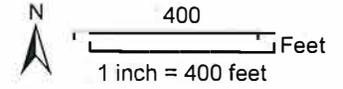


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HOUSTON PARKS BOARD SUBMISSION TO TXDOT JULY 26, 2017 - 18 ACRE LOSS OF OPEN SPACE

White Oak Bayou Greenway

Segment WO01: After I-45 Expansion



Legend

- Major Greenspace Area
- Future Freeway Area
- Freeway to be Removed

Trails and Existing Shared Use

- Existing Bayou Greenways
- Proposed Bayou Greenways
- Other Trails

Aerials (HGAC 2016-01)

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WHITE OAK BAYOU GREENWAY LOOKING TOWARDS DOWNTOWN



WHITE OAK BAYOU GREENWAY LOOKING TOWARDS DOWNTOWN



WHITE OAK BAYOU GREENWAY LOOKING NORTHWEST TOWARDS HOGAN STREET FROM THE UNIVERSITY OF HOUSTON DOWNTOWN



WHITE OAK BAYOU GREENWAY LOOKING NORTHWEST TOWARDS HOGAN STREET FROM THE UNIVERSITY OF HOUSTON DOWNTOWN

