Thompson/Cape Dam & Ditch Engineering Structure FAQ

June 12, 2019

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1. How did we get here?

- In 2014, City Council approved Planned Development District (PDD) zoning for the Woodlands development project, and received 20 acres of dedicated parkland along the San Marcos River, which includes Capes Dam and the Mill Race.
- In October 2014, the Parks and Recreation Advisory Board requested a study of safety and environmental issues associated with the Dam. Watershed Systems Group, Inc. (Dr. Thom Hardy), was contracted to conduct a scientific evaluation.
- On February 22, 2016, Council held a Workshop and received a presentation from Dr. Thom Hardy. Council provided direction to the City Manager to prepare an item for Council consideration and possible action for removal of Cape's Dam and filling of the Mill Race.
- On March 15, 2016, City Council approved a motion to remove Cape's Dam.
- On June 21, 2016, a stakeholder meeting was held at fish hatchery, including US Fish and Wildlife Service (USFWS), Texas Historical Commission (THC), US Army Corps of Engineers (USACE), Hays County Historical Commission, and the City. At this meeting, THC stated that the dam, mill race and associated structures retain sufficient historic integrity to remain eligible for listing in the National Register. USFWS stated that leaving the dam in place, in whole or in part, would make the City ineligible for USFWS funding for the project.
- On August 16, 2016, Council received a presentation from USFWS regarding the Cape's Dam removal planning and permitting process. The USFWS report states that the dam, "acts as a barrier to fish and other aquatic species" and "is in severe disrepair and poses a safety hazard to recreational users."
- Due to the conflicting positions of USFWS and THC, and the competing interests of other interested stakeholders, the City determines that the best course of action is to suspend the UFWS permit process and further investigate removal, repair and replacement options.
- On September 6, 2018, the Historic Preservation Commission initiated a petition to designate Cape's Dam and the Mill Race as a Local Historic Landmark.
- On October 4, 2018, the Historic Preservation Commission voted to recommend designation of Cape's Dam and the Mill Race as a Local Historic Landmark.
- On November 27, 2018, the Planning & Zoning Commission voted to deny designation of Cape's Dam and the Mill Race as a Local Historic Landmark.
- On January 29, 2019, City Council held a public hearing regarding Ordinance 2019-04, and postponed the vote to designate Cape's Dam and the Mill Race as a Local Historic Landmark.

2. The property has a trinomial attached to it 41HY164. What does this mean for the property?

- An archeological site has officially been recorded with the state. What is listed under the trinomial is smaller than the 17 acres noted in the 1985 National Register nomination form for Thompson/Cape Dam & Ditch Engineering Structure. The exact boundaries of the archeological

site may be bigger than boundary shown on the National Register nomination form; an archeological survey would be required to determine this boundary.

- Since the site is located on state land administered by the City, removal of or repairs to the dam and associated elements would fall under the Antiquities Code of Texas. Any work taking place in this area must be coordinated with the THC. Archeological work would be required in advance of most projects
- The City or Texas Parks and Wildlife Department (TPWD) would take the lead in negotiating with the Texas Historical Commission (THC) on what level of effort would be necessary to mitigate the impacts to the site if removal or repair is undertaken.
- Designation does not require the City to do historic preservation activities to maintain the dam or associated structure(s).

3. How does being eligible for listing in the National Register of Historic Places (NRHP) affect the property?

- Property is not listed in the NRHP but has been deemed eligible.
- If listed, there are no restrictions on what a non-federal owner may do with the property, including demolition, unless the property is involved in a project that receives Federal assistance, usually funding or licensing.
- In addition to honorific recognition, NRHP listing has the following effect:
- Consideration in planning for Federal, Federally licensed, and Federally assisted projects;
- Eligibility for certain tax provisions; and
- Qualification for Federal grants for historic preservation, when funds are available.
- NRHP listing does not require the City to do historic preservation related activities to maintain the dam.

4. How will designation of this property as a local historic landmark affect the property?

- Local Historic Landmark designation does not require the City to do anything to the dam or the associated structure(s).
- Ordinary repair and maintenance do not require a Certificate of Appropriateness.
- Exterior changes in material or design, including demolition, must be approved through a Certificate of Appropriateness (COA) by the Historic Preservation Commission (HPC).

5. Can Certificates of Appropriateness for City-owned property designated as historic landmarks or located in local historic districts be appealed to City Council?

- Section 2.5.5.5 of the San Marcos Development Code requires that appeals of Certificates of Appropriateness are heard by the Zoning Board of Adjustments (ZBOA).
- City Council discussed amending this Section to allow the City Council to be appellate body of Certificates of Appropriateness when City-owned property is involved. This Section can be amended with the upcoming annual update to the Code.

6. How does the location of the dam on a navigable body of water affect the property?

- The US Army Corps of Engineers (USACE) would likely need to be involved if the dam is removed or water flow is affected. US Fish and Wildlife Service (USFWS) may also be involved.
- Section 106 of the National Historic Preservation Act and its implementing regulations at 36 CFR Part 800 would be triggered.
- If the federal agencies are involved, they would take the lead in negotiating with the City and THC about an appropriate level of effort for mitigating the effects of the project (removal, refurbishment, restoration, etc.) on the dam.

7. What cost estimates do we currently have for dam removal, repair and/or replacement?

- Our original estimates to remove the dam ranged between $50k and $75k to remove the structure. These numbers have not been updated at this point. The original funding was going to be funded through USFW. The original cost estimate to restore the dam was a range starting at approximately $500k up to 6 figures. This had a wide variation because the type of structure and the amenities associated with the development. These numbers will all be updated at the next presentation.

8. What is the status of negotiations with Hays County and the Hays County Historical Commission?

- Hays County, in partnership with the Hays County Historical Commission, has stated their preference to assume responsibility for operation and maintenance of the dam and mill race structures, and surrounding areas of City-owned park land, under agreement with the City.
- Hays County Historical Commission has stated their intent to secure funding for restoration of the dam structure, and ongoing operations and maintenance.
- Discussions with Hays County are ongoing, and include other parks-related topics. Specifically, the County has proposed transferring ownership of the Five Mile Dam Soccer Complex, Randy Vetter Park, and Dudley Johnson Park to the City. The City currently operates and maintains the Five Mile Dam Soccer Complex under (an expired) agreement with Hays County. Vetter and Johnson Parks are County-owned and maintained.

9. What is the status of Rio Vista Falls?

- City staff and consulting engineer (Gary Lacy, Recreation Engineering & Planning) have evaluated Rio Vista Falls and identified structural deficiencies. Specifically, undercutting along the man-made south bank, below the second and third falls.
- Staff, with the concurrence of our consulting engineer, has concluded that emergency repairs are warranted.
- City staff provided the consulting engineer's report to the US Army Corp of Engineers (USACE), which is the lead agency for all matters related to the bed and banks of the San Marcos River.
- City staff contacted USACE in early March and requested an inspection of the structural deficiencies identified by Recreation Engineering & Planning. In response to our request, USACE stated that the identified structural deficiencies do not warrant emergency repairs.

- USACE will conduct a visual inspection of Rio Vista Falls; however, no timeframe for that inspection has been identified. Upon visual inspection, USACE may determine that emergency repairs are warranted.
- Notification was also provided to US Fish & Wildlife, Texas Parks & Wildlife, Texas Commission on Environmental Quality (TCEQ), and the Texas Historical Commission.
- In coordination with US Fish & Wildlife, USACE must issue a permit for any modifications or repairs to the main-made structures at Rio Vista Falls.