



MEMO

TO: Stephanie Reyes, Assistant City Manager
FROM: Drew Wells, Director of Parks and Recreation
DATE: December 23, 2019
RE: Cape's Dam

SUMMARY

The purpose of this memorandum is to provide further detail regarding the timeline and permitting process related to Cape's Dam. Hyperlinks are including within the information below.

Background

January 15, 2013, City Council approved Planned Development District (PDD) zoning for The Woodlands of San Marcos development project, and received 20 acres of dedicated parkland along the San Marcos River, which includes Cape's Dam and the Mill Race.

September 23, 2014, the Parks and Recreation Advisory Board received a presentation from Dr. Thom Hardy regarding work done by the Meadows Center in regards to a study of the safety and environmental issues associated with Cape's Dam. Scientific evaluation was completed which recommended the removal of Cape's Dam and filling of the Mill Race.

February 22, 2016, City Council held a Cape's Dam Workshop where they received a presentation from Dr. Thom Hardy, and provided direction to Staff to bring back an action item that would approve the removal of the dam and the filling of the mill race. Click to read minutes [here](#).

March 15, 2016, City Council approved a motion to remove Cape's Dam. Click [here](#) to read minutes.

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. 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.

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. Click [here](#) to read minutes.

October 4, 2018: Historic Preservation Commission recommended approval of designating Thompson/Cape Dam and Ditch Engineering Structure as a local historic landmark (4-2). Click [here](#) to read minutes.

November 27, 2018: Planning and Zoning Commission recommended denial of designating Thompson/Cape Dam and Ditch Engineering Structure as a local historic landmark (5-4). Click [here](#) to read minutes.

January 15, 2019: City Council briefed in executive session to discuss possible partnership opportunities with Hays County and the Hays County Historical Commission.

January 29, 2019: City Council considered an item designating Cape's Dam as a historic landmark. This action was postponed for up to 6 months while staff gathered more information related to the project. Click [here](#) to read minutes.

June 18, 2019: City Council briefed in Work Session on status of possible partnership opportunities with Hays County and the Hays County Historical Commission. Presentation from County on proposed project anticipated in fall 2019. Click [here](#) to read minutes

October 15, 2019: City Council received a presentation from Vista Planning & Design on behalf of Hays County and the Hays County Historical Commission regarding a visioning study for Cape's Dam, the Mill Race, Thompson's Island & San Marcos River. Council provided consensus for staff to seek what permissions and permits would be needed from State and Federal agencies to remove or repair the dam. Click [here](#) to read minutes.

Permitting

The permitting requirements could vary depending on what direction the City Council would like to go in, but the following is a general overview of all agencies that could be involved.

Federal Agencies

United States Army Corp of Engineers (USACE): The United States Army Corps of Engineers is a federal agency under the Department of Defense that primarily oversees dams, canals and flood protection in the United States, as well as a wide range of public works throughout the world. The permitting process would begin with the submission of the project, whether that is rehabilitation or removal. They would be the lead federal agency and would coordinate with the United States Fish and Wildlife Service (USFWS) for permitting.

United States Fish and Wildlife Service (USFWS): The United States Fish and Wildlife Service is an agency within the US Department of the Interior dedicated to the management of fish, wildlife, and natural habitats. They would provide the permits required related to the endangered species within the project area.

State Agencies

Texas Parks and Wildlife Department (TPWD): The Texas Parks & Wildlife Department is a state agency that oversees and protects wildlife and their habitats. In addition, the agency is responsible for managing the state's parks and historical areas. They would provide the permits required for excavation of state-owned substrate (soil/river bottom).

General Land Office (GLO): The Texas General Land Office is responsible for managing lands and mineral rights properties that are owned by the state. They would provide the permits required for activities on state-owned substrate (soil/river bottom).

Texas Commission on Environmental Quality(TCEQ): The Texas Commission on Environmental Quality is the environmental agency for the state. They would provide the permits and certifications needed to ensure compliance with state water quality standards. One of the requirements for obtaining USACE permitting is certification from TCEQ.

Texas Historic Commission (THC): The Texas Historic Commission is the state agency for historic preservation. Due to the historic nature of the structure Historic Building and Structure Permits may be issued for preservation, rehabilitation, restoration, reconstruction, architectural investigation, hazard abatement, new construction, and in rare cases, relocation or demolition.

Options to Consider

Option 1: Removal.

Next steps: Staff would begin the permitting process with the US Army Corp of Engineers and state agencies to begin demolition.

Option 2: Redesign & Rebuild.

Next steps: Staff would begin working on an Interlocal Agreement partnering with Hays County on the rehabilitation efforts that would be brought back to the City Council for consideration. An Interlocal Agreement could include things such as cost sharing of an impact study, agreement on vision & design and other cost participation commitments.

Option 3: Restoration.

Next steps: Staff would begin working with the Texas Historical Commission and the US Army Corp of Engineers to determine exactly what restoration would potentially look like. There is a strong possibility that the steps needed to fully restore the dam would not be allowed under today's federal and state statutes and the project would not be permitted.

Option 4: Have another study conducted on Cape's Dam and the Mill Race

Next steps: Staff would need direction on if the study is to be comprehensive or have a specific focus. Staff would reach out to Hays County and the Hays County Historical

Commission to determine if they would be willing to cost participate. Staff would then move forward with identifying an unbiased third party to conduct the analysis and would bring the completed report back to the City Council and Hays County.

Redesign & Rebuild (Rehabilitation) vs. Restoration

Rehabilitation acknowledges the need to alter or add to a historic property to meet continuing or changing uses while retaining the property's historic character.

Restoration depicts a property at a particular period of time in its history, while removing evidence of other periods.

Funding Currently Available

Currently there is \$174,628 remaining of the \$250,000 that was originally funded for the Cape's Camp Improvement and Dam Project. To date \$75,372 of the funds allocated have been used to fund previous studies on Cape's Dam and the Mill Race.

END