



FROM THE DESK OF THOMAS M. CLASS SR., TOWN MANAGER

To: Mayor and Council

Date: 02/12/2019

From: Thomas M. Class, Sr., Town Manager

**Re: Loop Road Update
Agenda Item 2019-050-T
Town Council Meeting, February 12, 2019**

As Council is aware, the concept of a Loop Road for Trophy Club, in some form or fashion, has been in existence since the Town's formation, and in fact, was first noted in the original Grapevine Lake Master Plan of 1971 as amended in 2001. Since that time previous Town Councils have on again - off again looked into the feasibility of the road from public safety and convenience, logistical, and financial perspectives without resolution.

A significant setback for the Loop Road occurred in 2001 with the adoption of the revised Grapevine Lake Master Plan, which was a supplement to the original Master Plan of 1971. The revised plan identified Environmentally Sensitive Areas (ESA) for the purpose of minimizing the number of future easements (or crossings) granted.

In early 2014 there appeared to be a renewed interest in determining the feasibility of a Loop Road from the Town Council, and in fact, an engineering study was completed for a low water elevated bridge crossing. The projected engineering and construction cost at the time was \$5.3 million dollars, and shortly thereafter, discussions began in earnest with the Army Corp of Engineers (COE) to secure easements for the road.

The Loop Road proposal was dealt a significant blow in December 2014 when the Town received an official denial letter from the COE citing Federal restrictions on the granting of easements within designated ESA's. Following the denial very little, if any, follow up was conducted until I re-engaged COE officials in mid-2017. Since that time I have been in frequent personal contact with the COE's Grapevine Lake Manager, and have held four meetings with COE staff in an effort to seek some resolution on the easement issue.

In November 2017 I met with COE officials to further discuss the Loop Road, determine if anything, regulatory or otherwise, had changed from the COE perspective since the December 2014 denial, and to determine what options were available in moving forward with an appeal.

At the meeting COE officials confirmed the following facts pertinent to the Loop Road, and the unlikelihood of a positive result in appealing the 2014 decision:

1. The Master Plan remains in effect and there are no post-2014 changes to the ESA designation that would be favorable to Trophy Club's Loop Road request.
2. Recent changes to the Clean Water Act and the definition of what constitutes Waters of the US (WOTUS) were not tied to the ESA designation.

COE officials further confirmed that because the following restrictions were placed on granting future easements across COE land:

1. Requests would only be granted when no practical alternative exists.
2. Requests must have the least identifiable environmental and visual impact.
3. Requests must consider routing the easement to adjacent land outside the ESA when possible.

In addition to the ESA restrictions, COE officials placed yet another hurdle in front of the Town; that being the requirement to prove the following "demonstrated needs" for construction of the road:

1. Whether adjacent private land is available outside the ESA that could be utilized for the easement (Negative – Contact with Trophy Club Country Club General Manager indicated any modification to the course would likely not be approved).
2. Whether the proposed roadway traverses multiple jurisdictions and qualifies as a regional arterial (Negative – the roadway does not qualify as a regional arterial).
3. Whether there is a demonstrated "public safety" need (Negative – the TCPD and TCFD Chiefs conducted an analysis of emergency response times and determined the overall public safety posture was not significantly improved with the addition of a Loop Road).

According to COE officials, a successful appeal of the 2014 decision was highly unlikely, but should the Town desire to move forward with an attempt it would emanate at the local Grapevine Lake office and follow a logical progression through the Regional office, Fort Worth office, National Corps office, and ultimately to the Department of the Army. The final decision rested with the Assistant Secretary of the Army for Civil works, who is the only individual with the authority to override existing national policy related to ESA designations.

Despite the COE's opinion on the potential for a successful appeal, on October 2, 2018, the Town Attorney submitted by letter an official appeal of the 2014 decision. Additionally, I engaged the office of United States Congressman Michael Burgess, who requested by letter a formal inquiry into the matter.

As a follow up to the Town's appeal and the Congressional inquiry, the Town Attorney and I again met with COE officials in November 2018 to further the Loop Road discussion; and in particular address the COE response to Congressman Burgess. Present at the meeting were COE officials from the Grapevine Office representing the Legal, Real Estate, Recreation, and Environmental Divisions. Each Division official had an individual perspective on the Loop Road, and none were in support of granting access easement for construction.

The Congressional response reiterated the COE's position that the proposed "Loop Road" was not in alignment with established environmental policies based on the impact to the previously established ESA designation, and was not compliant with the COE's current Road Policy and Non-Recreational Outgrant Policy. The letter referenced three potential alternatives in seeking a compromise with the Town, as indicated below:

1. Rebuild Old King Road which was previously abandoned
2. Construct a bridge over a narrow piece of Government property, and/or
3. Pursue a land exchange

Discussion of the "Old King Road" alternative was undertaken and the idea soon dismissed based upon the need for City of Southlake access and approval, a more significant impact on a previously designated ESA, and apparent conflicts with both the Road and Non-Recreational Outgrant policies.

Discussion centered on the construction of a bridge over a narrow piece of Government property was undertaken and the idea soon dismissed based upon previous concerns expressed by Trophy Club Country Club officials with changes to the existing golf course, and the 90 degree angle of the roadway which would inhibit emergency response.

Discussion centered on a possible land exchange was undertaken and the idea soon dismissed based upon the necessity of Congressional approval for any such transaction, COE policy which necessitates any such transaction benefit the primary COE mission (flood control), and the fact that the only potential Town property available to exchange (Canterbury Hills adjacent the COE trail head), is not within the flood plain and consequently of no interest to the local COE office.

In addition, the meeting with COE officials revealed other potential obstacles to the Loop Road not previously disclosed. The main issue is the ESA designation which still remains. Discussions further confirmed that all available routes for the Loop Road would traverse through the ESA which would continue to draw additional scrutiny from Government officials, and in all likelihood, result in a denial.

Additional obstacles presented during the meeting included:

1. Any construction of a Loop Road would require heightened environmental approvals from not only the COE but also the Federal Environmental Protection Agency (EPA). The COE Environmental official advised the area in Trophy Club Park and Marshall Creek was considered a “high-value quality habitat” based on the existence of rare “bottom land hardwoods.” Because of this the Town would be required to mitigate any damage to trees (much like the town requires developers to mitigate under Town ordinances). The mitigation ratios the official proposed were between 6:1 and 12:1 caliper inches. These ratios mean the Town would be required mitigate every caliper inch of tree destroyed by the Loop Road with anywhere between six caliper inches to 12 caliper inches.
2. The project would also require a “404 Permit” under the Clean Water Act. This Permit is granted by the EPA and separate from any action or consideration of the COE. The “404 Permit” also requires mitigation for fill dirt or other materials brought into clean water or wetlands, and the mitigation costs are in addition to the COE mitigation costs for trees. Additionally, the Town would have to demonstrate the Loop Road project met the “Least Environmentally Damaging Practical Alternative” standard before consideration by other authorities outside the EPA.
3. Other unknown environmental issues could be easily be discovered as the project progresses, and would likely be raised by the COE, EPA, Texas Commission on Environmental Quality (TCEQ), or any other agency with environmental or flood control jurisdiction.

In addition, COE Legal and Real Estate officials expressed the following concerns:

1. Whether the COE would entertain granting additional easements through COE property land.
2. Whether the COE would entertain granting expansion of existing easements through COE property land. The existing Trophy Club Municipal Utility District (MUD) easements are 15 feet and would presumably require expansion to 80 feet to accommodate the Loop Road. Additionally, current agreements in place with the MUD require “boring” for the construction of pipelines so as not to disturb the existing ESA ecosystem. Construction of a Loop Road, whether ground level or by bridge would presumably disturb the ESA ecosystem, and therefore would be inconsistent with the existing easement agreements, and would certainly result in increased scrutiny and require additional levels of approval.
3. Whether granting the easement would fit with the public purpose (recreational) the COE is charged with at Lake Grapevine.

4. Whether granting the easement would interfere with the COE purpose (flood control) at Lake Grapevine.
5. Whether conveyance of COE property for construction of a Loop Road would require Congressional approval, or approval at a lower level.

In addition, the COE Recreation official expressed the following concern:

1. The overall effect the Loop Road would have on previously designated recreational land. Recreation areas are highly regulated and roadway construction results in additional scrutiny and requires higher levels of approval based on this designation.

Based upon updated projections from the Town's engineering firm, the cost of the Loop Road has risen from \$5.3 million dollars in 2014 to \$7.1 million dollars in 2019, and would be expected to rise to \$9.5 million dollars within five years, and \$12.7 million dollars within 10 years. Issuance of a GO Bond, which would require voter approval, would potentially result in a corresponding 2.5 to 3.5 cent increase to the Town's I&S Rate.

Engineering, construction, and finance costs aside, the Town Attorney has also made it clear from a legal standpoint that further litigation would take an extensive effort, be protracted and expensive, and in all likelihood would not be successful given the consistent feedback from COE officials beginning in 2014, and ending as recently as November 2018, with the Appeal and Congressional Inquiry follow up meeting.

At this point it appears clear from every interaction with COE officials that the established multi-agency Federal review process can and will be used to thwart any future attempt the Town makes to secure approval for the Loop Road, and that any continued effort on the Town's part will be determined by Federal authorities to lack merit.