ADMINISTRATIVE APPEAL DECISION

WOODY'S SPORT CENTER – GLENN MARTIN

Permit Denial, FILE 23485

GALVESTON DISTRICT

31 March 2005

Review Officer: James E. Gilmore, US Army Corps of Engineers, Southwestern Division, Dallas, Texas

Appellant Representative: Glenn Martin

Galveston District Representatives: Denise Sloan

Permit Authority: Section 10 of the Rivers and Harbors Act

Receipt of Request For Appeal (RFA): 17 February 2005

Background Information: The appellant proposed to install a timber pile supported private commercial pier to facilitate passenger access to the Corpus Christi Ship Channel (CCSC) north jetty and the Gulf of Mexico beach on San Jose Island for recreational purposes. The walkway would be 40 feet long by 8 feet wide and the T-head terminal structure would be 16 feet long by 10 feet wide. Construction methods would consist of timber piling driven/jetted between the large cover stones of the jetty. The remainder of the structure (strings, decking, railing, cross bracing, etc.) would then be bolted into place. All work would be done using floating equipment. The project is located at Aransas Pass at Corps of Engineers Station No. 38+50 of the CCSC north jetty, on the channel side, Aransas County, Texas.

The proposed pier would allow a second "jetty boat" to transport recreational fishermen and sightseers to the north jetty for fishing and sightseeing from both the north jetty and the adjacent Gulf of Mexico beach located on San Jose Island. According to Mr. Martin a "jetty boat" has been operating in the area since the 1950s. The existing "jetty boat" pier, which is located on the north jetty, was constructed in 1965. The current "jetty boat" has been operating since 1960. It has operated out of the Woody's Sport Center facility since 1977 and Mr. Martin has been associated with the operation since 1982 until the present owner of the boat moved it to a new facility in 2004.

The Galveston District (District) denied the permit because the project, as proposed, would be contrary to the overall public interest in that it would create an unacceptable hazard to general navigation and pose unnecessary public safety concerns.

Summary of Decision: The District reasonably denied the permit. There was substantial evidence in the record to effect that granting the permit would create an unacceptable hazard to navigation and public safety.

Appeal Reason 1: "It seems apparent from the record that the respondent agencies and departments did not adequately understand the environment of the proposed site or function of the service for which the permit application was filed."

FINDING: The appeal does not have merit.

ACTION: None required.

DISCUSSION: The District's evaluation properly considered comments received from the Corpus Christi Pilots (Pilots) and the US Coast Guard (USCG). Captain Rick Casas of the Pilots requested that the District deny the permit application due to navigability and safety issues. In an e-mail dated 3 September 2004, the USCG Marine Safety Office stated "it is our opinion that the proposed location's close proximity to an extremely busy, narrow channel is inherently dangerous and poses an unnecessary risk to persons and property." In addition to the above comments, the USCG and Pilots stated that the CCSC is designed and currently used for deep-draft commercial and military vessel traffic and that these types of vessel produce a large wake. Both groups agreed that the wake is unavoidable because the vessels must maintain "bare steerage", which is the lowest possible speed at which a vessel can move and maintain control. The wake produced by the vessels would impact the proposed pier and any vessel trying to utilize the pier. The wake could negatively impact people on the pier or north jetty. The USCG also stated that the proposed project could potentially increase the volume of recreational boat traffic utilizing the CCSC. This potential increase in small boat traffic crossing the CCSC could increase the risk of collision due to a large vessel's inability to take evasive action or maneuver in such limited area. The Pilots also stated that the displacement of water caused by large vessels creates a powerful suction, which could also endanger people utilizing the area.

In his RFA, the appellant felt "that the respondent agencies and departments did not adequately understand the environment of the proposed site or function of the service for which the permit application was filed." However, after receiving the initial USCG comments, the appellant's consultant met separately with the USCG to discuss the proposed project in more detail. Based on the results of that meeting, the USCG sent a second e-mail dated 20 October 2005 to the District stating that its "position still stands." In addition to maintaining its original position regarding the appellant's project, the USCG stated that a (vessel) traffic analysis was completed as part of the Liquid Natural Gas site studies that indicated there would be substantial increase in ship traffic in the area. The USCG stated that this study did not take into account the traffic that would be generated by a new container terminal that was scheduled to be operational within the next two (2) years.

In addition to the comments received from the USCG and Pilots, the District's Operations Division – Navigation Branch, Engineer Division and Real Estate Division provided comments to the Regulatory Branch. Operations Division–Navigation Branch submitted an electronic message on 3 September 2004 recommending denial of the permit and forwarding concerns of the USCG and the Pilots. The Navigation Branch stated that the Corps maintains the ship channel because of the value of the Port of Corpus Christi with regard to national economic development. The Navigation Branch stated the jetty's purpose is to protect vessels so they can successfully navigate the ship channel, and it is not a recreational feature. The Branch felt that limited jetty access regulates the number of fishermen on the jetty. This manages to accommodate the fishermen without posing a safety threat to the public. The Branch opined further that if the number of people allowed access to the jetty increases, it might become a safety issue when Placement Area No. 2, a dredged material containment area, located behind the north jetty, is used. The Navigation Branch stated that approval of the proposed project may lead to additional activity and the safety and navigability issues cited by the USCG and the Pilots may be realized. The Engineer Division stated that it was opposed to the construction methods the appellant proposed to use in constructing the pier. Engineering stated that "driving" the pile could require moving the cap stones in order to provide enough space to install the pilings. Engineering also felt that "jetting" could have a negative impact on integrity of the jetty by causing excessive loss of soil fines, which could lead to future subsidence. The District's Real Estate Division stated that it agrees with the comments made by the USCG and Pilots in addition to those made by the other district offices. Real Estate also stated that "the Real Estate Division will not make this federal property available for the proposed pier."

In response to the USCG and Pilots' comments, the appellant stated "There is no denying that operating conditions in the ship channel can create a challenging navigation situation for the many classes of vessels that use the channel." However, the availability of a second boat (second landing) isn't likely to increase the number of people using the north jetty for recreation, but instead may cause a split in ridership between the two boats, with an attendant reduction in the number of trips for the existing boat. The appellant stated that the level of jetty boat traffic has not changed appreciably in many years. The appellant also pointed out that the existing jetty boat has been operating for more than 25 years without incident. Mr. Martin stated that, like the existing jetty boat, his boat will be inspected and certified by the USCG Marine Safety Office and that the operator will be licensed by the USCG. The appellant stated that if conditions changed in the future, the boat operations might also have to change. Having the landing in place doesn't preclude appropriate agencies from restricting vessel operations in the ship channel in the future if conditions warrant. The appellant's comments were not sufficient to overcome the USCG and Pilots' objections to the proposed project. Nor were they sufficient enough to remove the objections received from the District's Engineering Division, Operations Division or Real Estate Division.

33 CFR, Part 325.8(b) which discusses the District Engineer's authority, states that District Engineers are authorized to deny permits without issuing a public notice or taking other procedural steps where required local, state, or other federal permits for the proposed activity

have been denied or where he determines that the activity will clearly interfere with navigation. Based on this regulation, the District determined that a permit should be denied since a federal easement would not be issued, and the entities primarily responsible for navigation interests objected.

Under the provisions of the Ports and Waterway Safety Act of 1972 at U.S.C. Sections 1221 through 1236, the USCG is recognized as the Federal authority on matters relating to navigational safety. Relying on the USCG determination that the proposed pier would create an unacceptable hazard to navigation, Galveston District (District) properly determined that issuing the permit to construct the pier would create an unacceptable navigation and safety hazard.

CONCLUSION: Based on my review of the proposed project, and in compliance with section 10 of the Rivers and Harbors Act of 1899, I have determined that the activity would clearly interfere with navigation and cause unnecessary public safety concerns. Therefore, I find that the appellant's appeal does not have merit.

1 April 2005
(Date)

Jeffrey J. Dorko
Brigadier General, US Army
Commanding