

Telephone

(504) 347-8683
(504) 340-8942
FAX# (504) 348-0434



DAVID E. COLE
COMMANDER USCG (ret)
EXPERT WITNESS
CONSULTANT IN ADMIRALTY
AND MARITIME

MAILING ADDRESS:

P.O. BOX #99
MARRERO, LOUISIANA
70073 - 0099

August 31, 2001

Mr. John Lopez
President, North Shore Beach Association
387 Carr Drive
Slidell, Louisiana 70458

Re: Proposed drawbridge over Faciane Canal

Dear Mr. Lopez:

You have requested my analysis and opinions concerning the events and circumstances surrounding the proposal, by Mr. Josh Jones, to build a drawbridge across the northern end of the subject canal.

In conducting this analysis, I have reviewed material (supposedly an application for a permit) provided by Mr. Jones to the United States Coast Guard as well as Public Notices issued by the Coast Guard, various opinions of the State of Louisiana Attorney General's office, correspondence from the United States Army Corps of Engineers to Senator John Breaux, and Mr. Jones' responses to the Association's questions submitted previously. In addition, I visited the site of the proposed bridge and met with you on August 23, 2001.

I am an independent marine consultant. I hold a B.S. in Marine Transportation from the State University of New York Maritime College, which is one of the state-operated Merchant Marine Academies. I also have a J.D. from Loyola University at New Orleans, Louisiana. I pursued graduate courses in Transportation Management from my undergraduate alma mater. I also hold an unlimited Third Mate's license and an unlimited Able Seaman's certificate.

I spent 20 years on active duty as a commissioned officer with the United States Coast Guard, with 18 of those years being within the marine safety specialty. This program consists of the inspection of commercial vessels, the licensing of merchant marine personnel, and the investigation of marine casualties to determine cause and appropriate disciplinary measures, where necessary. I have spent the bulk of my time, since 1973, in the investigation of casualties, which includes the grounding of vessels, allisions, collisions, fires, explosions, sinkings,

capsizings, personal injuries and deaths. My duties involved the review of permit applications submitted to the Coast Guard and the Corps of Engineers for permits required by regulations enforced by the Coast Guard and the Corps of Engineers. I have continued this endeavor following my retirement from the Coast Guard in 1987.

PREMISES

It is my understanding that Mr. Josh Jones intends to build a fixed bridge, which would have a draw span, across the Faciane Canal near its entrance into Lake Pontchartrain, between what is known as Carr Point and "Paradise Island" to the east of Carr Point. Mr. Jones claims ownership of both the island and the land at the end of Carr Point. He has submitted a hand-drawn sketch of this proposed bridge to the Coast Guard for issuance of a permit. A previous request for a fixed bridge without a draw span, wherein he suggested a back channel as an alternate route for vessel traffic to enter and leave the Faciane Canal was denied.

The Faciane Canal is used primarily by non-commercial vessels, and particularly those owned by residents of the North Shore Beach subdivision which runs along Carr Drive. This canal is fitted with numerous boat docks and boat houses. There is a history of commercial vessels using the canal, such as construction barges and tugs to build and repair docks and bulkheads, and commercial fishing vessels. It can be expected that this commercial use will continue. The depth of the canal typically runs from 7 to 10 feet in its center.

"Paradise Island" is presently being cleared by Mr. Jones for whatever use he intends. I have no knowledge that this intent has been conveyed in the permit application procedure. He has constructed a concrete landing in the back channel on the east side of the island, and has amassed a large amount of non-descript construction equipment at that location. On the day of my visit to this area, the back channel had a depth as little as one to two feet in some locations.

The Faciane Canal provides a straight-in access from Lake Pontchartrain and is approximately 135 feet wide at the location of the proposed bridge. Mr. Jones proposes to place a 20 foot wide draw on the eastern side of the bridge over the canal, which negates the navigational advantage of the straight-in approach afforded by the unobstructed canal. Mr. Jones has not stated in the permit application how he intends to operate the drawbridge, which would be standard information expected in a permit application:

- 1) What times and what days will the draw be manned?
- 2) How will the draw be operated?
- 3) Who will operate the draw?
- 4) Will there be a dedicated individual for operating the draw?
- 5) What signaling and communications devices are planned for the draw so that vessels can indicate the need to pass?
- 6) What will the experience of the draw operator be, so that signals are understood and the draw is opened in a timely manner and closed so as not to be lowered on vessels?
- 7) If not actively manned, will the draw be left in the up or down position?

- 8) What provisions are in place for operation of the draw in event of a power failure?
- 9) What lighting will be displayed?
- 10) What construction material will be used for the bridge?
- 11) What construction material will be used for the fenders?
- 12) What will the design of the fenders be?

The Corps of Engineers has deferred to the Coast Guard in the permitting of the bridge, and will address dredging issues for the back channel after bridge construction matter has been resolved.

He has stated in his responses to the questions of concern propounded to him by the Association that:

- 1) The bridge will be "automatically" operated by means of four control boxes, two located on the bridge, and two located in the canal for boat traffic, with one on each side of the bridge at a distance of approximately 50 feet.
- 2) The bridge will apparently remain in whatever position the last user has placed it in.
- 3) There will be a 24 hour "emergency" number posted, but Mr. Jones has not stated that this will be a manned telephone number, nor how quickly response to any telephone call would occur.
- 4) There will be no back-up power system in the event of a failure of the bridge draw mechanism.
- 5) Any inability to raise the bridge for the passage of boat traffic will not be handled by Mr. Jones directly since Mr. Jones expects that any vessel traffic needing passage will use the back channel.
- 6) There will be no navigation lights on the bridge structure.

REGULATIONS

The Faciane Canal has been found to be a navigable waterway of the State of Louisiana by the Louisiana Supreme Court in Discon v. Saray, Inc., 265 So.2d 148 (La. Feb 8, 1972), which upheld a permanent injunction against obstructing this waterway. More importantly, it has been found to be a navigable waterway of the United States by the United States Court of Appeal for the Fifth Circuit, in United States of America v. Lamastus and Associates, Inc., 785 F.2d 1349. This Court also found, based on Discon, that this canal was dedicated for the beneficial use of the North Shore subdivision lot owners.

Thus, construction of this bridge, including its approaches, fenders and other appurtenances, which would obstruct the free flow of navigation in the waterway, must be permitted under the provisions of 33 CFR 114, *et seq.*

The two cited cases both hold that this canal cannot be obstructed. A bridge is, in and of itself, an obstruction (33 CFR 116.01).

33 CFR 114.10 states that a permit issued by the Coast Guard must consider only the effects of the bridge on navigation. However, it is not to be seen as any authority whatsoever to proceed with the construction of the bridge without approval of any other permits which might be required by any other federal, state, or local agencies

33 CFR 115.05 states that approval of a State where such approval is required and proof thereof must be presented with the application. This same section also requires that a permit not be granted where there is doubt about the right of a bridge to be constructed. Section 115.30 states that an opinion of the State's Attorney General will serve as evidence of this right. *In this instance, that right has been found to not exist by the Louisiana Attorney General.*

Section 115.50(f)(1) requires that written evidence of approval by State and Parish officers and boards, where applicable, be presented with the permit application. *I see no evidence that this section has been complied with by Mr. Jones.*

Section 115.60 also provides for public hearings where substantial issues are present on the effect on the proposal will have on the reasonable needs of navigation.

Lighting of the bridge is required by 33 CFR 118.

COMMENTS

It is my opinion that construction of this bridge will have significant negative effects on navigation, and the proposal to place this bridge has been made without any consideration for the safety of navigation nor the requirements of the applicable laws and regulations.

The proposed bridge is deficient and a detriment to safe navigation for the following reasons:

1) The draw span is improperly placed, causing vessels to leave the safety of a straight, mid-channel, and move closer to the island and shallow water than would be acceptable, particularly in times of adverse wind and weather. This would be especially hazardous for vessels under sail. The removal of existing pilings, as stated by Mr. Jones in his responses, does not address the concerns of having the draw span close to the island since is vessels having to maneuver away from the deep channel in the area of the Canal closest to the open area of the Lake.

2) The draw span lacks sufficient horizontal clearance for even the non-commercial vessels which Mr. Jones is indicating would use this bridge. This would be true wherever the draw was located along the length of the bridge. It becomes especially critical where the draw is proposed, providing less room to align on an opening which will already require extraordinary skill and caution.

3. The horizontal clearance is unacceptable in that it must also be considered that commercial navigation will transit this area, and the minimum beam of most inland construction barges would be between 30 and 35 feet.

4. The vertical clearance is insufficient and represents a hazard to most vessels transiting the area. This would require an inordinate number of openings, and would be hazardous to vessels where the draw was not opened in time or malfunctioned while in operation.

5. The safety of navigation is entirely dependant on the proper operation of the draw, and Mr. Jones' proposals present an even greater degree of danger than would be ordinarily be envisioned if this bridge was being proposed by someone with some degree of knowledge of vessel operation, no matter how slight. Examples of this are:

a) The use of an "automatic" system invites serious injury, death and damage. This would require a vessel operator to leave his operating station to activate the device. This is unacceptable. Further, it is certain to cause damage to the vessel, as well as the control structure, in even calm weather. Adverse weather will increase this likelihood significantly.

b) The "automatic" system will be subject to vandalism and pranksters. It can easily be foreseen that the draw will be lowered on a passing vessel and rendered inoperable.

c) The "automatic" system will also require operation by individuals not knowledgeable of proper bridge operation, and it is foreseeable that it would not be operated in compliance with the regulations which would subsequently be established by the Coast Guard for operation of the bridge, similar to those found in 33 CFR 117.

d) There is no assurance whatsoever that the use of a 24-hour "emergency" number will be responded to in the event of an emergency. Such emergencies are numerous and can vary among many different problems, such as a vessel being struck by the draw to a vehicle caught by the draw. Though some bridges require advance notice to open, there is an operator present to assure safe operation when the bridge is opened. This is not the case here.

e) The failure to consider the lighting required by Coast Guard regulations creates an additional danger to vessels.

6. The structural integrity of the bridge must be addressed in that a collapse would close the Canal for an indefinite, and lengthy, period of time.

7. There are no contingency plans in event of a natural emergency, such as hurricanes.

In its Public Notices, the Coast Guard has indicated that the back channel is available as an alternative to using the draw span. *Mr. Jones has since indicated that he is relying on the back channel as a measure for avoiding the requirements of the regulations and safe vessel*

navigation to maintain an unobstructed channel. However, this reliance is mis-placed and totally unacceptable as presently contemplated in that the depth of this channel is insufficient, as well as larger vessels will have difficulty navigating the turns in the back channel. Dredging would be required to make the channel navigable initially, and constant dredging would be required after that to maintain the necessary depth and width. Certainly, commercial traffic would not be able to navigate this back channel.

This back channel is clearly a private canal under the direct control of Mr. Jones, and there has been no showing to the Coast Guard (or anyone) of what measures would be taken by Mr. Jones to maintain this alternate channel to provide free passage at all times. We must also consider that Mr. Jones owns the land east of the channel, and it can be envisioned that, at sometime future time, this land will be developed with another accompanying bridge.

Nor should this be seen by the Coast Guard as a "backyard" dispute between neighbors. The afore-mentioned court decisions clearly show the need to maintain the navigable waters of the United States and the State of Louisiana, as well as the Faciane Canal in particular, free of obstructions. Though drawbridges are obviously a part of our maritime way of life, this particular bridge does not comport with even the minimum requirements for safe, unobstructed navigation.

This proposal, as originally set forth by Mr. Jones, and particularly as expanded on, represents a total obstruction of a navigable waterway of the United States and the State of Louisiana.

It is my opinion that Mr. Jones cannot satisfy the requirement of the regulations in that his proposal has been disallowed by the Louisiana Attorney general's office, and this alone should be sufficient for the Coast Guard to deny the application. The ruling in Lamastus also should be sufficient to deny the application. Further, he has not addressed the obvious issues the Coast Guard would have concern over, such as a failure of the bridge and inaccessibility by commercial craft.

It must also be remembered that other governmental agencies have not been heard from as yet, and it is likely that those agencies would also express serious concerns, if not outright disapproval.

A public hearing should be considered.