



# CAPE COD COMMISSION

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*Date* November 2, 1998

*To* Tilipi Run Nominee Trust, Allan S. Blank, Trustee  
Paul P. & Lynn T. Brountas  
William & Elizabeth Taggart

*From* Cape Cod Commission

*Re* Modification of a Development of Regional Impact Decision, Cape Cod Commission Act,  
Section 12

*Project* Chatham Revetments Project Phase 2, TR93131  
Chatham, MA

*Applicant* Book/Page or Certificate #:

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## MODIFICATION OF DEVELOPMENT OF REGIONAL IMPACT DECISION

In accordance with a decision of the Regulatory Committee of the Cape Cod Commission on November 2, 1998, the June 22, 1995 Development of Regional Impact (DRI) Decision issued for Chatham Revetments Project Phase 2, pursuant to Section 12 of the Cape Cod Commission Act, as modified April 9, 1998, is hereby further modified as follows:

1. By modifying Condition #22(a) to replace "1" = 50'" with "1" = 40'."
2. By replacing Condition #22(c) with the following language:

"Proof of a commitment by each of the property owners within Phase 3 to construct that portion of the revetment on their lot(s) through a private agreement (memorandum of understanding) between and among the property owners and the Cape Cod Commission."

3. By replacing Condition #22(d) with the following language:

"A beach nourishment program which provides for the required nourishment specified in condition #23 (ongoing nourishment) below. In order to ensure the performance of the nourishment program the Phase 3 property owners shall deposit a sum of money in an escrow account to cover the cost of the beach nourishment program. The Phase 3 property owners shall prepare and submit to the Commission a written estimate of the cost of complying with the nourishment program for a period of two years, based upon a calculation of  $[\text{Length} \times \text{Height} \times 2.0 \text{ ft/yr}] \times 2$ . The amount of the escrow account shall be established by the Commission based on the cost of material to be placed on the beach. The escrow account shall be established prior to the beginning of construction of Phase 3 and the use of escrow funds shall be governed by an Escrow Agreement in form and content satisfactory to counsel to the Commission. The escrow account is to be held for a period of 5 years to ensure that the nourishment required for Phase 3 will be satisfactorily carried out. As an alternative, the Phase 3 property owners may submit documentation to the Commission demonstrating that the Town of Chatham has committed to providing the nourishment required for Phase 3, in whole or in part, and has appropriated sufficient funds therefor, in which case the escrow account will be reduced accordingly."

4. By replacing Condition #23 with the following language:

"Following construction of the revetment, the beach shall be restored. Areas above the revetment will be vegetated. All sand displaced by the revetment shall be placed on the beach fronting the revetment on the seaward side as partial compliance with the initial nourishment requirement."

5. By replacing Condition #25 with the following language:

"The property owners within Phase 3 shall prepare a plan for and undertake an ongoing beach nourishment program to mitigate the impact of construction of the revetment. Said nourishment program shall provide for the initial deposit of an amount of sediment equivalent to the volume of sediment in the

coastal bank that would be eroded over a one year period, utilizing an erosion rate of 2.0 ft per year over the length of the coastal bank to be revetted. The nourishment program shall include planting of suitable native vegetation at the top of the coastal bank above the revetment as needed to stabilize the coastal bank. The composition of nourishment materials shall be compatible with, or slightly coarser than beach materials existing on the site. The amount of nourishment to be placed on the beach annually thereafter shall be determined by the Commission or its designee based upon annual reports provided by the applicants to the Commission. Said annual report shall summarize the effects of the revetment and the beach nourishment program on the coastal bank and the beach in front of the revetment as well as adjacent areas including beach profile data in the same locations as the baseline surveys. The annual report shall include a discussion of any factors that relate to changes in the beach profile or erosion rate on the site. The amount of nourishment may be decreased or increased by the Commission or its designee based on the outcome of the annual report but shall not exceed an average of 1230 cu. yds. annually. If, through monitoring, it is determined that less than 1230 cu. yds. is needed in any given year, the unused number of cu. yds. may be required to be applied in succeeding years should it be needed to maintain the originally established profile. In no event, however, shall the amount of nourishment required in any one year exceed 1620 cu. yds. The annual report shall include a description of the beach nourishment proposed in the succeeding year and shall be submitted no later than April 1st of each year. Beach nourishment shall occur between May 1st and June 1st of each year. The annual report shall be prepared by a registered professional engineer and the form and content of the annual report shall be agreed upon in advance by the applicant and the Commission. The nourishment program may be terminated by the Commission if on-site inspection or evaluation determines that the nourishment is not constructive, but rather is deleterious to on-going coastal processes.”

6. By replacing Condition #26 with the following language:

“At the end of the five year period referenced above, the Phase 3 property owners shall provide a comprehensive report to the Commission. The Commission shall review the annual reports, the comprehensive report, and any other relevant information, and shall make a determination regarding the impacts of construction of the revetment on the adjacent or downdrift coastal banks and beach, the effectiveness of the beach nourishment program, the short and long-term erosion rates at the site, and other factors relating to the Cape Cod Commission Act and Regional Policy Plan. At this time, the Commission may, after holding a public hearing: a) order a continuance of the beach nourishment program and reporting requirements (as set forth in Condition 25 above) and/or a renewal of the escrow account established pursuant to Condition 20 (d) above with adjustments as necessary for inflation; b) order continuing study and monitoring of the impacts of the revetment; c) terminate the beach nourishment program if it finds that such program is no longer necessary to mitigate the impacts of the revetment; d) modify the conditions, or other responsibilities of the applicant imposed pursuant to the permit, except that nourishment shall not exceed amounts specified above; and/or e) order modification of the revetment if there have been improvements in the technology of revetments that result in significant improvement in the effects of the revetment on the beach and downdrift areas, or other resources protected by the Cape Cod Commission Act and Regional Policy Plan.”

7. By replacing Condition #27 with the following language:

“Pedestrian access is currently and historically available along the beach on Fish and Wildlife Service property in the proposed revetment area. Notwithstanding the nourishment limitations set forth in

Condition #25 above, after construction of the revetment, a sandy strip for public access purposes shall be maintained in front of the revetment at all times except during the two hours that precede and follow high tides."

8. By replacing Condition #28 with the following language:

"The Commission, after notice and opportunity for a public hearing, may order the removal of the revetment at the expense of the property owners or to take such other remedial measures as are deemed necessary. With respect to Phase 3, the Commission may order the removal of the revetment or may order other remedial measures, at the expense of the property owners, if the Commission finds that the construction of the revetment has or is likely to result in adverse impacts to the resources protected by the Cape Cod Commission Act or the Regional Policy Plan.

Failure of the Applicant and/or property owners to comply with these conditions is subject to an enforcement action in Barnstable Superior Court or the Land Court."

The Commission hereby grants this Modification to the Development of Regional Impact Decision dated June 22, 1995.

*Robert Deane*

*November 16, 1998*

Robert Deane, Chair

Date

Commonwealth of Massachusetts  
Barnstable, ss.

Subscribed and sworn to before me this 16<sup>th</sup> day of Nov 1998.

*Katharine L. Peters*

Name, Notary Public

My commission expires:

