



## CAPE COD COMMISSION

3225 MAIN STREET  
P.O. BOX 226  
BARNSTABLE, MA 02630  
(508) 362-3828  
FAX (508) 362-3136  
E-mail: [frontdesk@capecodcommission.org](mailto:frontdesk@capecodcommission.org)

### SUPPLEMENTAL DECISION OF THE CAPE COD COMMISSION

*Date* July 21, 2005

*To* Thomas W. Joy  
Coastal Engineering  
260 Cranberry Highway  
Orleans, MA

*From* Cape Cod Commission

*Re* Modification of a Development of Regional Impact Decision

*Applicant* Paul P. Broutas ctf 83514  
Lynn T. Broutas lot 137, plan 22613-P  
22 Conant Road  
Weston, MA 02193

Neal Shalom 464/104, ctf 57864  
145 Rosemary Street lot 136, plan 22613-P  
Suite E  
Needham, MA 02494

John P. Riley ctf 176597  
17 Dartmouth Street lot 131, plan 22613-M  
Winchester, MA 01890

Thomas R. Holmes ctf 170313  
26 Salt Pond Road Lot B, plan 25381-A  
North Chatham, MA 02650

*Project #* TR93131

*Project* Chatham Revetments Phase II, Chatham, MA  
Development of Regional Impact  
Cape Cod Commission Act, Section 12

## SUMMARY

The Cape Cod Commission (Commission) has reviewed the status of the Chatham Revetments Phase II project of Paul Broutas, Neal Shalom, John Riley, and Thomas Holmes, represented by Thomas W. Joy, Coastal Engineering, which is a Development of Regional Impact (DRI) pursuant to Section 12 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for the Phase 3 (Morris Island) section of Chatham Revetments Phase II. The decision is rendered pursuant to a vote of the Commission on July 21, 2005.

## PROJECT DESCRIPTION

This project review considered modifications to the decision allowing revetment of the coastal bank on four properties on Morris Island, Chatham, MA. The 1998 decision allowing construction of the revetment also required annual monitoring and beach nourishment, and required the establishment of an escrow for the purpose of ensuring that beach nourishment could be placed on the beach if warranted, as detailed in condition #25 of the June 22, 1995 Chatham Revetments Phase II decision, as modified April 28, 1998 and November 2, 1998. The Commission's consideration of these issues is in compliance with the requirement in condition #26 of that decision:

“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.”

## PROCEDURAL HISTORY

Pursuant to condition #26 of the June 22, 1995 Chatham Revetments Phase II decision, as modified April 28, 1998 and November 2, 1998, the Cape Cod Commission held a duly noticed public hearing on June 7, 2005 in Chatham, MA for the purpose of reviewing the condition of the revetment on the subject properties, reviewing the monitoring report for five years of beach

profile data, evaluating the continued need for beach nourishment and monitoring at this location, and for taking appropriate action to amend the decision as necessary.

The subcommittee held a public meeting on July 5, 2005 at the Commission office, at which the subcommittee voted 4-0 to recommend ceasing the beach monitoring and nourishment program, and to return the escrowed funds to the applicants.

#### MATERIALS SUBMITTED FOR THE RECORD

##### **From the applicant:**

Letter to CCC, requesting a Final Certificate of Compliance, dated 11/30/04

Letter to Chatham Conservation Commission, dated 11/30/05

Monitoring report and plans, dated November 2004

6 photographs submitted at the June 7, 2005 hearing

##### **From Cape Cod Commission staff:**

Staff report dated 6/1/05

Staff update dated 6/29/05

##### **From federal/state/local officials:**

Letter to CCC from Michael Brady, Monomoy National Wildlife Refuge Manager, dated 5/8/05

Letter to Chatham Conservation Commission from Jim O'Connell, WHOI SeaGrant and Barnstable County Cooperative Extension, dated 1/11/05

Letter to Commission from Jim O'Connell, dated 6/7/05

##### **From the public:**

Letter to Cape Cod Commission from the Committee for the Conservation of Horseshoe Crabs, dated July 18, 2005

The application and notices of public hearings relative thereto, the Commission staff's notes, exhibits and correspondence, the transcript and minutes of meetings and hearings and all written submissions received in the course of our proceedings are incorporated into the record by reference.

#### TESTIMONY

At the June 7, 2005 hearing, Will Joy stated that the revetment has not harmed the environment and that his clients would like the return of their escrow funds.

William Riley, Paul Brontas, Neal Shalom spoke in favor of ceasing the monitoring and nourishment requirements and returning the escrow.

Michael Brady, representing the US Fish and Wildlife Service (and manager of the Monomoy Refuge), stated that the beach has not changed much since the revetment was installed. He further stated that the protection of wildlife is the primary concern of his agency, and that US Fish and Wildlife would not permit nourishment-related work to occur from their property.

Ted Keon, Chatham Coastal Resources, and Kristin Andres, Chatham Conservation Commission, spoke in favor of further monitoring, and that access is a concern of the Town.

Paul Bernard stated that access has not changed since construction of the revetment.

Barbara Rogers stated that the beach had become narrower than it was in the 1970s.

Jim O'Connell stated that the Commission does not have the information required to determine if the conditions have been met.

Brenda Boleyn, representing the Committee for the Conservation of Horseshoe Crabs, stated that the Commission should preserve the option to nourish the beach in the future, but is concerned about impacts to horseshoe crabs.

At the July 5, 2005 meeting, staff presented revised recommendations. In response to a question from the subcommittee, Will Joy stated that it would be logistically difficult to nourish the revetment from the top of the bank, and Steve Tucker stated that the disturbance to established vegetation would cause more problems than would be resolved.

Catherine Frazer stated that such nourishment would possibly destabilize the bank. Alan Platt noted that the monitoring data is very weak and it is difficult to draw conclusions. Frank Hogan stated that he agreed with staff recommendations and that the escrow should be returned. Susan Kadar agreed. Mr. Platt stated that he does not want people reviewing this project in the future to believe that the committee thought this project was well done. There was no additional public testimony.

#### OTHER EVIDENCE

A letter to the Cape Cod Commission from Michael Brady, Monomoy National Wildlife Refuge Manager, dated 5/8/05, stated that the Service sees no positive biological benefit from nourishing the beach and that there is adequate access to Service properties.

A letter to the Chatham Conservation Commission from Jim O'Connell, WHOI SeaGrant and Barnstable County Cooperative Extension, dated 1/11/05 stated that the volume of the beach fluctuates and that the location of mean high water fluctuates. His analysis of the data and photos provided indicate that dry beach access may not be available at all times, and that with time, the mean high water contour may continue to migrate landward. These written comments also provide several alternate approaches for the Chatham Conservation Commission to consider in their deliberations. A letter to the Cape Cod Commission from Jim O'Connell, dated 6/7/05 stated that the monitoring information provided to the Commission may not be sufficient to determine whether access is maintained consistent with the permit requirements and that the

beach may have narrowed. He also observed that South Beach may weld onto Morris Island at some time in the future.

#### JURISDICTION

This decision is issued pursuant to the requirement of condition #26 of the June 22, 1995 Chatham Revetments Phase II decision as modified April 28, 1998 and November 2, 1998, which required the Commission to review the necessity of the monitoring program and beach nourishment based upon the evidence over the subsequent five year period.

#### FINDINGS

The Commission has considered the requirement of condition #26 of the June 22, 1995 Chatham Revetments Phase II decision as modified April 28, 1998 and November 2, 1998 as requested by Thomas W. Joy on behalf of the property owners on Morris Island, Chatham, MA, and based on consideration of such condition, and materials submitted for the record, makes the following findings:

1. As noted in the June 22, 1995 DRI decision, the coastal areas in the Town of Chatham experience dynamic shoreline changes that are the result of storm, tidal and ocean current induced erosion. Accelerated erosion of the coast occurred as a result of a breach that opened in the Nauset Barrier Beach in January 1987 (the Breach). The Breach subsequently expanded, leaving many areas of the Chatham coast exposed to attack from open ocean and storm related wave action.
2. The beach and shore dynamics at the subject site have been and will continue to be influenced by broad coastal processes, as has been the case since the Breach occurred. These processes may result in ample natural protection if South Beach adheres to Morris Island, and they may result in the additional exposure of the subject properties to ocean waves if the landform migrates past Morris Island. The influence of broader processes is common to most coastal locations. However, the erosion and retreat of South Beach and other ongoing changes to landforms that lie to the north and east present unique circumstances for the subject properties and for the abutting properties that comprise the Monomoy National Wildlife Refuge.
3. The two lots formerly owned by Alan Blank, Tilipi Run Nominee Trust, were transferred to Thomas Holmes and John Riley.
4. Phases 1A and B and 2 of the project originally filed as Chatham Revetments Phase II have not been constructed, and applicable permits and opportunities for extension have expired.
5. The original determination in the June 22, 1995 decision that the project was likely to have impacts of regional nature was based on a presumption that the review would address the armoring of multiple properties and provide the opportunity to address the interrelated effects of such projects. As the permit allowing Phases 1A and B and 2 of the original application has expired, the project that was constructed as Phase 3 is of a scale suitable for future management and oversight by local authorities.
6. The unique scale and extent of the coastal processes at work in this area warrant special consideration for the protection of preexisting development and future management of altered

coastal environments. These coastal processes will, over time, result in changes to the amount of sediment available at the subject properties, and the extent to which the sediment retained by the revetment is evidenced in the changing profile of the beach. Due to these unique characteristics, the project complies with the intent of the 1991 RPP MPS 2.2.2.4 regarding the function of the coastal bank as a sediment source to public trust resources.

7. The continued presence of the revetment, in the absence of future beach nourishment, is likely to result in narrowing of the beach in the short-term unless sediment from other sources remains available. Removal of the revetment in the absence of nourishment or the availability of another sediment source will restore the cycle of erosion that existed prior to the project, including the erosion of the bank that was originally found to jeopardize the applicants' homes.

8. Land seaward and adjacent to the subject properties comprises the Monomoy Fish and Wildlife Refuge which is managed on behalf of the United States by the US Fish and Wildlife Service (the Service). The Service has expressed its position that existing conditions at the subject properties are not adversely affecting their interests, and that they are concerned about possible adverse impacts from the placement of nourishment material on the beach. As such, the Service "does not see any positive biological reason to move ahead with the beach re-nourishment on Morris Island" (May 8, 2005 letter from Michael Brady, Refuge Manager).

9. Previously contemplated beach nourishment operations intended to replicate the function of the coastal bank are not presently practical. Extending the nourishment requirement would place the applicant in an untenable situation with the Service, the owners of the abutting property, and from whom permission must be acquired to attempt any nourishment operations. Furthermore, nourishment activities conducted solely from the applicants' property would result in additional environmental impacts caused by the removal of vegetation within the 100' buffer zone to the top of the coastal bank.

10. In the absence of a nourishment program, continued monitoring of beach profiles is not necessary. Given the scale of the coastal processes affecting the shoreline of the subject properties (as described above), collection of beach profiles at this location is unlikely to capture and quantify the discrete effects of the revetment on the fronting beach. The existence of the revetment also precludes collection of data to clarify the rate of retreat of the top of the bank.

11. Maximum feasible compliance with the decision and the Regional Policy Plan requirements to maintain public access may be obtained in the long-term by memorializing the public's right to utilize the beach that does exist, and to allow for the placement of additional material should the Service change its position on the matter. The provision for continued public access to the beach in a manner substantively similar to the access provided prior to construction of the revetment is consistent with MPS 2.2.1.2, requiring that development does not interfere with public access to the coast.

#### CONDITIONS

1. The public shall be allowed to pass and re-pass unimpeded across all areas seaward of the toe of the revetment, to the seaward extent of the applicants' property.

2. The applicant, Town of Chatham, shall be not be precluded from applying compatible beach nourishment material seaward of the top of the revetment in an amount and configuration and by

a method to be determined by the Chatham Conservation Commission in order to restore the beach. The property owners and the Cape Cod Commission shall be notified of the town's intention to pursue such a nourishment program at least 30 days in advance of implementation.

3. Maintenance or repair of the revetment, or any other activity that increases the revetment's mass or footprint shall be prohibited unless the applicant files for a modification of the Chatham Revetments Phase II DRI decision. Such filing shall include a complete alternatives analysis.

4. The Commission shall be notified in the event that any enforcement order is issued pursuant to the Wetland Protection Act or town of Chatham Wetland Bylaw for any of the subject parcels. The Commission shall receive notice of any future application under the Wetland Protection Act or the Chatham Wetlands Bylaw for a permit to conduct work on the subject parcels.

5. The applicant is relieved of the obligation to conduct ongoing beach monitoring and nourishment. Therefore, the Commission finds that monies held in escrow to ensure that these activities take place shall be released to the applicants.

CONCLUSION

The Commission hereby modifies the June 22, 1995 Chatham Revetments Phase II DRI, as modified April 28, 1998, and November 2, 1998 relative to the application of Paul Brontas, Neal Shalom, Thomas Holmes, and John Riley in Chatham, MA. This modification is rendered pursuant to Section 12 of the Act, c. 716 of the Acts of 1989, as amended.

Name, Cape Cod Commission Chair

Date

**Commonwealth of Massachusetts**

**Barnstable, ss.**

On this \_\_\_\_\_ day of \_\_\_\_\_, 2002, before me personally appeared

\_\_\_\_\_, to me known to be the person described in and who

executed the foregoing instrument, and acknowledged that \_\_\_\_\_ executed the same as

\_\_\_\_\_ free act and deed.

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Notary Public

My Commission expires: