

STUART RABNER
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs,
Attorney General of the State of New Jersey and
State of New Jersey, Department of Environmental Protection
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By: Gerard Burke
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STUART RABNER,	:	SUPERIOR COURT OF NEW JERSEY
ATTORNEY GENERAL	:	CHANCERY DIVISION-OCEAN CNTY.
OF NEW JERSEY,	:	
	:	DOCKET NO. _____
and	:	
	:	
STATE OF NEW JERSEY,	:	
DEPARTMENT OF	:	Civil Action
ENVIRONMENTAL PROTECTION,	:	
Plaintiffs,	:	
	:	
v.	:	
	:	VERIFIED COMPLAINT
	:	
MICHAEL GINALDI;	:	
	:	
DEBRA WRIGHT;	:	
	:	
MARTIN W. and	:	
MARGARET C. CAULFIELD;	:	
	:	
CAROL McCANN;	:	
	:	
and	:	
	:	
10 SURF CITY, LLC;	:	
	:	
Defendants.	:	

Plaintiffs, Stuart Rabner, the Attorney General of New Jersey, and the State of New Jersey, Department of Environmental Protection ("DEP") (collectively, "the State"), by way of complaint against the Defendants, say:

NATURE OF THE ACTION

1. This is an action in which the State seeks an order allowing the DEP, its representatives, contractors, agents and assigns to enter the property of Defendants to perform emergent shore protection and other erosion control measures for the benefit of the State of New Jersey and its citizens by protecting the Defendants and New Jersey's other coastal inhabitants, along with the coastal economy, from the threat of major storm events.

THE PARTIES

2. Plaintiff, Stuart Rabner, is the Attorney General of New Jersey. As such, Stuart Rabner is charged by law with representing the public interest inhering in the citizens of New Jersey. These interests include facilitating the exercise of the State's police power to protect public safety and protecting the public resources of the State under the Public Trust Doctrine. Stuart Rabner brings this action in his official position as the Attorney General of New Jersey.
3. Plaintiff, DEP, is a state agency charged with preserving, sustaining, protecting and enhancing the environment to ensure public health, high environmental quality, and economic vitality in the coastal area.
4. Defendant, Michael Ginaldi, is the owner of real property adjacent to the beach and Atlantic Ocean, located at 2201 N. Ocean Avenue in the Borough of Surf City, Ocean County, New Jersey, identified on the official Surf City tax map as Block 57, Lot 1.01.
5. Defendant, Debra Wright, is the owner of real property adjacent to the beach and Atlantic Ocean, located at 2207 N. Ocean Avenue in the Borough of Surf City, Ocean County, New Jersey, identified on the official Surf City tax map as Block 57, Lot 2.01.

6. Defendants, Martin W. and Margaret C. Caulfield, are the owners of real property adjacent to the beach and Atlantic Ocean, located at 2313 N. Ocean Avenue in the Borough of Surf City, Ocean County, New Jersey, identified on the official Surf City tax map as Block 58, Lot 3.00.
7. Defendant, Carol McCann, is the owner of real property adjacent to the beach and Atlantic Ocean, located at 6 N. 24th Street in the Borough of Surf City, Ocean County, New Jersey, identified on the official Surf City tax map as Block 58, Lot 4.
8. Defendant, 10 Surf City, LLC, is the owner of real property adjacent to the beach and Atlantic Ocean, located at 10 N. 22nd Street in the Borough of Surf City, Ocean County, New Jersey, identified on the official Surf City tax map as Block 53, Lot 4.

FACTUAL BACKGROUND

Risks Associated with Coastal Storms

9. In New Jersey, hurricanes and other tropical storm systems, as well as other Atlantic coastal storms such as "nor-easters," can produce extremely high winds, torrential rain (leading to flash floods), and tornadoes, and drive oceanic storm surges onto coastal areas with catastrophic effects.
10. Coastal storms on the open seas can cause large waves, heavy rains, and high winds. The most devastating effects of strong coastal storms occur when they pass close to the shoreline or cross coastlines, making landfall.
11. Coastal storms that pass close to the coastline or make landfall can, among other things, directly damage or destroy buildings, vehicles, roads and bridges, and cause an increase in sea level.
12. More importantly, coastal storms can result in loss of human life or serious injury or illness due to drowning, flying debris, the infusion of disease when combining the destruction of sanitation facilities with warm summer weather, an outbreak of infections due to wading in sewage-polluted standing water, fires caused by damaged buildings and utilities, power outages that prohibit vital communication and hamper rescue efforts, and the

destruction of access ways complicating efforts to transport necessities such as food, clean water, temporary shelters, and medicine.

13. Long Beach Island, a narrow barrier island in Ocean County stretching approximately eighteen (18) miles along the Atlantic Ocean, is subject to severe storms and constant erosion on the average of one foot per year, thereby destroying a valuable natural resource for all of the citizens of New Jersey and threatening the safety and property of five coastal municipalities and their residents.
14. The current vulnerability of Long Beach Island to dangerous coastal storms and erosion make shore protection through beach nourishment and replenishment necessary to defend against significant loss of human life, injury, and property damage.
15. In 1944 and 1962, catastrophic storms battered Long Beach Island, causing houses to float off their foundations, washing away whole sections of beach and cutting new inlets through the island.
16. The 1944 storm destroyed every major boardwalk along the 128-mile coast of New Jersey and killed at least four people.

17. The 1962 storm stands as the most devastating coastal storm in New Jersey's history, drowning twelve people, uprooting over 600 houses, and tearing the island into six pieces. The storm coincided with the time of the spring equinox new moon, the second highest astronomical tide of the year. The combination of spring tides and elevated water levels due to the piling of water up along the coast under the force of the wind and waves created a condition in which the tide did not fall below mid-tide for three consecutive days. The prolonged elevated water levels allowed the large storm waves to continuously pound away at the shoreline. These conditions first eroded the beach and breached the dunes, then demolished the protective bulkheads, and finally destroyed homes and infrastructure landward of the beach. The devastation was so complete that entire coastal communities were washed away.

18. After a period of almost thirty years of relative calm since that 1962 storm, a series of three devastating storms impacted the New Jersey coast over a period of fifteen months between October 1991 and December 1992. The last of these storms was the most significant nor'easter to occur since 1962. Coinciding with a full lunar eclipse and lasting for 140 hours and twelve tidal cycles, elevated water levels persisted for over five days. Waves

in excess of thirty feet were measured offshore of the coast. The combination of large waves and elevated water levels once again completely eroded the beaches and breached the dunes of the coast. New Jersey sustained damage in the amount of \$500 million (1992 value) during the storm, one quarter of which occurred on Long Beach Island.

19. In addition to these intermittent massive storms, smaller, more frequent storm events also take an erosive toll on the Long Beach Island shoreline. Most recently, storms causing significant flooding and property damage struck New Jersey in 1994, 1996 and 1998. While no major storms have struck coastal New Jersey since the aforementioned 1992 storm, large storms tend to be clustered together in a relatively short period of years.

Coastal Erosion Control Measures

20. Due to this coastal erosion caused by a variety of weather-related factors, and the related increased vulnerability to storms, certain beaches need to be replenished to protect the public health, safety, and economies of shore communities. The United States Army Corps of Engineers ("Army Corps") is the Federal entity that undertakes these Shore Protection Projects.

21. The federal Water Resources Development Acts ("WRDA") provide authorization and direction on the hundreds of projects undertaken by the Army Corps. Each WRDA contains authorizations, de-authorizations and administrative provisions regarding Army Corps water resources development activities. These activities include Shore Protection Projects, as the United States Congress has recognized the conservation, protection and development of water and related resources as a vital national interest. See WRDA of 2000, 106 P.L. 541, 114 Stat. 2572.
22. Pursuant to N.J.S.A. 12:6A-1, the DEP is authorized and empowered to repair, reconstruct, or construct bulkheads, seawalls, breakwaters, groins, jetties, beach fills, dunes and any or all appurtenant structures and work, on any and every shore front along the Atlantic Ocean, to prevent or repair damage caused by erosion and storm, or to prevent erosion of the shores and to stabilize inlets or estuaries.
23. Among other authority, N.J.S.A. 12:6A-1 allows the DEP to undertake any and all actions and work essential to the execution of this statutory authorization and the powers granted thereby.

Beach Nourishment Projects on Long Beach Island

24. The Army Corps' Barnegat Inlet to Little Egg Inlet, New Jersey, Final Feasibility Report and Integrated Environmental Impact Statement, September 1999 ("Army Corps' feasibility study") examined the magnitude and effect of shoreline erosion problems and identified beach nourishment as an implementable storm protection solution to these problems on Long Beach Island.
25. The Army Corps' feasibility study was prepared based on the recommendation of a preliminary study completed in March 1995 that identified possible solutions to the erosion problems facing Long Beach Island. The preliminary study also determined that such a solution was in the Federal interest.
26. The Water Resources and Development Act ("WRDA") of 2000, 106 P.L. 541, 114 Stat. 2572, section 101(a)(1) authorized a specific coastal erosion control project involving beach nourishment, known as the Barnegat Inlet to Little Egg Inlet, New Jersey Shore Protection Project ("Long Beach Island Shore Protection Project").
27. Beach nourishment projects consist of the initial placement of sand along a beach that has experienced erosion. Sources of sand for such projects can include a local source such as a neighboring beach or sandbar, a

dredged source such as a nearby inlet or waterway, an inland source such as a mining quarry or, as used most commonly in large-scale projects, an offshore source such as a borrow site along the ocean bottom. This sand can be brought in with trucks or barges, hydraulically pumped or any combination of the above, and is then spread evenly along the beach and piled up into dunes stabilized with snow fences and dune grass using a common dozer. As nourished beaches and dunes undergo erosion, they must be maintained and restored through beach re-nourishment.

28. Running parallel to the shoreline, dunes play a vital role in protecting coastal communities, along with its inhabitants and structures, against the high potential for dangerous surf and storm surge caused by significant storm events and other erosive factors.
29. The construction plan of the Long Beach Island Shore Protection Project consists of beach and dune construction using hydraulic pumping to transport sand from an offshore borrow site to the shoreline of the Long Beach Island municipalities of Long Beach Township, Harvey Cedars, Surf City, Ship Bottom, and Beach Haven.
30. According to the Army Corps' feasibility study, this plan requires approximately 4.95 million cubic yards of sand for initial berm placement and 2.45 million cubic yards

for dune placement. Approximately 1.9 million cubic yards will be needed for periodic nourishment every seven (7) years for the 50-year life of the project. See WRDA of 1986, 99 P.L. 662, 934.

31. The Barnegat Inlet to Little Egg Inlet, New Jersey: Report of the Chief of Engineers dated July 26, 2000 estimated a total cost for the Long Beach Island Shore Protection Project of \$51,203,000, with an estimated Federal cost of \$33,282,000 and an estimated non-Federal cost of \$17,921,000, and an estimated average annual cost of \$1,751,000 for periodic nourishment over the 50-year life of the project, with an estimated annual Federal cost of \$1,138,000 and an estimated annual non-Federal cost of \$613,000. WRDA of 2000, 106 P.L. 541, 101. These amounts are subject to annual appropriations by the United States Congress and the New Jersey Legislature.

32. Due to inflation and increased construction costs, the current estimated cost of the initial beach fill for the entire project has risen from \$51,203,000 to approximately \$71,200,000, to be cost shared 65% federal and 35% DEP in accordance with the PCA and Section 103 of WRDA 1986, 99 P.L. 662.

33. The DEP, as the non-federal sponsor for this project, signed a Project Cooperation Agreement ("PCA") with the

Army Corps on August 17, 2005 for initial construction of the Long Beach Island Shore Protection Project and periodic beach re-nourishment.

34. In the PCA, the DEP agreed to obtain access to construct and maintain the Project.
35. As part of the PCA, the Army Corps is requiring DEP to provide perpetual storm damage reduction easements granting public use of the footprint of the Project, as well as temporary work rights-of-way to the DEP, its representatives, contractors, agents and assigns in, on, over and across that land east of the established bulkhead line for the duration of the construction.
36. Further, the Army Corps also requires DEP to provide perpendicular public access points to the beach every $\frac{1}{2}$ mile where access is not currently available, along with adequate public parking.
37. If the requirements set forth in the PCA are not timely met by the DEP, the Army Corps is capable of carrying forward previous years' funding. However, the Army Corps has a multitude of responsibilities in the United States and abroad, and may decide not to fund this Long Beach Island Shore Protection Project in its entirety if all of the federal funding available this fall is not utilized.

Surf City Section of the Long Beach Island Project

38. For purposes of this action, the relevant section of the Long Beach Island Shore Protection Project is the portion of the oceanfront in the Borough of Surf City ("Surf City portion").
39. The Atlantic Ocean coastline of Surf City stretches 7,475 linear feet, or approximately 1.42 miles.
40. The Army Corps and the DEP have decided to complete the Surf City portion of the project first, based upon engineering concerns, as well as the issues regarding construction access and public access. The Borough of Surf City has obtained the required access for most of the Surf City portion, ensuring access for construction and for the public. From an engineering standpoint, the beach profile of Surf City is relatively stable and able to hold sand in place and serve as the primary foundation for replenishing the remaining portions of the island as the entire Long Beach Island Shore Protection Project proceeds.
41. The Surf City portion of this project must be undertaken immediately for fear of a ruinous coastal storm and loss of federal funding for the Long Beach Island Shore Protection Project, the feasibility of which has been examined at significant public cost for over a decade.

42. Due to engineering concerns, as cited in paragraph 40 above, a section of the dunes in the Surf City portion of this project must be constructed on oceanfront property owned by private individuals, including the Defendants to this action.
43. Most if not all of the flat dry sand beach east of the coastal dunes in Surf City is public trust property, and thus currently accessible for use by the public. A portion of this flat dry sand beach area is part of the municipality's Ocean Avenue right-of-way and is preserved for the citizens of New Jersey, as Ocean Avenue was razed during the aforementioned 1962 storm and never replaced. Seaward of the Ocean Avenue right-of-way, the dry flat sand beach area is likewise preserved for the citizens of New Jersey, as the State has not conferred any tidelands grants extending to this area.
44. Although most if not all of the flat beach area in Surf City is currently accessible for use by the public, under federal law the entire project area, including the dune area, must provide a public benefit. See 33 U.S.C. § 426e(d).
45. Any portion of beach benefiting from replenishment paid for through Shore Protection Projects using public funding must be open unconditionally to public access and use,

subject to New Jersey's statutory and regulatory provisions pertaining to the maintenance and enhancement of dunes as shore protection structures.

46. The Army Corps' guidelines for shore protection projects (available at <http://www.usace.army.mil/publications/eng-pamphlets/ep1165-2-1/c-14.pdf>), as well as the access that they are requiring of the private landowners in the project footprint, recognize a distinction between the dunes and the flat beach area. The definition of "public use" in the Army Corps' guidelines focuses on the public's rights to access the flat beach area for recreational use, while the Army Corps-approved easements acknowledge that the State, in using the dunes for the public benefit of shore protection, may facilitate the preservation of dunes and vegetation through the limitation of public access to dune areas.

47. Based on the Army Corps' design of the Long Beach Island Shore Protection Project, any private property impacted by the footprint of the Surf City portion will only contain dunes at this time. Nevertheless, erosion could ultimately transform a dune into flat sand beach.

48. Twenty-five (25) of the twenty-six (26) oceanfront properties impacted by the Surf City portion of the project lie north of 18th Street South in Surf City. (The

project area south of 18th Street South in Surf City is municipally owned, accounting for the twenty-sixth (26th) property.)

49. The Borough of Surf City has provided the public use and temporary construction easements required for the Surf City portion of the project for twenty (20) of the necessary twenty-five (25) oceanfront properties within the proposed footprint of the project.
50. The Borough of Surf City and the DEP have been unable to obtain the remaining five (5) easements from oceanfront property owners, the Defendants, precluding complete commencement of the Surf City portion of the Long Beach Island Shore Protection Project.
51. Given the extensive threat of severe coastal storms and erosion on Long Beach Island, this 17-mile project will take over ten years to complete and must move forward as expeditiously as possible. Between the federal and state shares, the Army Corps has approximately \$10.9 million available for construction costs this fall, 2006. If the Army Corps is unable to utilize all of the available federal funding this fall because of an inability to obtain the necessary easements, portions of Long Beach Island that could receive beach nourishment immediately will go unprotected. There is the potential that the

inability to obtain the necessary easements will jeopardize current and future federal funding of this much-needed project on Long Beach Island.

52. Subject to DEP's performing all requirements under the PCA, the Army Corps opened contractors' bids for the project on August 29, 2006, with construction set to commence in the area south of 18th Street South in Surf City on November 1, 2006.
53. The DEP, its representatives, contractors, agents and assigns must be permitted to enter the properties of Defendants, which are north of 18th Street South in Surf City, in furtherance of the continuation of the LBI Shore Protection Project on or before December 1, 2006.

FIRST COUNT - STATUTORY RIGHT OF ACCESS FOR CONSTRUCTION

54. Plaintiffs repeat and re-allege each and every allegation of Paragraphs 1 through 53 as if fully set forth at length herein.
55. Construction of the entire Surf City portion of the Project must commence immediately due to the current state of Long Beach Island's eroding coastline, the high potential for a substantial destructive storm event in the near future, and the possibility of placing in jeopardy any current or future federal funding available to complete this Project.
56. N.J.S.A. 12:6A-1 authorizes and empowers the DEP to repair, reconstruct, or construct bulkheads, seawalls, breakwaters, groins, jetties, beachfills, dunes and any or all appurtenant structures and work, on any and every shore front along the Atlantic Ocean, in the State of New Jersey, to prevent or repair damage caused by erosion and storm, or to prevent erosion of the shores and to stabilize the inlets or estuaries and to undertake any and all actions and work essential to the execution of this authorization and the powers granted hereby.
57. In order to exercise its statutory authority and accomplish the objectives of N.J.S.A. 12:6A-1, DEP, its representatives, contractors, agents and assigns must

enter onto the property of Defendants to replenish and repair the portions of the dunes on those properties.

58. Despite repeated requests, Defendants have refused to permit the DEP, its representatives, contractors, agents and assigns to enter Defendants' property for purposes of constructing said shore protection measures.

WHEREFORE, Plaintiffs demand that judgment be entered against the Defendants providing relief as follows:

- a. Ordering that the State of New Jersey, Department of Environmental Protection, its representatives, contractors, agents and assigns be permitted to enter the properties of Defendants in furtherance of performing emergent erosion control and storm protection measures for the benefit of protecting the Defendants and New Jersey's other coastal inhabitants, along with the coastal economy, from the threat of major storm events;
- b. Ordering Defendants not to interfere with or damage the performance of the work or the completed work;
- c. Ordering that Defendants must provide unrestricted public access to and use of all beaches benefiting from replenishment paid for with public funds, subject

to New Jersey's statutory and regulatory provisions pertaining to the maintenance and enhancement of dunes as shore protection structures, and declaring that title to Defendants' properties is subject to these public rights; and

d. Awarding fees, costs and such other and further relief as the Court may deem just and proper.

SECOND COUNT - PUBLIC NUISANCE

59. Plaintiffs repeat and re-allege each and every allegation of Paragraphs 1 through 58 as if fully set forth at length herein.
60. Defendants are maintaining their properties in a manner inadequate to protect LBI and its residents from the high risk of storm damage.
61. By refusing to permit the DEP, its representatives, contractors, agents and assigns to enter Defendants' property for purposes of constructing said shore protection measures, Defendants have unreasonably failed to abate this nuisance.
62. To abate this nuisance, the Defendants must allow the DEP, its representatives, contractors, agents and assigns, to enter their properties to perform shore protection activities, authorized by N.J.S.A. 12:6A-1-4.

WHEREFORE, Plaintiffs demand that judgment be entered against the Defendants providing relief as follows:

- a. Ordering that the State of New Jersey, Department of Environmental Protection, its representatives, contractors, agents and assigns be permitted to enter the properties of Defendants in furtherance of

performing emergent erosion control measures for the benefit of protecting the Defendants and New Jersey's other coastal inhabitants, along with the coastal economy, from the threat of major storm events;

- b. Ordering Defendants not to interfere with or damage the performance of the work or the completed work;
- c. Ordering that Defendants must provide unrestricted public access to and use of all beaches benefiting from replenishment paid for with public funds, subject to New Jersey's statutory and regulatory provisions pertaining to the maintenance and enhancement of dunes as shore protection structures, and declaring that title to Defendants' properties is subject to these public rights; and
- d. Awarding fees, costs and such other and further relief as the Court may deem just and proper.

STUART RABNER
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: Gerard Burke
Gerard Burke
Assistant Attorney General

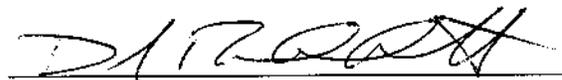
Dated: 10/13/06

VERIFICATION OF PLEADING

I, DAVID ROSENBLATT, being of full age, certify as follows:

1. I am the Administrator of the Office of Engineering and Construction in the State of New Jersey, Department of Environmental Protection ("DEP").
2. I have served as the Administrator of the DEP's Office of Engineering and Construction for the last two and one-half years and have been employed by DEP for a total of twenty-seven years. As the Administrator of the Office of Engineering and Construction, I supervise the Bureau of Coastal Engineering.
3. I have read the Complaint, and based on my personal knowledge, know that the facts contained in the Complaint are true, and I incorporate, by reference, those facts in this Certification.

I certify that foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me is willfully false, I am subject to punishment.



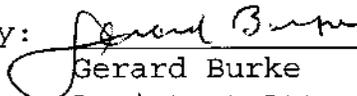
David Rosenblatt

Date:

CERTIFICATION PURSUANT TO RULE 4:5-1

The undersigned certifies, pursuant to R. 4:5-1, that the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding. I am not aware of any other persons who should be joined in this action, but for property owners in the adjacent Borough of Ship Bottom if the State is unable to obtain the necessary easements for construction to proceed in the Borough of Ship Bottom this year. I am not aware of any other persons who are subject to joinder.

STUART RABNER
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 
Gerard Burke
Assistant Attorney General

Dated: 10/13/06

DESIGNATION OF TRIAL COUNSEL PURSUANT TO RULE 4:25-4

Pursuant to R. 4:25-4, Stefanie A. Brand is hereby designated as trial counsel on behalf of Plaintiff, Stuart Rabner, Attorney General of New Jersey, and the State of New Jersey Department of Environmental Protection.

STUART RABNER
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: Gerard Burke
Gerard Burke
Assistant Attorney General

Dated: 10/13/06