



STATE OF CONNECTICUT

File# LIS-2006-056-V

Date of Issuance: August 17, 2012

v.

CHRISTOPHER KRATKY

and

EVERGREEN BUILDING SYSTEMS, LLC

CONSENT ORDER

A. With the understanding of Christopher Kratky ("Kratky") and Evergreen Building Systems, LLC ("Evergreen") (hereinafter referred to jointly as "Respondents" or individually as "Respondent"), the Commissioner of Energy and Environmental Protection ("the Commissioner") finds:

1. Respondent Kratky is the owner of the property located at Sumac Island, Branford, Connecticut ("the property"). The property is located in Long Island Sound, a tidal, coastal and navigable water of the State.
2. Respondent Evergreen is a Connecticut limited liability company with a principal business address of 16 Wychwood Road, Old Lyme, Connecticut, 06371.
3. On April 2, 2004, Respondent Kratky received a coastal site plan approval from the Branford Planning and Zoning Commission (#04-2.6) to raze an existing house on the Property and replace it with a new house and accessory buildings.
4. Respondent Kratky contracted with Respondent Evergreen to be the general contractor for the construction project at the property.
5. Respondent Evergreen constructed a home on the mainland and relocated the home to Sumac Island.
6. An approximately 510 square foot area of tidal wetlands historically existed along the northerly shoreline of the property waterward of the high tide line in tidal, coastal and navigable waters of the State. The subject wetland area is delineated on Attachment A.
7. The wetland location described in paragraph A.6., above, shall hereinafter be referred to as "the site."

8. Between 2005 and 2009, approximately 510 square feet of wetlands at the site were destroyed by activities related to preparation of the property for home relocation to Sumac Island.
9. Respondents did not receive a certificate or permit from the Commissioner under sections 22a-361 and 22a-32 of the Connecticut General Statutes ("CGS") for the wetland impacts described in paragraph A.8. above.
10. By virtue of the above, CGS sections 22a-361 and 22a-32 have been violated.
11. By agreeing to the issuance of this Consent Order, Respondents Kratky and Evergreen make no admission of fact or law with respect to the matters addressed herein, other than the facts asserted in paragraphs A.1 through A.5.

B. With the agreement of the Respondents, the Commissioner, acting under CGS sections 22a-6 and 22a-361, orders Respondents as follows:

1. Penalty for past violations. On or before 45 days after issuance of this Consent Order, Respondents shall pay a civil penalty of \$15,000.00 for the alleged violation of CGS sections 22a-361 and 22a-32 described above.
2. No Additional Work. Respondents shall not conduct any work waterward of the high tide line or in tidal wetlands at the site without prior written authorization of the Commissioner in accordance with CGS sections 22a-361 and 22a-32, except for routine maintenance as defined in CGS sections 22a-363a.
3. Full compliance. Respondents shall not be considered in full compliance with this Consent Order until the penalty described in paragraph B.1 above is paid. Upon payment of the penalty, the Respondents will be in full compliance with this Consent Order and the Commissioner will take no further action against the Respondents in connection with the violation alleged in paragraphs A.8. and A.9.
4. Payment of penalties. Payment of penalties under this Consent Order shall be mailed or personally delivered to Mr. Dennis Thibodeau, Department of Energy and Environmental Protection, Financial Management Office, 79 Elm Street, Hartford, CT 06106-5127, and shall be by certified or bank check payable to the Connecticut Department of Environmental Protection. The check shall state on its face, "Office of Long Island Sound Programs, Consent Order No. LIS-2006-056-V."
5. Definitions. As used in this Consent Order, "Commissioner" means the Commissioner of Energy and Environmental Protection or an agent of the Commissioner. The date of "issuance" of this Consent Order is the date the Order is deposited in the mail or personally delivered, whichever is earlier.

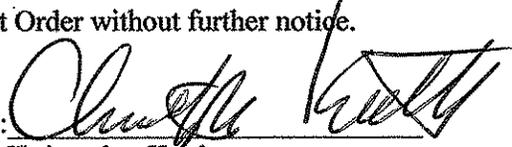
6. Dates. The date of submission to the Commissioner of the penalty payment required by this Consent Order shall be the date such payment is received by the Commissioner. The date of any notice by the Commissioner under this Consent Order, including but not limited to notice of approval or disapproval of any document or other action, shall be the date such notice is personally delivered or the date three days after it is mailed by the Commissioner, whichever is earlier. Except as otherwise specified in this Consent Order, the word "day" as used in this Order means calendar day. Any document or action which is required by this Order to be submitted or performed by a date which falls on a Saturday, Sunday or a Connecticut or federal legal holiday shall be submitted or performed on or before the next day which is not a Saturday, Sunday, or Connecticut or federal holiday.
7. Notification of noncompliance. In the event that Respondents become aware that they did not or may not comply, or did not or may not comply on time, with the penalty payment required by this Consent Order, Respondents shall immediately notify the Commissioner and shall take all reasonable steps to ensure that any noncompliance or delay is avoided or, if unavoidable, is minimized to the greatest extent possible. In so notifying the Commissioner, Respondents shall state in writing the reasons for the noncompliance or delay and propose, for the review and written approval of the Commissioner, dates by which compliance will be achieved, and Respondents shall comply with any dates which may be approved in writing by the Commissioner. Notification by Respondents shall not excuse noncompliance or delay. The Commissioner's approval of any revised compliance dates shall not excuse noncompliance or delay unless specifically so stated by the Commissioner in writing.
8. Noncompliance. This Consent Order is a final order of the Commissioner with respect to the matters addressed herein, and is nonappealable and immediately enforceable. Failure to comply with this Consent Order may subject Respondents to an injunction and penalties under CGS Chapters 439, and 446i.
9. False statements. Any false statement in any information submitted pursuant to this Consent Order may be punishable as a criminal offense in accordance with CGS section 22a-6, under CGS section 53a-157b.
10. Notice of transfer; liability of Respondent and others. Until Respondents have fully complied with this Consent Order, Respondents shall notify the Commissioner in writing no later than fifteen days after transferring all or any portion of the site, structures, obstructions, encroachments, fill, operations or facilities which are the subject of this Consent Order, or obtaining a new mailing or location address. Respondents' obligations under this Consent Order shall not be affected by the passage of title to the site to any other person or municipality. A future owner of the site may be subject to the issuance of an Order from the Commissioner.

11. Commissioner's powers. Nothing in this Consent Order shall affect the Commissioner's authority to institute any proceeding or take any action to prevent or abate violations of law, prevent or abate pollution, recover costs and damages for adverse impacts to natural resources and to impose penalties for violations of law, including but not limited to violations of any permit issued by the Commissioner.
12. Respondents' obligations under law. Nothing in this Consent Order shall relieve Respondents of other obligations under applicable federal, state and local law.
13. No assurance by Commissioner. No provision of this Consent Order or inaction by the Commissioner shall be construed to constitute an assurance by the Commissioner that the penalty payment required by this Consent Order will result in compliance with regard to any statute, regulation, permit, order or other authorization not identified hereunder.
14. No effect on rights of other persons. This Consent Order shall neither create nor affect any rights of persons who or municipalities which are not parties to this Consent Order.
15. Notice to Commissioner of changes. Within fifteen days of the date Respondents become aware of a change in any information submitted to the Commissioner under this Consent Order, or that any such information was inaccurate or misleading or that any relevant information was omitted, Respondents shall submit the correct or omitted information to the Commissioner.
16. Joint and Several Liability. Respondents shall be jointly and severally liable for all obligations under this Consent Order.
17. Submission of documents. Any document required to be submitted to the Commissioner under this Consent Order or any contact required to be made with the Commissioner shall, unless otherwise specified in writing by the Commissioner, be directed to:

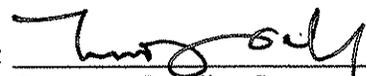
Susan Jacobson
Department of Energy and Environmental Protection
Office of Long Island Sound Programs
79 Elm Street
Hartford, CT 06106-5127
(860) 424-3693
Fax # (860) 424-4054

The undersigned certifies that they are fully authorized to enter into this Consent Order and to legally bind Respondents to the terms and conditions thereof.

Respondents consent to the issuance of this Consent Order without further notice.

BY: 
Christopher Kratky

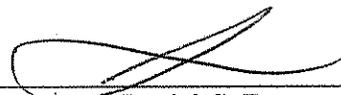
July 30th, 2012
Date

BY: 
Evergreen Building Systems, LLC
By: Timothy P. O'Neill
Its Member/Manager
Duly Authorized

July 31, 2012
Date

Issued as a final order of the Commissioner of Energy and Environmental Protection on

8/16, 2012.


FOR Daniel C. Esty
Commissioner
Mack McCleary
Deputy Commissioner

ATTACHMENT A

2005 aerial photograph



2010 aerial photograph



Area of wetland loss = 510 square feet

