

# STATE OF CONNECTICUT

## DEPARTMENT OF ENVIRONMENTAL PROTECTION



STATE OF CONNECTICUT

File# LIS-2010-3236-V

Date of Issuance: June 29, 2011

v.

Yarde Realty Company

### CONSENT ORDER

- A. With the agreement of Yarde Realty Company ("Respondent"), the Commissioner of Environmental Protection ("the Commissioner") finds:
  1. Respondent is the owner of the property located at 4 Boston Post Road, Madison, Connecticut ("the property"). The property is located adjacent to the East River, a tidal, coastal and navigable water of the State.
  2. On or before November 2, 2010, Respondent placed stone at the northwest corner of the site and along the western shoreline of the site waterward of the high tide line in the tidal, coastal and navigable waters of the State.
  3. The property and the location of the work described in paragraph A.2., above, shall hereinafter be referred to as "the site."
  4. Respondent has not received a certificate or permit from the Commissioner under sections 22a-32 or 22a-361 of the Connecticut General Statutes ("CGS") for the erection and maintenance of the structures described in paragraph A.2. at the site.
  5. By virtue of the above, Respondent has violated sections 22a-32 and 22a-361 of the General Statutes.
- B. With the agreement of the Respondent, the Commissioner, acting under sections 22a-6 and 22a-361 of the CGS, orders Respondent as follows:
  1. Restoration. Respondent shall complete the work identified in the approved restoration plan titled "Proposed Restoration, Yarde Realty Company, 4 Boston Post Road, Madison, Connecticut" dated April 27, 2011 no later than September 30, 2011.
  2. Retention of Fill. Within 70 days of issuance of this Order Respondent shall submit an application pursuant to CGS section 22a-32 and 22a-361 to authorize the stone placed on the site.

3. Permit Application. In the event that the Commissioner's final determination on the permit application identified in paragraph B.2., above, requires modification or removal of existing structures waterward of the high tide line, or other mitigative measures, Respondent shall, not later than 30 days following issuance of a final determination, submit a timetable to the Commissioner for his review and written approval for conforming the existing structures to the terms and conditions of said decision. Upon written approval, Respondent shall conform such existing structures in accordance with the permit decision and the approved timetable.
4. No Additional Work. Respondent 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 sections 22a-361 and 22a-32 of the CGS, except for routine maintenance as defined in section 22a-363a of the CGS.
5. Full compliance. Respondent shall not be considered in full compliance with this Consent Order until all actions required by this Consent Order have been completed as approved and to the satisfaction of the Commissioner.
6. Penalty for past violations. On or before 30 days after issuance of this Consent Order, Respondent shall pay a civil penalty of \$1,100 for the violations of section 22a-361 of the CGS described in paragraph A.3., above.
7. Payment of penalties. Payment of penalties under this Consent Order shall be mailed or personally delivered to Mr. Dennis Thibodeau, Department of 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-2002-033-V."
8. Approvals. Respondent shall use best efforts to submit to the Commissioner all documents required by this Consent Order in a complete and approvable form. If the Commissioner notifies the Respondent that any document or other action is deficient, and does not approve it with conditions or modifications, it is deemed disapproved, and Respondent shall correct the deficiencies and resubmit it within the time specified by the Commissioner or, if no time is specified by the Commissioner, within thirty days of the
9. Commissioner's notice of deficiencies. In approving any document or other action under this Consent Order, the Commissioner may approve the document or other action as submitted or performed or with such conditions or modifications as the Commissioner deems necessary to carry out the purposes of this Consent Order. Nothing in this paragraph shall excuse noncompliance or delay.
10. Definitions. As used in this Consent Order, "Commissioner" means the Commissioner of 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.

11. Dates. The date of submission to the Commissioner of any document required by this Consent Order shall be the date such document 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.
12. Notification of noncompliance. In the event that Respondent becomes aware that it did not or may not comply, or did not or may not comply on time, with any requirement of this Consent Order or of any document required hereunder, Respondent 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, Respondent 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 Respondent shall comply with any dates which may be approved in writing by the Commissioner. Notification by Respondent 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.
13. Certification of documents. Any document, including but not limited to any notice, which is required to be submitted to the Commissioner under this Consent Order shall be signed by a duly authorized representative of the Respondent and by the individual or individuals responsible for actually preparing such document, each of whom shall certify in writing as follows: "I have personally examined and am familiar with the information submitted in this document and all attachments thereto, and I certify that based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, the submitted information is true, accurate and complete to the best of my knowledge and belief. I understand that any false statement made in the submitted information may be punishable as a criminal offense in accordance with Section 22a-6 of the CGS, under Section 53a-157b of the CGS, and in accordance with any other applicable statute."
14. Noncompliance. This Consent Order is a final order of the Commissioner with respect to the matters addressed herein, and is non-appealable and immediately enforceable. Failure to comply with this Consent Order may subject Respondent to an injunction and penalties under Chapters 439, and 446i of the CGS.

15. False statements. Any false statement in any information submitted pursuant to this Consent Order may be punishable as a criminal offense in accordance with section 22a-6, under section 53a-157b of the CGS.
16. Notice of transfer; liability of Respondent and others. Until Respondent has fully complied with this Consent Order, Respondent 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. Respondent's 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.
17. 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. If at any time the Commissioner determines that the actions taken by Respondent pursuant to this Consent Order have not successfully corrected all violations, the Commissioner may institute any proceeding to require Respondent to undertake further investigation or further action to correct violations.
18. Respondent's obligations under law. Nothing in this Consent Order shall relieve Respondent of other obligations under applicable federal, state and local law.
19. 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 corrective actions taken by Respondent pursuant to this Order will result in compliance with regard to any statute, regulation, permit, order or other authorization not identified hereunder.
20. Access to site. Any representative of the Department of Environmental Protection may enter the site without prior notice for the purposes of monitoring and enforcing the actions required or allowed by this Consent Order.
21. 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.
22. Notice to Commissioner of changes. Within fifteen days of the date Respondent becomes 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, Respondent shall submit the correct or omitted information to the Commissioner.

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22. 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:

Cheryl A. Chase, P.E.  
Department of Environmental Protection  
Office of Long Island Sound Programs  
79 Elm Street  
Hartford, CT 06106-5127  
(860) 424-3034  
Fax # (860) 424-4054

The undersigned certifies that he is fully authorized to enter into this Consent Order and to legally bind Respondent to the terms and conditions thereof.

Respondent consents to the issuance of this Consent Order without further notice.

BY:   
Michael Barnes, Owner

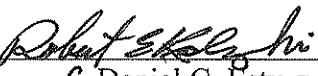
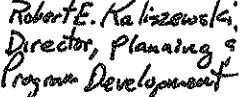
Yarde Realty Company

June 16 2011

Date

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

June 27, 2011,

  
for Daniel C. Esty   
Robert E. Kaliszowski  
Commissioner Director, Planning &  
Program Development