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DEEP
Land & Water Resources Division

STATE OF CONNECTICUT File #LIS-2016-3812-V Date of Issuance: February 23, 2018

v.

66 HIGH STREET GUILFORD, LLC

CONSENT ORDER

A. The Commissioner of Energy & Environmental Protection ("the Commissioner") finds:

1. 66 High Street Guilford, LLC ("Respondent") is the owner of property at 66 High Street, Guilford, CT. ("The Property"). The property is located adjacent to the West River, a tidal, coastal and navigable water of the State and includes tidal wetlands as defined by section 22a-29 of the Connecticut General Statutes ("CGS").
2. On or before September 9, 2016, without authorization, Respondent conducted the following work as follows: 1) installed an approximately 3' high x 210' long x 2' wide concrete block retaining wall along the southeastern corner of the property of which portions of the retaining wall were constructed waterward of the Coastal Jurisdiction Line (CJL); 2) removed existing grade and installed three sections of concrete block retaining wall; northern "L" shape section measuring approximately 3' high x 70' long x 2' wide, center western section measuring approximately 3' high x 130' long x 2' wide, and a southern section measuring approximately 3' high x 100' long x 2' resulting in the structures installed waterward of the existing CJL; and 3) constructed sections of the northern "L" shaped retaining wall and sections of the southeastern retaining wall that resulted in work which was performed within tidal wetlands. The retaining walls are depicted on a site survey entitled "As-Built Retaining Walls," dated September 27, 2016 and revised on October 10, 2016, and prepared by Luchs Consulting Engineers, Inc., a copy of which is attached hereto as "Attachment A."
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 did not receive a certificate or permit from the Commissioner under sections 22a-361 and 22a-32 CGS for the work described in paragraph A.2. at the site.
 5. By virtue of the above, Respondent has violated sections 22a-361 and 22a-32 of the CGS.
 6. The Respondent has not received a lawful coastal site plan approval from the Town of Guilford for the installation of the retaining walls described in paragraph A.2., above, pursuant to sections 22a-105, 22a-106, and 22a-109 of the CGS.
 7. The installation of the retaining walls has resulted in the creation of a public nuisance pursuant to section 22a-108 of the General Statutes.
- B. With the agreement of the Respondent, the Commissioner, acting under CGS sections 22a-6, 22a-32, and 22a-361 orders Respondent as follows:
1. Removal of Structures. Respondent shall remove the northern "L" shaped retaining wall section measuring approximately 3' high x 40' long x 2' wide and the southern retaining wall section measuring approximately 3' high x 100' long x 2' wide located along the shoreline of the site and restore the site to the pre-work or better condition including establishing a stable vegetated slope and restore any tidal wetland impact, pending a final determination, including a final determination on any appeal, of the permit application identified in paragraph B.3., below.
 2. Retention of Structures. Respondent may retain the work completed at the site as described in paragraph A.2., with the exception of paragraph B.1., pending a final determination, including a final determination on any appeal, of the permit application identified in paragraph B.3., below.
 3. Permit Application Decision.
 - a. No later than ninety (90) days after issuance of this Consent Order, Respondent shall submit a permit application to authorize the work completed at the site as described in paragraph B.2., above, and to remove and restore to the pre-work conditions, the retaining wall sections described in paragraph B.1., above. Such application shall include all information required on forms prescribed by the Commissioner, including a justification for the purpose and need for the retaining walls and their consistency with all applicable state statutes and policies.
 - b. In the event that the Commissioner's final determination on the permit application submitted pursuant to paragraph B.3.a., above, requires modification or removal of the structures, the Respondent shall, not later than 30 days following issuance of a final decision, submit a timetable to the Commissioner for his review and

written approval for the modification or removal of the existing structure(s) in accordance with the terms and conditions of such final decision. Upon the Commissioner's written approval, the Respondent shall modify or remove such existing structure(s) in accordance with the approved timetable and final decision.

4. No Additional Work. Respondent shall not conduct any work waterward of the coastal jurisdiction 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.
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. Supplemental Environmental Project.
 - a. The Respondent has agreed to fund a supplemental environmental project ("SEP") or projects as selected by the Department according to its February 15, 1996 "Policy on Supplemental Environmental Projects." Therefore, on or before thirty (30) days after the date of issuance of this Consent Order, the Respondent shall pay \$4,000 to the State-Wide SEP Account. The payment shall be mailed or personally delivered to the Department of Energy & Environmental Protection, Bureau of Financial and Support Services, Accounts Receivable Office, 79 Elm Street, Hartford, Connecticut 06106-5127, and shall be by certified or bank check payable to the "Treasurer, State of Connecticut," with notation thereon "State-Wide SEP Account" and "Consent Order No. LIS-2016-3812-V."
 - b. If the Respondent fails to fund the SEP in accordance with paragraph 6.a. above, the Respondent shall immediately pay a civil penalty of \$4,250. Respondent shall pay such civil penalty in accordance with the provisions of paragraph B.8 of this Consent Order.
 - c. The Respondent shall not claim or represent that any SEP payment made pursuant to this Consent Order constitutes an ordinary business expense or charitable contribution or any other type of tax deductible expense, and the Respondent shall not seek or obtain any other tax benefit such as a tax credit as a result of the payment under this paragraph.
 - d. If and when the Respondent disseminates any publicity, including but not limited to any press releases regarding funding a SEP, the Respondent shall include a statement that such funding is in partial settlement of an enforcement action brought by the Commissioner.
7. Penalty for past violations. On or before 30 days after issuance of this Consent Order, the

Respondent shall pay a civil penalty of One Thousand Dollars (\$1,000) for the violations of CGS sections 22a-361 and 22a-32 described in paragraph A.2., above.

8. Payment of penalties. Payment of penalties under this Consent Order shall be mailed or personally delivered to the "Connecticut Department of Energy & 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 Energy & Environmental Protection. The check shall state on its face, "Land & Water Resources Division, Consent Order No. LIS-2016-3812-V."
9. 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 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 Energy & 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 to the Respondent, 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 the Respondent becomes aware that they 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 CGS Section 22a-6, under CGS Section 53a-157b 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 nonappealable and immediately enforceable. Failure to comply with this Consent Order may subject Respondents to an injunction and penalties under Chapters 439, and 446i of the General Statutes.
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 CGS section 22a-6, under CGS section 53a-157b.
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 Energy & 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 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, Respondent shall submit the correct or omitted information to the Commissioner.
23. 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:

Kevin Zawoy
Department of Energy & Environmental Protection
Land & Water Resources Division
79 Elm Street
Hartford, CT 06106-5127
(860) 424-3626
Fax # (860) 424-4054

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



66 High Street Guilford, LLC
c/o Kenneth J. Horton, Member

1-23-18

Date

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

February 23, 2018.



Robert E. Kaliszewski
Deputy Commissioner

Alan and Linda Landis
File # LIS-05-40087-FV