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Juliet Bryan-Lowell, AA
Signature/(Your title), Department of Energy and Environmental Protection

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Affirmative Action/Equal Opportunity Emplc

STATE OF CONNECTICUT

File #LIS-2016-3836-V

Date of Issuance: 10/10/2017

v.

TOWN OF GUILFORD

CONSENT ORDER

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

1. The Town of Guilford ("Respondent") is the owner of Tuttle Point Road, between Marshall Avenue and White Top Lane, Guilford, CT. ("The Property"). The property is located adjacent to the Long Island Sound, 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 October 21, 2016, in violation of permit #201503795-SJ issued on July 7, 2016 or without any other authorization, the Respondent: a) failed to post the required permit notice at the Property; b) failed to remove 2 large mooring balls required to be removed from tidal wetlands prior to the commencement of culvert replacement work at the Property; c) replaced two existing twin 15" diameter culverts with one 36" diameter culvert rather than in-kind as authorized by the permit; d) side-cast excavated material on the southern culvert embankment into tidal wetlands; e) constructed northern and southern stone roadway embankments to elevation 8.0' NAVD 88 instead of the authorized elevation 7.0' NAVD 88; f) constructed the northern stone embankment an approximate distance of 340 linear feet with an approximately 1:1 side slope instead of the authorized 275 linear feet with 1.5:1 side slope. Such stone embankment encroaches into tidal wetlands between 11' and 15' (13' on average) along station points instead of the authorized 3' to 4' (3.5' on average) along entire distance of the roadway resulting in an approximately 3,230 square foot additional tidal wetlands impact; and g) constructed the southern stone embankment an approximate distance of 290 linear feet with an approximately 1:1 side slope instead of the authorized 275 linear feet with a 1.5:1 side

slope. Such stone embankment encroaches into tidal wetlands between 10' and 14' (12' on average) along station points instead of the authorized 3' to 4' (3.5' on average) along the entire distance of the roadway resulting in an approximately 2,465 square foot additional tidal wetlands impact.

3. The violations referenced in paragraph A.2.a., A.2.b., A.2.d., and A.2.e. were corrected by the Respondent with those corrections observed during site inspections of the Property conducted on October 27, 2016 and November 3, 2016;
 4. The permit from the Commissioner under sections 22a-361 and 22a-32 CGS did not authorize the work described in paragraphs A.2.c., A.2.f., and A.2.g. and the Respondent had no other certificate or authorization to conduct the work so described. The unauthorized work described in paragraphs A.2.c., A.2.f., and A.2.g. remains uncorrected.
 5. By virtue of the above, Respondent has violated sections 22a-361 and 22a-32 of the CGS.
 6. By agreeing to the issuance of this Consent Order, the Respondent makes no admission of fact or law with respect to the matters addressed herein.
- 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. Retention of Structures. Respondent may retain the work completed at the Property as described in paragraphs A.2.c., A.2.f., and A.2.g., above, pending a final determination, including a final determination on any appeal, of the permit application identified in paragraph B.2., below.
 2. 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 Property as described in paragraphs A.2.c., A.2.f., and A.2.g., above. Such application shall include all information required on forms prescribed by the Commissioner, including a justification for the purpose and need for the additional stone roadway embankments 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.2.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.

3. No Additional Work. Respondent shall not conduct any work waterward of the coastal jurisdiction line or in tidal wetlands at the Property without prior written authorization of the Commissioner in accordance with CGS sections 22a-361 and 22a-32.
4. 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.
5. Penalty for past violations. On or before 30 days after issuance of this Consent Order, the Respondent shall pay a civil penalty of Five Thousand Dollars (\$5,000) as the total civil penalty to be sought by the Commissioner for those, and only those violations of CGS sections 22a-361 and 22a-32 described in paragraph A.2., above.
6. 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 and Water Resources Division," Consent Order No. LIS-2016-3836-V."
7. Supplemental Environmental Project. In addition to the civil penalty referenced in paragraph B.5, Respondent shall fund the following supplemental environmental project ("SEP") and make payment as follows:
 - 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 \$10,000 to the Statewide SEP Account. The payment shall be mailed or personally delivered to the Department of Energy and 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 "Statewide SEP Account" and "Consent Order No. LIS-2016-3836-V."
 - b. If the Respondent fails to fund the SEP in accordance with paragraph 7.a. above, the Respondent shall immediately pay a civil penalty of \$10,750. The Respondent shall pay such civil penalty in accordance with the provisions of paragraph B.6 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.
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 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.
9. 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.
10. 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.
11. Notification of noncompliance. In the event that 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.


12. 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."
13. 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.
14. 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.
15. 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 Property, 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 Property to any other person or municipality. A future owner of the Property may be subject to the issuance of an Order from the Commissioner.

16. 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.
17. Respondent's obligations under law. Nothing in this Consent Order shall relieve Respondent of other obligations under applicable federal, state and local law.
18. 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.
19. Access to Property. Any representative of the Department of Energy and Environmental Protection may enter the Property without prior notice for the purposes of monitoring and enforcing the actions required or allowed by this Consent Order.
20. 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.
21. 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.

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:

Kevin Zawoy
Department of Energy and 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.

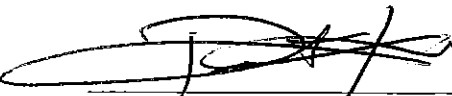


Town of Guilford, First Selectman
Joseph S. Mazza

Date 9/19/17

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

October 10th, 2017.



Robert E. Katiszewski Robert Klee
Deputy Commissioner

Received for Record at Guilford, CT
On 10/13/2017 At 10:54:21 am

