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Affirmative Action/Equal Opportunity Employer

STATE OF CONNECTICUT    File #LIS-2016-3853-V    Date of Issuance: August 17, 2017

v.

BAYPOINTE HOLDING, LLC

CONSENT ORDER

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

1. Baypointe Holding, LLC ("Respondent") is the owner of 112 Southfield Avenue, Stamford CT. The property is located adjacent to the West Branch of Stamford Harbor, a tidal, coastal and navigable water of the State as defined by section 22a-361 of the Connecticut General Statutes ("CGS").
2. The property and the location described in paragraph A.1., above, shall hereinafter be referred to as "the site."
3. On July 11, 2016, Respondent submitted Certificate of Permission (COP) application #201608477-SB pursuant to CGS section 22a-363(b) to retain and modify a seawall and construct an approximately 25 square foot section of a public access walkway located waterward of the coastal jurisdiction line (CJL). Said walkway section was proposed to connect a proposed walkway landward of the seawall on the subject property to an existing walkway on the northerly abutting property and will eventually connect with a walkway planned to be constructed along the southerly abutter's shoreline. Our letter of August 17, 2016 requested information necessary to complete the COP application and extended the time frame for application review to October 10, 2016.
4. On September 30, 2016, the Commissioner was informed that Respondent had completed the work described in paragraph A.3., above, without the required authorization. As a result, the COP application was rendered ineligible on October 6, 2016. Three sheets of as-built plans were received January 18, 2017 of which the plan view was dated November 10, 2016 and two cross-sections were dated January 4, 2017. These plans

confirmed that the work proposed in the COP application was completed. In addition, the as-built plans showed that the stones on the top of the seawall had been reset along the entire length of the seawall. This activity was not proposed as a part of the COP application.

5. Respondent did not received a COP or permit from the Commissioner under section CGS 22a-361 to authorize the completed work described in paragraphs A.3 and A.4.
  6. By virtue of the above, Respondent has violated CGS section 22a-361.
- B. With the agreement of the Respondent, the Commissioner, acting under CGS sections 22a-6 and 22a-361, orders Respondent as follows:
1. Retention of Structures. Respondent may retain the work completed that is described in paragraph A.3., above, pending a final determination, including a final determination on any appeal, of the COP application identified in paragraph B.2., below.
  2. COP Application Decision.
    - a. No later than ninety (60) days after issuance of this Consent Order, Respondent shall submit a COP application pursuant to CGS section 22a-363(b) to authorize the completed work described in paragraphs A.3. and A.4, above. Such application shall include all information required on forms prescribed by the Commissioner, including as-built plans, a description of the completed work, dimensions of the completed structures, methodology used during construction including removal of backfill landward of the seawall and modifications to the seawall.
    - b. In the event that the Commissioner's final determination on the COP 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 CJL or in tidal wetlands at the site without prior written authorization of the Commissioner in accordance with CGS sections 22a-361 and 22a-28.
  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. 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 Respondents shall pay \$3,000.00 to the 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-2016-3853-V."
- b. If the Respondent fails to fund the SEP in accordance with paragraph 5.a. above, the Respondent shall immediately pay a civil penalty of \$3,250.00. 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.

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 & Water Resources Division, Consent Order No. LIS-2016-3853-V."

7. 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.

8. 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 signed Order is deposited in the mail or personally delivered to the Respondent, whichever is earlier.
9. 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.
10. Notification of noncompliance. In the event 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.
11. 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 Respondent or, if Respondent is not an individual, by Respondent's chief executive

officer or a duly authorized representative of such officer, as those terms are defined in §22a-430-3(b)(2) of the Regulations of Connecticut State Agencies, and by the individual(s) responsible for actually preparing such document, and each such individual 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, based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, that 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 under §53a-157b of the Connecticut General Statutes and any other applicable law.”

12. 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 Respondent to an injunction and penalties under Chapters 439, and 446i of the General Statutes.
13. 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.
14. 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.
15. 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.
16. Respondent's obligations under law. Nothing in this Consent Order shall relieve

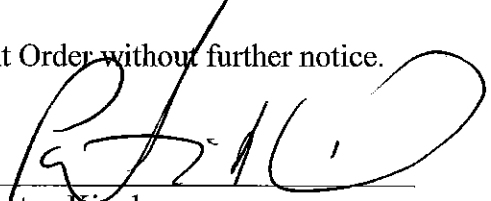
Respondent of other obligations under applicable federal, state and local law.

17. 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.
18. 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.
19. 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.
20. 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.
21. 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 L. Bailey, Environmental Analyst 3  
Department of Energy & Environmental Protection  
Land & Water Resources Division  
79 Elm Street  
Hartford, CT 06106-5127  
(860) 424-3625  
Fax # (860) 424-4054

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

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

  
\_\_\_\_\_  
Paxton Kinol  
Baypointe Holding, LLC

  
\_\_\_\_\_  
Date

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

August 17, , 2017.

  
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Robert E. Kaliszewski  
Deputy Commissioner