



STATE OF CONNECTICUT File # LIS-2018-4003-V Date Issued: 10/22/2018

v.

170 KENWOOD AVENUE, LLC

CONSENT ORDER

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

1. 170 Kenwood Avenue, LLC ("Respondent") is the owner of 170 Kenwood Avenue, Fairfield, CT. ("The Property"). The property is located adjacent to Ash Creek, 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 December 14, 2009, the Department issued Notice of Violation (NOV) #LIS-2009-132-V to the prior property owner Zolton Toth for the placement of fill consisting of crushed stone and boulders along the entire shoreline of the property.
3. Upon removal of the fill and stabilization of the property, the Department determined that the site returned to compliance and signed a Department memo closing the violation dated May 12, 2010.
4. On or before August 21, 2018, without authorization, Respondent has installed or is maintaining an approximately 20' wide x 150' long area of fill consisting of soil, rock, wood, asphalt, and asphalt millings located along the north to northeastern shoreline of the property waterward of the coastal jurisdiction line (CJL) and within tidal wetlands. In addition, Respondent has installed or is maintaining an approximately 100 linear foot-long flood and erosion control structure consisting of rock, soil, wire fence, and horizontal wooden piles located along the eastern shoreline of the property some of which is waterward of the CJL and within an area of tidal wetlands. Such structure was constructed without a lawful coastal site plan approval from the Town of Fairfield pursuant to sections 22a-105, 22a-106, and 22a-109 of the General Statutes. This activity may have resulted in the creation of a public nuisance pursuant to section 22a-108 of the

GGS.

5. Respondent did not receive a certificate or permit from the Commissioner under sections 22a-361 and 22a-32 of the CGS for the placement or maintenance of any fill or structure waterward of the CJL described in paragraph A.4 at the site.
 6. The property and the location of the work described in paragraph A.4., above, shall hereinafter be referred to as "the Site."
 7. By virtue of the above, Respondent has violated sections 22a-361 and 22a-32 of the CGS.
- 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. Obtain one or more of the necessary Consultants. Within 7 days of the issuance of this Order, the Respondent shall identify for the Commissioner's written approval a State of Connecticut licensed Land Surveyor, Professional Engineer, or other qualified consultant(s) acceptable to the Commissioner, to aid in the preparation of the drawings and proposal to restore the site to the pre-work condition as identified in paragraph B.2., below and retain such consultants approved by the Commissioner until full compliance with this Order has been achieved. No later than three days after retaining any consultant other than one previously approved by the Commissioner, the Respondent shall submit to the Commissioner the identity of such other consultant for the Commissioner's review and written approval. If requested by the Commissioner, the Respondent shall submit to the Commissioner a description of a consultant's education, experience and training which is relevant to the work required by this Order within three days after a request for such a description. Nothing in this paragraph shall preclude the Commissioner from finding a previously acceptable consultant unacceptable.
 2. Removal of Fill. Within 21 days of issuance of this Order, Respondent shall submit for the review and written approval of the Commissioner, a plan to remove all unauthorized fill at the Site including any shoreline flood and erosion control structures, soil, stone, wood, asphalt or other fill materials to the satisfaction of the Commissioner. Such plan must include an existing site survey prepared by a professional licensed surveyor in the State of Connecticut. The survey must show the existing location of the CJL for the Town of Fairfield, the location of mean high water, and tidal wetlands. The plan must propose to remove all the unauthorized fill at the Site currently waterward of the CJL and in tidal wetlands. Upon removal of such fill, the plan shall propose to: stabilize the shoreline area with vegetation; remediate impacts to tidal wetlands by installing tidal wetland plant plugs 1 foot on center; and monitor the site for two years to ensure successful stabilization and remediation. The plan must contain a detailed construction methodology to complete this work and leave the Site in a stable condition with properly installed and

maintained erosion controls. Such plan shall provide for the completion of all work no later than 21 days after the Commissioner's written approval of such plan.

3. Respondent shall contact the Commissioner within 24 hours of initiation of the work required under paragraph B.2 of this Order.
4. Respondent shall notify the Commissioner in writing within 24 hours of the completion of the required work at the Site.
5. 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.
6. 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.
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 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 that Respondent become 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 a duly authorized representative of the Respondents 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."
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 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.
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:

170 Kenwood Ave, LLC
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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.



170 Kenwood Ave, LLC
Austin Ganim, member

10/2/2018

Date

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

October 22, 2018.



Robert E. Kaliszewski
Deputy Commissioner