



79 Elm Street • Hartford, CT 06106-5127

www.ct.gov/deep

Affirmative Action/Equal Opportunity Employer

STATE OF CONNECTICUT File # LIS-2018-4038-V Date of Issuance: 7/5/2019

v.

SHM PILOTS POINT, LLC

CONSENT ORDER

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

1. SHM Pilots Point, LLC ("Respondent") is the owner of property 63 Pilots Point Drive, Northern Yard, Westbrook, CT ("The Property"). The property is located adjacent to the Patchogue 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 November 23, 2018, without any authorization, Respondent installed a new concrete "jersey" type barrier with associated backfill and base landward of an existing area of riprap located along the shoreline of the marina south of Dock #10. The unauthorized barrier is approximately 330 linear feet long and approximately 3 feet high and is supported by a base. This barrier was constructed waterward of the coastal jurisdiction line without authorization under section 22a-361 of the CGS.
3. In response to the unauthorized work, on December 13, 2018, the Department issued Notice of Violation (NOV) #LIS-2018-4038-V to the Respondent to submit an application to bring the site into compliance.
4. The property and the location of the work described in paragraph A.1., shall hereinafter be referred to as "the site."
5. The Respondent has not received a lawful coastal site plan approval from the Town of Westbrook for the construction of the concrete barrier described in paragraph A.2., above, pursuant to sections 22a 105, 22a-106, and 22a-109 of the CGS.

6. The unauthorized construction of the concrete barrier has resulted in the creation of a public nuisance pursuant to section 22a-362 of the CGS.
7. By virtue of the above, the Respondent has violated section 22a-361 of the CGS.
- 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:
 - a. No later than ninety (90) days after issuance of this Consent Order, Respondent shall submit a permit application to retain the concrete barrier and associated backfill described in paragraph A.2., above. Such application shall include all information required on forms prescribed by the Commissioner, including a justification for the purpose and need for the concrete barrier and fill, 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 of or denies the request to retain the concrete structure and backfill, 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 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.
 2. 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.
 3. 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.
 4. Civil penalty. The Respondent shall pay a penalty of \$2,500 as the total civil penalty to be sought by the Commissioner for those, and only those, violations described in paragraph A.2. of this Order. This penalty shall be paid in accordance with paragraph B.5 of this Order.
 5. 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-2018-4038-V."

6. 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.
7. 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.
8. 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.
9. 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.

10. 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."
11. 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.
12. 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.
13. 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.
14. 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.

15. Respondent's obligations under law. Nothing in this Consent Order shall relieve Respondent of other obligations under applicable federal, state and local law.
16. 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.
17. 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.
18. 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.
19. 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.
20. 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.


~~SHM Point Marina, LLC~~ SHM Pilots Point, LLC
c/o, Member, Duly Authorized
Officer,
5/16/19

Date

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

July 5, 2019.



Betsey Wingfield
Deputy Commissioner