

180 Pine Orchard Road
Branford, CT 06405
pineorchardassociation.com



PINE ORCHARD ASSOCIATION
Branford, Connecticut

January 8, 2024

Jeffrey Caiola, Assistant Director, Land and Water Resource Division
Bureau of Water Protection and Land Resources
Department of Energy & Environmental Protection 79 Elm Street
Hartford, CT 06106

Re: Response to Notice of Non-Compliance #LIS 2023-4736-V

Dear Mr. Caiola:

We received the DEEP above-referenced notice of Non-Compliance dated December 13, 2023. On behalf of the Pine Orchard Association, Inc., I request that you permit the temporary safety measure to remain in place until the remedial work to repair the existing stairs can be accomplished as permitted under 202303146-COP.

The Pine Orchard Association, Inc. is a municipal subdivision within the Town of Branford and bounded to the South by Long Island Sound. Among its public functions is maintaining nine water access points, which provide public access to Long Island Sound. A board of 12 civic-minded volunteers runs it and has no paid staff but an administrative person who works 4 hours a week. The subject site, located at the terminus of Crescent Bluff Ave, is one of these water access points.

For the past 25 years, and continuing even today, this access point has been the subject of litigation, which sought and continues to seek clarification of the rights of the public and the residents on Crescent Bluff Ave. to access Long Island Sound. For the past 12 years, the POA has steadfastly advocated for, at a significant expense, the public's right to access Long Island Sound through the terminus of Crescent Bluff, including the stairs that provide access down the embankment to the water. During this litigation, the public's access to the water over this land and down the stairs was severally curtailed, and the POA, who, for more than fifty years prior, maintained a set of stairs to the water for public access, shied away from maintaining the stairs because of the viciousness of the litigation. During that period, the stairs fell into disrepair and, as of 2023, presented as a hazard for the public seeking access to the water.

In December of 2022, the POA finalized a significant portion of the litigation and, in so doing, obtained title to an 11-foot-wide piece of land to provide public access from the end of Crescent Bluff Ave., down the stairs, and to Long Island Sound. Unfortunately, the POA was almost immediately dragged into further litigation seeking to resolve specific property claims by the adjoining landowners (1 & 2 Crescent Bluff Ave.), which litigation potentially could adversely affect the public's practical access to Long Island Sound across the POA land.

Even while this most recent litigation was pending, the POA did seek and eventually obtained permission to provide safe public access to water from the stairs. However, given the looming litigation, the significant expense the POA had already incurred to preserve public access to the water, and the uncertainty of the outcome of the current litigation, the POA was reluctant to expend the significant amount of money required to complete the repairs as permitted. Furthermore, the practical difficulty was that by the time the POA obtained its permit, its contractor was committed to other projects through the fall of 2023 and could only commit to undertaking this project in the spring of 2024. Given recent developments in the litigation, the POA has achieved a comfort level that its rights to the property conveyed by it and its ability to provide access to the public will not be adversely affected by any outcomes of the litigation and give the ability of its contractor, the POA is fully committed to completing the full set of repairs as provided for permitted under 202303146-COP during the late spring of 2024 at which time the temporary repair will be removed.

After receiving the letter of compliance directive from DEEP and speaking with our DEP consultant, we now understand that the temporary stairs should have been permitted separately. It was not the POA's intention to disregard any rule or regulation; it just sought to provide the safe access to Long Island Sound that the public had waited for far too long.

According to the POA requests:

1. an extension of the deadline for compliance until June 1, 2024;
2. Administrative consideration for any agreeable safety measures to ensure safe access until new stairs are built.

Sincerely,



Vinent S. Giordano, Jr.
President, Pine Orchard Association

CC: (by email) Karen Jubanyik, David Silverstone (POA Waterfront Committee)
John Lust, Attorney, Peter Berdon,
Katherine Becker, EA III, DEEP & Emily Hertz, DEEPLWRD
Kevin Kotelly, USACE