

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

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IN THE MATTER OF: )  
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**Katherine Duncan** )  
**12952 County Road 1** )  
**Fairhope, Baldwin County, Alabama** )  
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\_\_\_\_\_ )

) Consent Order No.:XXX-XXXX

**PREAMBLE**

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "Department" or "ADEM") and Katherine Duncan (hereinafter "Duncan") pursuant to the provisions of the Alabama Environmental Management Act, Code of Alabama (1975), §§ 22-22A-1 to -17, *as amended*, and the Coastal Area Management Act, Code of Alabama (1975), §§ 9-7-10 to -20, *as amended*, and the ADEM Administrative Code of Regulations (hereinafter "ADEM Admin. Code R.") promulgated pursuant thereto.

**STIPULATIONS**

1. Duncan is in possession of Baldwin County property parcel 05-56-09-30-0-000-014.001, located at 12952 County Road 1 in Fairhope, Baldwin County, Alabama (the "Site"). The site is located within the coastal area as defined by *Ala. Code* § 9-7-10(1) (1975), as amended. On the Site, Duncan placed unauthorized fill into coastal wetlands.
2. The Department is a duly constituted department of the State of Alabama pursuant to Code of Alabama (1975), § 22-22A-1 to -17, *as amended*.
3. The Department, pursuant to Code of Alabama (1975), § 22-22A-4(n), *as amended*, is the state agency responsible for the promulgation and enforcement of coastal area management regulations in accordance with the provisions of the Coastal Area Management Act, Code of Alabama (1975), §§ 9-7-10, to -17, -20, *as amended*.

## DEPARTMENT'S CONTENTIONS

4. Pursuant to ADEM Admin Code r. 335-8-1-.03(1), persons desiring to conduct a use within the coastal area requiring a consistency determination for federally regulated activities, or a non-regulated use described in ADEM Admin. Code r. 335-8-1-.11, shall obtain, as appropriate, either a consistency determination or permit from the Department that assesses whether or not the use is consistent with the applicable provisions of the ADEM's Division 8 Administrative Code.
5. Pursuant to ADEM Admin Code r. 335-8-1-.09(1) and ADEM Admin Code r. 335-8-1-.11, federally regulated activities and non-regulated uses affecting the coastal area are required to be conducted in a manner consistent with the Alabama Coastal Area Management Program ("ACAMP"). Among these activities are permits required under 33 U.S.C. §1344 (to fill wetlands). ADEM Admin. Code r. 335-8-2-.02 codifies the Department's rules and regulations relative to placement of fill into coastal wetlands and/or the dredging of wetlands or state waterbottoms.
6. On July 24, 2024, the Department conducted an inspection of the site in the company of a Baldwin County Planning and Zoning inspector and Duncan. The inspection documented that fill had been placed in coastal wetlands on the Site without an affirmative consistency determination for federally regulated activities or a non-regulated use permit from the Department. Therefore, Duncan violated ADEM Admin. Code r. 335-8-1-.03(1) for placing fill into coastal wetlands without first obtaining from the ADEM either an ADEM permit or a consistency determination that assessed whether or not the placement of fill material into coastal wetlands was consistent with the applicable provisions of the ADEM's Division 8 Administrative Code. Duncan declined to voluntarily remove the fill from the wetland areas.
7. On September 18, 2024, a Notice of Violation (NOV) was issued to Duncan for ADEM Division 8 violations. No response to the NOV was received from Duncan.

8. Duncan consents to abide by the terms of the following Consent Order and to pay the civil penalty assessed herein.

9. Pursuant to Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol. and 2014 Cum. Supp.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violations, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violations upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an Order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATIONS:** The Department considered the general nature of each violation, the magnitude and duration of each non-compliant discharge, their effects, if any, on impaired waters, and any available evidence of irreparable harm to the environment or threat to the public. The Department determined the base penalty to be \$5,000.

B. **THE STANDARD OF CARE:** In considering the standard of care manifested by Duncan, the Department noted that violations continue to be observed at the Site. In consideration of this factor, the Department noted that the standard of care taken by Duncan was not commensurate with the applicable regulatory requirements and increased the penalty by an additional \$5,000.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Department has not determined there was a significant economic benefit gained because of the violations referenced herein.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT: In consideration of this factor, the Department noted that Duncan declined to voluntarily remove the fill to comply with the applicable regulatory requirements and the fill remains in coastal wetlands. The Department increased the penalty by an additional \$5,000.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department is not aware of historical violations occurring before those addressed herein.

F. THE ABILITY TO PAY: The Department is unaware of any evidence regarding Duncan's inability to pay the civil penalty.

G. The Civil Penalty is summarized in the penalty synopsis (Attachment "A".)

H. It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty the Department believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

10. The Department neither admits nor denies Duncan's Contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violation(s) cited herein without the unwarranted expenditure of State resources in further prosecuting the alleged violation(s). The Department has determined that the terms contemplated in this Consent Order are in the best interest of the citizens of Alabama.

#### **DUNCAN'S CONTENTIONS**

11. Duncan neither admits nor denies the Department's Contentions. Duncan consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

**ORDER**

Therefore, without admitting that it has violated any statutes or regulations, Duncan, along with the Department, desires to resolve and settle the alleged violations issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)(c), as amended, as well as the need for timely and effective enforcement.

The Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Duncan (collectively "Parties") agree to enter into this Consent Order with the following terms and conditions:

A. That Duncan shall pay to the Department a civil penalty in the amount of \$2,000 in settlement of the violations alleged herein within forty-five (45) days from the issuance of this Consent Order. Failure to pay the civil penalty within forty-five (45) days from the date of issuance of this Consent Order may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. That all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel  
Alabama Department of Environmental Management  
PO Box 301463  
Montgomery, Alabama 36130-1463

C. That, within sixty (60) days of the date of issuance of this Consent Order, Duncan shall have had all fill material removed from impacted wetlands areas to the pre-impact elevation.

D. That, within ninety (90) days of the date of issuance of this Consent Order, Duncan shall submit to the Department certification that the restoration of coastal resources required in paragraph C. above has been completed.

E. That this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to

this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

F. That, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

G. That Duncan is not relieved from any liability if Duncan fails to comply with any provision of this Consent Order.

H. That, for purposes of this Consent Order only, the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. In any action brought by the Department to compel compliance with the terms of this Agreement, Duncan shall be limited to the defenses of Force Majeure, compliance with this Agreement and physical impossibility. A Force Majeure is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of Duncan, including Duncan's contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of Duncan) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute Force Majeure. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten (10) working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of Duncan, the Department may extend the time as justified by the circumstances. The Department may

also grant any other additional time extension as justified by the circumstances, but the Department is not obligated to do so.

I. That the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the Site which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and Duncan shall not object to such future Orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

J. That this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and Duncan does hereby waive any hearing on the terms and conditions of the same.

K. That this Consent Order shall not affect Duncan's obligation to comply with any federal, State, or local laws or regulations.

L. That final approval and entry into this Consent Order are subject to the requirements that the Department give notice of proposed penalty Orders to the public, and that the public have at least thirty (30) days within which to comment on the Consent Order.

M. That, should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with federal or State law and therefore unenforceable, the remaining provisions herein shall remain in full force and effect.

N. That any modifications of this Consent Order must be agreed to in writing and signed by both Parties.

O. That, except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under federal, State

or local law, and shall not be construed to waive or relieve Duncan of Duncan's obligations to comply in the future with any permit.

Executed in duplicate with each part being an original.

KATHERINE DUNCAN

ALABAMA DEPARTMENT OF ENVIRONMENTAL

Katherine Duncan

(Signature of Authorized Representative)

\_\_\_\_\_  
Lance R. LeFleur  
Director

Katherine Duncan

(Print Name of Authorized Representative)

Date Signed: \_\_\_\_\_

owner

Title

Date Signed: 3/20/25



## ATTACHMENT 1 - PENALTY SYNOPSIS

ACAMP-2018-007.3  
 Katherine Duncan  
 Parcel 05-56-09-30-0-000-014.001  
 12952 County Road 1  
 Fairhope, Baldwin County, Alabama

Violation	Number of Violations	Seriousness of Violation & Base Penalty	Standard of Care	Effort to Resolve the Violation
<b><u>ADEM Admin Code R. 335-8-1-.03:</u></b> Failure to obtain a permit or consistency determination prior to conducting a use.	1	\$5,000	\$5,000	\$5,000
Totals:	1	\$5,000	\$5,000	\$5,000
Economic Benefit:				
Sub-Total:				\$15,000
Mitigating Factors:				
Ability to Pay:				
Other Factors:				(13,000)
Amount of Initial Penalty:				\$15,000
Total Adjustments:				-13,000
Final Penalty:				\$2,000