

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:

Robert Hallmark  
Tin Top Riverside, LLC  
Bon Secour, Baldwin County, Alabama

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)  
) Consent Order No.:XXX-XXXX  
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PREAMBLE

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

STIPULATIONS

1. The Owner possesses Baldwin County waterfront property parcels 05-60-06-39-0-000-049.003 and 05-60-06-38-0-000-084.000 located at 17451 County Road 40 in Bon Secour, Baldwin County, Alabama (the "Site") adjacent to the Bon Secour River. On the Site, the Owner is constructing a new restaurant called Tin Top Riverside. The parcels are within the coastal area as defined by Ala. Code § 9-7-10(1) (1975), as amended.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code § 22-22A-1 through 22-22A-17, as amended.
3. The Department, pursuant to Ala. Code § 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, Ala. Code §§ 9-7-10 through 9-7-20, as amended.

#### DEPARTMENT 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), federally regulated activities affecting the coastal area are required to be conducted in a manner consistent with the Alabama Coastal Area Management Program ("ACAMP"), carried out in ADEM's Division 8 Administrative Code.
6. Pursuant to ADEM Admin Code r. 335-8-1-.11, any person wishing to conduct a "non-regulated use", i.e., a use subject to the ACAMP and not requiring a "state permit", must make an application to the Department for a Department permit.
7. ADEM Admin. Code r. 335-8-2-.02 codifies the Department's rules and regulations relative to placement of fill into coastal wetlands and the dredging of wetlands or state waterbottoms.
8. ADEM Admin. Code r. 335-8-2-.06 codifies the Department's rules and regulations relative to emplacement of structural shoreline armament along shorelines in the coastal area.
9. On January 25, 2022, the Department conducted an inspection of the site. The inspection documented that coastal wetlands on the site had been filled without an affirmative consistency determination for federally regulated activities or a non-regulated use permit from the Department. Therefore, the Owner 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. The Owner agreed to voluntarily remove the fill materials from the wetland areas, so the Department did not pursue formal enforcement actions for this violation.

10. During May 2022, Baldwin County Commission inspectors documented that the fill had been removed from the wetlands. In April 2023, Baldwin County Commission inspectors observed that native wetlands vegetation had re-established in the restored wetland areas.

11. On August 14, 2023, the Department was notified by a Baldwin County Commission inspector that the previously restored wetlands had been re-filled and additional coastal wetlands on the property parcels were also filled. On August 18, 2023, a joint-agency site inspection was conducted with the ADEM, a Baldwin County Commission inspector, and the Owner's environmental consultant. The inspection revealed that coastal wetlands on the parcels had been filled with white sand and gravel and also, that structural shoreline armament had been installed along the bank of Bon Secour River fronting both parcels. Therefore, the Owner again violated ADEM Admin. Code r. 335-8-1-.03(1) by placing fill into coastal wetlands and also by constructing structural shoreline armament along the bank of the Bon Secour River without first obtaining from the ADEM either an ADEM permit or a consistency determination that assessed whether or not the activities (uses) were consistent with the applicable provisions of the ADEM's Division 8 Administrative Code.

12. On August 31, 2023, a Notice of Violation (NOV) was issued to the Owner for ADEM Division 8 violations.

13. On September 27, 2023, an NOV response was submitted to the Department which indicated that the Owner intended to remediate the filled coastal wetlands areas in full but did not intend to remove the structural shoreline armament.

14. On September 28, 2023, an on-site meeting was held that included ADEM, the Owner's environmental consultant, Alabama Department of Conservation and Natural Resources - State Lands Division, and the Baldwin County Commission inspector. In this

meeting the Owner's environmental consultant stated that the Owner does not intend to remove coastal wetlands fill in full and would seek after-the-fact authorization to retain fill material placed in those coastal wetlands as well as retain the structural shoreline armament constructed along the bank of Bon Secour River. Also, during this meeting, it was revealed to the Department that coastal wetlands and state waterbottoms had also been dredged from the area along the shoreline fronting the two parcels seaward of the newly placed structural shoreline armament. Therefore, the Owner violated ADEM Admin. Code r. 335-8-1-.03(1) for dredging coastal wetlands and state waterbottoms along the bank of the Bon Secour River without first obtaining from the ADEM either an ADEM permit or a consistency determination that assessed whether or not the activities (uses) were consistent with the applicable provisions of the ADEM's Division 8 Administrative Code.

15. On October 20, 2023, the Department conducted a follow-up inspection and documented that some fill material had been excavated from a wetland area from the landward side of the bulkhead but full restoration of the violations had not been accomplished.

16. On November 3, 2023, TTL submitted an after the fact joint application form to the Department and the United States Army Corps of Engineers requesting authorization for "a retaining wall, bulkhead, and the installation of a dock".

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 \$40,000.

B. **THE STANDARD OF CARE:** In considering the standard of care manifested by the Owner, the Department noted that violations continue to be observed at the Site after it exercised leniency for the original coastal wetlands fill violation and issuing less formal enforcement for the subsequent violations. In consideration of this factor, the Department noted that the standard of care taken by the Owner was not commensurate with the applicable regulatory requirements and increased the penalty by an additional \$20,000.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Owner avoided certain costs associated with proper filing of an application. Based on the Department's estimates of these delayed costs and the timeframe of non-compliance, the Department determined that the Owner did derive a significant economic benefit from these violations and increased the penalty by an additional \$5,400.

D. **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT:** The Department is unaware of any efforts by the Owner to minimize or mitigate the effects of the violations upon the environment.

E. **HISTORY OF PREVIOUS VIOLATIONS:** The Department is not aware of historical violations previous to those addressed herein.

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

G. **The Civil Penalty is summarized in the penalty synopsis.**

I. The Department neither admits nor denies the Owner'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.

#### OWNER'S CONTENTIONS

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

#### ORDER

Therefore, the Owner, along with the Department, desires to resolve and settle the alleged violations 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 the Owner (hereinafter collectively "Parties") agree to enter into this Consent Order with the following terms and conditions:

A. That the Owner shall pay to the Department a civil penalty in the amount of \$25,000 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 effective date 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 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.

D. 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.

E. That the Owner is not relieved from any liability if the Owner fails to comply with any provision of this Consent Order.

F. 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, the Owner 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 the Owner, including the Owner'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 the Owner) 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 the Owner, 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.

G. 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 the Owner 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.

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

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

J. 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.

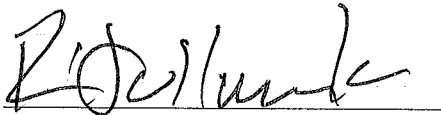
K. That, should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with federal or State law and therefore unenforceable, the remaining provisions herein shall remain in full force and effect.

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

M. 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 the Owner of its obligations to comply in the future with any permit.

Executed in duplicate with each part being an original.

ROBERT HALLMARK



(Signature of Authorized Representative)



(Print Name of Authorized Representative)



Title

Date Signed: 4.24.25

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL

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

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

## ATTACHMENT 1 - PENALTY SYNOPSIS

Robert Hallmark Parcels 05-60-06-39-0-000-049.003 and 05-60-06-38-0-000-084.000 located at 17451 County Road 40 in Bon Secour, Baldwin County, Alabama

Violation	Number of Violations	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
335-8-1-.03 - Failure to obtain a permit or Consistency determination prior to conducting a use	4	\$40,000	\$20,000	
Totals:	4	\$40,000	\$20,000	

Economic Benefit*:	\$5,400
Sub-Total:	\$65,400
Mitigating Factors*:	
Ability to Pay*:	
Other Factors*:	\$40,400
Amount of Initial Penalty:	\$65,400
Total Adjustments:	\$40,400
Final Penalty:	\$25,000