

STATE OF ALABAMA     )  
CALHOUN COUNTY        )

DEED           3332     305  
Recorded In Above Book and Page  
04/01/2024 02:15:45 PM  
Alice K. Martin  
Judge of Probate  
Calhoun County, Alabama  
  
Recording Fee           0.00  
TOTAL                   0.00

**THE MCCLELLAN DEVELOPMENT AUTHORITY**  
**ENVIRONMENTAL COVENANT**  
**NUMBER FY-23-01.00**

KNOW ALL MEN BY THESE PRESENTS: That pursuant to the Alabama Uniform Environmental Covenants Act, §§ 35-19-1 through 35-19-14, Code of Alabama 1975, as amended, (the "Act") and the ADEM Administrative Code of Regulations promulgated thereunder,

**THE MCCLELLAN DEVELOPMENT AUTHORITY**

(hereinafter "MDA" or "Grantor") grants this Environmental Covenant, Numbered FY-23-01.00 which constitutes a servitude arising under an environmental response project that imposes activity and/or use limitations, to the following statutory Holder:

**THE MCCLELLAN DEVELOPMENT AUTHORITY**

("MDA"), (hereinafter "Grantee" or "Holder"), to-wit:

WHEREAS, the MDA is the owner of a portion of that certain real property known as "CERFA Parcels 081(5) and 175(5)" also known as Landfill #4 and Butler Green Industrial Landfill, respectively (see Exhibit "A", attached hereto) which is located on the grounds of the former Fort McClellan, in the City of Anniston, Calhoun County, Alabama (the "Property"), which was conveyed to MDA by deed dated April 1, 2010, and recorded in the Office of the Judge of Probate for said County, Alabama, in Deed Book 3125 at Page 275; and,

WHEREAS, the Covenant Boundary is more particularly described as follows:

***LANDFILL #4, PARCEL 081(5) and BUTLER GREEN INDUSTRIAL LANDFILL,  
PARCEL 175(5) DESCRIPTION***

A parcel of land described as follows:

**COMMENCING** at a brass disk found at the northwest corner of Section 10, Township 15 South, Range 8 East; runs thence South 01 degrees 04 minutes 35 seconds East, 1733.31 feet; thence North 88 degrees 55 minutes 25 seconds East, 1686.76 feet to a 5/8-inch rebar with cap found at the **POINT OF BEGINNING**; thence North 23 degrees 42 minutes 35 seconds West, 6.07 feet; thence North 11 degrees 54 minutes 34 seconds West, 294.84 feet to a 5/8-inch rebar with cap found; thence North 80 degrees 22 minutes 37 seconds East, 60.58 feet to a 5/8-inch rebar with cap found; thence North 12 degrees 35 minutes 58 seconds East, 286.40 feet to a 5/8-inch rebar with cap found; thence North 68 degrees 35 minutes 53 seconds West, 151.38 feet to a 5/8-inch rebar with cap found; thence North 23 degrees 56 minutes 45 seconds East, 235.53 feet to a 5/8-inch rebar with cap found; thence North 78 degrees 56 minutes 53 seconds East, 489.12 feet

to a 5/8-inch rebar with cap found; thence North 80 degrees 54 minutes 36 seconds East, 456.24 feet to a 5/8-inch rebar with cap found; thence South 82 degrees 03 minutes 00 seconds East, 159.04 feet; thence North 78 degrees 24 minutes 32 seconds East, 499.97 feet to a 1-inch rebar found; thence South 60 degrees 54 minutes 44 seconds East, 411.43 feet to a 1-inch rebar found; thence South 09 degrees 13 minutes 35 seconds West, 119.84 feet to a 1-inch rebar found; thence South 16 degrees 16 minutes 46 seconds East, 193.00 feet; thence South 01 degrees 27 minutes 49 seconds West, 15.94 feet; thence South 01 degrees 27 minutes 49 seconds West, 504.85 feet to a 1/2-inch rebar with cap number 17520 found; thence South 74 degrees 12 minutes 00 seconds West, 386.01 feet to a 5/8-inch rebar with cap found; thence South 70 degrees 29 minutes 50 seconds West, 305.92 feet to a 5/8-inch rebar with cap found; thence South 74 degrees 37 minutes 09 seconds West, 708.35 feet to a 5/8-inch rebar with cap found; thence South 84 degrees 27 minutes 24 seconds West, 231.28 feet to a 5/8-inch rebar with cap found; thence South 75 degrees 18 minutes 40 seconds West, 230.72 feet to a 5/8-inch rebar with cap found; thence North 23 degrees 42 minutes 35 seconds West, 438.70 feet to the POINT OF BEGINNING and containing 53.05 acres, more or less.

WHEREAS, this instrument is an Environmental Covenant developed and executed pursuant to The Alabama Uniform Environmental Covenants Act and the regulations promulgated thereunder;

WHEREAS, Parcels 081(5) opened in 1967 as an unlined trench and fill landfill for disposal of Fort McClellan household garbage, construction and demolition debris, oil-contaminated soil and dead animals and was closed in 1994. Parcel 175(5) is located within Landfill #4 and was not previously used. In 1993, Parcel 175(5) received a permit to dispose of industrial and construction debris on top of the filled trenches and stopped receiving waste in 2022. The waste disposed of will remain in place and will require maintenance of final cover systems;

WHEREAS, the remedial action plan drawings were approved by ADEM on November 30, 2007 and updated on July 7, 2016 and again approved by ADEM on July 25, 2016;

WHEREAS, the selected remedial action for the property includes soil caps, which have been implemented;

WHEREAS, the remedial action plan, the final cap, was approved by ADEM on August 30, 2022, following ADEM's closure inspection of the final cap on August 29, 2022;

WHEREAS, Parcels 081(5) and 175(5) have land use controls preventing residential use and excavations within the landfill area, monuments and signs to outline the property boundary and maintenance and repair of the engineered cap;

WHEREAS, the selected "remedial action" for the Property, which has now been implemented, providing in part, for the following actions,

#### DESCRIPTION OF REMEDIAL ACTION:

WHEREAS, pursuant to the Alabama Hazardous Wastes Management and Minimization

Act of 1978, (AHWMMA), Ala. Code §§ 22-30-1 to 22-30-24, as amended, the GRANTOR and assignees agreed to perform operation and maintenance activities at the Property, pursuant to an ADEM Cleanup Agreement Number AL4-210-020-562 to address the effects of the release/disposal, which includes controlling exposure to the hazardous wastes, hazardous constituents, hazardous substances, pollutants, or contaminants;

WHEREAS, the said Cleanup Agreement requires institutional controls to be implemented to address the effects of the release/disposal and to protect the remedy so that exposure to the hazardous waste, hazardous constituents, hazardous substances, pollutants, or contaminants is controlled by restricting the use of the Property and the activities on the Property;

WHEREAS, hazardous wastes, hazardous constituents, hazardous substances, pollutants, or contaminants remain on the Property;

WHEREAS, the purpose of this Covenant is to ensure protection of human health and the environment by placing restrictions on the Property in accordance with the approved Cleanup Agreement; and

WHEREAS, further information concerning the remediation activities, including the Administrative Record, may be obtained by contacting:

Chief, Land Division  
**Alabama Department of Environmental Management**  
 1400 Coliseum Boulevard  
 Montgomery, Alabama 36110  
 (334) 271-7700

NOW, THEREFORE, Grantor hereby grants this Environmental Covenant to the named Holder, and declares that the Property shall hereinafter be bound by, held, sold, used, improved, occupied, leased, hypothecated, encumbered, and/or conveyed subject to the requirements set forth below:

1. **DEFINITIONS**

Owners. "Owners" means the GRANTOR, its successors and assigns in interest.

2. **USE RESTRICTIONS**

Activities that violate the following restrictions shall not take place on the Property without obtaining prior written approval from ADEM:

- (i) The facility shall inspect and maintain the engineered landfill cap at the location shown in Exhibit A, as described and required in ADEM Rule 335-13 or Permit 08-02.
- (ii) Residential use of the property is prohibited. Residential uses include, but are not limited to, housing, daycare facilities, playgrounds and schools (excluding education and training programs for persons over 18 years of age), and assisted living facilities.
- (iii) Use of the property is restricted to surface use only. Digging or excavation is prohibited.

- (iv) Use of groundwater for potable water, irrigation, industrial and agricultural applications is not allowed at CERFA Parcel 81(5).
- (v) The installation of any well for extraction of groundwater for purposes of consumptive or other uses (unless said wells are intended to be utilized by the Holder or ADEM for groundwater monitoring) is prohibited.
- (vi) Permanent monuments marking the boundary of Landfill 4 have been installed and signs prohibiting intrusive activities have been posted.
- (vii) Grantor reserves an access easement to the Property in any case in which a response action or corrective action is found to be necessary after the date of the establishment of this covenant upon such Property, or in any case such access is necessary to carry out a response action or corrective action on adjoining property.

### 3. GENERAL PROVISIONS

- A. Restrictions to Run with the Land. This Environmental Covenant runs with the land pursuant to §35-19-5, Code of Alabama 1975, as amended; is perpetual unless modified or terminated pursuant to the terms of this Covenant or §35-19-9 Code of Alabama 1975, as amended; is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof; inures to the benefit of and passes with each and every portion of the Property; and binds the Owner, the Holder, all persons using the land, all persons, their heirs, successors and assigns having any right, title or interest in the Property, or any part thereof who have subordinated those interests to this Environmental Covenant, and all persons, their heirs, successors and assigns who obtain any right, title or interest in the Property, or any part thereof after the recordation of this Environmental Covenant.
- B. Notices Required. In accordance with §35-19-4(b), Code of Alabama 1975, as amended, the Owner shall send written notification pursuant to Section I, below, upon any of the following events affecting the property subject to this covenant: Transfer of any interest, any proposed changes in the use of the property, any applications for building permits, or any proposals for site work that could affect the subsurface areas or contamination on the Property. The Owner shall send this notification within fifteen (15) days of each event listed in this Section.
- C. Registry/Recordation of Environmental Covenant; Amendment; or Termination. Pursuant to §35-19-12(b), Code of Alabama 1975, as amended, this Environmental Covenant and any amendment or termination thereof, shall be contained in the ADEM Registry of Environmental Covenants. After an environmental covenant, amendment, or termination is filed in the registry, a notice of the covenant, amendment, or termination may be recorded in the land records in lieu of recording the entire covenant in compliance with §35-19-12(b). Grantor shall be responsible for filing the Environmental Covenant within thirty (30) days of the final required signature.
- D. Compliance Certification. In accordance with Ala. Code §35-19-4(b), as amended, the Owner shall submit a report on the effectiveness of the land use controls to the Chief of the ADEM Land Division, on an annual basis. The Land Use Control Effectiveness Report (LUCER) shall be submitted in accordance with §IV.B.9. of the Cleanup Agreement each March and shall detail the Owner's compliance, and any lack of compliance with the terms of the Covenant during the preceding calendar year.

- E. Right of Access. Subject to the requirements of the above-referenced Cleanup Agreement, the Owner hereby grants to ADEM, ADEM's agents, contractors and employees; the Owner's agents, contractors and employees; and any other named Holder, its agents, contractors and employees, the right of access to the Property for implementation or enforcement of this Environmental Covenant.
- F. ADEM Reservations. Notwithstanding any other provision of this Environmental Covenant, ADEM retains all of its access authorities and rights, as well as all of its rights to require additional land/water use restrictions, including enforcement authorities related thereto.
- G. Representations and Warranties. Grantor hereby represents and warrants as follows:
- i) That the Grantor has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided, and to carry out all obligations hereunder;
  - ii) That the Grantor is the sole owner of the Property and holds fee simple title which is free, clear and unencumbered;
  - iii) That the Grantor has identified all other parties that hold any interest or encumbrance affecting the Property and has notified such parties of the Grantor's intention to enter into this Environmental Covenant.
  - iv) That this Environmental Covenant will not materially violate, contravene, or constitute a material default under, any other agreement, document, or instrument to which any Grantor is a party, by which such Grantor may be bound or affected;
  - v) That this Environmental Covenant will not materially violate or contravene any zoning law or other law regulating use of the Property;
  - vi) That this Environmental Covenant does not authorize a use of the Property which is otherwise prohibited by a recorded instrument that has priority over the Environmental Covenant.
- H. Compliance Enforcement. In accordance with §35-19-11(b), Code of Alabama 1975, as amended, the terms of the Environmental Covenant may be enforced by the parties to this Environmental Covenant; any person to whom this Covenant expressly grants power to enforce; any person whose interest in the real property or whose collateral or liability may be affected by the alleged violation of the Covenant; or a municipality or other unit of local government in which the real property subject to the Covenant is located, in accordance with applicable law. The parties hereto expressly agree that ADEM has the power to enforce this Environmental Covenant. Failure to timely enforce compliance with this Environmental Covenant or the use or activity limitations contained herein by any person shall not bar subsequent enforcement by such person and shall not be deemed a waiver of the person's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall limit the regulatory authority of ADEM under any applicable law with respect to the environmental response project.
- I. Modifications/Termination. Any modifications or terminations to this Environmental Covenant must be made in accordance with §§ 35-19-9 and 35-19-10, Code of Alabama 1975, as amended.
- J. Notices. Any document or communication required to be sent pursuant to the terms of this

Environmental Covenant shall be sent to the following persons:

**ADEM**

Chief, Land Division  
A.D.E.M.  
1400 Coliseum Boulevard  
Montgomery, AL 36110

**GRANTOR**

The McClellan Development  
Authority  
4975 Bains Gap Road  
Anniston, AL 36205

- K. No Property Interest Created in ADEM. Pursuant to §35-19-3(b), Code of Alabama 1975, as amended, the rights of ADEM under the Act or under this Environmental Covenant, other than a right as a holder, is not an interest in the real property subject to the covenant, nor does the approval by ADEM of this Environmental Covenant create any interest in the real property.
- L. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.
- M. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Alabama.
- N. Recordation. In accordance with §35-19-8(a), Code of Alabama 1975, as amended, Grantor shall have this Environmental Covenant, and any amendment or termination thereof, recorded in every county in which any portion of the real property subject to this Environmental Covenant is located. Grantor shall have this Environmental Covenant recorded within fifteen (15) days after the date of the final required signature.
- O. Effective Date. The effective date of this Environmental Covenant shall be the date the fully executed Environmental Covenant is recorded in accordance with paragraph "N" above.
- P. Distribution of Environmental Covenant. In accordance with §35-19-7, Code of Alabama 1975, the Grantor shall, within fifteen (15) days of filing this Environmental Covenant, have a recorded and date stamped copy of same distributed to each of the following: (1) Each person who signed the covenant; (2) Each person holding a recorded interest in the property; (3) Each person in possession of the property; (4) Each municipality or other unit of local government in which the property is located; and (5) Any other person required by ADEM to receive a copy of the covenant. However, the validity of this Environmental Covenant will not be affected by the failure to provide a copy of the Covenant as herein provided.
- Q. Party References. All references to ADEM, the Grantor, or other applicable parties, shall include successor agencies, departments, divisions, heirs, executors and/or administrators.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this the 24<sup>th</sup> day of January, 2024.

Jim McClellan  
 MDA Grantor  
 By: Jim McClellan  
 Its: Chairman

STATE OF ALABAMA )

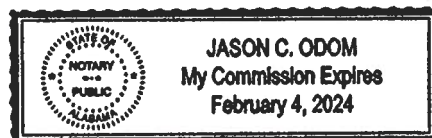
CALHOUN COUNTY )

I, the undersigned Notary Public in and for said County and State, hereby certify that Jim McClellan whose name as Chairman of the Grantor is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date and with full authority to do so.

Given under my hand and official seal this 24<sup>th</sup> day of January, 2024.

[Signature]  
 Notary Public


My Commission Expires: \_\_\_\_\_



**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

This Environmental Covenant is hereby approved by the State of Alabama, Department of Environmental Management.

Dated February 23, 2024


By:   
 Stephen A. Cobb  
 Chief, Land Division  
 Alabama Department of Environmental  
 Management

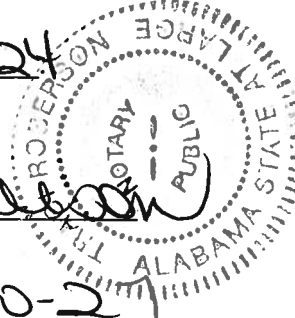
STATE OF ALABAMA )

MONTGOMERY COUNTY )

I, the undersigned Notary Public in and for said County and State, hereby certify that Stephen A. Cobb, whose name as Chief, Land Division, Alabama Department of Environmental Management is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he approved the same voluntarily on the day the same bears date and with full authority to do so.

Given under my hand and official seal this 23 day of February, 2024

  
 Notary Public  
 My Commission Expires: 1-30-27



STATE OF ALABAMA     )  
CALHOUN COUNTY        )

I, hereby certify that the foregoing Environmental Covenant has been recorded in the property records of Calhoun County, Alabama, at Deed Book 3332, Page 305.

Dated April 1st, 20 24

By: Amanda McElwain  
Clerk, Office of Probate Judge

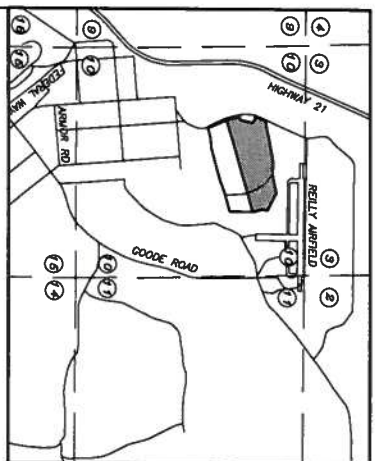
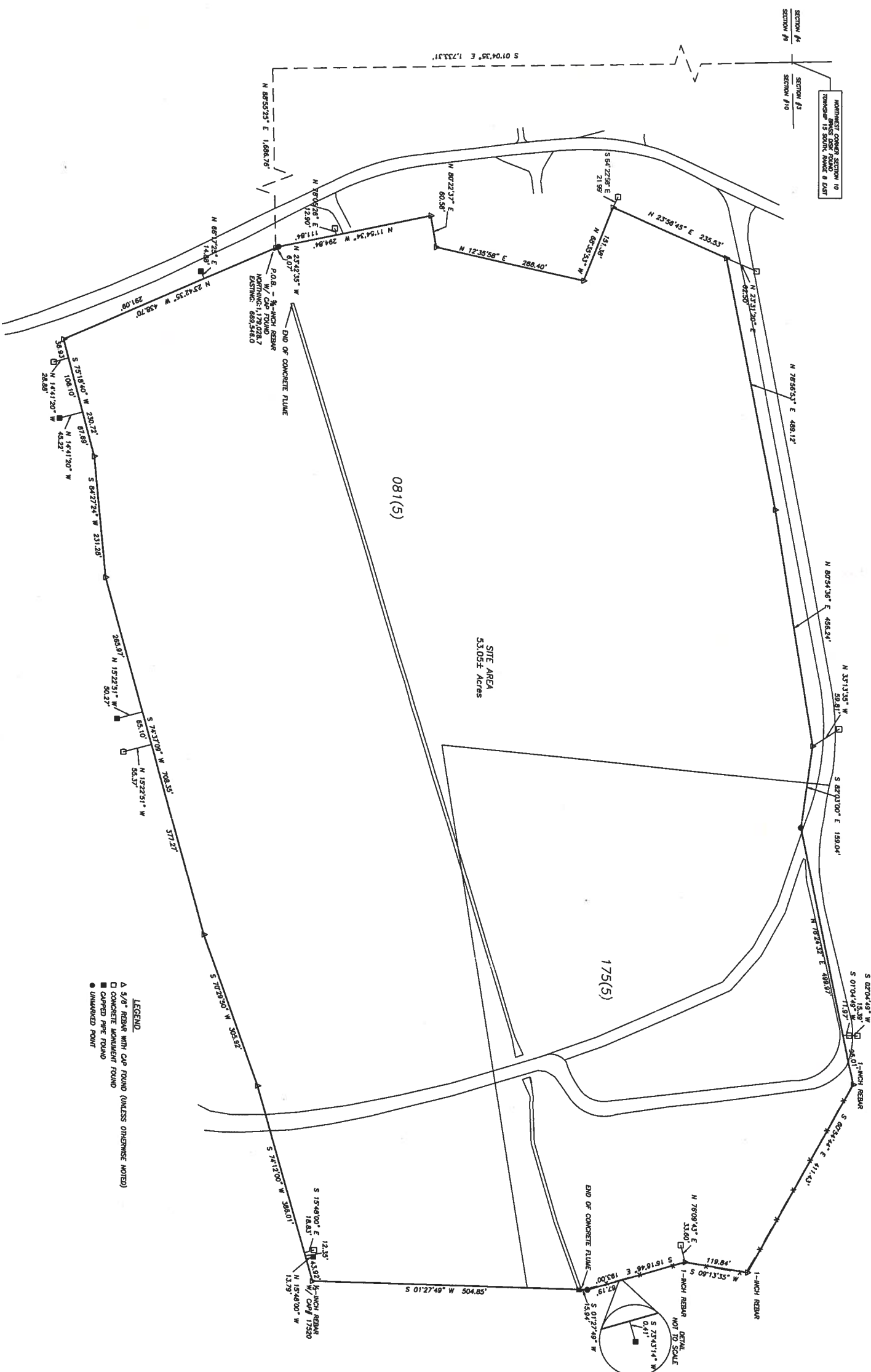


EXHIBIT DRAWING FOR:  
MCLELLAN DEVELOPMENT AUTHORITY  
LANDFILL #4, CERFA PARCEL 081(5) AND  
BUTLER GREEN INDUSTRIAL LANDFILL, CERFA PARCEL 175(5)

IN THE NORTH ½ OF SECTION 10, TOWNSHIP 15 SOUTH, RANGE 6 EAST  
HUNTSVILLE MEMORIAL, CITY OF HUNTSVILLE, CALHOUN COUNTY, ALABAMA  
REFERENCES: THE UNITS OF THIS LANDLOT IS LOCATED WITHIN THE  
PROPERTY DESCRIBED IN DEED BOOK 3039, PAGE 291  
TOTAL AREA 53.00± ACRES



ALABAMA STATE PLANE COORDINATE  
SYSTEM, EAST ZONE - NAD 83  
VERTICAL DATUM - NAVD 1988

**NOTES:**

THE LAND USE RESTRICTIONS FOR THE CERFA PARCELS DEPICTED ON THIS EXHIBIT ARE SPECIFICALLY DESCRIBED IN MDA ENVIRONMENTAL COVENANT FT23-01.00 AS FILED WITH THE CALHOUN COUNTY PROBATE OFFICE AND ADEA.

THIS IS AN EXHIBIT DRAWING ONLY AND SHOULD ONLY BE USED AS A REFERENCE FOR THE LOCATION OF THE CERTA PARCEL(S) DESIGNATED HERON. THIS DRAWING IS NOT A PART OF A SURVEY AND SHOULD NOT BE USED TO CONVEY PROPERTY. THERE IS NO CERTIFICATION OF THE ACCURACY OF THE MEASUREMENTS SHOWN HEREIN.

THE CEEPA PARCELS LOCATION AND GEOMETRY ARE BASED ON A SURVEY BY L.L. SMITH & ASSOCIATES, INC. TITLED "MCLELLAN DEVELOPMENT AUTHORITY - FORT MCLELLAN INDUSTRIAL LANDFILL," DATED 05/07/2012 AND A GIS FILE PROVIDED. LOCATIONS OF ANY MONUMENTS DETECTED HEREON ARE BASED ON THE FOUND LOCATIONS FROM FIELD WORK PERFORMED AS PART OF THE SURVEY.

THE LOCATIONS OF ROADS, BUILDINGS, AND ADJOINING AREAS AS SHOWN HEREON ARE BASED ON PREVIOUSLY ACQUIRED MAPS AND DRAWINGS AND MAY NOT HAVE BEEN FIELD LOCATED AS PART OF THIS SURVEY.