

STATE OF ALABAMA)
CALHOUN COUNTY)

DEED 3140 261
Recorded In Above Book and Page
09/23/2011 12:12:56 PM
Alice K. Martin
Judge of Probate
Calhoun County, Alabama

THE MCCLELLAN DEVELOPMENT AUTHORITY
ENVIRONMENTAL COVENANT
NUMBER FY-11-01.00

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-11-01.00, 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 Grantor is the owner of certain real property known as "The Fill Area northwest of Reilly – CERFA Parcel No. 229(7)", the "Former Post Garbage Dump north of Reilly Field – CERFA Parcel No. 126(7)" and the "Fill Area east of Reilly Airfield – CERFA Parcel No. 227(7)" located on the grounds of the former Fort McClellan, in the City of Anniston, Calhoun County, Alabama (the "Property"), which was conveyed to Grantor 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 Property is more particularly described as follows:

Fill Area Northwest of Reilly – CERFA Parcel No. 229(7)

A parcel of land situated in the South 1/2 of Section 3, lying in Township 15 South, Range 8 East, Huntsville Meridian, Calhoun County, Alabama, being a portion of that property which was conveyed to Anniston-Calhoun County Fort McClellan Development Joint Powers Authority, by deed of record in Deed Book 3039, Page 291, and subsequently conveyed by the JPA to the McClellan Development Authority by Statutory Warranty Deed recorded at Deed Book 3125, Page 275 in the records of the Probate Court of Calhoun County, Alabama, and being more particularly described as follows:

COMMENCING at a brass disk found at the Southwest corner of Section 3, Township 15 South, Range 8 East, Huntsville Meridian, Calhoun County, Alabama; runs thence as follows:
South 89 degrees 35 minutes 23 seconds East, 2,640.25 feet;

North 00 degrees 24 minutes 37 seconds East, 154.77 feet to the **POINT OF BEGINNING**, being a concrete monument found at the easternmost corner of the property herein described, and having Alabama State Plane, East Zone, Coordinates of North: 1,180,865.9, and East: 670,468.2; runs thence as follows:

North 85 degrees 57 minutes 45 seconds West, 251.44 feet to a concrete monument found;

North 76 degrees 12 minutes 21 seconds West, 202.44 feet to a concrete monument found;

North 67 degrees 01 minutes 30 seconds West, 280.32 feet to a concrete monument found;

North 34 degrees 34 minutes 17 seconds West, 122.34 feet to a concrete monument found;

North 03 degrees 05 minutes 31 seconds West, 250.10 feet to a concrete monument found;

North 43 degrees 38 minutes 41 seconds East, 274.95 feet to a concrete monument found;
 South 45 degrees 17 minutes 09 seconds East, 250.73 feet to a concrete monument found;
 South 49 degrees 38 minutes 58 seconds East, 483.61 feet to a concrete monument found;
 South 12 degrees 26 minutes 26 seconds East, 240.96 feet to the Point of Beginning, and containing 7.35 Acres, more or less, as indicated on the Exhibit Drawing attached hereto as "Exhibit A," prepared by Larry I. Smith, Alabama Professional Land Surveyor Number 15717, of L. I. Smith & Associates, 302 North Caldwell Street, Paris, TN 38242, on August 4, 2011. Bearings are based upon the Alabama State Plane Coordinate System, East Zone, NAD 83.

And:

***Former Post Garbage Dump (North of Reilly Field) – CERFA Parcel No. 126(7)
 And Fill Area East of Reilly Airfield – CERFA Parcel No. 227(7)***

A parcel of land situated in the Southeast 1/4 of Section 3 and the Southwest 1/4 of Section 2, lying in Township 15 South, Range 8 East, Huntsville Meridian, Calhoun County, Alabama, being a portion of that property which was conveyed to Anniston-Calhoun County Fort McClellan Development Joint Powers Authority, by deeds of record in Deed Book 3002, Page 369 and Deed Book 3039, Page 291, and subsequently conveyed by the JPA to the McClellan Development Authority by Statutory Warranty Deed recorded at Deed Book 3125, Page 275 in the records of the Probate Court of Calhoun County, Alabama, and being more particularly described as follows:

COMMENCING at a brass disk found at the Southwest corner of Section 3, Township 15 South, Range 8 East, Huntsville Meridian, Calhoun County, Alabama; runs thence as follows:

South 89 degrees 35 minutes 23 seconds East, 5,482.98 feet;

South 00 degrees 24 minutes 37 seconds West, 38.99 feet to the **POINT OF BEGINNING**, being a concrete monument found at the southernmost corner of the property herein described, and having Alabama State Plane, East Zone, Coordinates of North: 1,180,651.8, and East: 673,309.5; runs thence as follows:

North 49 degrees 12 minutes 00 seconds West, 185.29 feet to a 1/2-inch rebar with cap stamped JBW&T, Inc. CA0046LS found;

North 33 degrees 00 minutes 06 seconds West, 35.88 feet to a ½-inch rebar with cap set;
 North 33 degrees 00 minutes 06 seconds West, 149.51 feet to a concrete monument
 found;
 North 13 degrees 22 minutes 51 seconds East, 291.49 feet to a concrete monument found;
 North 14 degrees 58 minutes 33 seconds East, 156.64 feet to a concrete monument found;
 North 44 degrees 36 minutes 53 seconds West, 57.66 feet;
 North 58 degrees 46 minutes 05 seconds West, 13.74 feet;
 North 36 degrees 36 minutes 25 seconds West, 16.35 feet;
 North 08 degrees 41 minutes 34 seconds West, 15.30 feet;
 North 01 degrees 29 minutes 30 seconds West, 12.00 feet;
 North 02 degrees 51 minutes 45 seconds East, 12.52 feet;
 North 14 degrees 07 minutes 01 seconds East, 21.53 feet;
 North 24 degrees 56 minutes 13 seconds East, 21.64 feet;
 North 28 degrees 56 minutes 30 seconds East, 21.57 feet;
 North 18 degrees 15 minutes 07 seconds East, 24.74 feet;
 North 17 degrees 31 minutes 32 seconds East, 29.89 feet;
 North 30 degrees 55 minutes 33 seconds East, 16.17 feet;
 North 81 degrees 08 minutes 04 seconds East, 36.50 feet;
 North 75 degrees 42 minutes 31 seconds East, 61.27 feet;
 North 73 degrees 44 minutes 58 seconds East, 45.12 feet;
 North 61 degrees 46 minutes 16 seconds East, 13.48 feet;
 North 74 degrees 03 minutes 17 seconds East, 10.92 feet;
 South 77 degrees 52 minutes 59 seconds East, 11.31 feet;
 South 56 degrees 00 minutes 02 seconds East, 228.60 feet to a concrete monument found;
 South 84 degrees 06 minutes 57 seconds East, 386.78 feet to a concrete monument found;
 South 62 degrees 23 minutes 21 seconds East, 101.74 feet to a ½-inch rebar with cap
 stamped JBW&T, Inc. CA0046LS found;
 South 19 degrees 32 minutes 33 seconds East, 133.33 feet to a concrete monument found;
 South 28 degrees 36 minutes 16 seconds West, 329.55 feet to a ½-inch rebar with cap
 stamped JBW&T, Inc. CA0046LS found;
 South 28 degrees 35 minutes 05 seconds West, 220.24 feet to a concrete monument
 found;
 South 71 degrees 46 minutes 16 seconds West, 495.49 feet to the Point of Beginning, and
 containing 14.71 Acres, more or less, as indicated on the Exhibit Drawing attached hereto as
 "Exhibit B," prepared by Larry I. Smith, Alabama Professional Land Surveyor Number 15717,
 of L. I. Smith & Associates, 302 North Caldwell Street, Paris, TN 38242, on August 4, 2011.
 Bearings are based upon the Alabama State Plane Coordinate System, East Zone, NAD 83.

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

WHEREAS, with regard to Parcels 126(7) and 227(7) - On 4/17/06, ADEM concurred that Former Post Garbage Dump requires No Further Action with respect to CERCLA. However, minor cap maintenance and repairs are necessary. Property owner will perform five years of cap maintenance, and,

WHEREAS, Parcel 229(7) was used for the disposal of solid waste, which will remain in place and which requires groundwater monitoring and maintenance of final cover systems;

WHEREAS, Parcels 126(7) and 227(7) were used for the disposal of solid waste, which will remain in place and will require maintenance of final cover systems;

WHEREAS, the selected remedial action for the property includes soil caps, which have been implemented, and groundwater remediation, which has not been implemented, providing in part for the following actions:

WHEREAS, Parcels 126(7) and 227(7) have land use controls preventing residential site use and excavations within the landfills/fill areas, monuments and signs to outline the parcel(s) boundaries and maintenance and repair of the engineered cap. Parcel 229(7) has land use controls requiring maintenance and repair of the engineered cap, signs and monuments to outline the parcel boundary. The property owner will perform In-situ bioremediation (monitored natural attenuation) at Parcel 229(7) and perform groundwater monitoring on a semi-annual basis for, but not limited to: 1,1,2,2-Tetrachloroethane; 1,1,2-Tetrachloroethane; 1,2-Dichloroethane; Benzene; cis-1,2-Dichloroethene; Napthalene; Tetrachloroethene; Vinyl Chloride; Heptachlor Epoxide; Alpha-BHC; Beta-BHC; Mercury; Nickel;

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, implementation of the approved Cleanup Agreement has achieved risk-based cleanup levels deemed protective of public health and the environment based upon certain use restrictions imposed on the property to limit exposure to potential hazardous waste (HTRW) and/or groundwater contaminants of concern; and,

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 HTRW and/or groundwater release and 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**

Owner. "Owner" 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) Class 2 engineering controls of clay or soil caps shall be maintained;
- (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) Groundwater monitoring wells remain on and/or around the property and shall not be disturbed. Wells located on property that is transferred or leased from the Grantor to a third party will at all times remain accessible to the Grantor;
- (v) The installation of any well for extraction of groundwater for purposes of consumptive or other uses is prohibited; and
- (vi) 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 Holders, 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 an annual report to the Director of the EPA Region 4 Superfund Division, and to the Chief of the ADEM Land Division, on the anniversary of the date this Covenant was signed by the Grantor. Said report shall detail the Owner's compliance, and any lack of compliance with the terms of the Covenant.
- 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 Grantor is a party, by which 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. 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:
- | | |
|--|---|
| <p><u>ADEM</u>
 Chief, Land Division
 A.D.E.M.
 1400 Coliseum Boulevard
 Montgomery, AL 36110</p> | <p><u>GRANTOR</u>
 The McClellan Development
 Authority
 4975 Bains Gap Road
 Anniston, AL 36205</p> |
|--|---|
- 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 14th
day of September, 2011.

William R. Smith

Grantor

By: William R. Smith

Its: Chairman

STATE OF ALABAMA)
CALHOUN COUNTY)

I, the undersigned Notary Public in and for said County and State, hereby certify that William R. Smith 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 14th day of September, 2011.



Sandra Roberts

Notary Public

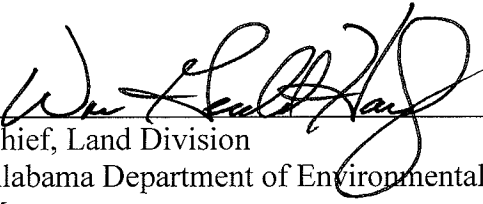
My Commission Expires:

SANDRA ROBERTS
Notary Public, State of Alabama
Alabama State At Large
My Commission Expires
January 12, 2014

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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

Dated Sept 21, 2011

By: 

Chief, Land Division
Alabama Department of Environmental
Management

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 3140, Page 261
_____.

Dated Sept 23, 2011

By: Shirley J. Miller
Clerk, Office of Probate Judge

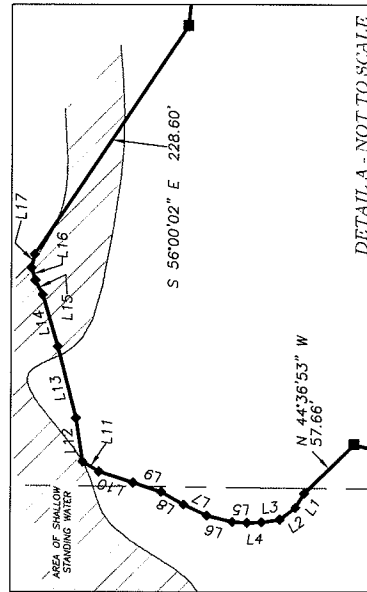
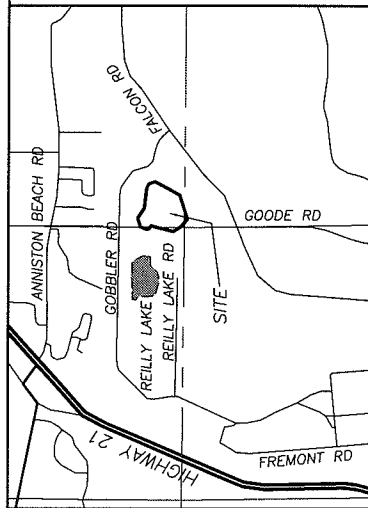


EXHIBIT DRAWING FOR:
McCLELLAN DEVELOPMENT AUTHORITY &
ALABAMA DEPT. OF ENVIRONMENTAL MANAGEMENT
CLEANUP AGREEMENT NO. AL4 210 020 562
CERFA PARCELS # 126(7) & 227(7)

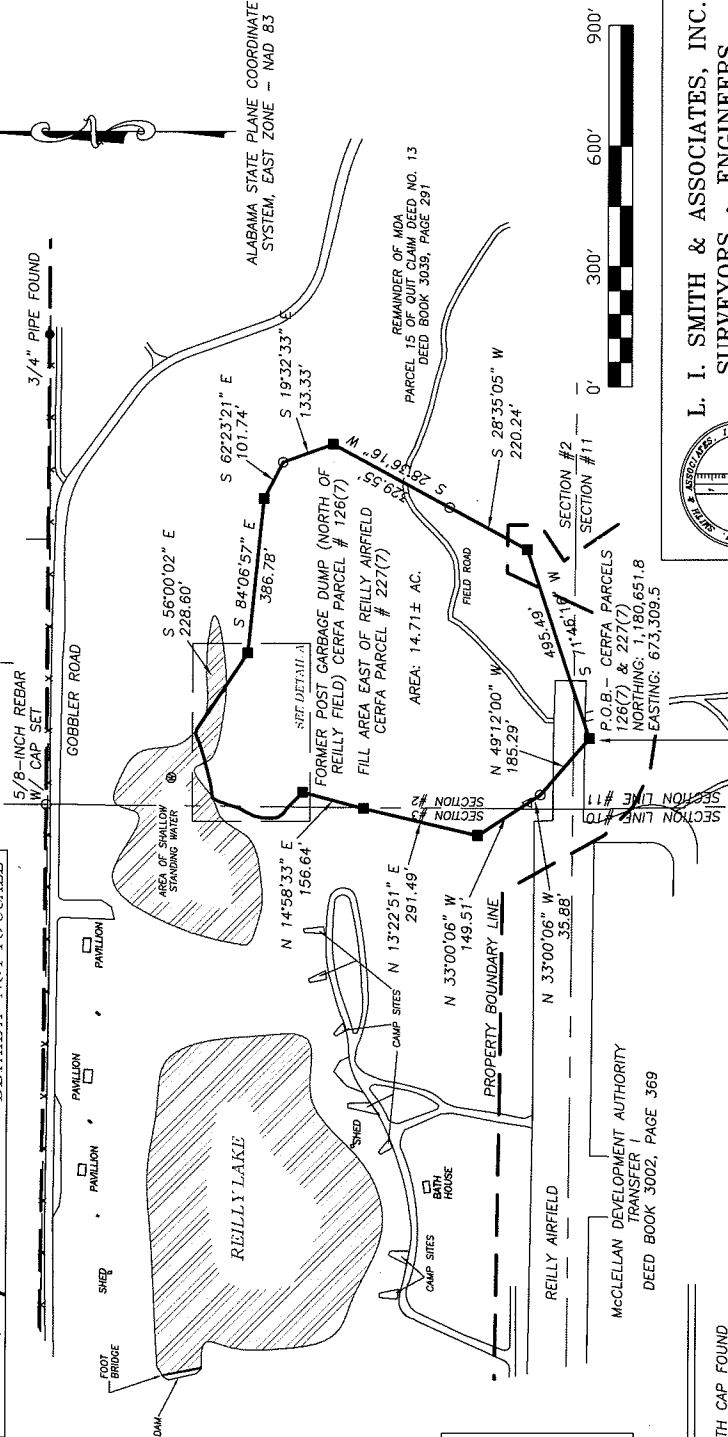
SITUATED IN THE SOUTH 1/2 OF SECTION 3 AND THE SOUTHWEST 1/4 OF SECTION 2,
 LYING IN TOWNSHIP 15 SOUTH, RANGE 8 EAST,
 HUNTSVILLE MERIDIAN, CALHOUN COUNTY, ALABAMA

REFERENCES: A PORTION OF DEED BOOK 3002, PAGE 369 (PROPERTY DESCRIPTION)
 A PORTION OF PARCEL NO. 15 OF DEED BOOK 3039, PAGE 291 (PROPERTY DESCRIPTION)
 DEED BOOK 3125, PAGE 275 (TRANSFER TO THE MDA)

VICINITY MAP - NOT TO SCALE

DETAIL A - LINE TABLE

LINE	BEARING	DISTANCE
L1	N 58°46'05" W	13.74'
L2	N 36°36'25" W	16.35'
L3	N 08°41'34" W	15.30'
L4	N 01°29'30" W	12.00'
L5	N 02°51'45" E	12.52'
L6	N 14°07'01" E	21.53'
L7	N 24°56'13" E	21.64'
L8	N 28°56'30" E	21.57'
L9	N 18°15'02" E	24.74'
L10	N 17°31'32" E	28.69'
L11	N 30°55'33" E	16.17'
L12	N 81°08'04" E	36.50'
L13	N 75°42'31" E	61.27'
L14	N 73°44'58" E	45.12'
L15	N 61°46'16" E	13.48'
L16	N 74°03'17" E	10.92'
L17	S 77°52'59" E	11.31'



NOTES:
 THE LAND USE RESTRICTIONS FOR THE CERFA PARCELS DEPICTED
 ON THIS EXHIBIT ARE SPECIFICALLY DESCRIBED IN MDA
 ENVIRONMENTAL COVENANT FY11-01 AS FILED WITH THE CALHOUN
 COUNTY PROBATE OFFICE AND ADEM.

THIS IS AN EXHIBIT DRAWING ONLY AND SHOULD ONLY BE USED
 AS A REFERENCE FOR THE LOCATION OF THE CERFA PARCEL(S)
 DEPICTED HEREON. THIS DRAWING IS NOT A PLAT OF A SURVEY
 AND SHOULD NOT BE USED TO CONVEY PROPERTY.

LEGEND

- ROAD CENTERLINE
- CERFA PARCEL BOUNDARY
- PROPERTY BOUNDARY
- ADJOINING PROPERTY
- DITCH FLOWLINE
- REBAR WITH CAP FOUND
- 1/2-INCH REBAR WITH CAP SET
- CONCRETE MONUMENT FOUND
- UNMARKED POINT
- MONITORING WELL
- RECORD LOCATION

L. I. SMITH & ASSOCIATES, INC.
SURVEYORS - ENGINEERS

302 North Caldwell Street
 Perth, Tennessee 38902
 731-644-1014 FAX 731-644-0109
 1100 Lebanon Pike, Suite 105
 Nashville, Tennessee 37203
 615-861-7143 FAX 615-266-0890
 Website: www.lismitth.com

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 DRAWN BY: RWB CHECKED BY: LIS SCALE: 1"=300'
 PROJECT # 4002.21.6929 DATE: 08/04/2011

