

STATE OF ALABAMA)
CALHOUN COUNTY)

THE MCCLELLAN DEVELOPMENT AUTHORITY
ENVIRONMENTAL COVENANT
NUMBER FY-12-06.00

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-12-06.00, 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 partially encompassing the areas known as "CERFA Parcel No. 183(6)" also known as "Training Area T-6" and "CERFA Parcel No. 510(7)" also known as "The Cane Creek Training Area", along with additional surrounding area (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 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:

COVENANT BOUNDARY FOR FY-12-06.00

A parcel of land situated in the South ½ of Section 22, lying in Township 15 South, Range 8 East, Huntsville Meridian, Calhoun County, Alabama, and being more particularly described as follows:

COMMENCING at a brass disk found at the Southwest corner of Section 22, Township 15 South, Range 8 East, Huntsville Meridian, Calhoun County, Alabama; runs thence as follows:
South 89 degree 12 minutes East, 2,228.5 Feet;
North 00 degrees 48 minutes East, 1,397.5 Feet to the **POINT OF BEGINNING**, being an unmarked point having Alabama State Plane, East Zone, Coordinates of North: 1,166,163 and East: 670,128; runs thence as follows:
North 22 degrees 5 minutes West, 248.4 Feet;

North 43 degrees 33 minutes West, 69.5 Feet;
North 53 degrees 43 minutes East, 50.5 Feet;
North 00 degrees 30 minutes West, 159.9 Feet;
North 54 degrees 00 minutes East, 198.6 Feet;
North 51 degrees 53 minutes East, 72.9 Feet;
North 53 degrees 11 minutes East, 72.9 Feet;
North 55 degrees 43 minutes East, 67.3 Feet;
North 89 degrees 00 minutes East, 455.3 Feet;
South 17 degrees 52 minutes West, 455.4 Feet;
South 51 degrees 05 minutes West, 314.8 Feet;
South 73 degrees 16 minutes West, 313.9 Feet to the point of beginning, having an area of 8.75 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, Training Area T-6, Parcel 183(6) is historically known as the Howitzer Hill Decontamination Area or the Former Agent Decontamination Training Area, and is a heavily wooded area approximately 10 acres in size, located at the base of the northeastern slope of Howitzer Hill, west of Fox Road and the South Branch of Cane Creek in the west-central area of McClellan. Training Area T-6 was used by the Army for training exercises sometime prior to 1954 until 1973. Decontamination of chemical weapons material (CWM) was performed at Training Area T-6 during routine military training exercises. The training sites consisted of concrete pads and a network of drainage ditches, where the decontamination agents and CWM were rinsed and collected and may have drained to a shallow pond.

WHEREAS, the Cane Creek Training Area, Parcel 510(7) is currently a vacant, wooded parcel located adjacent to and northeast of Training Area T-6 across Fox Road and south of Derby Street, in the west-central portion of McClellan. The Cane Creek Training Area is approximately 2 acres in size and straddles the South Branch of Cane Creek. In 1958, this area was reportedly used for training in decontamination procedures of military equipment, but it is unknown if toxic agents were used. Historical aerial photographs indicated an abundance of activity at Cane Creek Training Area from the early 1940s until approximately 1969. Portions of Training Area T-6 (Naylor Field), Parcel 183(6) (Training Area T-6) and Cane Creek Training Area, Parcel 510(7) (Cane Creek Training Area), along with additional adjoining area will be collectively referred to as the Property or Covenant Site.

Concentrations of contaminants at the Covenant Site are below the Risk-Based Target Levels (RBTLs) in surface water, sediment, surface soil, and subsurface soil; therefore no remediation of these media is required. Concentrations of Volatile Organic Compounds (VOCs), specifically: 1,1,2,2-tetrachloroethane (1,1,2,2-PCA), tetrachloroethene (PCE), 1,1,2-trichloroethane, vinyl chloride and trichloroethene (TCE) exceeded the groundskeeper RBTLs in groundwater for monitoring wells located in the vicinity and immediately downgradient of the trenches and former concrete wash pads. These VOCs are considered the Corrective Action Contaminants of Concern (COCs) for the Covenant Site.

WHEREAS, the selected remedial action for the Covenant Site includes the use of a soil vapor extraction system (SVE) combine with air sparging (AS) to reduce COC concentrations in groundwater which has been implemented, and groundwater monitoring, which is currently being implemented, providing in part for the following actions:

WHEREAS, the Covenant Site has land use controls requiring inspections of the area on a daily basis. The Holder will perform groundwater remediation using SVE and AS at the Covenant Site and perform groundwater monitoring on a quarterly basis unless monitoring frequency is modified by MDA and approved by ADEM. Monitoring will be conducted for, but not limited to: 1,1,2,2-PCA, 1,1,2-TCA, chloroform, PCE, and TCE in groundwater.

WHEREAS, the selected "remedial action" for the Property/Covenant Site, 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,

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 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) Consumptive use or direct contact with groundwater is not allowed due to low levels of volatile organic compounds (VOCs) in groundwater.
- (ii) Public access is not allowed and use of the Property for any purpose is not allowed pending completion of the remedy;
- (iii) 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;
- (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; and
- (v) 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 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 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 25th day of February, 2013.

Phil Webb

Grantor
By: Phil Webb
Its: Chairman

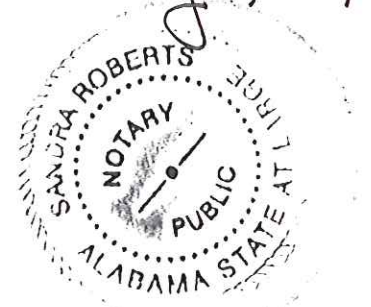
STATE OF ALABAMA)
CALHOUN COUNTY)

I, the undersigned Notary Public in and for said County and State, hereby certify that Phil Webb, 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 25th day of February, 2013.

Sandra Roberts
Notary Public

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 2-March, 2013

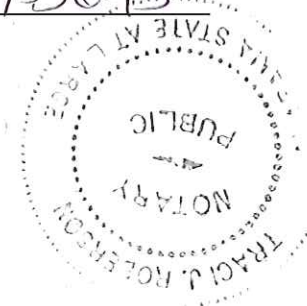
By: Phillip D. Davis
 Chief, Land Division
 Alabama Department of Environmental
 Management

STATE OF ALABAMA)
 MONTGOMERY COUNTY)

I, the undersigned Notary Public in and for said County and State, hereby certify that Phillip D. Davis, 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 4 day of March, 2013.

Diari Robinson
 Notary Public
 My Commission Expires: 1-30-15

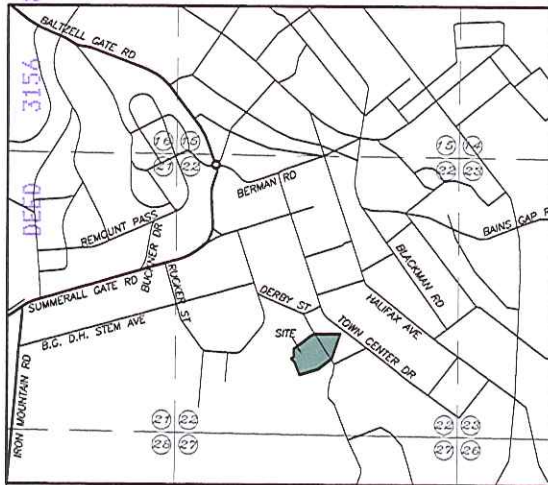


STATE OF ALABAMA)
CALHOUN COUNTY)

I, hereby certify that the foregoing Environmental Covenant has been recorded in the property records of Calhoun County, Alabama, at Deed Book 3156, Page 817 - 826.

Dated March 7, 2013

By: S Robinson
Clerk, Office of Probate Judge



VICINITY MAP - NOT TO SCALE

MONITORING WELLS		
WELL ID	NORTHING	EASTING
CWM-183-MW01	1,165,946	670,209
CWM-183-MW02	1,165,864	670,484
CWM-183-MW03	1,166,713	670,379
CWM-183-MW04	1,166,414	670,380
CWM-183-MW05	1,166,407	670,534
CWM-183-MW06	1,166,395	670,235
CWM-183-MW07	1,166,509	670,284
CWM-183-MW08	1,166,596	670,223
CWM-183-MW09	1,166,491	670,164
CWM-183-MW10	1,166,285	670,417
CWM-183-MW11	1,166,405	670,249
CWM-183-MW12	1,166,219	670,289
CWM-183-MW13	1,166,424	670,385
CWM-183-MW14	1,166,534	670,549
CWM-183-MW15	1,166,609	670,474
CWM-183-MW16	1,166,600	670,477
CWM-183-MW17	1,166,723	670,375
CWM-183-MW18	1,166,862	670,363
CWM-183-MW19	1,166,855	670,366
CWM-183-MW20	1,166,595	670,211
CWM-183-MW21	1,166,492	670,085
CWM-183-MW22	1,166,486	670,081
CWM-183-MW23	1,166,329	670,208
CWM-183-MW24	1,166,650	670,154
CWM-183-MW25	1,166,707	670,249
CWM-183-MW26	1,166,453	670,657
CWM-183-MW27	1,166,685	670,504
CWM-183-MW28	1,166,522	670,232
CWM-183-MW29	1,166,298	670,454
CWM-183-MW30	1,166,676	670,969
CWM-183-MW31	1,166,844	670,741
CC-510-MW01	1,167,020	670,427
CC-510-MW02	1,166,854	670,484
CC-510-MW03	1,166,956	670,545
CC-510-MW04	1,166,700	670,503

SOUTHWEST CORNER SECTION 22
BRASS DISK FOUND
TOWNSHIP 15 SOUTH, RANGE 8 EAST

EXHIBIT A

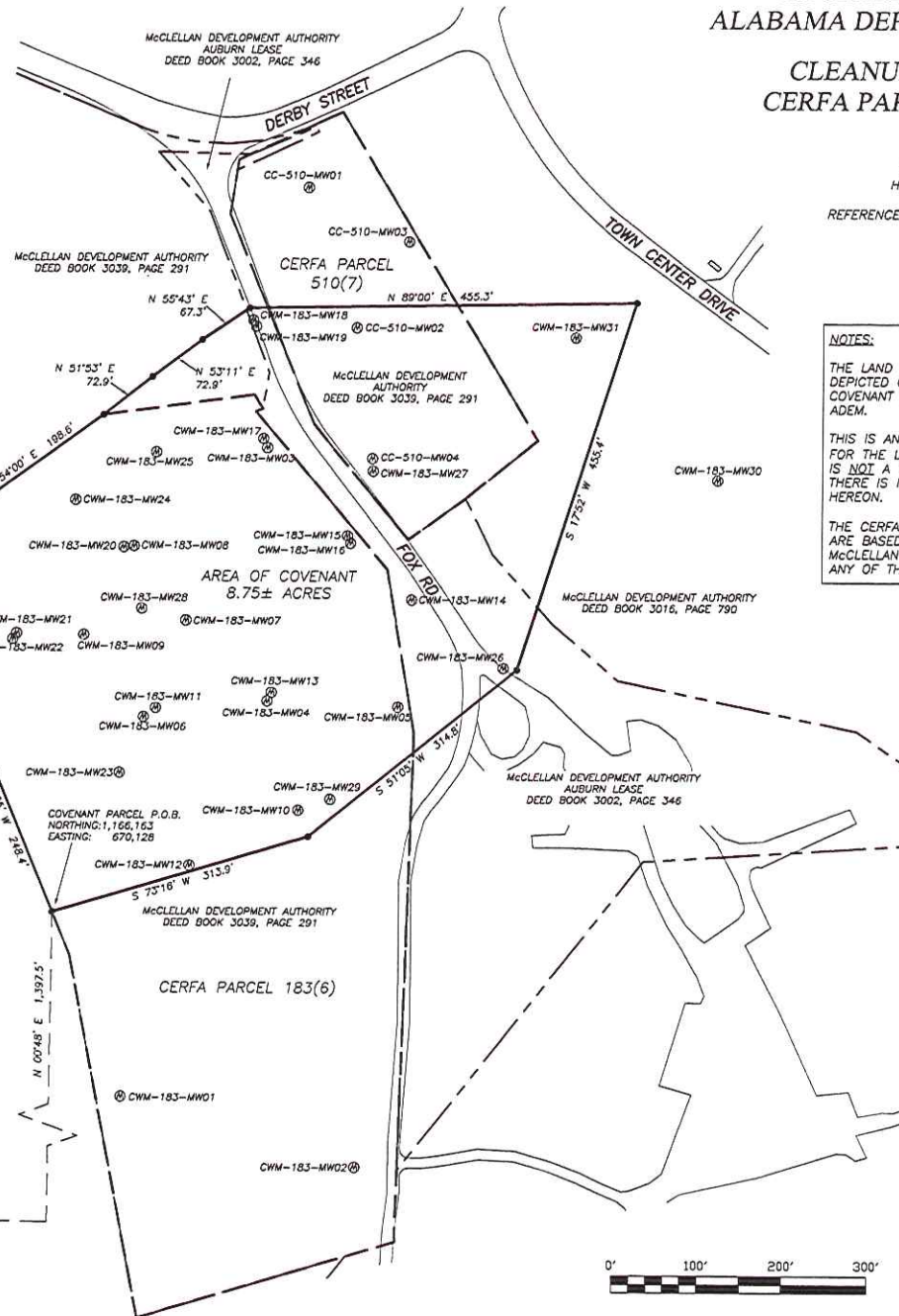


EXHIBIT DRAWING FOR:

McCLELLAN DEVELOPMENT AUTHORITY &
ALABAMA DEPT. OF ENVIRONMENTAL MANAGEMENT

CLEANUP AGREEMENT NO. AL4 210 020 562
CERFA PARCEL# 183(6) & CERFA PARCEL 510(7)

SITUATED IN THE SOUTH 1/2 OF SECTION 22,
LYING IN TOWNSHIP 15 SOUTH, RANGE 8 EAST,
HUNTSVILLE MERIDIAN, CALHOUN COUNTY, ALABAMA

REFERENCES: DEED BOOK 3002, PAGE 346 (PROPERTY DESCRIPTION)
DEED BOOK 3016, PAGE 790 (PROPERTY DESCRIPTION)
DEED BOOK 3039, PAGE 291 (PROPERTY DESCRIPTION)
DEED BOOK 3125, PAGE 275 (TRANSFER TO THE MDA)

NOTES:

THE LAND USE RESTRICTIONS FOR THE CERFA PARCELS, OR PORTIONS THEREOF, DEPICTED ON THIS EXHIBIT ARE SPECIFICALLY DESCRIBED IN MDA ENVIRONMENTAL COVENANT FY12-06 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. THERE IS NO CERTIFICATION OF THE ACCURACY OF THE MEASUREMENTS SHOWN HEREON.

THE CERFA PARCEL'S LOCATION & GEOMETRY AND MONITORING WELL LOCATIONS ARE BASED ON DEED RECORDS AND ESRI GIS SHAPEFILES PROVIDED BY THE McCLELLAN DEVELOPMENT AUTHORITY. NO FIELDWORK WAS PERFORMED TO VERIFY ANY OF THE INFORMATION PRESENTED HEREON.

LEGEND

- ROAD CENTERLINE
- COVENANT BOUNDARY
- CERFA PARCEL BOUNDARY
- APPROXIMATE PROPERTY BOUNDARY

- UNMARKED POINT
- MONITORING WELL

ALABAMA STATE PLANE COORDINATE
SYSTEM, EAST ZONE - NAD 83



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

302 North Caldwell Street
Paris, Tennessee 38243
731-644-1014 800-247-6847 FAX 731-644-0109

1100 Lebanon Pike, Suite 105
Nashville, Tennessee 37210
615-351-7143 FAX 615-351-0290

Website: www.lismith.com

© 2012 L.I. SMITH & ASSOCIATES, INC. SHEET: 1 of 1

DRAWN BY: RWB CHECKED BY: LIS SCALE: 1"=100'

PROJECT # 4002.29.7295 DATE: 08/23/2012