

STATE OF ALABAMA)
CALHOUN COUNTY)

DEED 3173 92
Recorded In Above Book and Page
04/18/2014 09:28:23 AM
Alice K. Martin
Judge of Probate
Calhoun County, Alabama

THE MCCLELLAN DEVELOPMENT AUTHORITY
ENVIRONMENTAL COVENANT
NUMBER FY-13-01.00

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 "Co-Grantor") grants this Environmental Covenant, Numbered FY-13-01.00, 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 "Co-Grantee" or "Co-Holder"), to-wit:

WHEREAS, the MDA is the owner of a portion of that certain real property known as "CERFA HTRW Parcel No. 230(7)" also known as Tract B of "Fill Area North of Landfill #2" (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 Property is more particularly described as follows:

CERFA HTRW PARCEL 230(7) – Fill Area North of Landfill #2 - TRACT B

A parcel of land situated in the Southwest ¼ of Section 11, 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 Northwest corner of Section 10, Township 15 South, Range 8 East, Huntsville Meridian, Calhoun County, Alabama; runs thence as follows:
South 01 degree 04 minutes 35 seconds East, 4,935.11 Feet;
North 88 degrees 55 minutes 25 seconds East, 5,743.68 Feet to the **POINT OF BEGINNING**, being concrete monument having Alabama State Plane, East Zone, Coordinates of North: 1,175,903.7 and East: 673,662.3; runs thence as follows:
North 19 degrees 52 minutes 33 seconds East, 117.74 Feet;
North 07 degrees 29 minutes 46 seconds East, 117.40 Feet to a concrete monument;

North 23 degrees 02 minutes 31 seconds East, 137.62 Feet to a concrete monument;
 South 37 degrees 51 minutes 00 seconds East, 78.76 Feet;
 South 29 degrees 57 minutes 16 seconds East, 45.95 Feet;
 South 16 degrees 06 minutes 42 seconds East, 91.40 Feet to a concrete monument;
 South 06 degrees 53 minutes 58 seconds West, 110.04 Feet;
 South 07 degrees 38 minutes 33 seconds West, 108.93 Feet to a concrete monument;
 South 18 degrees 57 minutes 14 seconds West, 99.91 Feet;
 South 30 degrees 05 minutes 00 seconds West, 99.16 Feet to a concrete monument;
 South 58 degrees 09 minutes 34 seconds West, 52.26 Feet;
 South 59 degrees 50 minutes 39 seconds West, 85.73 Feet to a point located North 59
 degrees 50 minutes 39 seconds East, 69.69 feet from a concrete monument;
 North 63 degrees 03 minutes 31 seconds West, 92.27 Feet to a point located North 38
 degrees 49 minutes 10 seconds East, 45.38 feet from a concrete monument;
 North 38 degrees 49 minutes 10 seconds East, 44.93 Feet;
 North 25 degrees 06 minutes 31 seconds East, 119.22 Feet;
 North 12 degrees 18 minutes 06 seconds East, 122.23 Feet to the point of beginning,
 having an area of 2.22 Acres, more or less.

AND

THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY

(hereinafter "DHS" or "Co-Grantor") grants this Environmental Covenant, Numbered FY-13-01.00, which constitutes a servitude arising under an environmental response project that imposes activity and/or use limitations, to the following statutory Holder:

THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY

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

WHEREAS, the DHS is the owner of a portion of that certain real property known as
 "CERFA HTRW Parcel No. 230(7)" also known as Tract A of "Fill Area North of Landfill #2"
 (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 the
 United States Department of Justice ("DOJ") by Federal Agency transfer recorded in the Office
 of the Judge of Probate for said County, Alabama, in Deed Book 3110 at Page 480 and which
 was subsequently transferred from DOJ to DHS by operation of law pursuant to Title 6, United
 States Code §§203 and 238; and,

WHEREAS, the Property is more particularly described as follows:

CERFA HTRW PARCEL 230(7) – Fill Area North of Landfill #2 – TRACT A

A parcel of land situated in the Southwest ¼ of Section 11, 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 Northwest corner of Section 10, Township 15 South, Range 8 East, Huntsville Meridian, Calhoun County, Alabama; runs thence as follows:
 South 01 degree 04 minutes 35 seconds East, 5,230.29 Feet;
 North 88 degrees 55 minutes 25 seconds East, 5,604.87 Feet to the **POINT OF BEGINNING**, being concrete monument having Alabama State Plane, East Zone, Coordinates of North: 1,175,606.0 and East: 673,529.1; runs thence as follows:
 North 38 degrees 49 minutes 10 seconds East, 45.38 Feet;
 South 63 degrees 03 minutes 31 seconds East, 92.27 Feet;
 South 59 degrees 50 minutes 39 seconds West, 69.69 Feet to a concrete monument;
 North 50 degrees 35 minutes 16 seconds West, 65.30 Feet to the point of beginning, having an area of 0.10 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, Parcel 230(7) was 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;

WHEREAS, Parcel 230(7) has land use controls preventing residential site use and excavations within the landfill area, monuments and signs to outline the parcel boundaries 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 CO-GRANTORS 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, Co-Grantors hereby grant this Environmental Covenant to the named Co-Holders, 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 CO-GRANTORS, their 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 on Fill Area North of Landfill 2, at the location shown in Exhibit A, as described and required in the *Final Corrective Measures Implementation Plan* for Landfill 1, Parcel 78(6); Landfill 2, Parcel 79(6); Former Post Garbage Dump, Parcel 126(7); Fill Area East of Reilly Airfield, Parcel 227(7); and Fill Area North of Landfill 2, Parcel 230(7) dated January 2008 and the *Final Corrective Measures Implementation Report* for Fill Area North of Landfill 2 dated November 2012.;
- (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) 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 Co-Holders or ADEM for groundwater monitoring) is prohibited; and
- (v) Co-Grantors reserve 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 Owners, the Co-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 Owners 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 Owners 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). Grantors 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 Owners 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 Owners' 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 Owners hereby grant to ADEM, ADEM's agents, contractors and employees; the Owners' 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. Co-Grantors hereby represent and warrant as follows:
- i) That the Co-Grantors have 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 Co-Grantors are the sole owners of their respective portions of the Property and holds fee simple title which is free, clear and unencumbered;
 - iii) That the Co-Grantors have identified all other parties that hold any interest or encumbrance affecting the Property and has notified such parties of the Co-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. 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

CO-GRANTOR

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

CO-GRANTOR

Center for Domestic Preparedness
Federal Emergency Management
Agency
U.S. Department of Homeland
Security
P.O. Box 5100, 61 Responder Drive
Anniston, Alabama 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, Co-Grantors 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. Co-Grantors 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 Co-Grantors 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 Co-Grantors, 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 MARCH, 20 14.

Phil Webb

MDA Co-Grantor
By: Phil Webb
Its: Chairman

STATE OF ALABAMA)
CALHOUN COUNTY)

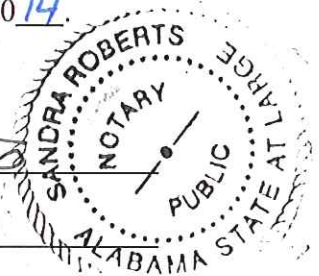
I, the undersigned Notary Public in and for said County and State, hereby certify that Phil Webb whose name as Chairman of the Grantor is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he executed 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 MARCH, 20 14.

Sandra Roberts

Notary Public


My Commission Expires: _____



My Commission Expires 01/09/2018

**APPROVAL OF UNITED STATES DEPARTMENT OF DEPARTMENT OF
HOMELAND SECURITY, FEDERAL EMERGENCY MANAGEMENT
AGENCY, CO-GRANTOR**

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this the 12 MAR 2014
day of _____, 20____.


United States Department of Homeland Security, Federal Emergency Management Agency
Co-Grantor
By: Robert M. Waltemeyer
Its: Chief Administrative Officer
On behalf of: Craig S. Fugate
Its: Director of the Federal Emergency Management Agency

STATE OF IL)
_____)

I, the undersigned Notary Public in and for said County and State, hereby certify that Robert M. Waltemeyer, whose name as Chief Administrative Officer of the Federal Emergency Management Agency of the United States Department of Homeland Security Co-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 13 day of March, 2014.

MICHELLE TABER SMITH
NOTARY PUBLIC DISTRICT OF COLUMBIA
 My Commission Expires July 14, 2017

C. Michael Smith
Notary Public
My Commission Expires: 7/14/2017



ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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

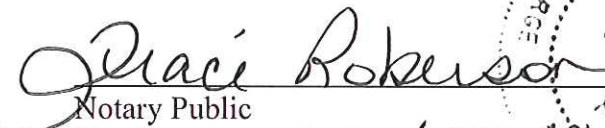
Dated April 14, 2014

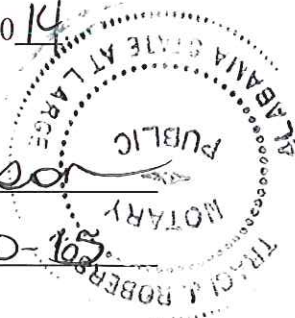
By: 
 Chief, Land Division
 Alabama Department of Environmental
 Management

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 14 day of April, 2014


 Notary Public
 My Commission Expires: 1-30-15

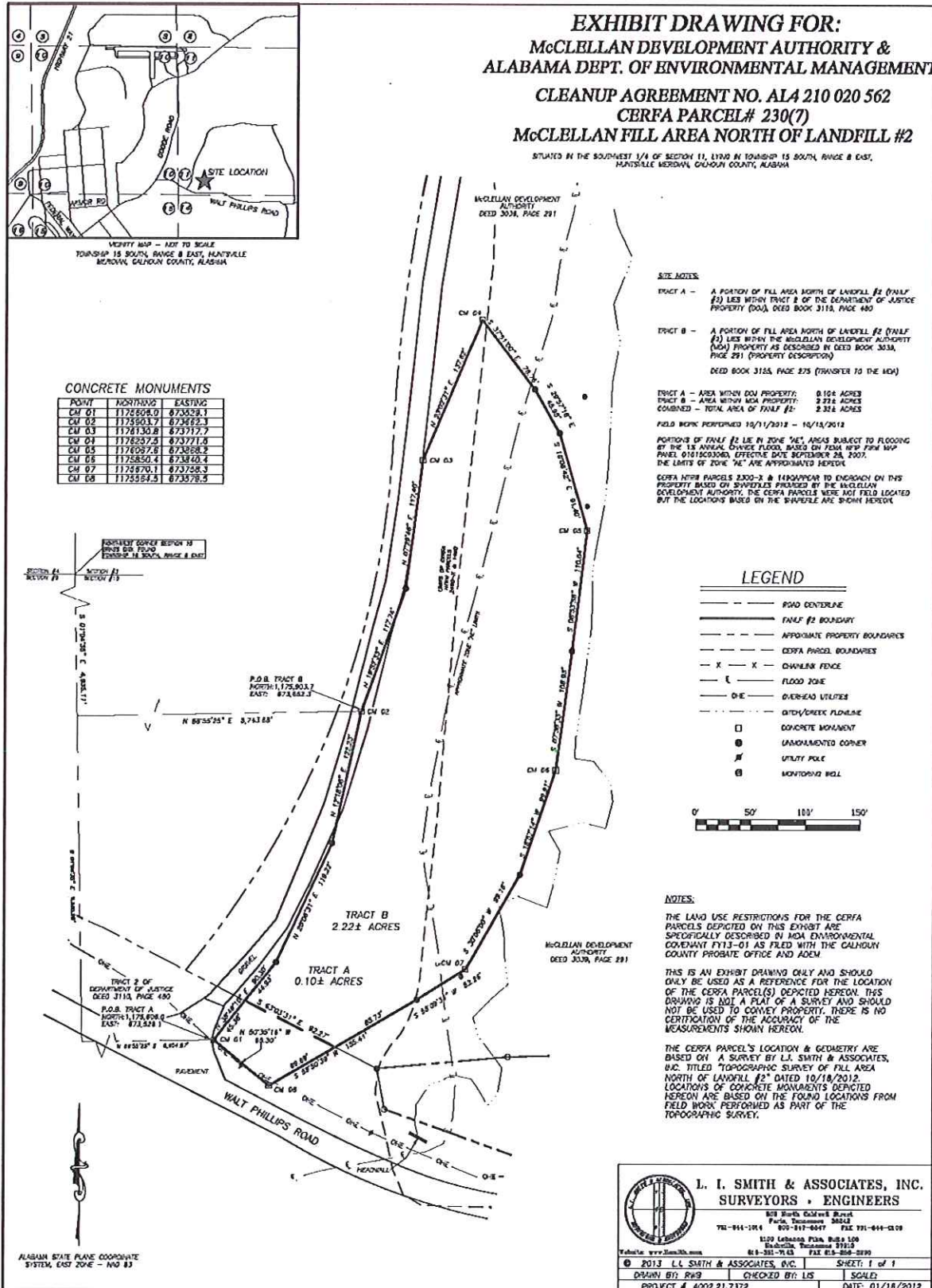


STATE OF ALABAMA)
CALHOUN COUNTY)

I, hereby certify that the foregoing Environmental Covenant has been recorded in the property records of Calhoun County, Alabama, at Deed Book 3173, Page 92
_____.

Dated April 18, 2014

By: S Robinson
Clerk, Office of Probate Judge



Recording Fee 0.00; TOTAL 0.00