

Appendix C

Joint Public Notice No. 06-91

Page intentionally blank



US Army Corps
of Engineers®

Public Notice

Public Notice No. **06-91**

Date: **August 22, 2006**

Nashville District

Application Nos. **2006-01778**

2006-01779 Expires: **September 21, 2006**

Please address all written responses to:

Nashville District Corps of Engineers, Regulatory Branch

3701 Bell Road, Nashville, TN 37214

Attn: Freddie Bell, Telephone 615/369-7513, Fax 615/369-7501

JOINT PUBLIC NOTICE
US ARMY CORPS OF ENGINEERS
TENNESSEE VALLEY AUTHORITY
STATE OF ALABAMA

SUBJECT: Proposed Community Dock Facilities at Tennessee River Mile 380.5, Right Bank, and Roseberry Creek Mile 1.0, Right Bank, Guntersville Lake, Jackson County, AL

TO ALL CONCERNED: The project described below has been submitted for a Department of the Army (DA) permit pursuant to **Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act**, and approval from the Tennessee Valley Authority (TVA) pursuant to **Section 26a of the TVA Act** (RLR Nos. 174701 & 174675) for the work on TVA Tract Nos. XGR-554 & XGR-665. Before a permit can be issued, certification must be provided by the Alabama Department of Environmental Management (ADEM), pursuant to Section 401(a)(1) of the CWA, that applicable water quality standards will not be violated. By copy of this notice, the applicant hereby applies for the required certification.

APPLICANT: The Promenade and The Oaks Homeowner's Association Inc.
3528 Darien Highway, Suite 203
Brunswick, Georgia 31520

LOCATION: Tennessee River Mile 380.5, right bank, and Roseberry Creek Mile 1.0, right bank, across from (Goose Pond Island), Guntersville Lake, Jackson County, AL. USGS Map: Langston, AL- Lat: 34-34-59, Lon: 86-2-30.

DESCRIPTION: The proposed work consists of the construction of two community dock facilities and a concrete boat launching ramp. One community dock and concrete boat launching ramp will be constructed in the area of the development known as The Promenade and one community dock would be constructed in an area of the development known as The Oaks. The two community dock facilities would together cover

File Nos. 2006-01778 & 2006-01779

Public Notice 06-91

approximately 48, 400 square feet and provide 82 covered boat slips. All facilities would be owned and operated by The Promenade and The Oaks Homeowner's Association, Inc.

1. The community dock facility and the concrete boat launching ramp in (The Promenade Subdivision) would be located in Tobe Hollow Cove along Roseberry Creek, adjacent to lots 3, 4, 5 & 6, as shown on Exhibit B. The facility would consist of three docking structures that will accommodate 40 boat slips and would have a total footprint area of 1710 square feet. There would be 320 linear feet of 8' wide boardwalk connecting the three docking structures. The 30' wide concrete boat launching ramp and associated boarding pier with 2 open slips would be constructed adjacent to the facility, as shown on Exhibits B & C.

2. The community dock facility in (The Oaks Subdivision) would be located in Willowy Cove along the Tennessee River, adjacent to lots 192, 193 & 194, as shown on Exhibit D. The facility would have three docking structures that would accommodate 42 boat slips and would have a total footprint area of 27, 787 square feet. There would be 320 linear feet of 8' wide boardwalk connecting the three docking structures.

3. To provide adequate water depth for the facilities, two areas of dredging would be needed. The first dredging area, located adjacent to the concrete boat launching ramp, roughly 75 cubic yards of material would be dredged. The second area of dredging, located adjacent to the community dock facility in The Oaks Subdivision, roughly 278 cubic yards of material would be dredged. All spoil material removed during dredging will be placed outside the 100 year flood plain and above TVA flood risk profile Elevation 597.0.

Plans of the proposed work are attached to this notice.

The decision whether to issue a permit will be based on an evaluation of the probable impacts including cumulative impacts of the activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources.

The benefit, which reasonably may be expected to accrue from the work, must be balanced against its reasonably foreseeable detriments. All factors, which may be relevant to the work, will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people. In addition, the evaluation of the impact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, Environmental Protection Agency, under authority of Section 404(b)(1) of the CWA (40 CFR Part 230). A permit will be granted unless the District Engineer determines it to be contrary to the public interest.

File Nos. 2006-01778 & 2006-01779

Public Notice 06-91

The Corps of Engineers is soliciting comments from the public; federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historical properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment (EA) and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

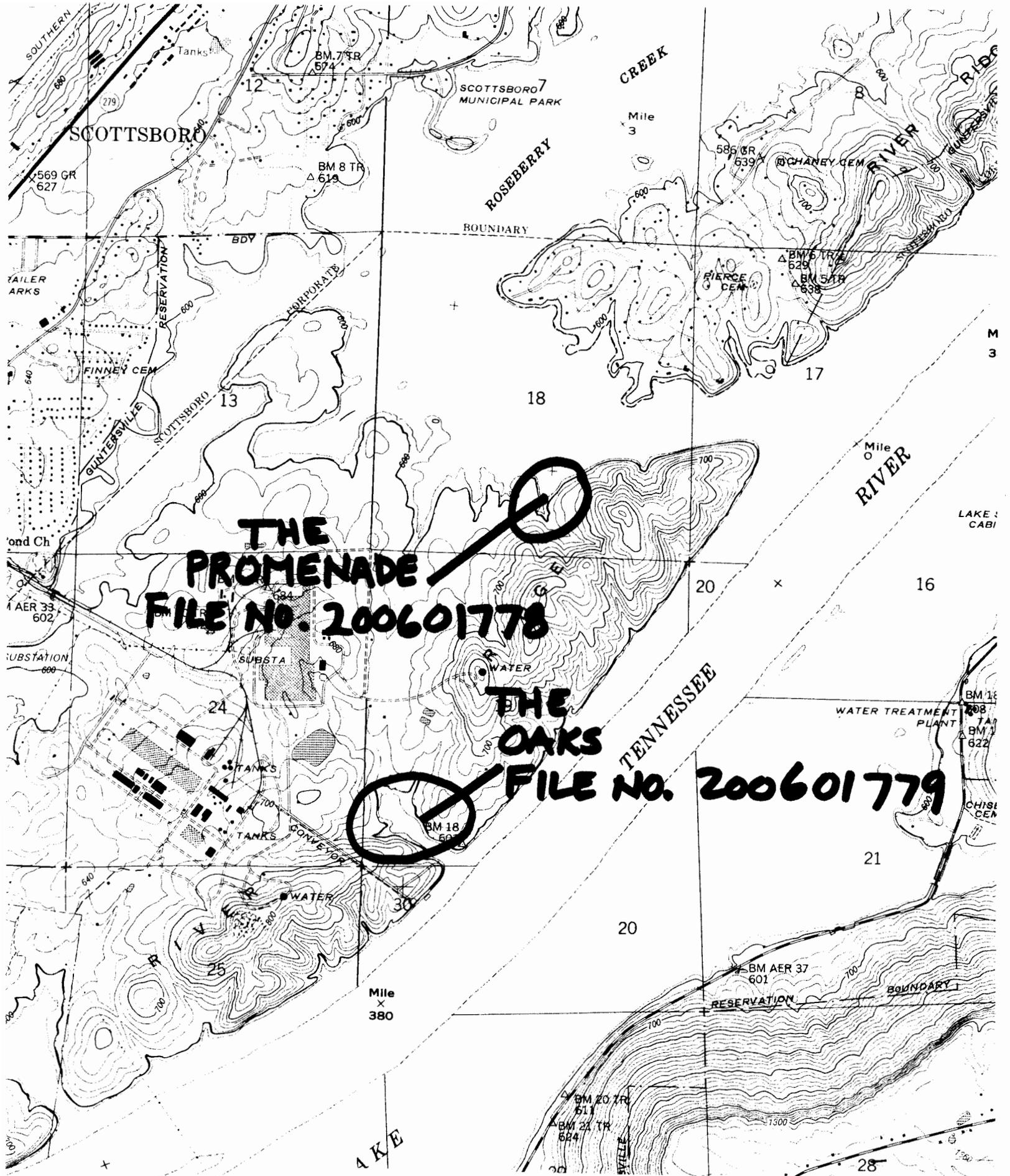
An EA will be prepared by this office prior to a final decision concerning issuance or denial of the requested DA Permit.

The National Register of Historic Places has been consulted and no properties listed in or eligible for the National Register are known which would be affected by the proposed work. This review constitutes the full extent of cultural resources investigations unless comment to this notice is received documenting that significant sites or properties exist which may be affected by this work, or that adequately documents that a potential exists for the location of significant sites or properties within the permit area. Copies of this notice are being sent to the office of the State Historic Preservation Officer.

Based on available information, the proposed work will not destroy or endanger any federally listed threatened or endangered species or their critical habitats, as identified under the Endangered Species Act, and, therefore, initiation of formal consultation procedures with the U.S. Fish and Wildlife Service is not planned at this time.

In addition to the DA and TVA permits, and water quality certification, other federal, state, and/or local approvals may be required for the proposed work.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for hearings shall state, with particularity, the reasons for holding a hearing. Written statements received in this office on or before **September 21, 2006**, will become a part of the record and will be considered in the determination. Any response to this notice should be directed to the Regulatory Branch, Attn: Freddie Bell, at the above address, telephone (615) 369-7513. It is not necessary to comment separately to TVA or the state, since copies of all comments will be sent to those agencies and will become part of their record on the proposal. Point of contact at TVA is Travis C. Perry or Alisha Mulkey, (256) 571-4280, Guntersville, Alabama.



THE PROMENADE
FILE No. 200601778

THE OAKS
FILE No. 200601779

Exhibit A
File Nos. 2006-01778
2006-01779
PN: 06-91

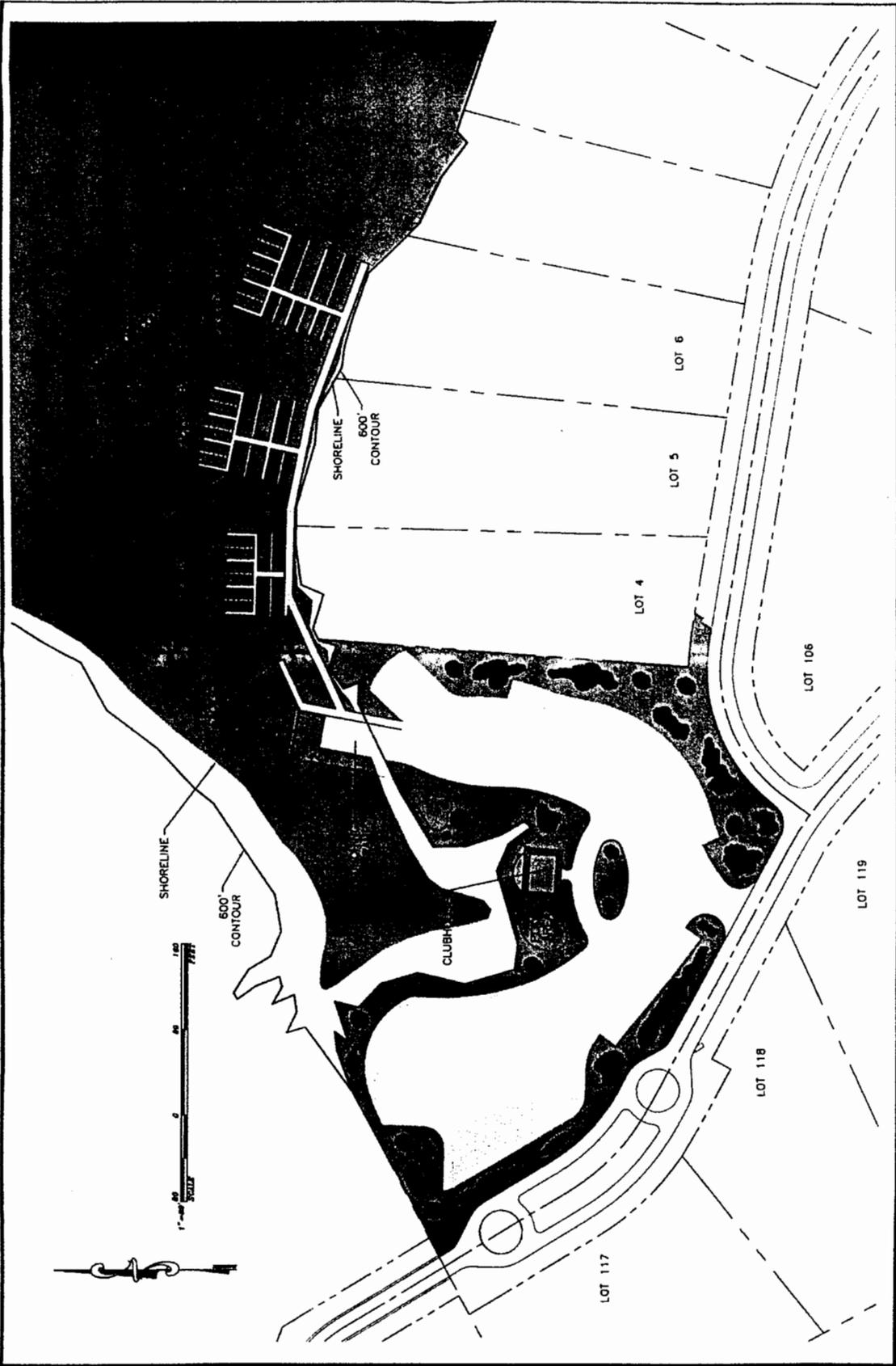
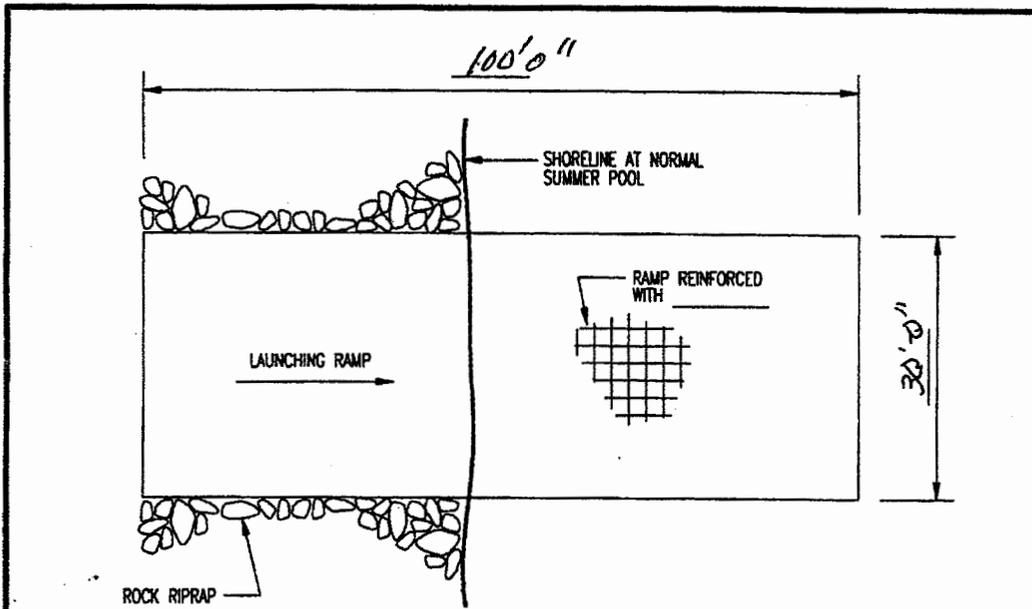
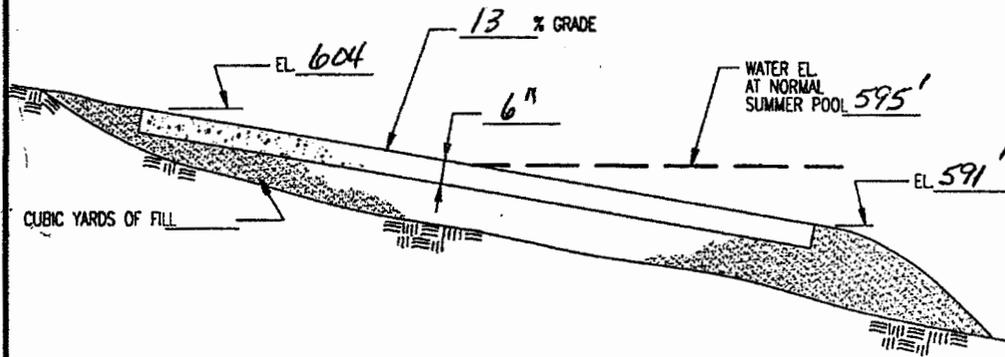


Exhibit B
File No. 2006-01778
PN: 06-91



PLAN



SECTION THRU CONCRETE RAMP

THE NORMAL SUMMER WATER LEVEL IS:

595.44'

NOTE:
INCLUDE ALL DIMENSIONS AND ELEVATIONS
WHERE INDICATED.

TVA	TYPICAL CONCRETE RAMP DETAIL		
	PROJECT LOCATION INFORMATION:		
STREAM NAME	<i>Rosengrove Creek</i>	SUBDIVISION NAME	<i>THE PRADENADE & THE OAKS</i>
RESERVOIR NAME	<i>Lake Coantoville</i>	LOT NUMBER	<i>3</i>
MILE MARKER		MAP NO.	
(APPLICANT'S NAME)			
<i>THE PRADENADE and THE OAKS Homeowner's Association</i>			

386-1-88

Exhibit C.

File NO. 2006-01778

PN-06-91

Page intentionally blank

Appendix D
Agency Correspondence

Page intentionally blank



May 27, 2005

Erin Prichard
Tennessee Valley Authority
400 West Summit Hill Drive
West Tower 11-D, Cultural Resources
Knoxville, Tennessee 37902

LEE H. WARNER
Executive Director

468 South Perry Street
Montgomery, Alabama
36130-0900

tel 334 242-3184
fax 334 240-3477

Re: AHC 2003-0029 & 2005-0322
CRA of 50 Acre Project Area on Goose Pond Island
Jackson County

Dear ~~Ms. Prichard~~: *EAM*

The Alabama Historical Commission agrees with the findings of the cultural resource assessment by Alexander Archaeological Consultants, Inc. Neither of the three archaeological sites, 1Ja1034, 1Ja1035 and 1Ja1036, are eligible for the National Register of Historic Places. Construction of this 50 acre phase of the proposed development should have no adverse effect. We look forward to reviewing the cultural resource assessments for the subsequent phases of development on the remaining 1150 acres.

As always, we appreciate your efforts to help us in preserving Alabama's non-renewable cultural resource. If you have questions or comments or if we may be of additional service, please contact Stacye Hathorn of our office and include the AHC project number referenced above.

Very truly yours,

A handwritten signature in black ink, appearing to read "Elizabeth Ann Brown".

Elizabeth Ann Brown
Deputy State Historic Preservation Officer

EAB/LDB/SGH/sgH

CC: Roy Light, Scottsboro Water Works, Sewer and Gas Board

June 17, 2005

Mr. T. Mandell Tillman
St. Christopher Point
704 S. 4th St.
Gadsden, AL 35901

Re: AHC 05-0839
Cultural Resource Assessment
Residential Development on Goose Pond Island
Jackson County, AL

Dear Mr. Tillman:

Upon review of the cultural resource assessment conducted by the Office of Archaeological Research, the Alabama Historical Commission has determined the following. The results of the assessment indicate that there are no archaeological resources or standing structures listed on or eligible for the National Register of Historic Places within the project boundaries. Therefore, our office can concur with the proposed project.

We appreciate your efforts in helping us preserve Alabama's non-renewable cultural resources. Should you have any questions or comments or if we may be of further service, please contact Amanda McBride of this office and include the project number referenced above.

Sincerely,



Elizabeth Ann Brown
Deputy State Historic Preservation Officer

468 South Perry Street
Montgomery, Alabama
36130-0900

tel 334 242-3184
fax 334 240-3477



STATE OF ALABAMA
ALABAMA HISTORICAL COMMISSION
468 SOUTH FERRY STREET
MONTGOMERY, ALABAMA 36130-0900

COLONEL (RET.) JOHN A. NEUBAUER
EXECUTIVE DIRECTOR

March 29, 2007

TEL: 334-242-3118
FAX: 334-240-347

Thomas O. Maher, Ph.D.
Archaeologist
TVA
400 W Summit Hill Drive
WT 11D
Knoxville, Tennessee 37902

Re: AHC 2006-0399
Final CRA, Development on Goosepond Island
Tracts 1, 3, 4, 5, 7, 8 and 10
Jackson County

Dear Dr. Maher:

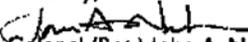
Upon review of the final cultural resource assessment conducted by Alexander Archaeological Consultants for the above referenced project, we have determined that we agree that archaeological sites 1Ja1074, 1Ja1044, 1Ja1075 and 1Ja1099 are potentially eligible for the National Register of Historic Places and should be avoided by project activities. If this option is not feasible, Phase II testing should be conducted. A detailed Phase II testing proposal for each site should be forwarded to our office for review and comment prior to commencement of testing activities. The remaining sites, 1Ja1034, 1Ja1035, 1Ja1036, 1Ja1076, 1Ja1082, 1Ja1039, 1Ja211, 1Ja1100, 1Ja1077, 1Ja1078 are not eligible for the National Register and no further testing is recommended for these locations.

The office of Archaeological Research, University of Alabama, is currently conducting documentary research regarding 1Ja1074, which was inadvertently destroyed by project. This research will serve as the mitigation for the site. As it may take several months to complete the mitigation, project activities in this area may proceed.

The remaining sites and isolated finds are not eligible for the National Register and no further testing is recommended for these locations.

We appreciate your commitment to helping us preserve Alabama's non-renewable resources. Should you have any questions, the point of contact for this matter is Amanda Hill at 334-230-2692. Please have the AHC tracking number referenced above available and include it with any correspondence.

Sincerely,


Colonel (Ret.) John A. Neubauer
State Historic Preservation Officer

JAN/AMH/amh



STATE OF ALABAMA
ALABAMA HISTORICAL COMMISSION
468 SOUTH PERRY STREET
MONTGOMERY, ALABAMA 36130-0900

COLONEL (RET.) JOHN A. NEUBAUER
EXECUTIVE DIRECTOR

April 18, 2007

TEL: 334-242-3184
FAX: 334-240-3477

Thomas O. Maher, Ph.D.
Archaeologist
TVA
400 W Summit Hill Drive
WT 11D
Knoxville, Tennessee 37902

Re: AHC 2006-0399
Development on Goosepond Island
Status of Sites IJa1038, IJa1039, IJa1074 and IJa1093
Jackson County

Dear Dr. Maher:

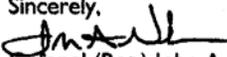
Per your recent telephone and electronic mail correspondence with Amanda Hill of our office, we would like to present a summary of the status of several sites on the Goosepond Island development.

- The office of Archaeological Research, University of Alabama has submitted the mitigation for site IJa1074 and we consider the mitigation complete. We have no further issues with this area.
- We agree with your field evaluation that the stone mounds at IJa1039 do not appear to be culturally significant. Therefore, this site is *not eligible*.
- To clarify our comments regarding the most recent archaeological assessment performed by Cypress Cultural Consultants, sites IJa1038 and IJa93 are *not eligible* for the National Register and work may proceed in these areas.

In summary, sites **IJa1038**, **IJa1039**, and **IJa1093** are *not eligible* for the National Register and no further testing is recommended for these locations. Mitigation is complete at site **IJa1074** and project activities may proceed here.

We appreciate your commitment to helping us preserve Alabama's non-renewable resources. Should you have any questions, the point of contact for this matter is Amanda Hill at 334-230-2692. Please have the AHC tracking number referenced above available and include it with any correspondence.

Sincerely,


Colonel (Ret.) John A. Neubauer
State Historic Preservation Officer

JAN/AMH/amh



United States Department of the Interior

FISH AND WILDLIFE SERVICE
1208-B Main Street
Daphne, Alabama 36526

IN REPLY REFER TO:

2006-FA-0366

September 14, 2006

District Engineer
U.S. Army Corps of Engineers
3701 Bell Road
Nashville, Tennessee 37214

Attention: Freddie Bell

Dear Sir:

This is the report of the U.S. Fish and Wildlife Service (Service) concerning public notice 06-91, application No.'s 2006-01778 and 2006-01779, a joint public notice of the U.S. Army Corps of Engineers (Corps), Tennessee Valley Authority (TVA), and the State of Alabama's Department of Environmental Management (ADEM), in which the applicant, The Promenade and The Oaks Homeowner's Association, Inc., is proposing to construct two community dock facilities and a concrete boat launching ramp. The proposed actions would occur in two separate locations on Guntersville Reservoir, approximately 3 miles south of the Town of Scottsboro, Jackson County, Alabama. As proposed, a boat launching ramp and a dock facility would be constructed within The Promenade Subdivision, located at Mile 1.0, Right Bank, Roseberry Creek (across from Goose Pond Island). Another dock facility would be constructed in The Oaks Subdivision located in Willow Cove, a cove located at Tennessee River Mile 380.5, Right Bank, Guntersville Reservoir. These two project sites are approximately one mile apart. The two community dock facilities would together impact approximately 48,400 square feet and provide 82 covered boat slips for the landowners in the two respective subdivisions. As proposed, the facilities would be owned and operated by the applicant. Dredging is proposed to occur at both dock facility locations; approximately 75 cubic yards would be dredged from The Promenade dock and boat ramp facility located in Roseberry Creek and approximately 278 cubic yards would be dredged from Willow Cove at The Oaks dock facility. As proposed, all dredged materials would be deposited on an upland site, outside the 100-year flood plain and above TVA flood risk profile Elevation 597.0.

This report is prepared in accordance with the requirements of the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.), and Fish and Wildlife Coordination Act (16 U.S.C. 661-667e) and is to be used in your determination of 404 (b) (1) guidelines compliance (40 CFR 230) and in your public interest review (33 CFR 320.4) as they relate to protection of fish and wildlife resources.

www.fws.gov

PHONE: 251-441-5181



FAX: 251-441-6222

Our evaluation of this project has included a review for Threatened and Endangered (T&E) species and/or their designated critical habitat in the proposed project area. According to our collection records, there are no known sites of T&E species or critical habitat in the proposed project site or in the vicinity (within a mile radius) of the project footprint. Past land management practices and the construction of Guntersville Dam on the Tennessee River have likely limited the potential for federally listed species to occupy this site or re-establish populations in this area. We note, however, that collection records available to the Service may not be all-inclusive, as our database is a compilation of collection records made available by various individuals and resource agencies. This information is seldom based on comprehensive surveys of all potential habitats and thus does not necessarily provide conclusive evidence that protected species are present or absent at a specific locality. However, based on the best information available at this time and past surveys conducted in areas in close proximity to the proposed project, we believe that the requirements under Section 7 of the Endangered Species Act (ESA) of 1973, as amended, are fulfilled. Obligations under Section 7 of the ESA must be reconsidered if: (1) new information reveals impacts of this identified action that may affect listed species or critical habitat in a manner not considered, (2) the action is subsequently modified to include activities which were not considered in this consultation, or (3) new species are listed or critical habitat designated that might be affected by the proposed action.

There is the potential for this project to have negative impacts on the aquatic environment within Guntersville Reservoir/Tennessee River proper, at least during the construction activities and immediately following construction/dredging activities at the project sites. Water quality conditions would likely be compromised in the area of, and adjacent to, the proposed dredging activities. As proposed, the dredging activities will remove approximately 353 cubic yards of material (e.g. reservoir silt and sediment) in the areas near the proposed dock facilities to allow for boats/vessels to moor at the dock/boat slips.

Suction dredging is the preferred method of dredging over mechanical, clam-shell dredging in reducing impacts to water quality, namely reducing turbidity. Regardless of method, it is imperative to implement and maintain best management practices (BMPs) throughout the duration of the project. We recommend dredging activities occur during winter drawdown/normal winter pool (NWP) conditions on Guntersville Reservoir (normally October through March) to further reduce impacts to aquatic biota in the vicinity of the project site. If dredging activities are allowed to occur during normal summer pool elevation/full pool periods of the year, we recommend the Corps coordinate planned dredging operations with the applicant and/or their contractor to minimize turbidity and siltation impacts within Guntersville Reservoir. The dredging contractor should be familiar with TVA power generation/water release scheduling at Nickajack Dam and Guntersville Dam to aid in determining the most appropriate times to dredge. By coordinating dredging activities with water release scheduling at these two dam facilities, turbidity and siltation impacts would likely be reduced.

We concur with the proposed removal and placement of dredged materials in an upland site. We request however, that the area designated for material disposal be surveyed to

ensure it is an upland site. No wetlands, streams, or other waterbodies at the proposed disposal area(s) should be filled or indirectly impacted from the placement of these dredged materials. We recommend the site be surveyed and a jurisdictional wetlands determination made by the Corps prior to any dredge materials disposal. All areas disturbed by the dredged materials should receive prompt stabilization measures to ensure erosion and sedimentation are kept to a minimum (e.g. use hay bales, erect and maintain geotextile silt fences, mulch and establish grass on bare soil areas, etc...).

Construction materials utilized in building the docks and boat ramp should be Environmental Protection Agency (EPA)-approved materials to ensure no adverse environmental impacts occur to the aquatic biota or water quality conditions in Guntersville Reservoir.

There was no mention or discussion in the public notice on the need or proposal for shoreline stabilization near, or in the vicinity of, the proposed action. However, if conditions warrant and shoreline stabilization is needed at one or either of these sites, we request that we be informed of the applicant's proposal to remedy shoreline erosion. We recommend the applicant and Corps consider bioengineering methods to remedy shoreline erosion and sedimentation rather than the use of hardened structures such as bulkheads/seawalls or stone riprap.

Best management practices are essential in minimizing adverse impacts to fish and wildlife and plant resources. Therefore, BMPs and their appropriate use should be employed prior to and maintained throughout the duration of the project to avoid or minimize sedimentation and turbidity in Guntersville Reservoir/Tennessee River during all phases of construction for this project. To further reduce sedimentation impacts to the Tennessee River, the Service recommends that the proposed activities occur during low water or NWP conditions. When practicable, shoreline stabilization activities should be conducted from the shore during NWP conditions to minimize sedimentation and turbidity in the Tennessee River. If shoreline stabilization activities require working from a barge, we recommend the use of tug boats that have the capacity to direct propeller wash away from river bottom substrates to minimize substrate disturbance.

Within the last 3 years, we have reviewed a number of proposed boat docking facilities (including individual landowner and community dock facilities), marinas, or marina expansion proposals being considered on the Tennessee River within Alabama. Remaining consistent with our comments on those other proposals, we recommend the Corps and TVA; through their permit review or National Environmental Policy Act (NEPA) process, consider the actual need for new boat dock facilities, marinas, or expansion of existing marinas. We recommend these agencies base their permitting of such activities on the current public use of existing marina facilities located in the vicinity of this and future, similar proposed actions.

If after considering all comments on this project the Corps and TVA decide to permit the proposed action; the Service recommends strict adherence and proper implementation of BMPs during and following construction activities and throughout the lifespan of the

project. We recommend dredging activities occur when reservoir levels are at NWP conditions. Provided none of the three above mentioned ESA conditions occur, BMPs are fully implemented and maintained, and all appropriate permits are granted from the various state and federal agencies (e.g. NPDES permit, TVA 26A permit); the Service would have no objections to the proposed construction, operation, and maintenance of the proposed boat ramp and community dock facilities.

We appreciate the opportunity to comment on this EA and request that we be kept informed of the proposed action. We look forward to working with you in the future. If you have any questions please contact Mr. Rob Hurt at (256) 353-7243, ext. 29.

Sincerely,



William J. Pearson
Field Supervisor

cc: TVA Watershed Team, Guntersville, AL
Ms. Kyla Gatlin, ADEM, Montgomery, AL
Ms. Andrea Wade, EPA, Atlanta, GA
Mr. James Cherry, ADCNR, Montgomery, AL
Mr. Rob Hurt, USFWS, Decatur, AL

Appendix E
Promenade and Oaks Development
Conservation Easements

Page intentionally blank

STATE OF ALABAMA)

JACKSON COUNTY)

DECLARATION OF CONSERVATION EASEMENT

THIS DECLARATION OF CONSERVATION EASEMENT (this "Easement") is entered this the 18th day of August, 2006 by ALABAMA SHORELINE, LLC, an Alabama limited liability company (the "Grantor"), in favor of THE ALABAMA HISTORICAL COMMISSION, an Alabama non-profit organization (the "Grantee"), and joined in by REGIONS BANK for the purpose of evidencing its consent to the provisions of this Declaration of Conservation Easement.

RECITALS

WHEREAS, the Grantor is the owner of certain real property located in Jackson County, Alabama, which is more particularly described on Exhibit A attached hereto (hereinafter called the "Property").

WHEREAS, the Grantor has determined that a portion of the Property possesses certain archaeological or historical values of great importance to the people of Jackson County, Alabama and the people of the State of Alabama (the "Archaeological Values"), which area is more particularly described on Exhibit B attached hereto (the "Archaeological Area"); and

WHEREAS, the Grantee is a tax-exempt non-profit organization within the meaning of Sections 501(c)(3), 509(a) and 170(h) of the Internal Revenue Code of 1986, as amended (the "Code"), and is empowered to hold an interest in real estate under the laws of the state of Alabama as required by § 35-18-1 et seq. CODE OF ALABAMA (1975), as amended (the "State Act"); and

WHEREAS, the Grantor and the Grantee, all desire to place this Easement on and over the Archaeological Area for the purpose of preserving the Archaeological Area in its natural condition so as to protect the archaeological and historical values, and to create a conservation easement pursuant to the State Act; and

WHEREAS, the Grantor intends that the Archaeological Values of the Archaeological Area be preserved and maintained by permitting only those land uses that do not significantly impair or interfere with such values; and

WHEREAS, the Grantor further intends, as the owner of the Archaeological Area, to convey to the Grantee the right to preserve and protect the Archaeological Values of the Archaeological Area in perpetuity.

NOW, THEREFORE, that in consideration of Ten and No/100 (\$10.00) and other good and valuable consideration paid to the Grantor, and the mutual promises and conditions set forth herein, the receipt and sufficiency Grantor hereby acknowledges, Grantor hereby grants to the Grantee a conservation easement over the Archaeological Area described hereinabove for the purposes and uses described below and subject to the terms, conditions, covenants and reservations set forth below:

1. **Intent of Grantor.** Grantor hereby acknowledges and agrees that the sole purpose of the Easement hereby created is to retain, enhance, manage, protect, and preserve the Archaeological Values of the Archaeological Area, it being the specific intent of the Grantor to permanently protect in perpetuity the Archaeological Area as described herein and to create a conservation easement under Chapter 18 of Title 35 of the CODE OF ALABAMA (1975), as amended. It is also the intent of the Grantor to comply with the provisions of Treas. Reg. § 1.170A-14, the terms of which are incorporated herein by reference and this Easement shall be interpreted in accordance with such regulations. The Grantor intends that this Easement will confine the use of the Archaeological Area to those activities described in Section 3 hereof or other activities that are not inconsistent with the purpose of this Easement.

2. **Restricted Uses.** The Grantor hereby acknowledges and agrees that the Archaeological Area shall not be used for any use that is inconsistent with the intent of this Easement as set out in paragraph 1 above.

3. **Reserved Rights.** Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, including the members of the Grantor and its personal representatives and heirs, all rights accruing from their ownership of the Archaeological Area, including the right to engage in or permit or invite others to engage in all uses of the Archaeological Area that are not prohibited herein and are not inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, and subject to the terms of Section 2, the following rights are expressly reserved:

- 3.1 To engage and permit others to engage in recreational uses of the Archaeological Area, including, without limitation, hunting and fishing, that require no surface alteration or other development of the land.
- 3.2 With prior approval of the Grantee, the following improvements to the Archaeological Area by the Grantor are permitted: the replacement or construction of pedestrian trails, outdoor classroom facilities or recreational facilities, provided that plans for the same are first submitted to and approved by the Grantee, and further provided that no more than ten percent (10%) of the land surface area is disturbed.

4. **Rights of Grantee.** To accomplish the purpose of this Easement, the following rights are conveyed to the Grantee by this Easement:

- 4.1 To preserve and protect the conservation values of the Archaeological Area.
- 4.2 To enter upon the Archaeological Area at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Easement in accordance with Section 2; provided that, except in cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Archaeological Area.
- 4.3 To prevent any activity on or use of the Archaeological Area that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Archaeological Area that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth in Section 8.
- 4.4 To enter the Easement area for the purpose of study and to make scientific observations.

5. **Running with the Land.** It is the specific intent of the parties hereto, that this Easement, shall constitute an easement and servitude in and upon the Archaeological Area, and shall run with the Archaeological Area and shall inure to the benefit of, and shall be enforceable by the Grantee, its successors or assigns, against present or subsequent holders and subsequent owners of the Archaeological Area.

6. **Instruments Subject to Easement.** Any deed, lease, conveyance, contract or other instrument involving the Archaeological Area shall be subject to this Easement, and any deed, lease, conveyance, contract or other instrument involving the Archaeological Area shall be entered into and granted as if this Easement were contained therein, and this document shall be properly recorded in the office of the Judge of Probate, Jackson County, Alabama so as to be in the chain of title for the Archaeological Area.

7. **Notice and Approval.**

- 7.1 **Notice of Intention to Undertake Certain Permitted Actions.** The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities, as provided in Section 3, is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purpose of this Easement. Whenever notice is required, Grantor shall notify Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake

the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistence with the purpose of this Easement.

7.2 **Grantee's Approval.** Where Grantee's approval is required, as set forth in Section 7.1, Grantee shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantor's written request therefor. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement.

8. **Grantee's Remedies.**

8.1 **Notice of Violation; Corrective Action.** If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Archaeological Area resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Archaeological Area so injured to its prior condition in accordance with a plan approved by Grantee.

8.2 **Injunctive Relief.** If Grantor fails to cure the violation within twenty (20) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a twenty (20) day period, fail to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Archaeological Area to the condition that existed prior to any such injury.

8.3 **[Intentionally omitted].**

8.4 **Emergency Enforcement.** If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Archaeological Area, Grantee may pursue its remedies under this Section 8 without prior notice to Grantor or without waiting for the period provided for cure to expire.

8.5 **Scope of Relief.** Grantee's rights under this Section 8 apply equally in the event of either actual or threatened violations of the terms of this

Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in Section 8.2, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this Section 8 shall be cumulative and shall be in addition to all remedies now or thereafter existing at law or in equity.

- 8.6 **Costs of Enforcement.** All reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor; provided, however, that if Grantor ultimately prevails in a judicial enforcement action each party shall bear its own costs.
- 8.7 **Forbearance.** Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.
- 8.8 **Waiver of Certain Defenses.** Grantor hereby waives any defense of laches, estoppel, or prescription.
- 8.9 **Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Archaeological Area resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from acts of third parties not under the control of Grantor, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Archaeological Area resulting from such causes.

9. **Access.** No right of access by the general public to any portion of the Archaeological Area is conveyed by this Easement.

10. **Term.** The terms, covenants, conditions and restrictions set forth in this Easement shall run with and bind all of the Archaeological Area in perpetuity.

11. **Governing Law.** The validity of this Agreement and any of its items, or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State of Alabama.

12. **Legal Construction.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provisions of this Easement and this Easement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

13. **Entire Agreement.** This Easement constitutes the entire agreement between the parties hereto relating to the granting of an easement in the Archaeological Area, and any oral representations or other writings concerning said Easement shall have no effect.

14. **Assignment.** This Easement is transferable by the Grantee, but the Grantee may assign its rights and obligations under this Easement only to an organization that is (a) a qualified organization at the time of transfer under Treas. Reg § 1.170A-14(c)(1) (or any successor provision then applicable), and the applicable regulations promulgated thereunder; and (b) authorized to acquire and hold conservation easements under state statute (or any successor provision then applicable); and (c) approved as a transferee by the Grantor. As a condition of such transfer, the Grantee shall require the transferee to expressly agree, in writing, to carry out and uphold the conservation purposes of this Easement and otherwise assume all of the obligations and liabilities of the Grantee set forth herein or created hereby. After such transfer, the Grantee shall have no further obligation or liability under this Easement. If the Grantee desires to transfer the Easement to a qualified organization having similar purposes as the Grantee, but the Grantor unreasonably refuses to approve the transfer, a court with jurisdiction shall transfer the Easement to another qualified organization having similar purpose that agrees to assume the responsibilities of the Grantee.

15. **[Intentionally omitted]**

16. **Right of First Refusal; Subsequent Transfers.**

16.1 **Right of First Refusal.** In the event Grantor at any time wishes to transfer the Archaeological Area or any portion thereof by sale or exchange, Grantor shall first give written notice thereof to Grantee which notice shall set forth the name and address of the proposed transferee and the terms of the proposed transfer a "Transfer Notice". Grantee shall have the right, exercisable in writing within twenty (20) days of receipt of the Transfer Notice to elect to purchase that portion of the Archaeological Area described in the Transfer Notice on the same terms and conditions set forth in the Transfer Notice.

16.2 **Subsequent Transfers.** Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Archaeological Area, including, without limitation, a leasehold interest. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

17. **Interpretation.** If any reserved right of the Grantor under this Easement is found to be not in compliance with Section 170(h) of the Code, or any regulations promulgated thereunder, then such provision shall be interpreted and applied in such a manner as to be in compliance with Section 170(h) of the Code, or any regulations promulgated thereunder.

18. **Acceptance.** Grantee herein accepts this Easement. In accepting this Easement, Grantee represents, warrants and confirms that this Easement is in accordance with the policy of Grantee.

19. **[Intentionally omitted]**

20. **Notice.** Any notice required to be sent under the provisions of his Agreement shall be deemed to have been properly sent when mailed by Registered or Certified United States Mail, Return Receipt Requested, postage prepaid, to the following addresses:

If to the Grantor:

Alabama Shoreline, LLC
c/o Waterfront Group Georgia, LLC
3528 Darien Highway, Suite 211
Brunswick, Georgia 31525
Attn: Stephen Patch

If to the Grantee:

The Alabama Historical Commission

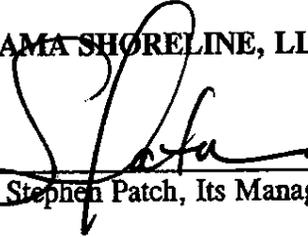
Attn: _____

TO HAVE AND TO HOLD the said Easement perpetually unto the Grantee, its successors and assigns.

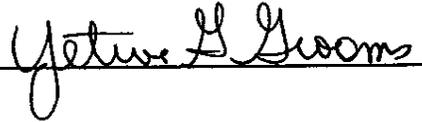
[signature page to follow]

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed and has caused its corporate seal to be hereunto affixed and attested by its respective officers, who have been hereunto duly authorized, this 18th day of August, 2006.

ALABAMA SHORELINE, LLC

By: 
Stephen Patch, Its Manager

WITNESSED:

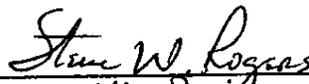


THE ALABAMA HISTORICAL COMMISSION

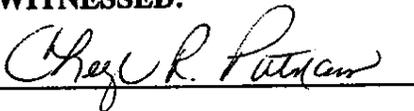
By: _____
Its: _____

WITNESSED:

REGIONS BANK

By: 
Its: Vice President

WITNESSED:



2006 25090

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed and has caused its corporate seal to be hereunto affixed and attested by its respective officers, who have been hereunto duly authorized, this ___ day of _____, 2006.

ALABAMA SHORELINE, LLC

By: _____
Stephen Patch, Its Manager

WITNESSED:

THE ALABAMA HISTORICAL COMMISSION

By: *Eizabeth Ann Brown*
Its: Interim Executive Director

WITNESSED:

M. Webb

REGIONS BANK

By: _____
Its: _____

WITNESSED:

STATE OF Georgia)
COUNTY OF Camden)

I, the undersigned, a Notary Public in and for said State and County, do hereby certify that Stephen Patch, whose name as Manager of **Alabama Shoreline, LLC**, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me this day that he, as such Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and seal on this the 18th day of August, 2006.

SEAL

Yvette J. Grooms
Notary Public
My Commission Expires: Sept. 30, 2008
Notary Public, Camden County, Georgia
My Commission Expires Sept. 30, 2008

STATE OF _____)
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said State and County, do hereby certify that _____, whose name as _____ of **The Alabama Historical Commission**, an Alabama non-profit organization, is signed to the foregoing instrument, and who is known to me, acknowledged before me this day that he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said organization.

Given under my hand and seal on this the ____ day of _____, 2006.

SEAL

Notary Public
My Commission Expires: _____

STATE OF _____)
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said State and County, do hereby certify that Stephen Patch, whose name as Manager of **Alabama Shoreline, LLC**, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me this day that he, as such Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and seal on this the ____ day of _____, 2006.

SEAL

Notary Public
My Commission Expires: _____

STATE OF _____)
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said State and County, do hereby certify that Elizabeth Ann Brown whose name as Interim Director of **The Alabama Historical Commission**, an Alabama non-profit organization, is signed to the foregoing instrument, and who is known to me, acknowledged before me this day that he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said organization.

Given under my hand and seal on this the 22 day of August, 2006.

SEAL

Ernest G. Marchant

Notary Public
My Commission Expires: 8/22/09

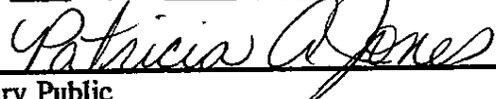
2006 25093

STATE OF ALABAMA)
COUNTY OF JACKSON)

I, the undersigned, a Notary Public in and for said State and County, do hereby certify that Steve W. Rogers, whose name as Vice President of **Regions Bank**, an Alabama banking corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me this day that he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said banking corporation.

Given under my hand and seal on this the 18th day of August, 2006.

SEAL



Notary Public
My Commission Expires: _____

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: MAY 20, 2008
BONDED THRU NOTARY PUBLIC UNDERWRITERS

This instrument prepared by:

Matthew W. Grill, Esq.
MAYNARD, COOPER & GALE, P.C.
1901 Sixth Avenue North
2400 AmSouth/Harbert Plaza
Birmingham, Alabama 35203-2602
(205) 254-1000

EXHIBIT A

(Description of Property)

A plot of land encompassing The Oaks Subdivision in its entirety, according to the Survey of The Oaks as reflected on the recorded map of The Promenade and The Oaks, as filed in Map Cabinet B, Slides 63A through 63J, in the Probate Office of Jackson County, Alabama (including all roadways, common areas and all other Archaeological Area located within the boundary of The Promenade Subdivision as shown on said map).

STATE OF ALABAMA
I CERTIFY THIS
INSTRUMENT WAS FILED

2006 25095

2006 SEP -8 AM 11:03

EXHIBIT B

U.C. FILE NUMBER OR
REC. BK. & P. IF KNOWN (Description of Archaeological Area)

Doyle H. ...

A Historical Archeological Easement Area being more particularly described as follows:

Commencing at a point purported to be the Southeast corner of Lot 202 of The Promenade & The Oaks as recorded in Cabinet B, Slide 63A-63J in the Probate Office of Jackson County, Alabama; Thence South 53 degrees 48 minutes 44 seconds West 57.83 feet to a point; Thence South 76 degrees 03 minutes 53 seconds West 27.64 feet to a point, the point of beginning for the property herein described; Thence North 30 degrees 31 minutes 06 seconds West 13.39 feet to a point; Thence North 65 degrees 46 minutes 10 seconds West 29.53 feet to a point; Thence North 85 degrees 26 minutes 08 seconds West 40.83 feet to a point; Thence North 78 degrees 05 minutes 51 seconds West 21.56 feet to a point; Thence North 59 degrees 53 minutes 42 seconds West 25.50 feet to a point; Thence North 52 degrees 32 minutes 21 seconds West 43.52 feet to a point; Thence North 88 degrees 37 minutes 58 seconds West 50.45 feet to a point; Thence South 79 degrees 07 minutes 42 seconds West 42.90 feet to a point; Thence South 53 degrees 14 minutes 10 seconds West 71.27 feet to a point; Thence South 34 degrees 02 minutes 38 seconds West 105.17 feet to a point; Thence South 36 degrees 22 minutes 04 seconds West 92.16 feet to a point; Thence South 70 degrees 56 minutes 38 seconds West 71.72 feet to a point; Thence South 76 degrees 07 minutes 37 seconds West 62.06 feet to a point; Thence South 79 degrees 53 minutes 45 seconds West 87.40 feet to a point; Thence South 65 degrees 25 minutes 40 seconds West 36.11 feet to a point; Thence South 54 degrees 45 minutes 58 seconds East 55.64 feet to a point; Thence South 54 degrees 27 minutes 00 seconds East 76.45 feet to a point on the 600 foot contour of Lake Guntersville; Thence along said contour as follows: Thence South 89 degrees 19 minutes 10 seconds East 86.01 feet to a point; Thence North 77 degrees 24 minutes 34 seconds East 49.60 feet to a point; Thence South 87 degrees 05 minutes 28 seconds East 68.03 feet to a point; Thence South 11 degrees 59 minutes 48 seconds East 30.76 feet to a point; Thence North 85 degrees 40 minutes 21 seconds East 43.40 feet to a point; Thence North 51 degrees 41 minutes 10 seconds East 175.96 feet to a point; Thence North 45 degrees 46 minutes 20 seconds East 126.34 feet to a point; Thence North 35 degrees 22 minutes 41 seconds East 122.39 feet to a point; Thence North 39 degrees 42 minutes 01 seconds East 4.21 feet to a point; Thence North 36 degrees 38 minutes 04 seconds East 28.77 feet to a point; Thence North 76 degrees 03 minutes 53 seconds East 14.88 feet to the point of beginning, containing 2.80 acres more or less.

File	<u>300</u>
Rec.	<u>4200</u>
Index	<u>400</u>
Mtg. Tax	
Deed Tax	<u>1.00 easement</u>
Misc.	
TOTAL	<u>50.00</u>

STATE OF ALABAMA)

JACKSON COUNTY)

DECLARATION OF CONSERVATION EASEMENT

THIS DECLARATION OF CONSERVATION EASEMENT (this "Easement") is entered this the ____ day of March, 2007 by **ALABAMA SHORELINE, LLC**, an Alabama limited liability company (the "Grantor"), in favor of **THE ALABAMA HISTORICAL COMMISSION**, an Alabama non-profit organization (the "Grantee"), and joined in by **REGIONS BANK** for the purpose of evidencing its consent to the provisions of this Declaration of Conservation Easement.

RECITALS

WHEREAS, the Grantor is the owner of certain real property located in Jackson County, Alabama, which is more particularly described on Exhibit A attached hereto (hereinafter called the "Property").

WHEREAS, the Grantor has determined that a portion of the Property possesses certain archaeological or historical values of great importance to the people of Jackson County, Alabama and the people of the State of Alabama (the "Archaeological Values"), which area is more particularly described on Exhibit B attached hereto (the "Archaeological Area"); and

WHEREAS, the Grantee is a tax-exempt non-profit organization within the meaning of Sections 501(c)(3), 509(a) and 170(h) of the Internal Revenue Code of 1986, as amended (the "Code"), and is empowered to hold an interest in real estate under the laws of the state of Alabama as required by § 35-18-1 et seq. CODE OF ALABAMA (1975), as amended (the "State Act"); and

WHEREAS, the Grantor and the Grantee, all desire to place this Easement on and over the Archaeological Area for the purpose of preserving the Archaeological Area in its natural condition so as to protect the archaeological and historical values, and to create a conservation easement pursuant to the State Act; and

WHEREAS, the Grantor intends that the Archaeological Values of the Archaeological Area be preserved and maintained by permitting only those land uses that do not significantly impair or interfere with such values; and

WHEREAS, the Grantor further intends, as the owner of the Archaeological Area, to convey to the Grantee the right to preserve and protect the Archaeological Values of the Archaeological Area in perpetuity.

NOW, THEREFORE, that in consideration of Ten and No/100 (\$10.00) and other good and valuable consideration paid to the Grantor, and the mutual promises and

conditions set forth herein, the receipt and sufficiency Grantor hereby acknowledges, Grantor hereby grants to the Grantee a conservation easement over the Archaeological Area described hereinabove for the purposes and uses described below and subject to the terms, conditions, covenants and reservations set forth below:

1. **Intent of Grantor.** Grantor hereby acknowledges and agrees that the sole purpose of the Easement hereby created is to retain, enhance, manage, protect, and preserve the Archaeological Values of the Archaeological Area, it being the specific intent of the Grantor to permanently protect in perpetuity the Archaeological Area as described herein and to create a conservation easement under Chapter 18 of Title 35 of the CODE OF ALABAMA (1975), as amended. It is also the intent of the Grantor to comply with the provisions of Treas. Reg. § 1.170A-14, the terms of which are incorporated herein by reference and this Easement shall be interpreted in accordance with such regulations. The Grantor intends that this Easement will confine the use of the Archaeological Area to those activities described in Section 3 hereof or other activities that are not inconsistent with the purpose of this Easement.

2. **Restricted Uses.** The Grantor hereby acknowledges and agrees that the Archaeological Area shall not be used for any use that is inconsistent with the intent of this Easement as set out in paragraph 1 above.

3. **Reserved Rights.** Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, including the members of the Grantor and its personal representatives and heirs, all rights accruing from their ownership of the Archaeological Area, including the right to engage in or permit or invite others to engage in all uses of the Archaeological Area that are not prohibited herein and are not inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, and subject to the terms of Section 2, the following rights are expressly reserved:

3.1 To engage and permit others to engage in recreational uses of the Archaeological Area, including, without limitation, hunting and fishing, that require no surface alteration or other development of the land.

3.2 With prior approval of the Grantee, the following improvements to the Archaeological Area by the Grantor are permitted: the replacement or construction of pedestrian trails, outdoor classroom facilities or recreational facilities, provided that plans for the same are first submitted to and approved by the Grantee, and further provided that no more than ten percent (10%) of the land surface area is disturbed.

4. **Rights of Grantee.** To accomplish the purpose of this Easement, the following rights are conveyed to the Grantee by this Easement:

4.1 To preserve and protect the conservation values of the Archaeological Area.

- 4.2 To enter upon the Archaeological Area at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Easement in accordance with Section 2; provided that, except in cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Archaeological Area.
- 4.3 To prevent any activity on or use of the Archaeological Area that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Archaeological Area that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth in Section 8.
- 4.4 To enter the Easement area for the purpose of study and to make scientific observations.

5. **Running with the Land.** It is the specific intent of the parties hereto, that this Easement, shall constitute an easement and servitude in and upon the Archaeological Area, and shall run with the Archaeological Area and shall inure to the benefit of, and shall be enforceable by the Grantee, its successors or assigns, against present or subsequent holders and subsequent owners of the Archaeological Area.

6. **Instruments Subject to Easement.** Any deed, lease, conveyance, contract or other instrument involving the Archaeological Area shall be subject to this Easement, and any deed, lease, conveyance, contract or other instrument involving the Archaeological Area shall be entered into and granted as if this Easement were contained therein, and this document shall be properly recorded in the office of the Judge of Probate, Jackson County, Alabama so as to be in the chain of title for the Archaeological Area.

7. **Notice and Approval.**

7.1 **Notice of Intention to Undertake Certain Permitted Actions.** The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities, as provided in Section 3, is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purpose of this Easement. Whenever notice is required, Grantor shall notify Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistence with the purpose of this Easement.

- 7.2 **Grantee's Approval.** Where Grantee's approval is required, as set forth in Section 7.1, Grantee shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantor's written request therefor. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement.
8. **Grantee's Remedies.**
- 8.1 **Notice of Violation; Corrective Action.** If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Archaeological Area resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Archaeological Area so injured to its prior condition in accordance with a plan approved by Grantee.
- 8.2 **Injunctive Relief.** If Grantor fails to cure the violation within twenty (20) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a twenty (20) day period, fail to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Archaeological Area to the condition that existed prior to any such injury.
- 8.3 **[Intentionally omitted].**
- 8.4 **Emergency Enforcement.** If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Archaeological Area, Grantee may pursue its remedies under this Section 8 without prior notice to Grantor or without waiting for the period provided for cure to expire.
- 8.5 **Scope of Relief.** Grantee's rights under this Section 8 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in Section 8.2, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in

this Section 8 shall be cumulative and shall be in addition to all remedies now or thereafter existing at law or in equity.

8.6 **Costs of Enforcement.** All reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor; provided, however, that if Grantor ultimately prevails in a judicial enforcement action each party shall bear its own costs.

8.7 **Forbearance.** Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

8.8 **Waiver of Certain Defenses.** Grantor hereby waives any defense of laches, estoppel, or prescription.

8.9 **Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Archaeological Area resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from acts of third parties not under the control of Grantor, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Archaeological Area resulting from such causes.

9. **Access.** No right of access by the general public to any portion of the Archaeological Area is conveyed by this Easement.

10. **Term.** The terms, covenants, conditions and restrictions set forth in this Easement shall run with and bind all of the Archaeological Area in perpetuity.

11. **Governing Law.** The validity of this Agreement and any of its items, or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State of Alabama.

12. **Legal Construction.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provisions of this Easement and this Easement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

13. **Entire Agreement.** This Easement constitutes the entire agreement between the parties hereto relating to the granting of an easement in the Archaeological Area, and any oral representations or other writings concerning said Easement shall have no effect.

14. **Assignment.** This Easement is transferable by the Grantee, but the Grantee may assign its rights and obligations under this Easement only to an organization that is (a) a qualified organization at the time of transfer under Treas. Reg § 1.170A-14(c)(1) (or any successor provision then applicable), and the applicable regulations promulgated thereunder; and (b) authorized to acquire and hold conservation easements under state statute (or any successor provision then applicable); and (c) approved as a transferee by the Grantor. As a condition of such transfer, the Grantee shall require the transferee to expressly agree, in writing, to carry out and uphold the conservation purposes of this Easement and otherwise assume all of the obligations and liabilities of the Grantee set forth herein or created hereby. After such transfer, the Grantee shall have no further obligation or liability under this Easement. If the Grantee desires to transfer the Easement to a qualified organization having similar purposes as the Grantee, but the Grantor unreasonably refuses to approve the transfer, a court with jurisdiction shall transfer the Easement to another qualified organization having similar purpose that agrees to assume the responsibilities of the Grantee.

15. **[Intentionally omitted]**

16. **Right of First Refusal; Subsequent Transfers.**

16.1 **Right of First Refusal.** In the event Grantor at any time wishes to transfer the Archaeological Area or any portion thereof by sale or exchange, Grantor shall first give written notice thereof to Grantee which notice shall set forth the name and address of the proposed transferee and the terms of the proposed transfer a "Transfer Notice". Grantee shall have the right, exercisable in writing within twenty (20) days of receipt of the Transfer Notice to elect to purchase that portion of the Archaeological Area described in the Transfer Notice on the same terms and conditions set forth in the Transfer Notice.

16.2 **Subsequent Transfers.** Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Archaeological Area, including, without limitation, a leasehold interest. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

17. **Interpretation.** If any reserved right of the Grantor under this Easement is found to be not in compliance with Section 170(h) of the Code, or any regulations promulgated thereunder, then such provision shall be interpreted and applied in such a

manner as to be in compliance with Section 170(h) of the Code, or any regulations promulgated thereunder.

18. **Acceptance.** Grantee herein accepts this Easement. In accepting this Easement, Grantee represents, warrants and confirms that this Easement is in accordance with the policy of Grantee.

19. **[Intentionally omitted]**

20. **Notice.** Any notice required to be sent under the provisions of his Agreement shall be deemed to have been properly sent when mailed by Registered or Certified United States Mail, Return Receipt Requested, postage prepaid, to the following addresses:

If to the Grantor:

Alabama Shoreline, LLC
c/o Waterfront Group Georgia, LLC
3528 Darien Highway, Suite 211
Brunswick, Georgia 31525
Attn: Stephen Patch

If to the Grantee:

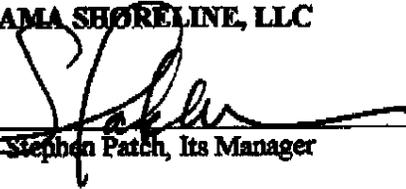
The Alabama Historical Commission
468 South Perry Street
Montgomery, Alabama 36104
Attn: Executive Director

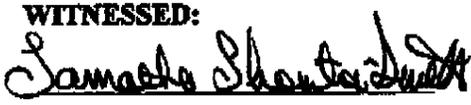
TO HAVE AND TO HOLD the said Easement perpetually unto the Grantee, its successors and assigns.

[signature page to follow]

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed and has caused its corporate seal to be hereunto affixed and attested by its respective officers, who have been hereunto duly authorized, this ___ day of February, 2007.

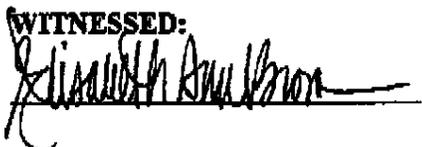
ALABAMA SHORELINE, LLC

By: 
Stephen Patch, Its Manager

WITNESSED:


THE ALABAMA HISTORICAL COMMISSION

By: 
Its: EXECUTIVE DIRECTOR

WITNESSED:


REGIONS BANK

By: _____
Its: _____

WITNESSED:

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed and has caused its corporate seal to be hereunto affixed and attested by its respective officers, who have been hereunto duly authorized, this __ day of March, 2007.

ALABAMA SHORELINE, LLC

By: _____
Stephen Patch, Its Manager

WITNESSED:

THE ALABAMA HISTORICAL COMMISSION

By: _____
Its: _____

WITNESSED:

REGIONS BANK

By: Steve W. Rogers
Its: Vice President

WITNESSED:

Cheryl R. Putnam

STATE OF _____)
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said State and County, do hereby certify that Stephen Patch, whose name as Manager of **Alabama Shoreline, LLC**, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me this day that he, as such Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and seal on this the ____ day of _____, 2007.

SEAL

Notary Public
My Commission Expires: _____

STATE OF _____)
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said State and County, do hereby certify that _____, whose name as _____ of **The Alabama Historical Commission**, an Alabama non-profit organization, is signed to the foregoing instrument, and who is known to me, acknowledged before me this day that he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said organization.

Given under my hand and seal on this the ____ day of _____, 2007.

SEAL

Notary Public
My Commission Expires: _____

STATE OF ALABAMA)
COUNTY OF JACKSON)

I, the undersigned, a Notary Public in and for said State and County, do hereby certify that Steve W. Rogers, whose name as Vice President of **Regions Bank**, an Alabama banking corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me this day that he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said banking corporation.

Given under my hand and seal on this the 15th day of March, 2007.

SEAL

Wanda Soulen
Notary Public
My Commission Expires: My Commission Expires June 18, 2010

This instrument prepared by:

Matthew W. Grill, Esq.
MAYNARD, COOPER & GALE, P.C.
1901 Sixth Avenue North
2400 AmSouth/Harbert Plaza
Birmingham, Alabama 35203-2602
(205) 254-1000

EXHIBIT A

(Description of Property)

A plot of land encompassing The Oaks Subdivision in its entirety, according to the Survey of The Oaks as reflected on the recorded map of The Promenade and The Oaks, as filed in Map Cabinet B, Slides 63A through 63J, in the Probate Office of Jackson County, Alabama (including all roadways, common areas and all other Archaeological Area located within the boundary of The Promenade Subdivision as shown on said map).

EXHIBIT B

(Description of Archaeological Area)

A Historical Archeological Easement Area being more particularly described as follows:

A tract or parcel of land containing 0.70 acres being part of Lots 232 and 233 of *The Promenade & The Oaks* as recorded in Plat Cabinet B, Slide 63A, Jackson County, Alabama, and being more particularly described as follows: Commence at the southwest corner of said Lot 232; thence S54°21'55"E 283.64 feet; thence N35°38'05"E 31.88 feet to an iron set (this iron and all irons referred to as set are 5/8 inch diameter rebar with yellow cap stamped CDG CA-0026-LS), the true point of beginning; thence N36°32'13"E 53.08 feet to an iron set; thence N03°31'11"W 36.81 feet to an iron set; thence N29°50'39"E 26.90 feet to an iron set; thence N88°39'23"E 31.45 feet to an iron set; thence S56°48'48"E 88.58 feet to an iron set; thence S86°56'37"E 22.36 feet to an iron set; thence S71°23'28"E 26.91 feet to an iron set; thence S30°40'56"E 32.54 feet to an iron set; thence S13°11'14"W 18.53 feet to an iron set; thence S11°42'57"E 10.12 feet to an iron set on the TVA 600 foot contour of Guntersville Lake; thence along said contour S22°52'03"W 27.94 feet to an iron set; thence continue along said contour S28°49'40"W 61.21 feet to an iron set; thence continue along said contour S33°30'00"W 32.61 feet to an iron set; thence leaving said contour S72°23'47"W 13.48 feet to an iron set; thence N68°29'52"W 34.78 feet to an iron set; thence N53°57'50"W 110.08 feet to an iron set; thence N35°15'21"W 26.27 feet to an iron set; thence N07°08'06"W 22.58 feet to the true point of beginning.

Page intentionally blank

Appendix F
Guntersville Reservoir Monitoring

Page intentionally blank

Guntersville Reservoir Monitoring

TVA began a program to systematically monitor the ecological conditions of its reservoirs in 1990; however, data from the Reservoir Fish Assemblage Index (RFAI) records on Guntersville Reservoir begin in 2000. Before 1990, reservoir studies were confined to site-specific assessments made to meet specific needs as they arose. Reservoir (and stream) monitoring programs were combined with TVA's fish tissue and bacteriological studies to form an integrated Vital Signs Monitoring Program. Vital signs monitoring activities focus on (1) physical/chemical characteristics of waters; (2) physical/chemical characteristics of sediments; (3) benthic macro-invertebrate community sampling; and (4) fish assemblage sampling.

Benthic macroinvertebrates are included in aquatic monitoring programs because of their importance to the aquatic food chain and because they have limited capability of movement, thereby preventing them from avoiding undesirable conditions. Sampling and data analysis were based on seven parameters that include species diversity, presence of selected taxa that are indicative of good water quality, occurrence of long-lived organisms, total abundance of all organisms except those indicative of poor water quality, proportion of total abundance comprised by pollution-tolerant oligochaetes, proportion of total abundance comprised by the two most abundant taxa, and proportion of samples with no organisms present. Areas sampled on Guntersville Reservoir near Goose Pond Island included the forebay (area of the reservoir nearest the dam), and a midreservoir transition station in the vicinity of Tennessee River Mile (TRM) 375.2. With the exception of the forebay in 2000, neither of the monitoring sites received a benthic community rating worse than "good" for the five years during which benthic samples were taken (Table 1). Presumably, areas around Goose Pond Island would score similarly considering the lack of disturbance that has occurred over the past 11 years.

Table 1. Recent (1996-2004) Benthic Community Scores* Collected as Part of the Vital Signs Monitoring Program in the Vicinity of Goose Pond Island, Guntersville Reservoir

Station	River Mile	1996	1998	2000	2002	2004
Forebay	TRM 350	35	35	23	25	35
Midreservoir	TRM 375.2	33	33	31	33	29

*Benthic Community Score	7-12	13-18	19-23	24-29	30-35
Community Condition	Very Poor	Poor	Fair	Good	Excellent

The Reservoir Vital Signs Monitoring Program has also included fish sampling on Guntersville Reservoir biennially from 2000 until 2006. Fish are included in aquatic monitoring programs because they are important to the aquatic food chain and because they have a long life cycle, which allows them to reflect water quality conditions over time. Fish are also important to the public for aesthetic, recreational, and commercial reasons. Ratings are based primarily on fish community structure and function using a metric known as the Reservoir Fish Assemblage Index (RFAI). Also considered in the rating is the percentage of the sample represented by omnivore and insectivores, overall number of fish collected, and the occurrence of fish with anomalies such as diseases, lesions, parasites, deformities, etc. (TVA 1999). The fish community in Guntersville Reservoir has consistently rated in the "fair" to "good" range at both the forebay and the midreservoir sampling stations (Table 2).

Table 2. Recent (2000-2006) RFAI Scores* Collected as Part of the Vital Signs Monitoring Program in the Vicinity of Goose Pond Island, Guntersville Reservoir

Station	River Mile	2000	2002	2004	2006
Forebay	TRM 350	42	36	41	44
Midreservoir	TRM 375.2	41	34	33	36

* RFAI Score 12-21 22-31 32-40 41-50 51-60
Community Condition Very Poor Poor Fair Good Excellent

A Sport Fishing Index (SFI) has been developed to measure sport fishing quality for various species in Tennessee and Cumberland Valley reservoirs. The SFI is based on the results of fish population sampling by TVA and state resource agencies and, when available, results of angler success as measured by state resource agencies (i.e., bass tournament results and creel surveys). Guntersville Reservoir provides some opportunities for sport anglers, particularly those interested in black bass (Hickman 1999). In 2005, Guntersville Reservoir rated above average for crappie and spotted bass and above average for the overall SFI score (Table 3).

Table 3. SFI Scores for Selected Sport Fish Species in Guntersville Reservoir, 2005

Fish Species	2005 Score	2005 Valleywide Average
Black Bass	42	34
Black Crappie	36	33
Largemouth Bass	32	34
Spotted Bass	32	30

Data on the fish species collected have been published or posted on the Internet for all samples taken between 2000 and 2004. However, the numbers of each species collected are available from 2000 to 2006. In total, there were 44 species collected from Guntersville Reservoir between 2000 and 2006. Table 4 lists the 44 species collected from Guntersville Reservoir as well as sample sizes for years that such data are available.

Table 4. Fish Species Collected From Electrofishing and Gill Netting Samples at Two Sites (TRM 350 and TRM 375.2) in the Vicinity of Goose Pond Island, Guntersville Reservoir, From 2000 to 2006

Common Name	Scientific Name	2000		2002		2004		2006	
		TRM 350	TRM 375.2						
Black Buffalo	<i>Ictiobus niger</i>	--	--	--	--	X	--	--	--
Black Crappie	<i>Pomoxis nigromaculatus</i>	--	X	X	X	X	X	X	X
Blackstripe Topminnow	<i>Fundulus notatus</i>	--	--	X	--	--	--	--	X
Blue Catfish	<i>Ictalurus furcatus</i>	X	--	X	--	--	X	X	X
Bluegill	<i>Lepomis macrochirus</i>	X	X	X	X	X	X	X	X
Bowfin	<i>Amia calva</i>	--	--	--	--	--	X	--	X
Brook Silverside	<i>Pimephales notatus</i>	X	--	--	--	X	--	--	--
Channel Catfish	<i>Ictalurus punctatus</i>	X	X	X	X	X	X	X	X
Common Carp	<i>Cyprinus carpio</i>	X	X	X	X	X	X	X	X
Emerald Shiner	<i>Notropis atherinoides</i>	--	X	--	X	X	X	--	--
Flathead Catfish	<i>Polydictis olivaris</i>	X	--	X	X	X	X	X	X
Freshwater Drum	<i>Aplodinotus grunniens</i>	X	X	X	X	X	X	X	X
Gizzard Shad	<i>Dorosoma cepedianum</i>	X	X	X	X	X	X	X	X
Golden Redhorse	<i>Moxostoma erythrurum</i>	--	--	--	--	--	--	X	X
Golden Shiner	<i>Notemigamus crysoleucas</i>	--	--	--	X	X	X	--	--
Grass Carp	<i>Ctenopharyngodon idella</i>	--	--	--	X	--	--	--	--
Green Sunfish	<i>Lepomis cyanellus</i>	--	--	--	--	--	--	X	--
Hybrid Shad	<i>Dorosoma sp.</i>	--	--	X	--	--	--	X	--
Hybrid Stripe x	<i>Morone sp.</i>	X	--	X	X	--	--	--	--
Hybrid Sunfish	<i>Lepomis sp.</i>	--	--	X	X	--	--	--	--
Inland Silverside	<i>Menidia beryllina</i>	--	--	--	--	X	X	X	X
Largemouth Bass	<i>Micropterus salmoides</i>	X	X	--	--	X	X	X	X
Logperch	<i>Percina caprodes</i>	X	--	X	X	X	X	X	--
Longear Sunfish	<i>Esox masquinongy</i>	X	--	X	--	X	--	X	--
Longnose Gar	<i>Lepisosteus osseus</i>	--	X	--	X	--	--	--	--
Northern Hog	<i>Hypentelium nigricans</i>	--	--	--	--	--	--	X	--
Redbreast Sunfish	<i>Lepomis auritus</i>	--	X	X	X	X	X	X	X
Redear Sunfish	<i>Lepomis microlophus</i>	X	X	X	X	X	X	X	X
Sauger	<i>Carpionodes carpio</i>	X	X	X	X	X	X	X	X
Skipjack Herring	<i>Moxostoma carinatum</i>	X	X	X	X	X	--	X	X
Smallmouth Bass	<i>Ambloplites rupestris</i>	X	--	X	--	--	--	--	--
Smallmouth Buffalo	<i>Notropis photogenis</i>	--	--	X	--	X	X	X	--
Spotted Bass	<i>Cyprinella spiloptera</i>	X	X	X	--	--	X	X	X
Spotted Gar	<i>Lepisosteus oculatus</i>	X	X	X	X	X	X	X	X
Spotted Sucker	<i>Minytrema melanops</i>	--	--	X	--	--	--	X	--
Striped Bass	<i>Morone saxatilis</i>	--	--	--	--	--	--	X	--
Threadfin Shad	<i>Dorosoma petenense</i>	X	X	X	X	X	X	X	X
Walleye	<i>Sander vitreus</i>	X	--	--	--	--	--	--	--
Warmouth	<i>Lepomis gulosus</i>	--	--	X	--	X	--	X	X
White Bass	<i>Morone chrysops</i>	--	--	X	X	--	--	X	X
White Crappie	<i>Pomoxis annularis</i>	X	--	--	--	X	--	--	--
Yellow Bass	<i>Morone mississippiensis</i>	X	X	X	X	X	X	X	X
Yellow Bullhead	<i>Ameiurus natalis</i>	--	--	X	--	--	--	X	--
Yellow Perch	<i>Perca flavescens</i>	X	X	X	--	X	X	X	--

Literature Cited

Hickman, G. D. 1999. *Sport Fishing Index (SFI) - A Method to Quantify Sport Fishing Quality*. Norris: Tennessee Valley Authority, Resource Stewardship. Unpublished report.

Tennessee Valley Authority. 1999. *Aquatic Ecological Health Determinations for TVA Reservoirs -1998. An Informal Summary of 1998 Vital Signs Monitoring Results and Ecological Health Determination Methods*. Primary Authors/Editors D. L. Dycus, D. L. Meinert, and T. F. Baker. Chattanooga: TVA Water Management.