

BALDWIN COUNTY, ALABAMA
 JUDGE ADRIAN T. JOHNS
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 6 Pages

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Model for Use with Permits With Mitigation Plans

STATE OF ALABAMA

**DECLARATION OF
 RESTRICTIVE COVENANTS**

COUNTY OF ~~MOBILE~~ BALDWIN

SLT NONE

THIS DECLARATION OF RESTRICTIVE COVENANTS is made this 07 day of October, 2008, by Stillwater Development Co., Inc. ("Covenantor").

RECITALS

WHEREAS, Covenantor is the owner of certain real property located in Baldwin County, State of Alabama, more particularly described Property:

The preservation tract is specifically located within the northwest corner of Section 9, Township 4 South, Range 2 East within the floodplain of Bay Minnette Creek, as depicted in Figure 7. The preservation area consists of 1.35-acre of high quality bottomland hardwood wetlands.

Commencing at the northwest corner of section 9, run S 0° 49' 36" E for a distance of 744.2 feet; thence run East for a distance of 452.1 feet to the point of beginning; thence run East for a distance of 169.46 feet; thence run S 0° 20' 46" E for a distance of 433.65 feet; thence run N 45° 00' 00" W for a distance of 242.39 feet; thence run N 0° 10' 37" E for a distance of 262.28 feet to the point of beginning. The preservation area contains approximately 1.35-acre.

[describe tract to be preserved, including. 1) acreage, 2) a reference to survey and/or recorded plat(s), (see Paragraph 9), and 3) any excluded property]

; and

WHEREAS, the said Property possesses significant ecological values of aesthetic and environmental benefit to the people of the State of Alabama and the United States; and

WHEREAS, in consideration of the issuance of Permit Number SAM-2008-0908-GAC ("Permit") by the U.S. Army Corps of Engineers, Mobile District ("Corps" or "Mobile District," to include any successor agency) pursuant to Section 404 of the Clean Water Act and /or Section 10 of the Rivers and Harbors Act authorizing certain activities in waters of the United States, and in recognition of the continuing benefit to the property, and for the protection of waters of the United States and scenic, resource, environmental, and general property values, Covenantor has agreed to perform certain mitigation and to place certain restrictive covenants on the Property, in order that the Property shall remain substantially in its natural condition forever;

WHEREAS, the natural condition of the Property will be restored, enhanced and preserved pursuant to the Mitigation Plan ("Mitigation Plan") as referenced in the Permit; and the term "natural condition" shall mean the condition of the Property at the time of this grant and as restored, enhanced, and preserved pursuant to the Mitigation plan of the Permit;

NOW THEREFORE, Covenantor hereby declares that the Property shall be held, transferred, conveyed, leased, occupied or otherwise disposed of and used subject to the following restrictive covenants, which shall run with the land and be binding on all heirs, successors, assigns (they are included in the term, "Covenantor," below), lessees, or other occupiers and users.

1. **Prohibitions & Restrictions.**

- a. **General.** There shall be no filling, flooding, excavating, mining or drilling; no removal of natural materials; no dumping of materials; and no alteration of the topography in any manner except as specifically provided for in the Mitigation Plan of the Permit.
- b. **Waters and Wetlands.** There shall be no draining, dredging, damming, or impounding; no changing the grade or elevation, impairing the flow or circulation of waters, reducing the reach of waters; and no other discharge or activity requiring a permit under applicable clean water or water pollution control laws and regulations except as specifically provided for in the Mitigation Plan of the Permit.
- c. **Trees/Vegetation.** There shall be no clearing, burning, cutting or destroying of trees or vegetation, except as expressly authorized in the Reserved Rights; there shall be no planting or introduction of non-native or exotic species of trees or vegetation except as specifically provided for in the Mitigation Plan of the Permit.
- d. **Uses.** No agricultural, industrial, or commercial activity shall be undertaken or allowed.
- e. **Structures.** There shall be no construction, erection, or placement of buildings, billboards, or any other structures, nor any additions to existing structures.
- f. **New Roads.** There shall be no construction of new roads or trails without the prior written approval of the Mobile District Engineer, including the manner in which they are constructed.
- g. **Use of Off Road Vehicles.** There shall be no use of off road vehicles, 4 wheel drive vehicles, all terrain vehicles or similar vehicles except on existing roads and trails and except as necessary to manage the Property.
- h. **Utilities.** There shall be no construction or placement of utilities or related facilities without the prior approval of the Mobile District Engineer.
- i. **Pest Control.** There shall be no application of pesticides or biological controls, including for problem vegetation, without prior written approval from the Mobile District Engineer.

- j. **Other Prohibitions.** Any other use of, or activity on, the protected property which is or may become inconsistent with the purposes of this grant, the preservation of the protected property substantially in its natural condition, or the protection of its environmental systems, is prohibited.
2. **Amendment.** After recording, these restrictive covenants may only be amended by a recorded document signed by the Corps and Covenantor. Amendment shall be allowed at the discretion of the Corps, in consultation with resource agencies as appropriate, and then only in exceptional circumstances. Mitigation for amendment impacts will be required at the time of amendment. There shall be no obligation to allow an amendment.
3. **Notice to Government.** Any permit application, or request for certification or modification, which may affect the Property, made to any governmental entity with authority over wetlands or other waters of the United States, shall expressly reference and include a copy (with the recording stamp) of these restrictive covenants.
4. **Reserved Rights.** It is expressly understood and agreed that these restrictive covenants do not grant or convey to members of the general public any rights of ownership, entry or use of the Property. These restrictive covenants are created solely for the protection of the Property, and for the consideration and values set forth above. The Covenantor reserves the right to engage in all acts or uses not prohibited by the Restrictions and which are not inconsistent with the conservation purposes of this covenant, that is to preserve the protected property substantially in its natural condition, and to protect its environmental systems. Notwithstanding the foregoing Restrictions, Covenantor reserves for itself, its heirs, successors, administrators, and assigns the following Reserved Rights, which may be exercised upon providing prior written notice to the Mobile District Engineer, except where expressly provided otherwise:
- a. **Landscape Management.** Landscaping by the Covenantor to prevent severe erosion or damage to the protected property or portions thereof, or significant detriment to existing or permitted uses, is allowed, provided that such landscaping is generally consistent with preserving the natural condition of the protected property.
 - b. **Wildlife and Forestry Management.** The Covenantor will naturally manage these lands to preserve and improve the existing forest and wildlife resources. Timber harvesting and management by Covenantor is limited to the extent necessary to protect the natural environment in areas where the forest is damaged by natural forces such as fire, flood, storm, insects or infectious organisms. Such timber harvest and/or management shall be carried out only after approval by the Mobile District Engineer.
 - c. **Recreation.** Covenantor reserves the right to engage in any outdoor, non-commercial recreational activities, including hunting (excluding planting or burning) and fishing, with cumulatively very small impacts, and which are consistent with the continuing natural condition of the protected property. No written notice required.

- d. **Mineral Interests.** Covenantor specifically reserves a qualified mineral interest in subsurface oil, gas, or other minerals and the right to access such minerals. However, there shall be no extraction or removal of, or exploration for, minerals by any surface mining method, nor by any method which results in subsidence or which otherwise interferes with the continuing natural condition of the protected property.
 - e. **Road Maintenance.** Covenantor reserves the right to maintain existing roads or trails. Maintenance shall be limited to: removal or pruning of dead or hazardous vegetation; application of permeable materials (e.g., sand, gravel, crushed) necessary to correct or impede erosion; grading; replacement of culverts, water control structures, or bridges; and, maintenance of roadside ditches.
 - f. **Other Reserved Rights.** Covenantor reserves the right to engage in all acts or uses not prohibited by the Restrictions and which are not inconsistent with the conservation purposes of this covenant, the preservation of the protected property substantially in its natural condition, and the protection of its environmental systems.
5. **Compliance Inspections.** The Corps, and its authorized agents shall have the right to enter and go upon the lands of Covenantor, to inspect the Property and take actions necessary to verify compliance with these restrictive covenants.
6. **Enforcement.** The Covenantor grants to the Corps and/or the U.S. Department of Justice, a discretionary right to enforce these restrictive covenants in a judicial action against any person(s) or other entity(ies) violating or attempting to violate these restrictive covenants; provided, however, that no violation of these restrictive covenants shall result in a forfeiture or reversion of title. In any enforcement action, an enforcing agency shall be entitled to a complete restoration for any violation, as well as any other judicial remedy such as civil penalties. These enforcement rights are cumulative, in addition to, and shall not limit enforcement rights available under other provisions of law or equity, or under any permit or certification.
7. **Property Transfers.** Covenantor shall include the following notice on all deeds, mortgages, plats, or any other legal instruments used to convey any interest in the Property (failure to comply with this paragraph does not impair the validity or enforceability of these restrictive covenants):

NOTICE. This Property Subject to Declaration of Restrictive
Covenants Recorded at

[insert book and page references, county(ies), and date of recording].

8. **Marking of Property.** The perimeter of the Property shall at all times be plainly marked by permanent signs saying, "Protected Natural Area," or by an equivalent, permanent marking system.

9. **Recording of Plat.** A plat depicting the boundaries of the Property subject to these restrictive covenants shall be recorded in the deed records office for each county in which the Property is situated prior to the recording of these restrictive covenants.

A map of the protected property is attached to these Covenants to be recorded.

10. **Separability Provision.** Should any separable part of these restrictive covenants be held contrary to law, the remainder shall continue in full force and effect.

IN WITNESS WHEREOF, the Covenantor has duly executed this Declaration of Restrictive Covenants the date written above.

IN THE PRESENCE OF:

Velde Watson
[
]

Covenantor Stillwater Development Co., Inc.

By: Richard Rowan
[Richard Rowan]
Its:
[Vice President]

This instrument prepared by:
U.S. Army Corp of Engineers
109 St. Joseph St. #1000
Mobile, Alabama 36602

STATE OF Alabama

COUNTY OF Baldwin

PERSONALLY appeared before me Stillwater Development Co., Inc., the undersigned witness, and made oath that he/she saw the within named [by Richard Rowan, its Vice President] sign, seal and as his/her/its act and deed, deliver the within named Declaration of Restrictive Covenants; and that he/she with the other witness named above witnessed the execution thereof.

Deborah C. Guinn
[type name of witness under signature line]

SWORN to and subscribed before me
this July day of 2009

NOTARY PUBLIC FOR State of Alabama

My Commission Expires:

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Sept 4, 2011
BOUNDED THRU NOTARY PUBLIC UNDERWRITING

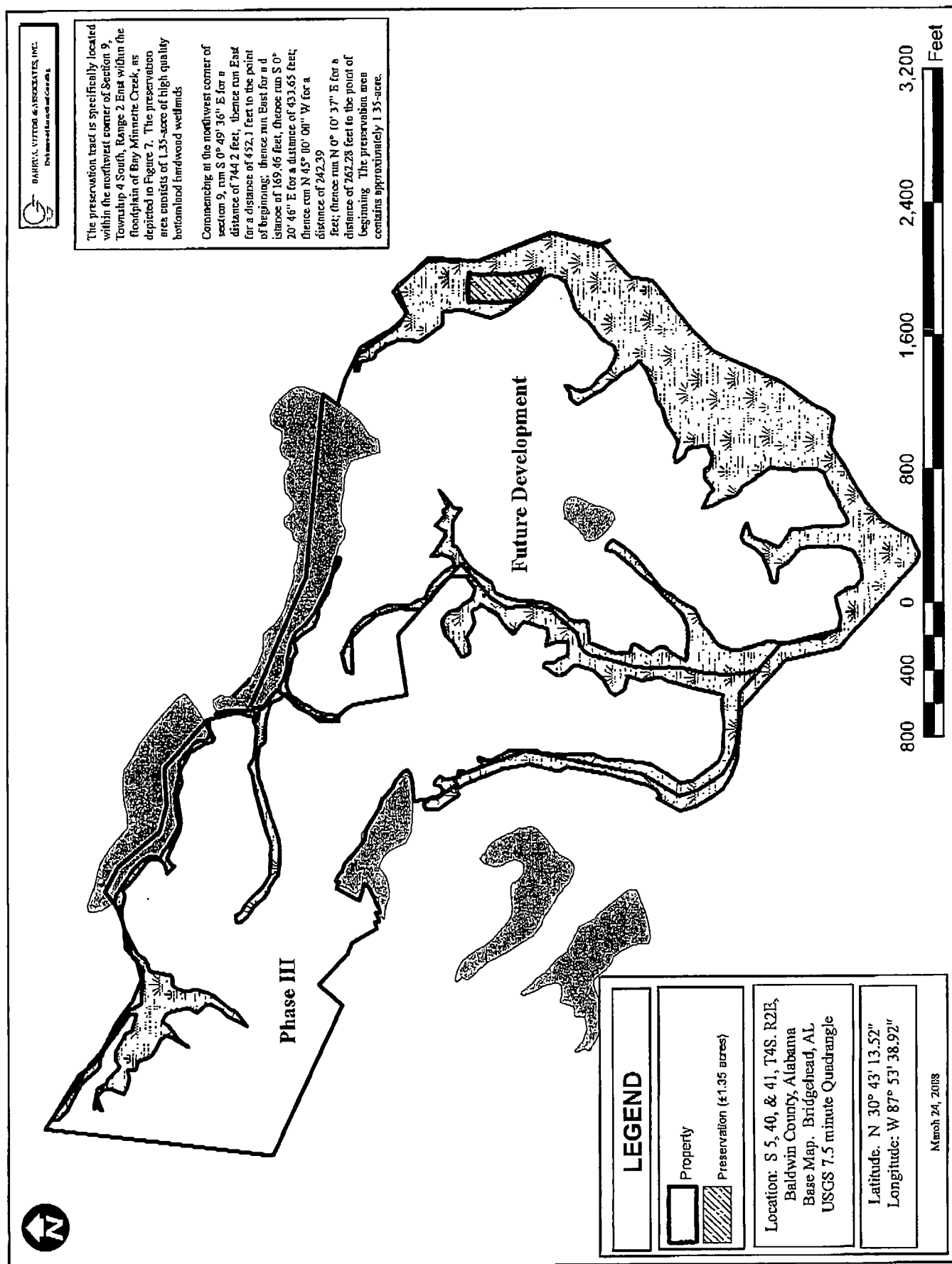


Figure 7. Preservation Area (1.35-acre).