

Conservation Easement Deed

accurate representation of the Property at the time of this grant and which is intended to serve as an objective, though nonexclusive, information baseline for monitoring compliance with the terms of this grant; and

WHEREAS, Grantor intends that the Conservation Values of the Property be preserved and maintained by permitting only those land uses on the Property that do not significantly impair or interfere with these documented Conservation Values, including, without limitation, those land uses described in Exhibit "B" existing at the time of this grant; and

WHEREAS, Grantor, desiring to make a charitable gift for the benefit of the citizens and residents of Jefferson County, further intends, as owner of the Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity;

NOW, THEREFORE, in consideration of the foregoing, together with the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of Alabama, and in particular the Uniform Conservation Easement Act of 1997, Grantor hereby voluntarily grants, bargains, sells and conveys to Grantee a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth, together with all powers and rights necessary to preserve, protect, manage and restore the Property, and to enforce all of the terms, covenants and restrictions provided for herein (the "Easement").

1. Purpose and Duration. It is the purpose of this Easement to assure that the Property will be retained forever in its natural and/or restored condition and to prevent any use of the Property that will impair or interfere with the Conservation Values of the Property. Grantor intends that this Easement will confine the use of the Property to such activities, including, without limitation, those described in Exhibit "B", as are not inconsistent with the purpose of this Easement. This Easement shall be perpetual, and it is intended to be and is hereby declared to constitute a "Conservation Easement" under the terms of the Alabama Conservation Easement Act.

2. Rights of Grantor. Grantor reserves to himself, and to his successors and assigns, all rights accruing from his ownership of the Property, including the right to engage in, or permit or invite others to engage in, all uses of the Property that are not expressly 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 Paragraphs 3 & 4, the following rights are expressly reserved.

a. To permit recreational and educational uses of the Property that require no material surface alteration or other development of the land. No right of public access by the general public to any portion of the Property is conveyed by this Easement. Recreational uses shall not include the use of motorized vehicles, including motorcycles, all-terrain or off-road vehicles, aircraft, jet skis, or motorized boats.

b. To sell, lease, give, mortgage or otherwise convey the Property, provided such conveyance is subject to the terms of this Easement and written notice is provided to the Grantee.

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

a. To take all actions and to exercise all powers necessary to preserve and protect the Conservation Values of the Property.

b. To review activities which involve the disturbance of land or vegetation, prior to such disturbance taking place. Grantor shall provide Grantee with reasonable written notice prior to the date Grantor intends to undertake the activity in question, and Grantee shall grant or withhold approval in writing within thirty (30) days of receipt of Grantor's written request therefore. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the maintenance of the Conservation Values and purposes of this Easement.

c. To enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Easement in accordance with Paragraph 6; provided, that except in cases where Grantee determine 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 in any case unreasonably interfere with Grantor's use and quiet enjoyment of the Property.

d. To place descriptive signage, kiosks, or similar protected informational centers on the property identifying the Greenway Project in a manner which does not diminish the scenic or aesthetic values of the property.

e. To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement, and to require of the Grantor the restoration of any areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to the exercise of those remedies set forth in Paragraph 6, if such damages and/or inconsistent use was caused or permitted by the Grantor.

4. Prohibited Uses. Any activity on or use of the Property inconsistent with the purposes of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses by the Grantor and Grantee are expressly prohibited:

a. The legal or de facto division, subdivision, or partitioning of the Property for any purpose, except as may be required by law for the uses permitted in Paragraph 2;

b. Any commercial or industrial use of or activity on the Property, other than those permitted under Paragraph 2;

c. The placement, construction, or maintenance of any buildings, structures, or other improvements of any kind (including, without limitation, fences, roads, parking lots, and utility lines and related facilities), other than those permitted under Paragraph 2;

d. Any alteration of the surface of the land, including, without limitation, the excavation or removal of soil, sand, gravel, rock, peat, or sod;

e. Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant depletion or pollution of any surfaces or subsurface waters;

f. Any new or additional use that substantially increases pollution or that would substantially interfere with the preservation of the Property;

g. The pollution, alteration, depletion or extraction of surface water, natural water courses, lakes, ponds, marshes, subsurface water or any other water bodies; nor shall activities be conducted on the Property or on adjacent property, if owned by Grantor, that would be detrimental to water purity or that could alter the natural water level or flow in or over the Property. Specifically, there should be no alteration or manipulation of Wetlands without express written approval of both the U.S. Army Corps of Engineers, when such wetlands fall in their jurisdiction, and of the Grantee;

h. The pruning, cutting down, or other destruction or removal of trees or other vegetation described in Exhibit "B", except as necessary to prevent disease or to repair damage resulting from fire or windstorm or other casualty or as otherwise permitted under Paragraph 2 above;

i. The use of pesticides or biocides, including but not limited to insecticides, fungicides, rodenticides, and herbicides, except as may be necessary to treat or prevent disease or to remove invasive and/or non-native species;

j. The processing, storage, dumping, or other disposal of wastes, refuse, and debris on the Property;

k. The placement of any signs or billboards on the Property, except that signs whose placement, number, and design do not significantly diminish the scenic character of the Property may be displayed to state the name and address of the Property, to advertise or regulate on-site activities permitted pursuant to Paragraph 2, including historic property markers and interpretive signage, to advertise the Property for sale or rent, and to post the Property to control unauthorized entry or use; and

l. The exploration for, or development and extraction of minerals and hydrocarbons by any surface mining method or any other method that would significantly impair or interfere with the Conservation Values of the Property. Prior to engaging in any mineral exploration, development, or extraction by any method not otherwise prohibited by this paragraph, Grantor must notify Grantee and submit a plan for Grantee's approval that provides for minimizing the adverse effects of the operation on the Conservation Values of the Property. In addition to such other measures as may be required to protect the Conservation Values of the Property, the plan must provide for: (1) preserving the quantity and quality of all surface and ground water; (2) concealing all

facilities or otherwise locating them so as to be compatible with existing topography and landscape to the greatest practicable extent; and (3) restoring any altered physical features of the land to their original state.

5. Amendment. If circumstances arise under which an amendment to this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement; provided, that any amendment shall be consistent with the purpose of this Easement and the preservation of the Conservation Values, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official real property records of Jefferson County, Alabama.

6. Grantee's Remedies.

a. **Mediation.** If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purpose of this Easement, and Grantor agrees not to proceed with the use or activity pending resolution of the dispute, either party may refer the dispute to mediation by request made in writing to the other.

b. **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 specify the corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.

c. **Injunctive Relief.** If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to continue diligently to cure such violation within the thirty day period, or fails 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 Property to the condition that existed prior to any such injury.

d. **Damages.** Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of scenic, aesthetic or environmental values. Without limiting Grantor's liability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

e. **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 Property, Grantee may pursue its remedies under this

Section 6 without prior notice to Grantor or without waiting for the period provided for cure to expire.

f. **Scope of Relief.** Grantee's rights under this Section 6 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 the Grantee shall be entitled to the injunctive relief described in Paragraph 6.3, 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 6 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

g. **Costs of Enforcement.** All reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit and reasonable 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 the Grantee shall pay to the Grantor the costs and expenses of the suit and reasonable attorney's fees incurred by the Grantor as a result of the suit undertaken by the Grantee.

h. **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 subsequent breach of the same or any other term of this Easement 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.

i. **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 Property not caused or permitted by the Grantor, or resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from causes beyond Grantors' control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

7. Title; Environmental Covenant.

a. **Costs, Legal Requirements, and Liabilities.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate liability insurance coverage. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

b. **Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

c. **Title.** The Grantor covenants and represents that the Grantor is the sole owner and is seized of the Property in fee simple and has good right to grant and convey this Conservation Easement; that the Property is free and clear of any and all encumbrances; and that the Grantee shall have the use of and enjoy all of the benefits derived from and arising out of this Easement. Grantor is retaining property that is the site of his residence and a means of access to his residence. This retained property is currently assessed with a portion of the Property as the homestead of Grantor.

d. **Environmental Covenant.** The Grantor covenants, represents and warrants to the Grantees that no hazardous substance or toxic waste exists nor has been generated, treated, stored, used, disposed of, or deposited in or in the Property, and that there are not now any underground storage tanks located on the Property.

e. **Control.** Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantor's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA") or any related environmental laws.

f. **Indemnification by Grantor.** Grantor hereby releases and agrees to hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Grantee Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act or omission of Grantor, or from any condition or other matter caused by Grantor related to or occurring on or about the Property; (2) the violation or alleged violation of,

or other failure to comply with, any state, federal, or local law, regulation, or requirement, including, without limitation, CERCLA, by Grantor, in any way affecting, involving, or relating to the Property; and (3) the presence or release in, on, from, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment caused by Grantor.

g. **Indemnification by Grantee.** Grantee hereby releases and agrees to hold harmless, indemnify and defend Grantor and his employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Grantor Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act or omission of Grantee, or from any condition or other matter caused by Grantee related to or occurring on or about the Property; (2) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, including, without limitation, CERCLA, by Grantee, in any way affecting, involving, or relating to the Property; and (3) the presence or release in, on, from, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, caused by Grantee.

8. **Transfer, Assignment, Extinguishment, and Condemnation.**

a. **Parties Subject to Easement.** The covenants agreed to and the terms, conditions, and restrictions imposed by this grant shall not only be binding upon the Grantor but also his lessees, agents, successors and assigns, and all other successors to Grantor in interest, and shall continue as a servitude running in perpetuity with the Property.

b. **Subsequent Transfers.** Grantor agrees to incorporate the terms of this Easement by reference in any deed or other legal instrument by which he may divest himself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least thirty (30) days prior to the date of such transfer. 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.

c. **Merger.** The Grantor and the Grantee agree that the terms of this Easement shall survive any merger of the fee and easement interest in the Property.

d. **Assignment.** This Easement is transferable, but Grantee may assign his rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code (or any successor provision then applicable), and authorized to acquire and hold conservation easements under the Alabama Conservation Easement Act (or any successor provision then applicable) or the laws of the United States. As a condition of such transfer, Grantee shall require that the Conservation Values that this grant is intended to advance continue to be carried out. Grantee agrees to give written notice to Grantor of an assignment at least thirty (30) days prior to the date of such assignment.

e. **Extinguishment.** If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantees shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be the stipulated fair market value of the Easement, or proportionate part thereof, as determined in accordance with Paragraph 8(f) below.

f. **Valuation.** This Easement constitutes a real property interest immediately vested in Grantees, which, for the purpose of Paragraphs 8(e) and 8(g), the parties stipulate to have a fair market value determined by multiplying (1) the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by (2) the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement, at the time of this grant. For the purpose of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant.

g. **Condemnation.** Any condemnation of property subject to this Easement shall be in accordance with the provisions of Section 18-1A-72(b), Code of Alabama, 1975. If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Grantee's share of the balance of the amount recovered shall be determined by multiplying that balance by the ratio set forth in Paragraph 8(f).

h. **Application of Proceeds.** Grantee shall use any proceeds received under the circumstances described in this Section 8 in a manner consistent with its Conservation Values, which are exemplified by this grant.

9. **Estoppel Certificates.** Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor, or to any party designated by Grantor, any document, including an estoppel certificate, which certifies, to the best of Grantee's knowledge, Grantor's compliance with any obligation of Grantor contained in this Easement or otherwise evidences the status of this Easement. Such certification shall be limited to the condition of the Property as of Grantee's most recent inspection. If Grantor requests more current documentation, Grantee shall conduct an inspection, at Grantor's expense, within thirty (30) days of receipt of Grantor's written request therefor.

10. **Notices.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor: Eugene B. Butler
3850 River Run Trail
Birmingham, Alabama 35243

To Grantee: Freshwater Land Trust
Birmingham-Southern College
Post Office Box 549071
Birmingham, Alabama 35254
Attention: Executive Director

or to such other address as either party from time to time shall designate by written notice to the other.

11. **Recordation.** Grantee shall record this instrument in timely fashion in the official records of Jefferson County, Alabama, and may re-record it at any time as may be required to preserve its rights in this Easement.

12. **General Provisions.**

a. **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of Alabama.

b. **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of the Alabama Conservation Easement Act. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

c. **Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

d. **Entire Agreement.** This Easement Deed sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

e. **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

f. **Joint Obligation.** The obligations imposed by this Easement upon Grantor shall be joint and several.

g. **Termination of Rights and Obligations.** A party's rights and obligations under this Easement Deed terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

h. **Captions.** The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

i. **Counterparts.** The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto Grantee and its successors and assigns forever.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Grantor and Grantee have set their hands on the day and year first above written.

GRANTOR:

Eugene B. Butler
Eugene B. Butler

STATE OF ALABAMA)
)
COUNTY OF JEFFERSON)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Eugene B. Butler, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this 17TH day of December, 2007.

Angus Dodson McEwen
Notary Public
My Commission Expires: 2-14-2009

[AFFIX SEAL]

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

[Signature Page to Deed of Conservation Easement]

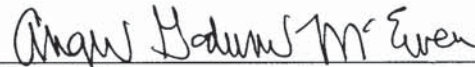
For purposes of compliance with Alabama Code § 6-10-3, Grantor's spouse, Judy W. Butler, hereby assents to this conveyance.


Judy W. Butler

STATE OF ALABAMA)
)
COUNTY OF JEFFERSON)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Judy W. Butler, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this 17TH day of December, 2007.


Notary Public
My Commission Expires: 2-14-2009

[AFFIX SEAL]

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

GRANTEE:

FRESHWATER LAND TRUST, an Alabama nonprofit corporation

By: Wendy Jackson

Name: WENDY JACKSON

Its: EXECUTIVE DIRECTOR

STATE OF ALABAMA)
)
COUNTY OF JEFFERSON)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that WENDY JACKSON, whose name as EXECUTIVE DIRECTOR of the **Freshwater Land Trust**, an Alabama nonprofit corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she, as an officer of the Freshwater Land Trust, and with full authority, executed the same voluntarily for and as the act of said nonprofit corporation on the day the same bears date.

Given under my hand and official seal, this 17TH day of December, 2007.

Angus Edwin McEwen
Notary Public
My Commission Expires: 2-14-2009

[AFFIX SEAL]

SCHEDULE OF EXHIBITS

- A. Legal Description of Property Subject to Easement
- B. Baseline Documentation

Exhibit "A"

Legal Description

Lots 60, 58 and 9, according to the Amended Map of river Run 6th Sector, as recorded in Map Book 121, page 58, in the Probate Office of Jefferson, County, Alabama, Birmingham Division.

LESS AND EXCEPT THE FOLLOWING:

Part of Lot 60, Amended Map of River Run 6th Sector, a map of which is recorded in the Office of the Judge of Probate, Jefferson County, Alabama, in Map Book 121, page 58, being more particularly described as follows:

From the Southwest corner of said Lot 60, which is also the Southwest corner of the SE 1/4 of the SE 1/4 of Section 11, Township 18 South, Range 2 West, Jefferson County, Alabama, Birmingham Division, run in a Northerly direction along the West line of Lot 60 for a distance of 194.03 feet to an existing iron rebar set by Weygand and being a corner of said Lot 60 and being the point of beginning; thence turn an angle to the left of 58°13'42" and run in a Northwesterly direction along the Southwest lot line of said Lot 60 for a distance of 356.03 feet to an existing iron rebar set by Weygand; thence turn an angle to the right of 83°00' and run in a Northeasterly direction for a distance of 200.0 feet to an existing iron rebar set by Weygand; thence turn an angle to the right of 83°11'33" and run in a Southeasterly direction for a distance of 353.17 feet to an existing iron rebar set by Weygand; thence turn an angle to the left of 29°07'46" and run in an Easterly direction for a distance of 97.36 feet; thence turn an angle to the right of 7°49'26" and run in an Easterly direction for a distance of 50.05 feet; thence turn an angle to the left of 8°47'42" and run in a Northeasterly direction for a distance of 67.30 feet; thence turn an angle to the right of 9°5'42" and run in an Easterly direction for a distance of 94.57 feet; thence turn an angle to the left of 7°14'25" and run in a Northeasterly direction for a distance of 86.81 feet; thence turn an angle to the right of 8°47'44" and run in an Easterly direction for a distance of 112.94 feet; thence turn an angle to the left of 4°32'17" and run in a Northeasterly direction for a distance of 98.94 feet; thence turn an angle to the right of 5°28'34" and run in an Easterly direction for a distance of 140.62 feet; thence turn an angle to the right of 0°28'39" and run in an Easterly direction for a distance of 56.66 feet; thence turn an angle to the left of 10°29'40" and run in a Northeasterly direction for a distance of 42.89 feet; thence turn an angle to the left of 11°48'03" and run in a Northeasterly direction for a distance of 32.85 feet; thence turn an angle to the right of 0°56'02" and run in a Northeasterly direction for a distance of 61.16 feet; thence turn an angle to the left of 9°8'21" and run in a Northeasterly direction for a distance of 98.0 feet to the point of beginning of a curve, said curve being concave in a Southeasterly direction and having a central angle of 19°40'42" and a radius of 450.0 feet; thence turn an angle to the right and run in a Northeasterly direction along the arc of said curve for a distance of 154.55 feet to a point of reverse curve, said latest curve being concave in a Northwesterly direction and having a central angle of 46°46'21" and a radius of 30.0 feet; thence turn an angle to the left and run in a Northeasterly direction along the arc of said curve for a distance of 24.49 feet to a point where the present road right of way for River View Drive ends; thence turn an angle to the right (84°19'12" from the chord of last mentioned curve) and run in a Southeasterly direction across the end of the existing road right of way for River View Drive for a distance of 57.92 feet to a

point on a curve, said latest curve being concave in a Northwesterly direction and having a central angle of 29°59'42" and a radius of 73.57 feet; thence turn an angle to the right (105°13'47" to the chord of said curve) and run in a Southwesterly direction along the arc of said curve for a distance of 38.51 feet to a point of ending of said curve; thence turn in a Southwesterly direction along the line tangent to the end of said curve for a distance of 14.04 feet to the point of beginning of a new curve, said latest curve being concave in a Southeasterly direction and having a central angle of 19°40'42" and a radius of 400.0 feet; thence turn an angle to the left and run in a Southwesterly direction along the arc of said curve for a distance of 137.38 feet to the point of ending of said curve; thence run in a Southwesterly direction along the line tangent to the end of said curve for a distance of 102.0 feet; thence turn an angle to the right of 9°8'21" and run in a Southwesterly direction for a distance of 64.75 feet; thence turn an angle to the left of 0°56'02" and run in a Southwesterly direction for a distance of 37.61 feet; thence turn an angle to the right of 11°48'03" and run in a Southwesterly direction for a distance of 52.65 feet; thence turn an angle to the right of 10°29'40" and run in a Westerly direction for a distance of 61.04 feet; thence turn an angle to the left of 0°28'39" and run in a Westerly direction for a distance of 138.02 feet; thence turn an angle to the left of 5°28'34" and run in a Southwesterly direction for a distance of 98.52 feet; thence turn an angle to the right of 4°32'17" and run in a Westerly direction for a distance of 111.07 feet; thence turn an angle to the left of 8°47'44" and run in a Southwesterly direction for a distance of 86.13 feet; thence turn an angle to the right of 7°14'25" and run in a Westerly direction for a distance of 93.76 feet; thence turn an angle to the left of 9°05'42" and run in a Southwesterly direction for a distance of 67.17 feet; thence turn an angle to the right of 8°47'42" and run in a Westerly direction for a distance of 50.47 feet; thence turn an angle to the left of 7°49'26" and run in a Southwesterly direction for a distance of 91.42 feet; thence turn an angle to the left of 47°25'02" and run in a Southwesterly direction for a distance of 247.92 feet, more or less, to the point of beginning.

Subject to the following:

1. Taxes for the year 2008 and subsequent years, not yet due and payable;
2. Easement to South Central Bell as recorded in Real 2408, page 630, in the Probate Office of Jefferson County, Alabama;
3. Right of way to Jefferson County, recorded in Real 2869, page 961, in the Probate Office of Jefferson County, Alabama;
4. Easement to Alabama Power Company recorded in Real 3269, page 414 and Real 3759, page 567, in the Probate Office of Jefferson County, Alabama;
5. Mineral and mining rights and rights incident thereto recorded in Volume 48, page 395; Volume 84, page 452; Volume 91, page 474 and Volume 537, page 417, in the Probate Office of Jefferson County, Alabama;
6. Easement for Alabama Power Company and Southern Bell Telephone and Telegraph Company, as recorded in Real 1744, page 572, in the Probate Office of Jefferson County, Alabama;

7. Right of way to Southern Bell Telephone and Telegraph Company, as recorded in Real 1794, page 671, in the Probate Office of Jefferson County, Alabama;
8. Right of way granted to Alabama Power Company by instrument recorded in Volume 4544, page 120 in the Probate Office of Jefferson County, Alabama;
9. Restrictions appearing of record in Real 1484, page 619; Real 1704, page 9 and Real 1707, page 369, in the Probate Office of Jefferson County, Alabama, but omitting any covenant or restriction based on race, color, religion, sex, handicap, familial status, or national origin;
10. The rights of upstream and downstream riparian owners with respect to any body of water which may lie adjacent to, and/or traversing through, subject property.

Exhibit "B"

Baseline Documentation

[Attached hereto]

Exhibit "B"

Conservation Easement Baseline Documentation Report

Eugene B. Butler

I. Introduction

Ownership Information

Eugene B. Butler
3850 River Run Trail
Birmingham, Alabama 35243
Phone: (205) 967-1285

Grantor Intent

Mr. Butler wishes to protect and preserve the natural and scenic character (conservation values) of his property in perpetuity by allowing only those land uses on the property that do not significantly impair or interfere with the purposes of the Jefferson County Greenways Program.

Purpose of the Baseline Documentation

The purpose of this report is to serve as an accurate representation of the property at the time of the conservation easement grant and as an objective, though nonexclusive, information baseline for monitoring compliance with the terms of the conservation easement.

II. Property Description

Area

Approximately 28 Acres

Zoning Classification

R-1

Geographic Location

SE ¼ of Section 11, Township 18 South Range 2 West, Jefferson County Parcel #s 28-11-4-001-052.000 and NE ¼ of Section 14, Township 18 South Range 2 West, Jefferson County Parcel #s 28-14-1-000-033.000 & -078.000.

Directions from Birmingham

From Downtown Birmingham, take U.S. Hwy. 280 south to I-459. Take I-459 north to Overton Road/Liberty Park Exit. Turn right at the top of the ramp and take an immediate right onto Overton Road. At the next intersection, take a right onto Old Overton Road. At the first traffic light, turn left onto River Run Drive and cross the Cahaba River. Staying on River Run Drive,

bear right before the interstate overpass. At the T-intersection with River View Drive, continue straight into Mr. Butler's driveway.

Access

Primary access to the property from the exterior via Mr. Butler's driveway; access to the southern portions of the property is possible via the cul-de-sac at the end of South River Circle (SE area of property) and form the right of way of River View Drive (SW area of property). Access is also possible via Bob and Anne Tate's property, which the Butler property surrounds on the north and west sides. Interior access is completely open.

General Description

The subject property consists of three contiguous Jefferson County tax parcels (APN: 28-11-4-000-052.000, 28-14-1-000-033.000, & -078.000 located between the Cahaba River and Interstate 459 near Liberty Park (See Attachments "A", "B", and "C"). The conservation easement lies within this 28 acre tract and excludes the house, driveway (25' from centerline), and immediate surrounding grounds. The site can be generally characterized as a riparian cove, which drains directly into the Cahaba River. The topography of the property's interior is generally level, low floodplain sloping up to high peripheral ridges to the north, east, and south. Elevations range from 480 feet above sea level along the Cahaba River to 690 feet above sea level in the southeastern corner of the property. The soils throughout the subject property are generally mesic. However, ridge tops and upper hillsides tend to be drier and the lower hillsides and streamside areas tend to be more moist.

A major stream transects the subject property, running generally east to west, with ephemeral tributaries draining into it primarily from the north and east. An ephemeral stream draining the adjacent Tate property meets with this stream in the western portion of the property and then flows another 200 feet further west to the Cahaba River.

Current Land Use and Improvements

The subject property is completely wooded, with the only human improvements being a house, paved driveway, small walking trails (including a brick walking path and abandoned unpaved road), three foot bridges, and a bench. The house and driveway are situated in the northern part of the property and are excluded from the easement. The walking trails, foot bridges, and bench are the only human improvements located within the conservation easement area. The subject property is used exclusively for passive recreation.

Notable/Special Features

Mature forest exists throughout the subject property, with several large specimens of Water oak (*Quercus nigra*), Tulip poplar (*Liriodendron tulipifera*), and American beech (*Fagus grandifolia*). A particularly large Water oak is located along the bank of the Cahaba River in the southwestern part of the subject site, with a diameter at breast height of approximately 3.5'. According to Bob and Ann Tate, large populations of Trout lilies (*Erythronium rostratum*), Spiderworts (*Tradescantia virginiana*), Bloodroot (*Sanguinaria canadensis*), and Ginseng (*Panax quinquefolium*) occur on their property adjacent to the subject property. While not confirmed, it is likely that these herbaceous species exist on the subject property as well.

Of historical significance is "Dodd's Ford," which for many years in the 19th and early 20th Centuries served as a major crossing of the Cahaba River.

the site of Dodd's Ford is located along the southwestern boundary of the subject property. The old road approaching this ford is still visible through the woods, running generally east to west (See Photopoint #2).

Adjacent Land Uses

Neighboring properties are zoned residential, with subdivided lots located to the north, east and south of the subject property. As previously noted, the Bob and Ann Tate conservation easement tract is situated to the south of the subject property. Land uses are generally restricted to residential and passive recreation on all of these adjacent parcels.

Utility Rights-of-Way / Easements

There are no utility rights-of-way or easements that lay within the boundaries of this conservation easement, with the exception of a 5 foot "no fence" easement that along the north, east, and south boundaries of the subject property. This easement appears to be for the purpose of preventing adjacent landowners from erecting fences beyond their respective property lines.

Hazardous or Toxic Waste

Based upon field observations, there is no evidence of hazardous or toxic waste on the subject property.

Trash / Other Debris

No debris or refuse occurs on the subject property. Some floating debris may periodically be deposited along the bank of the Cahaba River during high flow events.

Erosion / Non-Point Source Pollution

Several storm drains direct street runoff from River View Drive and South River Circle into the valley contained within the subject property. As a result, the main tributary that runs east to west across the subject property as well as the ephemeral tributaries feeding it show some evidence of limited incising. However, the banks of these streams appear to be relatively stable.

II. Vegetation

Forest Cover

The entire conservation easement area is forested, with approximately 40% of the site being characterized as drier upland ridge tops and hillsides and approximately 60% being moist valleys and coves. The upland ridge tops and hillsides are dominated by an overstory primarily consisting of Chestnut oak (*Quercus prinus*), with White oak (*Quercus alba*), Southern red oak (*Quercus falcata*), Virginia pine (*Pinus virginiana*), Tulip poplar (*Liriodenron tulipifera*), Pignut hickory (*Carya glabra*), and Mockernut hickory (*Carya tomentosa*) also in abundance. The understory is dominated by Red maple (*Acer rubrum*), Black cherry (*Prunus serotina*), Fire cherry (*Prunus pennsylvanica*), and Flowering dogwood (*Cornus florida*). Oakleaf hydrangea (*Hydrangea quercifolia*) is pervasive throughout the area. The moister valleys and lower hillsides have an overstory dominated by American beech (*Fagus grandifolia*), with the same species listed in the upland areas represented to a lesser extent. The understory here is also dominated by Oakleaf hydrangea, with Hornbeam (*Ostrya virginiana*) and Hophornbeam (*Carpinus caroliniana*) also present in significant numbers. Along the western end of the

northern boundary of the subject property there is a sizeable area of wind thrown timber, which has opened up a large gap in the forest canopy.

Exotic Invasive Species

No significant populations of exotic invasive plant or animal species were noted. There is some sparsely distributed privet (*Ligustrum spp.*) along the bank of the Cahaba River, but its occurrence is relatively limited.

III. Photopoint Survey



Point 1. 33°28'30N / 86°42'49W. Heading 0°. SE corner of house lot exclusion



Point 2. 33°28'28N / 86°42'52W. Heading 272°. Old wagon road servicing Dodd Ford



Point 3. 33°28'28N / 86°42'55W. Heading 52°. W boundary looking upstream along Cahaba River



Point 4. 33°28'26N / 86°42'56W. Heading 130°. At SW corner of property looking east along S boundary



Point 5. 33°28'25N / 86°42'35W. Heading 32°. Se boundary line viewed from South River Circle cul-de-sac



Point 6. 33°28'24N / 86°42'52W. Heading 333°. SW boundary line viewed from Riverview Drive



Point 7. 33°28'33N / 86°42'40W. Heading 205°. Brick walking path along main tributary near middle footbridge



Point 8. 33°28'32N / 86°42'45W. Heading 348°. Lower footbridge across main tributary.



Point 9. 33°28'27N / 86°42'50W. Heading 330°. Tributary draining Tate property along old road



Point 10. 33°28'32N / 86°42'42W. Heading 100°. Eastern end of cove



Point 11. 33°28'32N / 86°42'38W. Heading 100°. Eastern end of cove



Point 12. 33°28'32N / 86°42'38W. Heading 175°. Eastern end of cove



Point 13. 33°28'30N / 86°42'35W. Heading 118°. Eastern end of cove

Date of Inspection: 3/2/2007
Investigator: Brian R. Rushing
Report Preparer: Brian R. Rushing

In compliance with Section 1.170A-14(g)(5) of the federal tax regulations, this natural resources inventory is an accurate representation of the property at the time of the conservation easement donation.

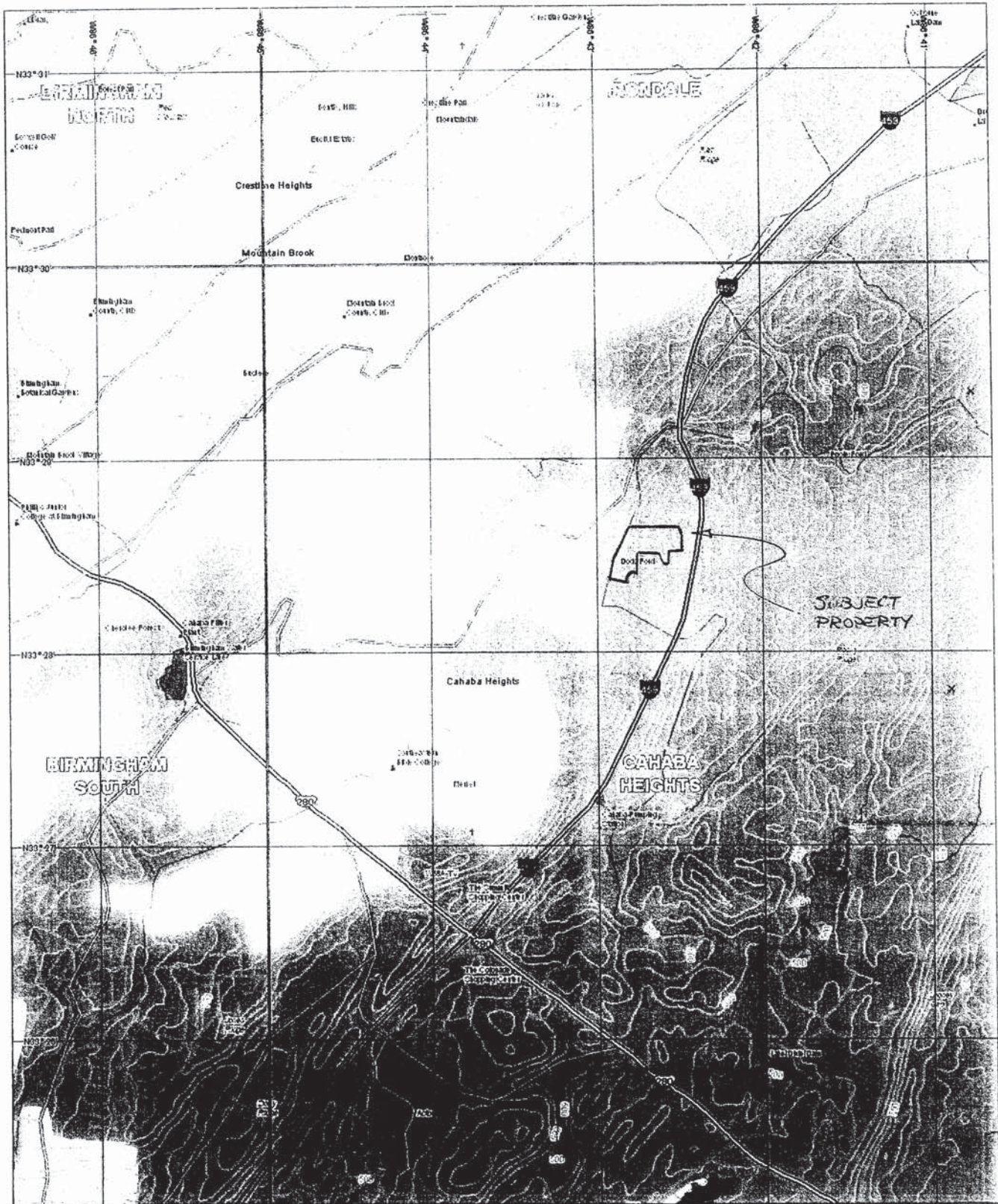
Eugene B. Butts
Grantor

17 Dec 2007
Date

Brian R. Rushing
Grantee, for the Freshwater Land Trust

June 8, 2007
Date

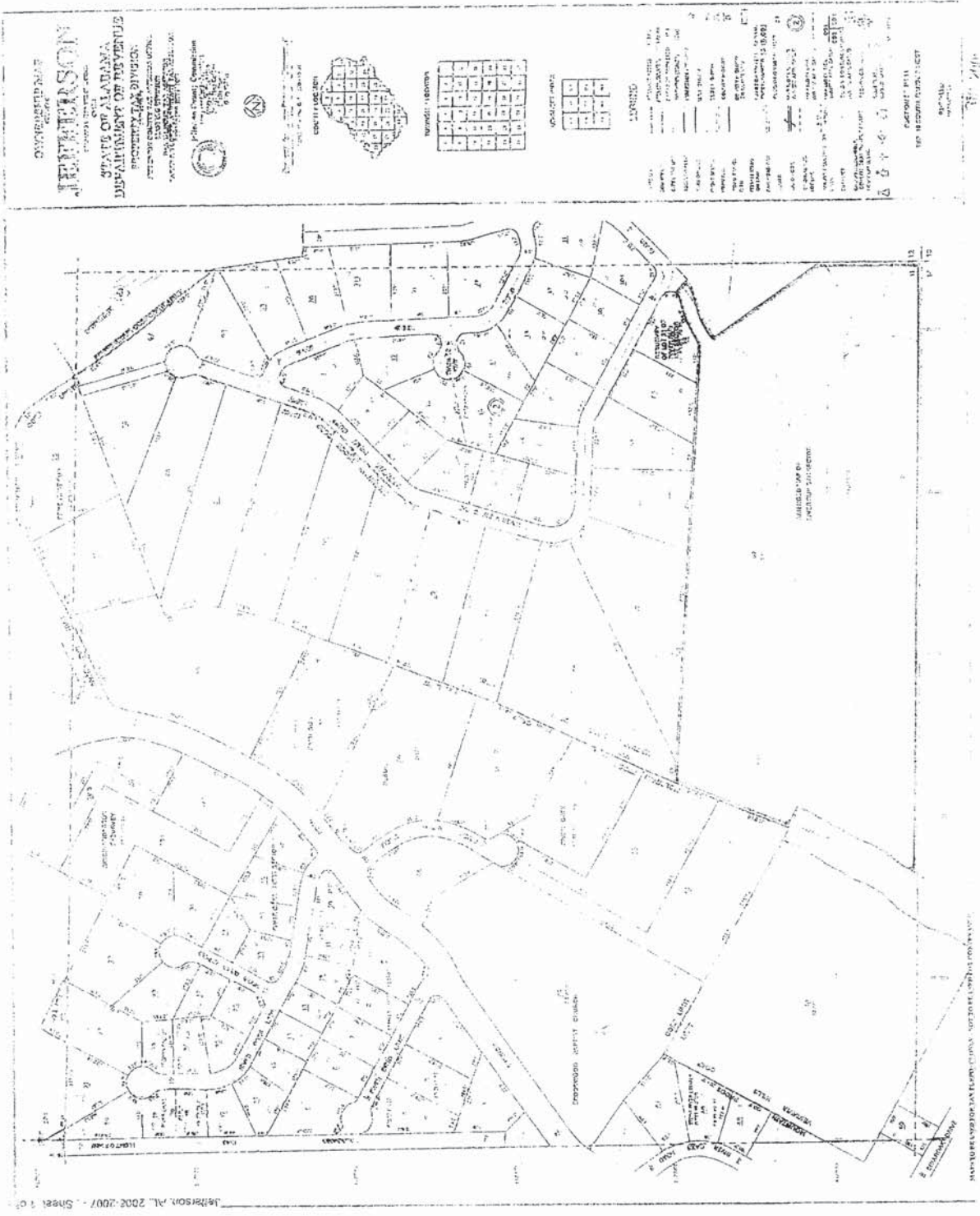
Attachment "A"



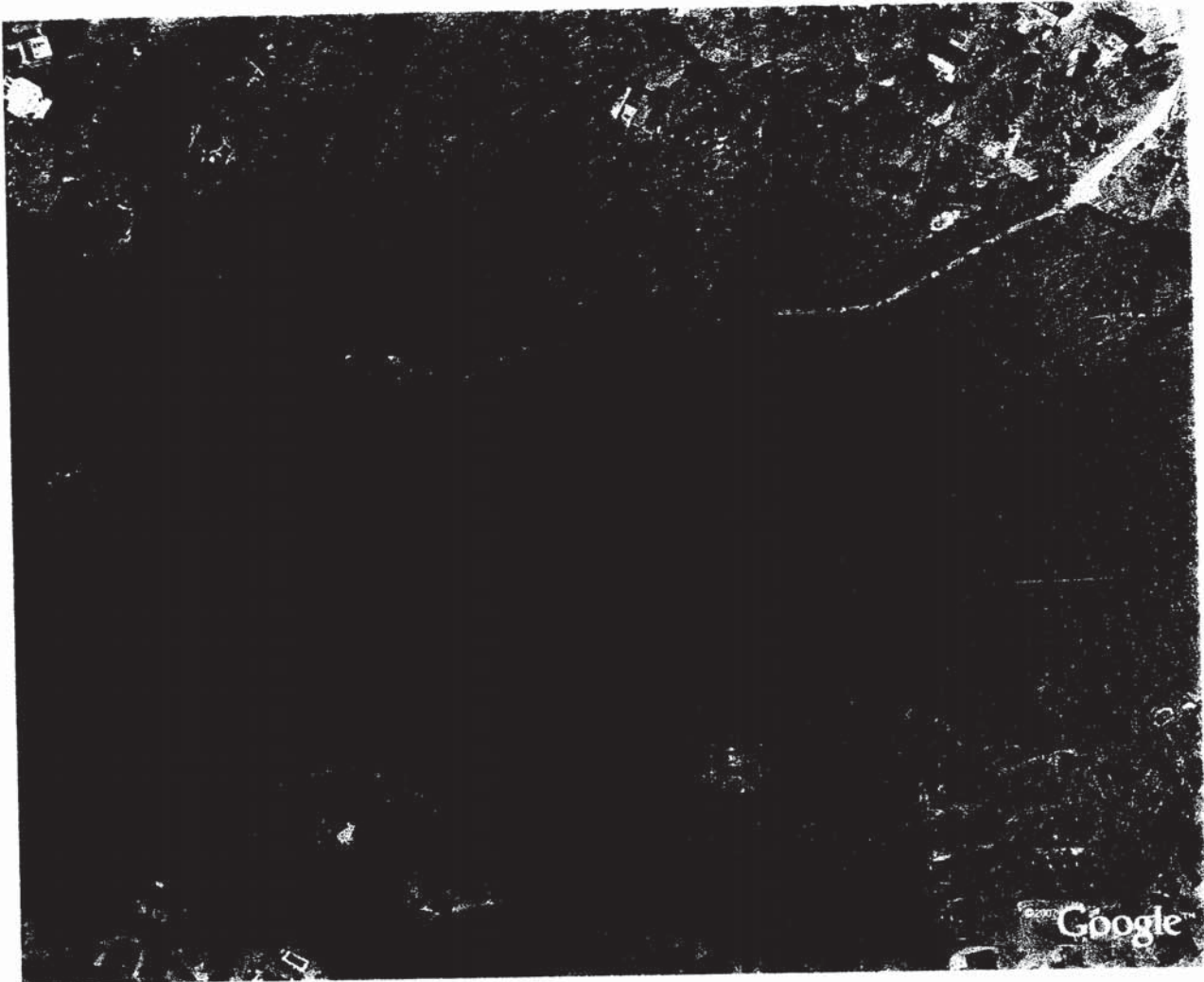
3-D TopoQuads Copyright © 1999 DeLorme Yarmouth, ME 04096

1800 ft Scale: 1:46,875 Detail: 12.2 Datum: WGS84

Attachment "B"



Attachment "D"



(Approximate conservation easement boundary location)

20071228001932170 35/35
Bk: LR200718 Pg:7820
Jefferson County, Alabama
12/28/2007 10:12:19 AM D
Fee - \$89.50
Deed Tax -\$665.00
Total of Fees and Taxes-\$754.50
LINDA

Conservation Easement Amendment
Baseline Documentation Report



20090730000904170 1/13
 Bk: LR200908 Pg: 7983
 Jefferson County, Alabama
 I certify this instrument filed on:
 07/30/2009 04:03:36 PM D
 Judge of Probate- Alan L. King

This instrument prepared by
 and upon recording return to:
 Freshwater Land Trust
 Birmingham-Southern College
 Post Office Box 549071
 Birmingham, Alabama 35254

**AMENDMENT TO
 DEED OF CONSERVATION EASEMENT**

STATE OF ALABAMA)
)
 COUNTY OF JEFFERSON)

THIS AMENDMENT TO DEED OF CONSERVATION EASEMENT (this "Amendment") is executed as of this 14 day of January, 2009, by **EUGENE B. BUTLER** ("Grantor"), and the **FRESHWATER LAND TRUST**, an Alabama nonprofit corporation f/k/a Black Warrior-Cahaba Rivers Land Trust ("Grantee").

WHEREAS, pursuant to that certain Deed of Conservation Easement in favor of the Grantee (the "Deed," capitalized terms used herein and not otherwise defined shall have the meanings given to them in the Deed) dated December 17, 2007, and recorded December 28, 2007, in the Probate Records of **JEFFERSON** County, Alabama in Book LR200718, Page 7820, Grantee is the holder of a conservation easement on certain real property located in **JEFFERSON** County, Alabama (the "Protected Property");

WHEREAS, the Deed places certain limitations and affirmative obligations on the Protected Property for the protection, restoration and enhancement of stream water quality and aquatic and riparian habitats, and in order that the Protected Property shall remain substantially in its natural and/or restored condition in perpetuity;

WHEREAS, as contemplated by the Deed, Grantee has conducted a monitoring investigation of the Protected Property and produced a report describing its findings, a copy of which is attached hereto as Exhibit A (the "Monitoring Report"); and

WHEREAS, Grantor and Grantee wish to document the recent condition of the Protected Property by recording the Monitoring Report as an amendment to the Deed.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor and Grantee hereby agree that the Deed is hereby amended to incorporate the Monitoring Report. All of the provisions of the Deed are incorporated herein by reference and shall remain and continue in full force and effect as amended by this Amendment.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first written above.

GRANTOR:

Eugene B. Butler
EUGENE B. BUTLER

STATE OF ALABAMA)
)
COUNTY OF JEFFERSON)

I, the undersigned, a notary public in and for said county in said state, hereby certify that _____, whose name is signed to the foregoing Amendment and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, she executed the same voluntarily on the day the same bears date.

GIVEN under my hand and official seal this 19 day of January, 2009.

Wanda B. Smith
Notary Public
My commission expires: 9-22-2012

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

EXHIBIT A



**CONSERVATION EASEMENT
MONITORING REPORT FORM**

Property: Eugene Butler Cahaba River Conservation Easement

Date: October 28, 2008

Investigator(s): Karl Peters and Charles Yeager

SECTION 1: General Information

1. Current Ownership:

unchanged

Name(s): _____

Address: _____

Phone: _____

2. Access:

unchanged

Exterior: _____

Interior: _____

SECTION 2: Conservation Status (write "NA" in each section if no change)

1. New land uses on property (especially those that could adversely or beneficially affect subject property's conservation value):

NA

2. New land uses on adjacent property (especially those that could adversely or beneficially affect subject property's conservation value)

NA

3. New trash or other debris causing material problems (locate on attached map):

NA

4. New evidence of hazardous or toxic waste on property (locate on attached map):

NA

5. New evidence or increased presence of erosion or non-point source pollution originating on property (locate on attached map) or upstream:

NA

6. New evidence of stream bank erosion or material changes in stream bank stability (locate on attached map):

NA

7. New evidence of or material changes in abundance and distribution of invasive plant and/or animal species (locate on attached map):

NA

8. Rare plants and/or animals previously unknown (locate on attached map):

NA

9. Additional Comments:

NA

SECTION 3: Development Survey

With the aid of attached photographs, describe the location, dimensions, and appearance of any structures, roads, utilities, or other improvements within the conservation easement area that appear to be unauthorized under the terms of the conservation easement.

NA

SECTION 5: Photopoint Survey

(Attach updates of all photopoints)

III. Photopoint Survey



Point 1. 33°28'30.2"N / 86°42'48.5"W. Compass Direction 0°. SE corner of house lot exclusion.



Point 2. 33°28'28"N / 86°42'52.2"W. Compass Direction 272°. Old wagon road servicing Dodd Ford.



Point 3. 33°28'28.5"N / 86°42'55.3"W. Compass Direction 20°. W boundary upstream view of Cahaba River.



Point 4. 33°28'26.1N / 86°42'55.2W. Compass Direction 130°. At SW corner of property looking east along S boundary.



Point 5. 33°28'24.3"N / 86°42'35.7"W. Compass Direction 34°. SE boundary line viewed from South River Circle cul-de-sac.



Point 6. 33°28'23.5"N / 86°42'52.7"W. Compass Direction 320°. SW boundary line viewed from Riverview Drive.



Point 7. 33°28'32.6"N / 86°42'40.5"W. Compass Direction 230°. Brick walking path along main tributary near middle footbridge.



Point 8. 33°28'30.2"N / 86°42'51"W. Compass Direction 76°. Lower footbridge across main tributary.



Point 9. 33°28'28"N / 86°42'50"W. Compass Direction 330°. Tributary draining Tate property along old road.



Point 10. 33°28'32.4"N / 86°42'39.7"W. Compass Direction 75°. Eastern end of cove.



Point 11. 33°28'31.1"N / 86°42'36.2"W. Compass Direction 100°. Eastern end of cove.



Point 12. 33°28'30.7"N / 86°42'36.2"W. Compass Direction 135°. Eastern end of cove.



Point 13. 33°28'29.5"N / 86°42'34.3"W. Compass Direction 118°. Eastern end of cove.

20090730000904170 13/13
Bk: LR200908 Pg:7983
Jefferson County, Alabama
07/30/2009 04:03:36 PM D
Fee - \$41.00