

THIS INSTRUMENT PREPARED BY:
James A. Wagoner, III, Attorney-Advisor
U.S. Army Corps of Engineers, Mobile District
P.O. Box 2288
Mobile, Alabama 36628-0001

DEED 3011 167
Recorded In Above Book and Page
09/12/2001 01:59:29 PM
Arthur C. Murray
Judge of Probate
Calhoun County, Alabama

STATE OF ALABAMA)

COUNTY OF CALHOUN)

QUITCLAIM DEED NO. 1
TO THE ALABAMA DEPARTMENT OF TRANSPORTATION

THIS QUITCLAIM DEED MADE AND ENTERED INTO BETWEEN, the UNITED STATES OF AMERICA (the "GRANTOR"), acting by and through the Deputy Assistant Secretary of the Army (I&H) pursuant to a delegation of authority from the SECRETARY OF THE ARMY (the "ARMY"), under and pursuant to the powers and authority contained in Section 317 of the Act of Congress approved August 27, 1958 (Public Law 85-767; 72 Stat. 885, and 23 U.S.C. 317) and the Defense Base Closure and Realignment Act of 1990 (BRAC) (Public Law 101-510 as amended), and the State of Alabama Department of Transportation, (the "Grantee").

WITNESSETH:

WHEREAS, Ft. McClellan, an Army BRAC installation, closed on September 30, 1999,

WHEREAS, the State of Alabama Department of Transportation has made application to the U.S. Department of Transportation, Federal Highway Administration (FHWA) requesting the transfer of certain lands that are a part of the former Ft. McClellan, and

WHEREAS, the FHWA approved the application under the authority contained at Section 317 of the Act of August 27, 1958 and requested that the Army proceed with the transfer, and

WHEREAS, pursuant to said Acts and to the Delegations, Rules, and Regulations of the Secretary of the Army, it has been determined that the conveyance requested by the State of Alabama Department of Transportation is not inconsistent with the needs of the Army, or the local redevelopment authority and is in the public interest;

DEED 3011 172

from such remaining property to and from said service road and roads which will be accessible to the controlled access facility only at such points as may be established by public authority.

2. This Grant is subject to the following covenants and conditions which the Grantee, by acceptance of this deed, assumes for itself and its successors and assigns, as covenants running with the land:

a. INCLUSION OF PROVISIONS

The person or entity to whom the property is transferred shall neither transfer the property, lease the property, nor grant any interest, privilege, or license whatsoever in connection with the property without the inclusion of the environmental protection provisions contained herein, and shall require the inclusion of such environmental protection provisions in all further deeds, transfers, leases, or grant of any interest, privilege, or license.

b. CERCLA NOTICE AND COVENANTS

(1) Notice. Pursuant to Sections 120 (h)(4) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Section 9601 et seq. ("CERCLA"), the Grantor has identified, the Finding of Suitability to Transfer ("FOT"), dated March 14, 2001, a copy of which has been provided to the Grantee, the Property as real property on which no hazardous substances and no petroleum products or their derivatives were stored for one year or more, or known to have been released or disposed of.

(2) Covenants.

(a) The Grantor covenants and warrants to the Grantee and its successors in interest that in the event that response action or corrective action is found to be necessary after the date of this conveyance as a result of hazardous substance or petroleum products contamination existing on the Property prior to the date of this conveyance, such response action or corrective action shall be conducted by the Grantor.

(b) This covenant shall not apply to the extent such remedial actions are caused by activities of the Grantee, its successors, assigns, transferees, sublessees, tenants, or licensees of the Grantee.

(3) Access Rights and Easement

0218 3011 173

The Grantor hereby reserves an access easement to the Property in any case in which a response action or corrective action is found to be necessary after the date of this conveyance at such Property, or in any case such access is necessary to carry out a response action or corrective action on adjoining property. In exercising this access easement, the Grantor shall give the Grantee, or the then record owner, at least thirty (30) days prior written notice of actions to be taken in the remediation of the Property or the adjacent property, as the case may be, except for emergency situations or an imminent threat to human health and the environment, (in which case the Army shall give such notice as is reasonably practicable under the circumstances) and shall use reasonable means, without significant additional cost to the Grantor, to avoid and/or minimize interference with the use of the Property by the Grantee, its successors and assigns. Furthermore, any such actions undertaken by the Grantor pursuant to this Section 2.B. will, to the maximum extent practicable, be coordinated with a representative of the Grantee, its successors and assigns. Grantee agrees that, notwithstanding any other provisions of the Deed, the Grantor assumes no liability to the Grantee, its successors or assigns, or any other person, should remediation of the Property interfere with the use of the Property. The Grantee shall not through construction or operation/maintenance activities, interfere with any remediation or response action conducted by the Grantor under this section. The Grantee, the then record owner, and any other person, shall have no claim against the Grantor, or any of its officers, agents, employees or contractors solely on account of any such interference resulting from such remediation.

c. NO LIABILITY FOR NON-ARMY CONTAMINATION

The U.S. Army shall not incur liability for response action or corrective action found to be necessary after the date of transfer, in any case, in which the person or entity to whom the property is transferred or other non-Army entities is identified as the party responsible for contamination of the property.

d. NOTICE OF THE POTENTIAL FOR THE PRESENCE OF ORDNANCE AND EXPLOSIVES

Ordnance and Explosives have been found on adjacent property. The U.S. Army intends to investigate the adjacent property. The investigation may have an impact on the Property

DEED 3011 174

through use of exclusion zones (zones established to restrict specific activities in a specific geographic area surrounding any object or structure which is being demolished using explosives) that intersect the Property. Due to the use of exclusion zones, temporary notices and restrictions may be issued to protect public safety, human health and the environment. These temporary restrictions and notices may include but are not limited to, the removal of unexploded ordnance on the adjacent property, temporary evacuation, limited closure of facilities and environmental cleanup. In the unlikely event that evacuation is required, all action will be carried out as expeditiously as possible to minimize inconveniences to the Property owner. Upon the completion of all OE work within the exclusion zones all temporary notices and restriction shall no longer be applicable. In the event the Grantee, its successors, and assigns, should discover any suspect ordnance on the Property, it shall not attempt to remove or destroy it, but shall immediately notify local Police Department and competent Grantor or Grantor designated explosive ordnance personnel will be dispatched promptly to dispose of such ordnance at no expense to the Grantee.

e. NOTICE OF THE PRESENCE OF ENDANGERED SPECIES AND COVENANT

Gray bats (*Myotis grisescens*) are known to forage near Twin Mountains Creek. Areas within the Transferred Premises that are adjacent to Twin Mountains Creek have been identified as suitable gray bat foraging habitat (Figure 4 and Attachment 3). Gray bats are listed as endangered by the U.S. Fish and Wildlife Service (FWS) and are afforded Federal protection under the Endangered Species Act (ESA) of 1973, as amended. Section 9 of the ESA prohibits private landowners from "taking" (harm, harass, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct) endangered species.

The following measures will limit potential take of gray bats on the Transferred Premises. Failure to follow these measures could subject the violator to criminal sanctions of the ESA:

Trees along Twin Mountains Creek with moderate quality foraging habitat on the Transferred Premises provide protective cover and prey for foraging gray bats. Forest within 50 feet of these streams should not be removed. If removal of dead or live trees within 50 feet of these streams is necessary, the FWS must be consulted prior to cutting.

Gray bats primarily feed on insects with an aquatic life

DEED 3011 175

stage; therefore, water quality and the physical characteristics of streams affect the amount and types of insects available for these bats. State and Federal regulations pertaining to water quality and erosion control should be followed. Additionally, modification of stream banks and water flow should be avoided to maintain present water quality and physical structure.

Use of pesticides, particularly Malathion, should be managed according to a FWS consultation letter dated June 11, 1998. The Grantee should avoid (or eliminate or minimize) fogging in the vicinity of all moderate quality foraging habitat. FWS requested that if Malathion is used it should be sprayed only during daylight hours no earlier than one hour after sunrise and no later than one hour prior to sunset between March 15 and October 31. Use atmospheric conditions to determine appropriate timing for fogging on lands directly adjacent to foraging areas.

f. NOTICE OF ARCHAEOLOGICAL PROPERTY AND PRESERVATION COVENANT

In consideration of the conveyance of the real property that includes the archaeological property, site 01CA0567, located in the County of Calhoun, Alabama, the Grantee hereby covenants on behalf of itself, its heirs, successors, and assigns at all times to the Alabama State Historic Preservation Officer (SHPO), to maintain and preserve the archaeological property, site 01CA0567, in accordance with the provisions of paragraphs 2 through 11 of this covenant.

The Grantee will notify the Alabama State Historic Preservation Officer in writing prior to undertaking any disturbance of the ground surface or any other action on archaeological property, site 01CA0567, that would affect the physical integrity of this site. Such notice shall describe in reasonable detail the proposed undertaking and its expected effect on the physical integrity of the archaeological property, site 01CA0567.

Within thirty (30) calendar days of the appropriate Alabama State Historic Preservation Officer's receipt of notification provided by the Grantee pursuant to paragraph 2 of this covenant, the State Historic Preservation Officer will respond to the Grantee in writing as follows:

That the Grantee may proceed with the proposed undertaking without further consultation; or

DEED 3011 176

That the Grantee must initiate and complete consultation with the Alabama State Historic Preservation Office before it can proceed with the proposed undertaking.

If the Alabama State Historic Preservation Officer fails to respond to the Grantee's written notice, as described in paragraph 2 of the covenant, within thirty (30) calendar days of the Alabama State Historic Preservation Officer's receipt of the same, then the Grantee may proceed with the proposed undertaking without further consultation with the Alabama State Historic Preservation Officer.

If the response provided to the Grantee by the Alabama State Historic Preservation Officer pursuant to paragraph 3 of this covenant requires consultation with the Alabama State Historic Preservation Officer, then both parties will so consult in good faith to arrive at mutually-agreeable and appropriate measures that the Grantee will employ to mitigate any adverse effects associated with the proposed undertaking. If the parties are unable to arrive at such mutually-agreeable mitigation measures, then the Grantee shall, at a minimum, undertake recordation for the concerned property in accordance with the Secretary of Interior's standards for recordation and any applicable state standards for recordation, or in accordance with such other standards to which the parties may mutually agree-- prior to proceeding with the proposed undertaking. Pursuant to this covenant, any mitigation measures to which the Grantee and the Alabama State Historic Preservation Officer mutually agree, or any recordation that may be required, shall be carried out solely at the expense of the Grantee.

The Grantee shall make every reasonable effort to prohibit any person from vandalizing or otherwise disturbing any archaeological site determined by the Alabama State Historic Preservation Officer to be eligible for inclusion in the National Register of Historic Places. Any such vandalism or disturbance shall be reported to the Alabama State Historic Preservation Officer promptly.

The Alabama State Historic Preservation Officer shall be permitted upon reasonable notice at a reasonable time to inspect the two archaeological properties, site 01CA0567, in order to ascertain its condition and to fulfill its responsibilities hereunder.

In the event of a violation of this covenant, and in

DEED 3011 177

addition to any remedy now or hereafter provided by law, the Alabama State Historic Preservation Officer may, following reasonable notice to the Grantee, institute suit to enjoin said violation or to require the restoration of any archaeological site affected by such violation. The successful party shall be entitled to recover all costs or expenses incurred in connection with any such suit, including all court costs and attorney's fees.

The Grantee agrees that the Alabama State Historic Preservation Officer may, at its discretion and without prior notice to the Grantee, convey and assign all or part of its rights and responsibilities contained in this covenant to a third party.

This covenant is binding on the Grantee, its heirs, successors, and assigns in perpetuity, unless explicitly waived by the Alabama State Historic Preservation Officer. Restrictions, stipulations, and covenants contained herein shall be inserted by the Grantee, verbatim or by express reference in any deed or other legal instrument by which it divests itself of either the fee simple title or any other lesser estate in the archaeological property, site 01CA0567, or any part thereof.

The failure of the Alabama State Historic Preservation Officer to exercise any right or remedy granted under this instrument shall not have the effect of waiving or limiting the exercise of any other right or remedy or the use of such right or remedy at any other time.

The covenant shall be a binding servitude upon the real properties that includes archaeological site 01CA0567 and shall be deemed to run with the land. Execution of this covenant shall constitute conclusive evidence that the Grantee agrees to be bound by the foregoing conditions and restrictions and to perform the obligations herein set forth.

g. CONDITIONS, RESTRICTIONS, AND COVENANTS BINDING AND ENFORCEABLE

These restrictions and covenants are binding on the Grantee, its successors and assigns; and shall run with the land; are forever enforceable; shall benefit the public in general and the territory surrounding the Property, including lands retained by the United States; and shall further the common environmental objectives of the United States and the State of Alabama; and are therefore enforceable by the United States Government and the State of Alabama.

3. NON-DISCRIMINATION

DEED 3011 178

With respect to activities related to the property, the Grantee hereby agrees that it will comply with the requirements of Title VI of the Civil Rights Act of 1964 (Public Law No. 88-352) and all requirements imposed by or pursuant to the regulations issued pursuant to the Act and now in effect, to the end that, in accordance with said Act and regulations, no person in the United States shall, on the grounds of race, color, national origin, sex, or handicap be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity related to the property of the Grantee, its successors or assigns.

4. STATUTORY INDEMNIFICATION

The Grantor recognizes its obligation to hold harmless, defend, and indemnify the Grantee and any successor, assignee, transferee, lender, or lessee of the Grantee or its successors and assigns, as required and limited by Section 330 of the Department of Defense Authorization Act of 1993, as amended, and to otherwise meet its obligations under law.

5. ANTI-DEFICIENCY ACT

The Grantor's obligation to pay or reimburse any money under this Deed is subject to the availability of appropriated funds to the Department of the Army, and nothing in this deed shall be interpreted to require obligations or payment by the Grantor in violation of the Anti-Deficiency Act.

TO HAVE AND TO HOLD the above-described land with all and singular the privileges and appurtenances thereunto belonging, or in anywise appertaining, unto the said part of the Grantee, and its assigns, forever.

This conveyance is not subject to Title 10, U.S. Code, Section 2662.

DEED 3011 179

IN WITNESS WHEREOF, the GRANTOR has caused this Deed to be executed in its name by the Deputy Assistant Secretary of the Army (I&H) and the Seal of the Department of the Army to be hereunto affixed this 2nd day of August, 2001.

UNITED STATES OF AMERICA

By: Paul W. Johnson
Paul W. Johnson
Deputy Assistant Secretary of the Army (I&H)

Signed, Sealed and Delivered

In the presence of:

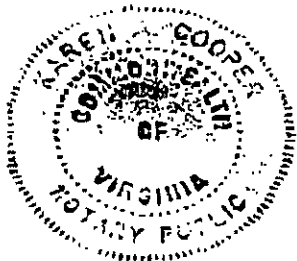
Witness: [Signature]

Witness: [Signature]

COMMONWEALTH OF VIRGINIA)

COUNTY OF ARLINGTON) ss:

I, the undersigned, a Notary Public in and for the Commonwealth of Virginia, County of Arlington, whose commission as such expires on the 30th day of November, 2001, do hereby certify that this day personally appeared before me in the Commonwealth of Virginia, County of Arlington, Paul W. Johnson, Deputy Assistant Secretary of the Army (I&H), whose name is signed to the foregoing instrument and acknowledged the foregoing instrument to be his free act and deed, dated this 2nd day of August, 2001, and acknowledged the same for and on behalf of the UNITED STATES OF AMERICA.



Karen A. Cooper

DEED 3011 180

The terms and conditions of this Quitclaim Deed are hereby accepted this 25th day
of JUNE, 2001.

APPROVED:

THE STATE OF ALABAMA

BY G M Roberts
G. M. ROBERTS
TRANSPORTATION DIRECTOR

Recording Fee 48.00
TOTAL 48.00

