

STATE OF ALABAMA)

Inst # 1998-20532

SHELBY COUNTY)

06/04/1998-20532
09:10 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE

THIS LEASE made and entered into on the ^{009 SNA .00} 3 day of November, 1997

by and between ALABAMA POWER COMPANY, a corporation (hereinafter sometimes referred to as the Lessor), and the SHELBY COUNTY COMMISSION located in the state of Alabama (hereinafter sometimes referred to as Lessee);

WITNESSETH:

WHEREAS, Alabama Power Company owns certain lands located in Section 26 and 27, Township 21 South, Range 1 East, Shelby County, Alabama; and

WHEREAS, the Lessee has instituted a program for establishing a park on the Lay Reservoir project boundary, to provide facilities, picnic areas and service for boat traffic, and is desirous of obtaining a lease on a certain portion of the above-mentioned property;

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that as a contribution for the benefit of the public and for and in consideration of the sum of One Dollar (\$1.00) rental each year of this lease, the first installment of which has been paid, by the Lessee, the receipt whereof is hereby acknowledged, Lessor does hereby lease and let unto Lessee the following described property situated in Shelby County, Alabama, to-wit:

A parcel of land containing 100 acres, more or less, described as follows:

All of the lands shown hatched on the attached drawing, marked Exhibit "A" attached hereto and made a part hereof, located in the South Half of the Northwest Quarter, and the West Half of the Northeast Quarter of Section 26 and in the Southeast Quarter of the Northeast Quarter of Section 27, all in Township 21 South, Range 1 East, in Shelby County, Alabama.

This lease is made under the following specific terms, conditions and stipulations:

1. This lease shall be for a term of 25 years beginning on the date first written above.
2. Lessor shall not be held liable for any claims for damage which may accrue on account of the construction, operation or maintenance of the proposed recreational facilities, and Lessor shall not be liable on account of any damage to such facilities; and Lessee shall indemnify, protect and save harmless Lessor from all loss, damage, lien or lien claims, cost or expense which Lessor may sustain on account of the construction, operation or maintenance of said facilities upon the leased land and on account of claims for damage by others by reason of

the construction, operation or maintenance upon said land of the proposed recreational facilities; or works connected or related thereto.

3. Lessee will erect and maintain a sign or signs on the leased premises which will contain a credit to the effect that the use of the premises was made available to lessee by lessor as a public service.

4. This lease will not be assigned by the Lessee except with the written consent of Lessor. However, Lessee may sublease and sublet portions of the premises to its designated Park Director, who may in turn build caretaker houses, concession stand, boat service structures or other public service or maintenance structures on the premises so subleased. Lessee may, by separate contract with other governmental agencies, arrange for the maintenance and operation of the property herein leased. In the event a Park Board is created, for the operation of Shelby County public parks, hereafter, the rights, duties and obligations of the Lessee hereunder may be discharged by said Park Board in accordance with the Code of Alabama, Title 12, Sections 224-226, or amendments thereto.

5. The Lessee will construct upon the leased premises the recreation facilities which are the subject of this lease. Plans for such facilities must be submitted to Lessor in writing, and the design, elevation and location shall be approved in writing by the Lessor in advance of construction.

6. Lessee, or its Park Director, shall not discharge or deposit or cause or suffer to be discharged or deposited, any waste, sewage, garbage or trash into the open water upon or touching the leased premises. Nor shall lessee maintain or utilize any outdoor privies thereon, but instead shall provide adequate indoor toilets connected with a septic tank or tanks constructed in accordance with standards prescribed by the health authority having jurisdiction thereof for the disposal of the waste and sewage from the toilets and other facilities of Lessee. Lessee shall furnish and maintain solid waste receptacles of appropriate capacity and design for use in the officially established solid waste management plan for the area of this facility. The lessee shall be required to cooperate with Alabama Power Company (Lessor) in complying with Federal licenses and directives, the State of Alabama Department of Public Health, state and local regulation in planning and providing for the collection, storage and disposal of solid waste generated through public access and use of project lands and waters. The cost and expense of such solid waste collection, storage and disposal of solid waste generated though public assess and use of project waters at the facility located on the lands described in this lease agreement shall be the sole responsibility of the Lessee, and the license or lease agreement shall be made subject to the complete fulfillment of such responsibility.

7. The Lessee, or its Park Director, shall not commit or suffer to be committed, any waste on or offensive use of the premises, and shall not maintain a nuisance thereon, nor suffer a nuisance to be maintained thereon, and shall maintain the premises and facilities thereon in good order at all times.

8. Lessor reserves the right to cut and remove timber from any part of said land, but in exercising such right, it shall give due consideration to aesthetic needs and the use of contemplated use of the premises and only after seeking and considering the advice of Lessee. Lessor shall, of course, cut diseased timber wherever located should it desire. The Lessee is expressly forbidden to cut or remove, or cause to be cut or removed, any trees or saplings, or deaden any green timber, regardless of size, growing on said land or any other land of the Lessor without the written consent by the Lessor being secured in advance, except such trees which must be removed in order to place the proposed structures and parking facilities on the premises.

9. Lessor shall have the right to enter upon the premises at any reasonable time during the term of this lease for the purpose of inspecting the premises and shall have the right to carry on erosion control programs and forestry programs and other like conservation programs upon the premises, due protection and consideration being afforded the structures, improvements, and uses of the Lessee. The Lessor shall be the judge as to what constitutes "any reasonable time" as set out in the first part of this paragraph.

10. All ad valorem taxes which may be lawfully imposed by the State of Alabama and its subdivisions upon the leasehold interest created hereunder, together with all other liens and encumbrances of each and every kind lawfully imposed by reason of this lease, permission or authorization granted herein and improvements placed upon the leased premises and operations thereof, shall be paid promptly by Lessee.

11. Lessor reserves the right of ingress and egress across the leased premises and Lessor reserves all existing electric transmission lines and related facilities, if any, which are located on the leased premises together with rights of way therefor and the right to grant others or to use in the future additional portions of the leased premises for rights of way for the construction, maintenance, and operation of such facilities as the Lessor desires in connection with its business operations, so long as the new facilities do not interfere with the use being made of the premises by the Lessee.

12. Lessor makes no representation by the leasing of said premises as to whether or not such premises are safe or suitable for the purpose for which they are permitted to be used under the terms of this lease.

13. All rights of the Lessee hereunder are subject to the terms and conditions of License 2146 Alabama heretofore issued by the Federal Power Commission, or which may be issued hereafter by the federal Energy Regulatory Commission, or its successor agency, to Alabama Power Company relating to the lands involved in this agreement, together with the applicable provisions of the Federal Power Act and of the rules and regulations of the Federal Power Commission (now Federal Energy Regulatory Commission), and of any amendments to such license, Act and rules and regulations hereafter put into effect.

14. Lessee is informed and understands that in the operation of Lessor's business there will be major fluctuations in the level of the water on which the leased lands are located. It is understood and agreed that the rights of the Lessee hereunder shall be subject at all times to the right of the Lessor, its successors and assigns, to raise and lower the waters of the Coosa River or any extensions of such waters from time to time in the operations of its dam or dams and works, whether upstream or downstream from said lands, and to flood such lands and any other lands owned by its or which it has the right to flood, continuously or from time to time, and the Lessor shall not be liable for damages of any nature whatsoever which may result directly or indirectly from such flooding or by reason of the maintenance or operation of its said dam or dams and works.

15. In the event such water level is to be raised pursuant to issuance of a license after date hereof by the Federal Energy Regulatory Commission, or its successor agency, and should Lessor notify Lessee at the address and in the manner provided in paragraph 24 hereof, at least six (6) months in advance of the date on which such raise in water level is expected to commence, Lessee shall promptly after receipt of such notice, submit to Lessor written plans and specifications and pertinent elevations for rearrangement or relocation of any improvements which will be adversely affected by such new water elevation so as to avoid such adverse effect. In such event Lessor shall promptly approve such plans or return them to Lessee for changes and resubmitting to Lessor. After receiving written approval of Lessor of such plans and specifications and pertinent elevations for rearrangement or relocation of those improvements, Lessee shall complete such rearrangement or relocation at least three (3) months prior to such date of expected commencement of raise in water level. At least three (3) months prior to such date, Lessee shall tear down and remove all improvements or parts thereof which are not to be a part of the approved, rearranged, or relocated improvements or parts thereof within such time, Lessor shall have the right to remove the same at the expense of Lessee or to flood or cover the same with water. Lessee is the party responsible under this lease and nothing it executed in the way of a sublease shall grant to anyone any rights which may vary the terms of this agreement.

16. In the event of a breach of any covenant contained herein by Lessee, and such breach remains uncorrected for 30 days after notice of such breach has been given to Lessee by Lessor,

or such additional period as Lessor may agree to in writing, this lease shall be considered terminated.

17. In the event of the termination of this lease for any reason, or its cancellation for any reason, or upon the expiration of the term hereof, the Lessee shall have the right to remove any and all of the properties, both real and personal, that have been placed on the premises, within one hundred twenty (120) days after date of termination.

18. Lessee covenants with Lessor that it will, within a period of one (1) year from the effective date hereof, utilize the leased premises for the proposed public recreational park, however, commencement of construction of such facility and thereafter diligent pursuit of completion of said construction shall be deemed to be such utilization; in the event such use is abandoned and discontinued for one hundred eighty (180) consecutive days at anytime during the term of this lease or extension thereof, the lease may be considered as terminated by Lessee. However, nothing contained in the preceding sentence shall relieve Lessee of its obligation to construct, operate, and maintain said public recreational park on the leased premises. Upon the occurrence of the above described termination, any rights acquired by Lessee under this lease shall revert to Lessor forthwith, and it is understood that Lessor will have no obligation to reimburse Lessee for any improvements made to such land.

19. Lessee shall take all precautions during the construction and maintenance of the park authorized to be built to protect Lay Dam and Reservoir from siltation and every form of pollution. Lessee shall take all necessary precautions during construction and subsequent operation and maintenance to protect and enhance the environmental values of any affected Federal Energy Regulatory Commission project lands and water. In the event Lessee does not fulfill the obligations specified in this paragraph, in the opinion of the Lessor, Lessee agrees to take corrective action as Lessor may direct.

20. The lessee shall not use the lands described herein in any manner so as to endanger health, create a nuisance or otherwise be incompatible with the overall recreational use of Lay Dam and Reservoir, or as specified at any time in connection with Federal Energy Regulatory Commission Project No. 2146 Alabama.

21. Lessee shall take such measures, and shall install or cause to be installed such safety devices as may be necessary to ensure the safety of the public using project lands and waters at the proposed Beeswax Recreation Park.

22. Lessee shall promptly notify the Lessor of any unusual or hazardous conditions relating to the construction, maintenance or existence of its said public park facilities.

23. Lessee shall permit equal and unobstructed use of such facilities to all members of the public without regard to race, color, religious creed, or national origin.

24. Where notices are provided for herein, such notices shall be conclusively deemed given when posted in the United States mail, addressed as follows:

Notice to Lessor

Alabama Power Company
600 North 18th Street
P. O. Box 2641
Birmingham, Alabama 35291-0980

Notice to Lessee

Shelby County Commission
Post Office Box ~~825~~ 467
Columbiana, Alabama 35051

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25. The terms, conditions and provisions contained herein are intended to be and shall be construed as running with this lease and shall be binding upon the Lessor and Lessee and their respective successors and assigns.

26. Lessee, its successors and assigns, ~~shall consult and cooperate with the~~ *prior to commencement of* construction of the park facilities, shall consult and cooperate with the State Historic Preservation Officer to determine the effect, if any, of the proposed construction of any archaeological sites and to determine the need, if any, for archaeological or historical surveys or salvage work at the site; and, if a need is established, Lessee shall provide funds in a reasonable amount for such work.

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27. Lessee will secure and maintain at its expense, a policy of public liability insurance in a form acceptable to Lessor and from a corporation acceptable to Lessor, which policy shall insure Lessor against, and hold it harmless from any and all liability which Lessor may incur as the result of personal injuries, death to persons, or damage to or destruction of property, whenever occurring, suffered or allegedly suffered by Lessee, its employees, tenants, invitees, licensees, or any other persons whomsoever, based upon or growing out of Lessee's use or occupancy of said land, or the flooding of such lands by Lessor, or the construction, operation, or maintenance thereon by Lessor of electrical facilities, and caused, occasioned, or contributed to by the negligence of Lessee, its agents, servants, employees, tenants, invitees, licensees, or any other persons whomsoever, and even though caused, occasioned, or contributed to by the negligence, sole or concurrent, of the Lessor, its agents, servants or employees. Such policy shall provide coverage to Lessor by naming Alabama Power Company as an additional insured against risk of such liability in an amount no less than One Million Dollars (\$1,000,000.00) for each occurrence, personal injury or injuries, death to persons and/or damage to or destruction of property or properties, and shall contain a provision that such policy will not be terminated as to Lessor until Lessor shall have been given no less than thirty days (30) notice in writing of the date on which such policy will be terminated. Lessee shall furnish Lessor with either a certified copy of such policy, or other sufficient evidence thereof upon the execution of this agreement and on each subsequent renewal date of such policy.

IN WITNESS WHEREOF, the parties hereto have executed this instrument on the 3
day of November, 1997.

ALABAMA POWER COMPANY

Attest:

Perry B. Southerland

Susan N. Story

SHELBY COUNTY COMMISSION

Attest:

Gloria H. Lucas

Ally D. Holt
~~Chairman~~ Co. Mgr

STATE OF ALABAMA)

SHELBY COUNTY)

I, Charles E. Mauldin, a Notary Public in and for said County, in said State,
hereby certify that Susan N. Story, whose name as
Vice President of Alabama Power Company, a corporation, is signed
to the foregoing conveyance, and who is known to me, acknowledged before me on this day that,
being informed of the contents of the conveyance, he, as such officer and with full authority,
executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this 3 day of November, 1997.

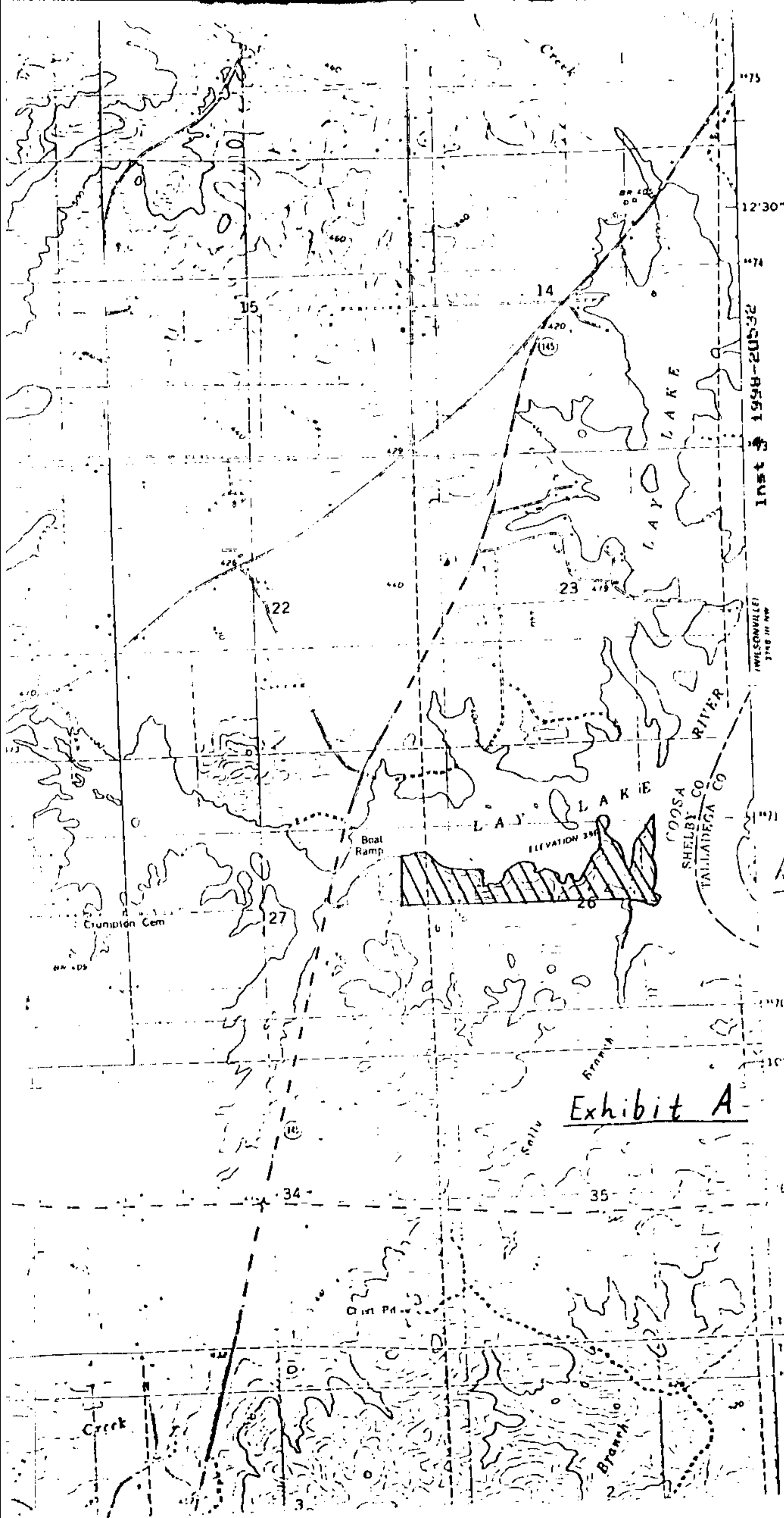
Charles E. Mauldin
Notary Public

STATE OF ALABAMA)
SHELBY COUNTY)

I, Gloria W. Lucas, a Notary Public in and for said County in said State, hereby certify that Alex Dudchack, whose name as Alex Dudchack, Co. Manager of Shelby County is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such County Manager and with full authority, executed the same voluntarily for and as the act of said commission.

Given under my hand and official seal, this 16th day of Dec., 1997.

Gloria W. Lucas
Notary Public



06/04/1998-20532
09:10 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
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Inst 3 26502-8561 1501

WILSONVILLE
3140 IN NW

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Exhibit A