

**Timber Cutting Agreement  
(Portion of Payment Deferred)  
Page 1**

**STATE OF ALABAMA)  
)  
JEFFERSON COUNTY)**

**AGREEMENT, entered into by and between Alabama Power Company (hereinafter referred to as Seller), and BLUE OX FORESTRY, INC. (hereinafter referred to as Buyer), of Selma, Alabama.**

**WITNESSETH:**

**1. That for and in consideration of an advance payment of Twenty-Two Thousand One Hundred Nineteen and 40/100 - Dollars (\$22,119.40), in hand paid by the Buyer to the Seller, the receipt of which is hereby acknowledged, and the promise of further advance payments in the total amount of Eighty-Eight Thousand Four Hundred Seventy-Seven and 60/100 - Dollars (\$88,477.60), in accordance with the terms of paragraph 4 hereinbelow (which advance payment and further advance payments represent an aggregate royalty of One Hundred Ten Thousand Five Hundred Ninety-Seven and 00/100 - Dollars (\$110,597.00) computed at the rate or rates and upon the quantity or quantities of timber as set out in paragraph 2 hereinbelow) Seller hereby gives and grants to Buyer the right to cut and remove within a period of Twelve (12) months from the date hereof the pine and hardwood sawtimber and pulpwood, on lands owned by the Seller in Shelby County, Alabama, which has been designated by the Seller as set out in Paragraph 17 of the attached Exhibit "A".**

**2. The parties hereto agree that the advance payment and further advance payments set out herein are subject to adjustment in accordance with paragraphs 8 and 9 of Exhibit "A", which is attached hereto and made a part hereof, and rates of adjustment per thousand board feet of timber shall be determined as follows:**

<b>Pine Sawtimber</b>	<b>245,053 Board Feet</b>	<b>@</b>	<b>\$272.96/MBF</b>
<b>Oak Sawtimber</b>	<b>84,368 Board Feet</b>	<b>@</b>	<b>\$200.00/MBF</b>
<b>Hickory Sawtimber</b>	<b>17,906 Board Feet</b>	<b>@</b>	<b>\$ 40.00/MBF</b>
<b>Miscellaneous Hardwood Swt.</b>	<b>4,640 Board Feet</b>	<b>@</b>	<b>\$ 50.00/MBF</b>
<b>Pine Pulpwood</b>	<b>443.00 Cords</b>	<b>@</b>	<b>\$ 22.75/CORD</b>
<b>Hardwood Pulpwood</b>	<b>958.00 Cords</b>	<b>@</b>	<b>\$ 16.50/CORD</b>

**TOTAL SAWTIMBER AND PULPWOOD: 351,967 Board Feet and 1,401 Cords**

3. The rights hereby granted by the Seller extend only to such trees as are situated on portions of the Seller's Shelby County Lands (2008 Timber Sale No. 2), Shelby County , Alabama, as the same is shown in a red color on the attached map, marked Exhibit "C", containing Sheet one, which is made a part hereof as if fully set out herein.

4. The Buyer shall have no right to cut timber hereunder until, in addition to the advance payment made at execution hereof, he has made a further advance payment in an amount so as to have prepaid the total estimated royalties for this sale. Therefore, only when advance payments totaling One Hundred Ten Thousand Five Hundred Ninety-Seven and 00/100 - - Dollars (\$110,597.00) have been paid over to Seller, may Buyer begin cutting under this agreement. The total estimated royalties for this sale are as follows:

ITEM	100% OF ESTIMATED ROYALTIES	80% OF ESTIMATED ROYALTIES
ENTIRE SALE	\$110,597.00	\$ 88,477.60

20% of estimated royalties paid at execution: \$22,119.40

5. Buyer will abide by and perform such obligations and duties with respect to the cutting and removing of such timber as are imposed upon him by the provisions of Exhibits "A" and "B", which are attached hereto and made a part hereof as if fully set out herein.

6. The rights and obligations of each party shall inure to the benefit of and be binding upon their heirs, assigns and successors.



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Timber Cutting Agreement  
(Portion of Payment Deferred)  
Page 2-A

IN WITNESS WHEREOF, the parties hereto have executed this agreement on this  
the 12th day of February, 2008.

ATTEST:

Brenda O. Chappell  
Secretary  
For Alabama Power Company, Seller

ALABAMA POWER COMPANY

By Jeff A. Beason  
US Forestry Supervisor  
Seller

ATTEST:

Sharon Thompson  
Secretary  
For: Blue Ox Forestry, Inc.  
Buyer

BLUE OX FORESTRY, INC.

By George S. Crum  
General Manager  
Buyer

Shelby County, AL 04/21/2008  
State of Alabama

Deed Tax: \$111.00


  
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EXHIBIT "A"

1. It is understood that all rights and privileges hereunder are to cease and terminate at the expiration of Twelve (12) months from the date of this instrument and at such time shall revert to and vest in the Seller, except that Buyer may at its option, extend the contract for an additional Six (6) months by paying an amount equal to 10% of the consideration for the portion of the sale area affected by the extension. If Buyer completes his cutting operation prior to the expiration date set out above, or prior to the expiration of any extension of this contract, he shall notify Seller thereof in writing within ten days after such completion.

2. In the event the Buyer fails or refuses to perform the obligations of the Buyer hereunder; any money paid by Buyer to the Seller shall be and become the property of the Seller in liquidation of any damages suffered by the Seller by reason of such failure of Buyer.

3. In the exercising by the Buyer of the right of ingress and egress to and from the lands herein described over and across adjacent lands of Seller for the purposes of cutting and removing such timber, the exercising of such rights shall be subject to the rights of Seller's tenants. Should the Buyer in the exercise of the rights herein granted make roads through or cut trees onto fences or across cultivated fields or damage the crops or other property owned or leased by such tenants, the Buyer shall be liable for and pay either to Seller or its tenants all damages resulting therefrom.

4. It is agreed that if Buyer cuts any trees not designated for cutting as provided herein, Buyer shall on demand pay to Seller \$10.00 or double the stumpage value, whichever is greater, for each undesignated tree so cut. In the event Buyer objects to Seller's count or determination of the number of trees so cut, the number shall be determined by a check made of the stumps by the Seller and Buyer, or by their designated agents, and a third person selected by the two.

5. The burden of loss of timber designated to be cut under this contract shall be upon Buyer at all times during the period of this contract, whether such loss results from fire, storm, theft or other cause. Seller shall not be liable for any such loss, and no adjustment of the advance payment shall be made by reason of such loss.

6. It is further agreed that while engaged in cutting or removing said timber, the Buyer, and the agents and employees of the Buyer, and their agents and employees, shall avoid so far as possible injury to young growth and to such trees as are left standing, and that the Buyer shall be especially bound to exercise reasonable diligence to prevent and extinguish forest fires upon said lands within the time limit covered by this instrument during which the timber may be removed; and the Buyer shall not leave any tops or limbs or inflammable debris resulting from the cutting or removal of said timber in



Exhibit "A" (Cont.)

contact with any living pine trees or saplings where it is practicable to prevent such contact. Power skidding shall be done in accordance with the provisions contained in Exhibit "B", which is attached to and made a part of this agreement.

7. It is understood that the Seller makes no covenant or warranty whatsoever with respect to the quality, merchantability or fitness of such timber for the purposes of the Buyer or with respect to title to such timber or the land on which such timber is located, and the Seller shall not be liable to the Buyer for any defects in such timber affecting its quality, merchantability or fitness for such purpose or for any failure of title to such timber or lands. If there be a failure of title to any part of such timber or of title to the land on which the same is located, so that the Buyer is prohibited or prevented by third party claiming title thereto from cutting and removing any part of such timber, then in such case the Seller will refund to the Buyer for such timber with respect to which the title has failed a portion of the advance payment to be computed at the rate or rates stated in paragraph 2 of the contract of which this Exhibit is a part. The amount of such timber upon which refund shall be made in such case shall be determined by estimate agreed upon by the Seller and the Buyer.

8. Although the parties hereto have agreed upon the estimated quantity of timber which the Buyer has the right to cut under this instrument as aggregating 351,967 board feet of sawtimber and 1,401.00 cords of pulpwood (such estimate being based upon a 100% cruise of such timber by Seller), it is understood and agreed that the Seller does not warrant to the Buyer that the timber specified to be cut actually contains such estimated quantity of board feet or cords of timber. In the event that the Buyer deems the actual quantity of marked and designated timber to be less than the estimated amount, the only recourse that Buyer shall have against Seller is to seek a downward adjustment of the advance payment in the manner set out in paragraph 9 of this Exhibit.

9. The advance payment is subject to adjustment as follows: (a) Downward for any amount of timber by which the estimated quantity of timber designated to be cut less 10% of such estimated quantity exceeds the actual quantity of designated timber cut, such adjustment to be made at the rate or rates prescribed in paragraph 2 of the contract of which this Exhibit is a part, except that only 50% of such prescribed rate or rates shall be used in computing the adjustment for designated marked timber which actually was standing, designated and available to be cut; but such downward adjustment shall be made only if Buyer serves written notice that he desires an adjustment, and only if such notice is served within a period of twenty days beginning with the day that Buyer notifies Seller of the completion of his cutting operation, or within a period of twenty days beginning with the expiration date of this contract if Buyer failed to complete his cutting operation prior to either such expiration date; and such adjustment shall be based upon a 100% stump cruise of designated trees cut plus a 100% cruise of uncut designated trees, such cruise to



**Exhibit "A" (Cont.)**

be at the expense of Buyer and to be conducted personally by a licensed forester or foresters who are mutually acceptable to the parties hereto.

(b) Upward for any amount of timber by which the actual quantity of designated timber cut exceeds the estimated quantity designated to be cut plus 10% of such estimated quantity; such adjustment to be made at the rate or rates prescribed in paragraph 2 of the contract of which this Exhibit is part; but such upward adjustment shall be made only if Seller serves written notice that he desires an adjustment within a period of 20 days beginning with the date of receipt of written notice from Buyer that Buyer has completed his cutting operation or within a period of 20 days beginning with the expiration date of this contract or the expiration of any extension of this contract if Buyer has failed to serve notice of completion of his cutting operation; and such adjustment shall be based upon a 100% stump cruise of designated trees cut plus a 100% cruise of uncut designated trees, such cruises to be at the expense of Seller and to be conducted personally by a licensed forester or foresters who are mutually acceptable to the parties hereto.

(c) The cruise hereinabove provided for shall include marking with a paint spot and actual measurement outside the bark of each individual stump or uncut tree and the compiling of a list of such timber by species, size and one inch diameter classes. Comparable standing timber in the vicinity of the sale areas shall be measured in the amount of 10% of the timber included in this sale for the purpose of deriving a local stump volume table for each species. All measurements of stump sizes and diameter breast high sizes shall be made with a diameter tape. All merchantable heights are to be made with a hypsometer or altimeter. All averages for use in volume computation shall be determined by recognized forest mensuration curve procedures. Any check cruise under this procedure shall be made on the assumption that the Buyer regardless of his actual practices used normal or average utilization efficiency.

(d) Whenever an adjustment is initiated and the cruises hereinbefore provided for are performed, the parties shall be bound by the results of such cruises, and the advance payment shall be adjusted in accordance therewith whether such adjustment will increase or decrease the amount paid by Buyer to Seller.

(e) The provisions of this paragraph 9 are in addition to and shall not affect the terms of paragraph 4 of this Exhibit "A".

10. Buyer agrees not to use axe blazes on undesignated trees for any purpose. Buyer may use ordinary lime whitewash material to mark the location of roads. Buyer will remove all tree tops and/or logs which fall into the waters of, or onto any lands below the highwater line of any lake created by any dam of the Seller. Such tree tops and/or logs will be removed promptly from below said high water mark irrespective of whether or not the logs in the trees are abandoned after sawing.



**Exhibit "A" (Cont.)**

**11. It is further agreed that this contract may not be assigned by Buyer without the written consent and approval of the Seller, nor may the Buyer sell the right to cut any part of said timber without first obtaining the written consent and approval of the Seller.**

**12. Buyer shall commence and conduct his timbering operations with the understanding the Seller has or may make or construct, and will continue to make or construct, certain improvements and structures (such as electric transmission lines) upon the lands here involved. In his timbering operations upon such lands, Buyer, his agents, servants and employees shall in no way damage, injure or interfere with such improvements or structures now existing or made or constructed during the term of this contract.**

**13. For and in consideration of the rights granted to Buyer under the contract of which this Exhibit "A" is a part, Buyer agrees to indemnify, protect, save and hold harmless Seller from and against any and all loss, damage or expense which Seller may suffer or sustain or be liable for, and against any and all claims, demands and suits, as a result of injury or death of persons and/or damages or injury to property (including but not limited to electric transmission lines and any other property of Seller) in whatever manner the same may be caused or occasioned, which arise out of or are in any way connected with the performance of any work under or related to this contract, including, but not limited to payments made under any Workmen's Compensation Law or under any plan for employees' disability and death benefits and any claims asserted by Buyer's employees, laborers, suppliers or materialmen performing labor or furnishing materials or supplies incident to the said work covered by this contract. Such agreement of Buyer shall be effective even though any of the aforesaid injuries or damages have been caused, occasioned or contributed to by the negligence, sole or concurrent, of Seller, its agents, employees. Buyer agrees to pay all charges of attorneys and costs and other expenses arising from the defense of any claim or action referred to in this paragraph.**

**14. The Buyer, in executing this agreement, covenants that the Buyer or the Buyer's qualified representative, has examined all timber to be cut under this agreement for the purpose of discovering defects therein which might render such timber unmerchantable or unfit for the purposes of the Buyer.**

**15. The rights outlined under Item 9 hereof will expire six (6) months after the terminal date of this agreement unless the party seeking an adjustment presents to the other party written proof that a diligent effort has been made to perform the acts set out as necessary to obtain an adjustment.**

**Exhibit "A" (Cont.)**

16. Seller and Buyer agree that all possible protection of the country's natural environment is very desirable. This includes measures to prevent littering of the landscape in disposing of wrappers, cans, and garbage. Buyer agrees that he and his agents will not litter any open woodland area during operation under this contract. Buyer further agrees to promptly remove any litter caused by, or in connection with operation under this agreement.

17. The timber offered for sale consists of a clear-cut area and a streamside management zone area (SMZ). In the clear-cut area of the sale, all merchantable timber is to be cut. Only the marked timber is to be cut within the SMZ area. This timber has been freshly marked with blue paint at breast height and at ground level. The clear-cut area is separated from the SMZ area by orange-paint. The sale is bounded on the north, south and east by yellow-painted boundary lines, and on the west by the I-65 right-of-way fence. Timber for sale is shown hatched and shaded on the attached Exhibit "C" map.

**Timber Sale Area:**

**Shelby County Lands**

**2008 Timber Sale No. 2**



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## **EXHIBIT "B"**

### **ALABAMA POWER COMPANY**

#### **Skidding Provisions**

1. All skidways shall be located at points which will likely cause the least erosion to result from the trail. The remaining tree cover after logging shall be considered.

2. Skidways shall be located and maintained in a way to prevent cable and logs from scraping timber not covered in the sales agreement.

3. Anchor trees shall be those covered in the sales agreement, and if it is necessary to tie to other trees, adequate cushions of boards or other material must be used to prevent skin damage.

4. As the timber cutting operation progresses, or from time to time, Seller may at its option, mark and count the number of trees that have received bark damage by reason of Buyer's operation, and make an estimate of the merchantable pulpwood cord volume in the damaged trees. In this event, Buyer will promptly pay upon invoices, from time to time, fifteen dollars (\$15.00) per cord for pine and ten dollars (\$10.00) per cord for hardwood damage for the estimated volume of trees damaged, with title to such trees to remain in Seller, who may at its option to sell such trees for salvage as pulpwood or sawtimber with the damage payment plus sale value to represent the compensation to Seller for damaged trees; or Seller may at its option require Buyer to promptly paint all damaged surfaces with creosote oil of a strength equal to that used in treating commercial utility poles. In the event that Seller elects to collect monetary damage for trees injured as set out herein, and Buyer does not accept the cord volumes estimated to be in such trees, Buyer may at his option elect to have a licensed forester acceptable to Seller, to make a 100% estimate of the merchantable pulpwood volumes in the damaged trees and pay to Seller, based upon this volume, fifteen dollars (\$15.00) per cord for pine and ten dollars (\$10.00) per cord for hardwood with title to such trees to remain in Seller. In this event, Buyer will pay the cost of the services of the licensed forester selected to make the estimate. This provision is to cover only those damages which, in the opinion of the Seller, are above or in excess of normal logging damages.

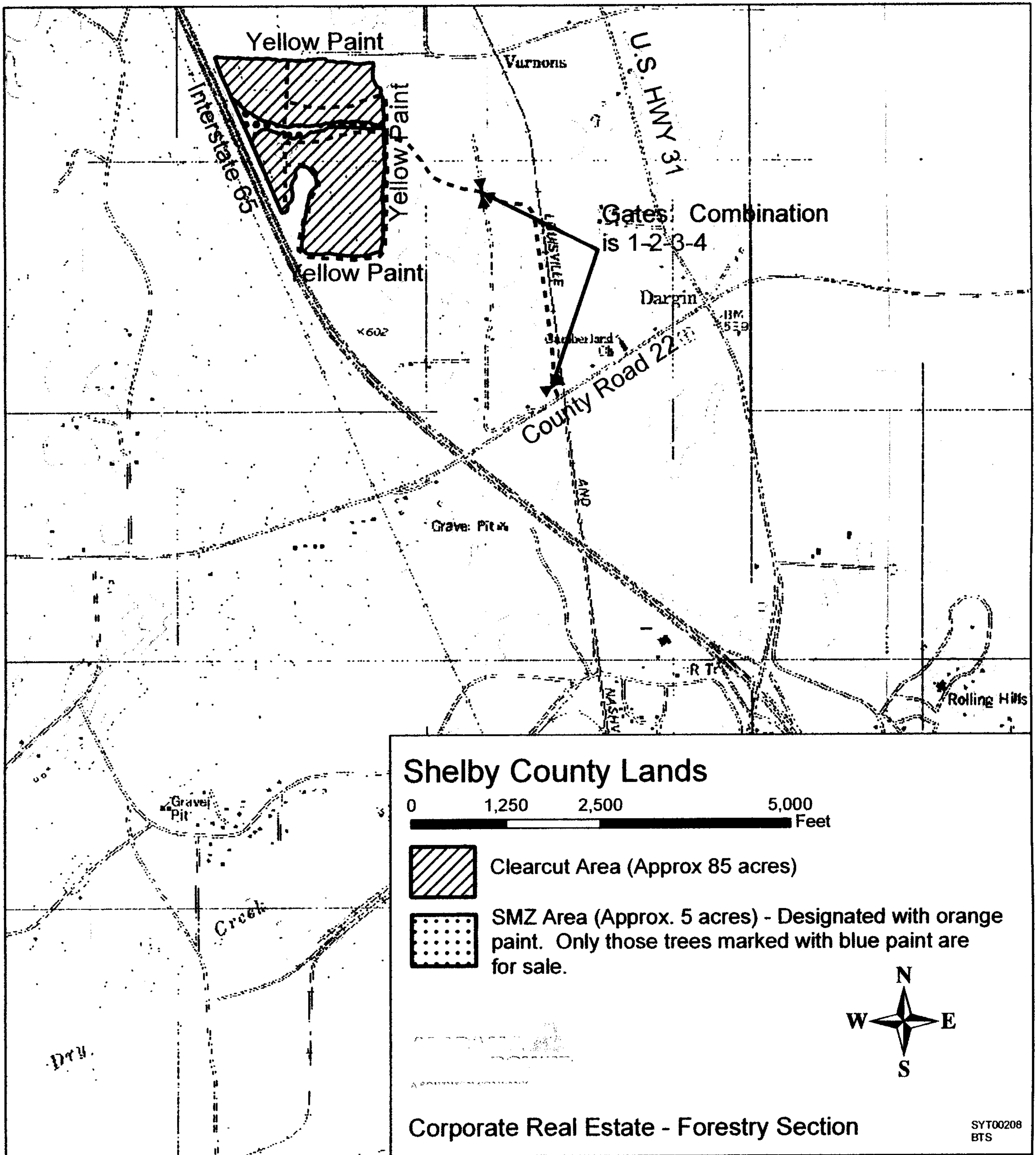


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# Exhibit "C"

A portion of the Shelby County Lands of Alabama Power Company,  
Compartment P-2, Section 32, Township 21 South,  
Range 2 West, Shelby, County, Alabama.

Shelby County Lands Timber Sale No. 002-2008 is shown hatched and shaded in black.



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