

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
DUBLIN DIVISION**

	)	
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 3:12-cv-00111 JRH-BKE
	)	
LISTER HARRELL; SARALAND,	)	
L.L.L.P; MIDDLE GEORGIA	)	
ROAD BUILDERS, INC.; and	)	
ROBERT SUTTON,	)	
	)	
Defendants.	)	
	)	

**CONSENT DECREE**

WHEREAS, Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), filed the Complaint herein against Defendants Lister Harrell, Saraland, L.L.L.P. (“Saraland,” owner of the Site, as hereinafter defined), Middle Georgia Road Builders, Inc. (“MGRB”), and Robert Sutton (collectively, “Defendants”), alleging that Defendants violated Section 301(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1311(a);

WHEREAS, the Complaint alleges that Defendants violated CWA Section 301(a) by discharging dredged or fill material and/or controlling and directing the discharge of dredged or fill material into waters of the United States at a site located north of Ocmulgee Church Road, near the city of Eastman, in Dodge County, Georgia (the “Site”) and more fully described in the Complaint, resulting in the creation of a dam and a related approximately 200-acre impoundment, without authorization by the United States Department of the Army (“the Corps”);

WHEREAS, the Complaint seeks (1) to enjoin the discharge of pollutants into waters of the United States in violation of CWA Section 301(a), 33 U.S.C. § 1311(a); (2) to require Defendants, at their own expense and at the direction of EPA, to restore and/or mitigate the damages caused by their unlawful activities; and (3) to require Defendants to pay civil penalties as provided in 33 U.S.C. § 1319(d);

WHEREAS, the United States has previously obtained a default judgment against Lister Harrell, an individual, who is not a party to this Consent Decree;

WHEREAS, this Consent Decree is intended to constitute a complete and final settlement of the United States' claims – as set forth in the Complaint – against all named Defendants (hereinafter, “Settling Defendants”) other than Lister Harrell;

WHEREAS, the United States and Settling Defendants agree that settlement of this case is in the public interest and that entry of this Consent Decree is the most appropriate means of resolving the United States' claims under the CWA against Settling Defendants in this case;

WHEREAS, the United States and Settling Defendants have previously entered into an Administrative Compliance Order on Consent (a copy of which is attached hereto as Appendix A, which was executed by EPA on February 11, 2015, and the requirements of which are incorporated herein by reference), providing, among other things, for appropriate restoration of the Site; and

WHEREAS, the Court finds that this Consent Decree is a reasonable and fair settlement of the United States' claims against Settling Defendants in this case, and that this Consent Decree adequately protects the public interest in accordance with the CWA and all other applicable federal law.

NOW THEREFORE, before the taking of any testimony upon the pleadings, without further adjudication of any issue of fact or law, and upon consent of the parties hereto by their authorized representatives, it is hereby ORDERED, ADJUDGED and DECREED as follows:

### **I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action and over the parties pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and CWA Section 309(b), 33 U.S.C. § 1319(b).

2. Venue is proper in the Southern District of Georgia pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c), because Settling Defendants conduct business in this District, the Site is located in this District, and the causes of action alleged herein arose in this District.

3. The Complaint states claims upon which relief can be granted pursuant to CWA Sections 301, 309 and 404, 33 U.S.C. §§ 1311, 1319 and 1344.

### **II. APPLICABILITY**

4. The obligations of this Consent Decree shall apply to and be binding upon Settling Defendants, their officers, directors, agents, employees and servants, and their successors and assigns and any person, firm, association or corporation who is, or will be, acting in concert or participation with any of the Settling Defendants whether or not such person has notice of this Consent Decree. In any action to enforce this Consent Decree against a Settling Defendant, the Settling Defendant shall not raise as a defense the failure of any of its officers, directors, agents, employees, servants, successors or assigns or any person, firm or corporation acting in concert or

participation with any Settling Defendant, to take any actions necessary to comply with the provisions hereof.

5. The transfer of ownership or other interest in the Site shall not alter or relieve any Settling Defendant of its obligation to comply with all of the terms of this Consent Decree. At least 15 days prior to the transfer of ownership or other interest in the Site, the party making such transfer shall provide written notice and a true copy of this Consent Decree to its successor in interest and shall simultaneously notify EPA and the United States Department of Justice at the addresses specified in Section X below that such notice has been given. As a condition to any such transfer, the Settling Defendant making the transfer shall reserve all rights necessary to comply with the terms of this Consent Decree.

### **III. SCOPE OF CONSENT DECREE**

6. This Consent Decree shall constitute a complete and final settlement of all civil claims for injunctive relief and civil penalties alleged in the Complaint against Settling Defendants under CWA Section 301 concerning the Site.

7. It is the express purpose of the parties in entering into this Consent Decree to further the objectives set forth in CWA Section 101, 33 U.S.C. § 1251. All plans, studies, construction, remedial activities, monitoring programs, or other obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall have the objective of causing Settling Defendants to achieve and maintain full compliance with, and to further the purposes of, the CWA.

8. Settling Defendants' obligations with respect to restoration (but not civil penalties) under this Consent Decree are joint and several.

9. Except as in accordance with this Consent Decree, Settling Defendants and their agents, successors and assigns are enjoined from discharging any pollutant into waters of the United States, unless such discharge complies with the provisions of the CWA and its implementing regulations.

10. The parties acknowledge that Nationwide Permit (“NWP”) 32, found at 61 Fed. Reg. 65,913 (Dec. 13, 1996), authorizes any fill that was placed prior to the filing of this action in the areas identified in the Restoration Plan (Exhibit C to Appendix A) to remain in place, subject to the conditions provided in the NWP and this Consent Decree. The parties further acknowledge that NWP 32 authorizes the discharge of dredged or fill material insofar as such discharge is necessary to complete the work required to be performed pursuant to this Consent Decree. Any such discharge of dredged or fill material necessary for work required by this Consent Decree shall be subject to the conditions of the NWP and this Consent Decree.

11. This Consent Decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to CWA Sections 402 or 404, 33 U.S.C. §§ 1342 or 1344, or any other law. Nothing in this Consent Decree shall limit the Corps’ ability to issue, modify, suspend, revoke or deny any individual permit or any nationwide or regional general permit; nor shall this Consent Decree limit EPA’s ability to exercise its authority pursuant to CWA Section 404(c), 33 U.S.C. § 1344(c).

12. This Consent Decree in no way affects or relieves Settling Defendants of their responsibility to comply with any applicable federal, state, or local law, regulation or permit.

13. This Consent Decree in no way affects the rights of the United States as against any person not a party to this Consent Decree.

14. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this Consent Decree and applicable law.

15. Nothing in this Consent Decree shall constitute an admission of fact or law by any party.

#### **IV. SPECIFIC PROVISIONS**

##### **CIVIL PENALTIES**

16. Settling Defendants shall be liable for civil penalties to the United States in the following amounts and as follows:

MGRB and Robert Sutton (in total): Five Thousand Dollars (\$5,000.00), payable within thirty (30) days of entry by the Court of this Consent Decree; and

Saraland: Two Hundred Thousand Dollars (\$200,000.00). The civil penalty for Saraland shall be allocated and treated as follows. The payment of the civil penalty assessed against Saraland constitutes a claim in the Chapter 11 case filed by Saraland, Case No. 12-30113-SBM (“Bankruptcy Case”). Following the District Court’s approval of this Consent Decree, EPA will amend EPA’s proof of claim filed in the Bankruptcy Case to reflect the agreed upon \$200,000.00 civil penalty. \$150,000.00 of the claim amount will be asserted as an agreed general unsecured claim, and \$50,000.00 asserted as an agreed post-petition administrative priority claim. Within fifteen (15) days of EPA filing its amended proof of claim in the Bankruptcy Case, the Chapter 11 Trustee for Saraland will seek authority from the Bankruptcy Court to promptly pay the \$50,000.00 administrative expense portion of this claim, with the payment to be made as soon as funds are available to the Trustee. The remaining general unsecured claim amount of \$150,000.00 will be subordinated to the other timely filed general unsecured claims of record.

EPA agrees that the subordinated claim of \$150,000.00 will receive payment from the Saraland bankruptcy estate only if and after the other timely filed general unsecured claims are paid in full.

17. Settling Defendants shall make the above-referenced payments by FedWire Electronic Funds Transfer (“EFT” or wire transfer) to the United States Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number (\_\_\_\_), EPA Region 4, and the DOJ case number 90-5-1-1-18422. Payment shall be made in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit of the United States Attorney’s Office for the Southern District of Georgia. Any payment received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day.

18. Upon payment of the civil penalties required by this Consent Decree, Settling Defendants shall provide written notice at the addresses specified in Section X of this Consent Decree that such payment was made in accordance with Paragraphs 17 and 18.

19. Civil penalty payments pursuant to this Consent Decree (including any stipulated penalty payments under Section IX) are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), or of 26 C.F.R. § 1.162-21, and are not tax deductible expenditures for purposes of federal law.

### **RESTORATION**

20. Settling Defendants have already taken action to drain the impoundment at issue in this case, thereby reducing the impacts of their alleged unlawful actions to the dam footprint and to impacts to several hundred feet of tributaries and adjacent wetlands on the Site that flow into Gum Swamp Creek. To remediate such impacts, Settling Defendants shall perform

restoration under the terms and conditions stated in the Restoration Plan (Exhibit C to Appendix A) appended hereto and incorporated herein by reference.

21. Upon completion of the terms and conditions of the Restoration Plan (Ex. C to Appendix A), Settling Defendants shall not mow, cut, clear, cultivate, dredge, excavate, farm, fill, de-water, drain or otherwise disturb in any manner whatsoever any location identified in Appendix A, except as approved in advance by EPA.

22. Any deed, title, or other instrument transferring or conveying an interest in any property subject to restoration under this Decree shall contain a notice stating that the property is subject to this Consent Decree and any restrictions applicable to said property under this Consent Decree.

#### **V. NOTICES AND OTHER SUBMISSIONS**

23. Within thirty (30) days after the deadline for completing any task set forth in the Restoration Plan (Ex. C to Appendix A of this Consent Decree), Settling Defendants shall provide the United States with written notice, at the addresses specified in Section X of this Consent Decree, of whether that task has been completed.

24. If the required task has been completed, the notice shall specify the date when it was completed, and explain the reasons for any delay in completion beyond the scheduled time for such completion required by the Consent Decree.

25. In all notices, documents or reports submitted to the United States pursuant to this Consent Decree, Settling Defendants shall certify such notices, documents and reports as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed



to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

## **VI. RETENTION OF RECORDS AND RIGHT OF ENTRY**

26. Until three years after entry of this Consent Decree, Settling Defendants shall preserve and retain all records and documents now in their possession or control or which come into their possession or control that relate in any manner to the performance of the tasks in Ex. C to Appendix A, regardless of any retention policy to the contrary. Until three years after entry of this Consent Decree, Settling Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the tasks in the Restoration Plan (Ex. C to Appendix A).

27. At the conclusion of the document retention period, Settling Defendants shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Defendants shall deliver any such records or documents to EPA.

28. A. Until termination of this Consent Decree, the United States and its authorized representatives and contractors shall have authority at all reasonable times to enter the Site to:

- 1) Monitor the activities required by this Consent Decree;
- 2) Verify any data or information submitted to the United States;
- 3) Obtain samples;
- 4) Inspect and evaluate Settling Defendants' restoration activities; and

5) Inspect and review any records required to be kept under the terms and conditions of this Consent Decree and the CWA.

B. This provision is in addition to, and in no way limits or otherwise affects, the statutory authorities of the United States to conduct inspections, to require monitoring and to obtain information from Settling Defendants as authorized by law.

## **VII. DISPUTE RESOLUTION**

29. Any dispute that arises with respect to the meaning or requirements of this Consent Decree shall be, in the first instance, the subject of informal negotiations between the United States and any Settling Defendant affected by the dispute to attempt to resolve such dispute. The period for informal negotiations shall not extend beyond thirty (30) days beginning with written notice by one party to the other affected party or parties that a dispute exists, unless agreed to in writing by those parties. If a dispute between the United States and any Settling Defendant cannot be resolved by informal negotiations, then the position advanced by the United States shall be considered binding unless, within thirty (30) days after the end of the informal negotiations period, such Settling Defendant files a motion with the Court seeking resolution of the dispute. The motion shall set forth the nature of the dispute and a proposal for its resolution. The United States shall have thirty (30) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, such Settling Defendant shall bear the burden of proving by a preponderance of the evidence that the United States' position is not in accordance with the objectives of this Consent Decree and the CWA, and that such Settling Defendant's position will achieve compliance with the terms and conditions of this Consent Decree and the CWA.

30. If the United States believes that a dispute is not a good faith dispute or that a delay would pose or increase a threat of harm to the public or the environment, it may move the Court for a resolution of the dispute prior to the expiration of the 30-day period for informal negotiations. Settling Defendants shall have fourteen (14) days to respond to the motion and propose an alternate resolution.

31. The filing of a motion asking the Court to resolve a dispute shall not extend or postpone any obligation of Settling Defendants under this Consent Decree, except as provided in Paragraph 39 below regarding payment of stipulated penalties.

#### **VIII. FORCE MAJEURE**

32. Settling Defendants shall perform the actions required under this Consent Decree within the time limits set forth or approved herein, unless the performance is prevented or delayed solely by events that constitute a Force Majeure event. A Force Majeure event is defined as any event arising from causes beyond the control of Settling Defendants, including their employees, agents, consultants and contractors, which could not be overcome by due diligence and which delays or prevents the performance of an action required by this Consent Decree within the specified time period. A Force Majeure event does not include, *inter alia*, increased costs of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstances arising out of the sale, lease or other transfer or conveyance of title or ownership or possession of the Site, or failure to obtain federal, state or local permits.

33. If any Settling Defendant believes that a Force Majeure event has affected its ability to perform any action required under this Consent Decree, it shall notify the United States in writing within seven (7) calendar days after the event at the addresses listed in Section X.

Such notice shall include a discussion of the following:

- A. what action has been affected;
- B. the specific cause(s) of the delay;
- C. the length or estimated duration of the delay; and
- D. any measure taken or planned by Settling Defendants to prevent or minimize the delay and a schedule for the implementation of such measures.

Settling Defendants may also provide to the United States any additional information that they deem appropriate to support their conclusion that a Force Majeure event has affected their ability to perform an action required under this Consent Decree. Failure to provide timely and complete notification to the United States shall constitute a waiver of any claim of Force Majeure as to the event in question.

34. If the United States determines that any condition constitutes a Force Majeure event, then the deadline for the affected action shall be extended by the amount of time of the delay caused by the Force Majeure event. Settling Defendants shall coordinate with EPA to determine when to begin or resume the operation affected by any Force Majeure event.

35. If the parties are unable to agree whether any condition constitutes a Force Majeure event, or whether the length of time for fulfilling the provision of the Consent Decree at issue should be extended, any party may seek a resolution of the dispute under the procedures in Section VII of this Consent Decree.

36. Settling Defendants shall bear the burden of proving (1) that the noncompliance at issue was caused by circumstances entirely beyond their control; (2) that Settling Defendants or any entity controlled by them could not have foreseen and prevented such noncompliance; and (3) the number of days of noncompliance that were caused by such circumstances.

### **IX. STIPULATED PENALTIES**

37. After entry of this Consent Decree, if any Settling Defendant fails to timely fulfill any requirement of the Consent Decree (including Appendix A and its exhibits), the United States shall provide written notice to such Settling Defendant of that default. The Settling Defendant in default shall have thirty (30) days to cure that default and provide notice of the default cure to the United States. In the event that the defaulting Settling Defendant fails to cure the default within thirty (30) days of the above notice, said Settling Defendant shall pay a stipulated penalty to the United States for each violation of each requirement of this Consent Decree as follows:

- A. For Day 1 up to and including Day 30 of non-compliance \$100.00 per day
- B. For Day 31 up to and including Day 60 of non-compliance \$200.00 per day
- C. For Day 61 and beyond of non-compliance \$500.00 per day

Such payments shall be made without demand by the United States on or before the last day of the month following the month in which the stipulated penalty accrued.

38. Any dispute concerning the amount of stipulated penalties, or the underlying violation that gives rise to stipulated penalties, that cannot be resolved by the parties pursuant to

the Dispute Resolution provisions in Section VII and/or the Force Majeure provisions in Section VIII shall be resolved upon motion to this Court as provided in Paragraphs 29 and 30.

39. The filing of a motion requesting that the Court resolve a dispute shall stay Settling Defendants' obligation to pay any stipulated penalties with respect to the disputed matter pending resolution of the dispute. Notwithstanding any stay of payment, stipulated penalties shall continue to accrue from the first day of any failure or refusal to comply with any term or condition of this Consent Decree. In the event that Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be paid by them as provided in this Section IX.

40. To the extent that Settling Defendants demonstrate to the Court that a delay or other non-compliance was due to a Force Majeure event (as defined in Paragraph 32 above) or otherwise prevail on the disputed issue, the Court shall excuse the stipulated penalties for that delay or non-compliance.

41. In the event that a stipulated penalty payment is applicable and not made on time, interest will be charged in accordance with the statutory judgment interest rate provided for in 28 U.S.C. § 1961. The interest shall be computed daily from the time the payment is due until the date the payment is made. The interest shall also be compounded annually.

42. Settling Defendants shall make any payment of a stipulated penalty by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the United States Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number (\_\_\_\_), EPA Region 4 and the DOJ case number 90-5-1-1-18422. Payment shall be made in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the Southern District of Georgia. Any payments

received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Upon payment of any stipulated penalties, Settling Defendants shall provide written notice, at the addresses specified in Section X of this Decree.

## **X. ADDRESSES**

43. All notices and communications required under this Consent Decree shall be made to the parties through each of the following persons and addresses:

### **A. TO EPA:**

- (1) Philip Mancusi-Ungaro  
Assistant Regional Counsel  
United States Environmental Protection Agency  
Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303
- (2) Chief, Marine Regulatory and Wetlands Enforcement Section  
Water Protection Division  
U.S. Environmental Protection Agency, Region 4  
Water Management Division  
61 Forsyth Street, SW  
Atlanta, GA 30303

### **B. TO THE UNITED STATES DEPARTMENT OF JUSTICE**

Martin F. McDermott, Attorney  
Martha C. Mann, Attorney  
Environmental Defense Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044

### **C. TO SETTLING DEFENDANTS:**

For SARALAND, LLLP:

Todd Boudreaux, Chapter 11 Trustee for Defendant Saraland, LLLP  
Shepard, Plunkett, Hamilton

& Boudreaux, LLP  
7013 Evans Town Center Blvd., Suite 303  
Evans, GA 30809  
Telephone: (706) 869-1334  
Fax: (706) 868-6788  
tboudreaux@shepardplunkett.com

For MIDDLE GEORGIA ROAD BUILDERS, INC.:

John Flanders Kennedy, Counsel for Defendant MGRB  
James Bates Brannan Groover LLP  
231 Riverside Dr.  
Macon, GA 31201  
Telephone: (478)749-9981  
Fax: (478) 742-8720  
jkennedy@jamesbatesllp.com

For ROBERT SUTTON:

James C. Garner, Counsel for Robert Sutton

Smith & Garner, LLC  
1808 Bellevue Road  
Dublin, GA 31021  
Telephone: (478) 304-1451  
Fax: (478) 304-1455  
jcgarnersmith@smithgarner.com

**XI. COSTS OF SUIT**

44. Each party to this Consent Decree shall bear its own costs and attorneys' fees in this action. Should Settling Defendants subsequently be determined by the Court to have violated the terms or conditions of this Consent Decree, they shall be liable for any costs or attorneys' fees incurred by the United States in any action against them for noncompliance with or enforcement of this Consent Decree.

**XII. PUBLIC COMMENT**



45. The parties acknowledge that after the lodging but before entry of this Consent Decree, final approval by the United States is subject to the requirements of 28 C.F.R. § 50.7, which provides for public notice and comment. The United States reserves the right to withhold or withdraw its consent to the entry of this Consent Decree if the comments received disclose facts that lead the United States to conclude that the proposed judgment is inappropriate, improper, or inadequate. Settling Defendants agree not to withdraw from, oppose entry of, or challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

### **XIII. CONTINUING JURISDICTION OF THE COURT**

46. This Court shall retain jurisdiction over this action in order to enforce or modify the Consent Decree consistent with applicable law or to resolve all disputes arising hereunder as may be necessary or appropriate for construction or execution of this Consent Decree. During the pendency of the Consent Decree, any party may apply to the Court for any relief necessary to construe and effectuate the Consent Decree.

### **XIV. MODIFICATION**

47. Upon its entry by the Court, this Consent Decree shall have the force and effect of a final judgment. Any modification of this Consent Decree shall be in writing, and shall not take effect unless signed by both the United States and Settling Defendants and approved by the Court.

### **XV. TERMINATION**

48. Except for Paragraph 21, this Consent Decree may be terminated by either of the following:

A. Settling Defendants and the United States may at any time make a joint motion to the Court for termination of this Decree or any portion of it; or

B. Settling Defendants may make a unilateral motion to the Court to terminate this Decree after each of the following has occurred:

1. Settling Defendants have obtained and maintained compliance with all provisions of this Consent Decree and the CWA for 12 consecutive months;

2. Settling Defendants have paid all penalties and other monetary obligations hereunder and no penalties or other monetary obligations are outstanding or owed to the United States;

3. Settling Defendants have certified compliance pursuant to subparagraphs 1 and 2 above to the Court and all Parties; and

4. Within 45 days of receiving such certification from Settling Defendants, EPA has not contested in writing that such compliance has been achieved. If EPA disputes any Settling Defendant's full compliance, this Consent Decree shall remain in effect pending resolution of the dispute by the Parties or the Court.

IT IS SO ORDERED.

Dated and entered this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

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United States District Judge

**ON BEHALF OF THE UNITED STATES OF AMERICA:**

EDWARD J. TARVER  
United States Attorney  
SANJAY S. KARNIK  
Assistant United States Attorney  
22 Barnard Street, 3rd Floor  
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JOHN C. CRUDEN  
Assistant Attorney General  
Environment & Natural Resources Division

By: *s/ Martin F. McDermott*  
MARTIN F. McDERMOTT  
MARTHA C. MANN  
U.S. Department of Justice  
Environmental Defense Section  
P.O. Box 7611  
Washington, DC 20044  
Telephone: (202) 514-4122 (McDermott)  
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[martha.mann@usdoj.gov](mailto:martha.mann@usdoj.gov)

*Counsel for United States of America*

**For THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

A handwritten signature in black ink, appearing to read "Mary J. Wilkes", written over a horizontal line.

MARY J. WILKES  
Regional Counsel and Director  
Office of Regional Counsel  
USEPA Region 4  
61 Forsyth St SW  
Atlanta, GA 30303  
Telephone: (404) 562-9556

**For SARALAND, LLLP:**

s/ Todd Boudreaux

TODD BOUDREAUX

Attorney for the Chapter 11 Trustee for  
Saraland, LLLP

Georgia State Bar No. 070023

SHEPARD, PLUNKETT,

HAMILTON & BOUDREAUX, LLP

7013 Evans Town Center Blvd., Suite 303

Evans, GA 30809

(706)869-1334

*Attorney for the Chapter 11 Trustee for Defendant Saraland, LLLP*

**For MIDDLE GEORGIA ROAD BUILDERS, INC.:**

JAMES-BATES-BRANNAN-GROOVER-LLP

*s/ John F. Kennedy*

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John F. Kennedy

Attorney for Middle Georgia Road Builders, Inc.

Georgia Bar No. 414830

231 Riverside Drive

Post Office Box 4283

Macon, GA 31208-4283

Telephone: 478-742-4280

Facsimile: 478-742-8720

Email: [jkennedy@jamesbatesllp.com](mailto:jkennedy@jamesbatesllp.com)

*Counsel for Defendant MGRB*

**For ROBERT SUTTON:**

SMITH, GARNER & ROWLAND, LLC

*s/ James C. Garner*

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James C. Garner

Attorney for Robert Sutton

Georgia Bar No. 285565

1808 Bellevue Road

Dublin, GA 31021

Telephone: 478-304-1451

Facsimile: 478-304-1455

Email: jcgarnar @smithgarner.com

*Counsel for Defendant Robert Sutton*



# Appendix A

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

<b>IN THE MATTER OF:</b>	)	
	)	<b>ADMINISTRATIVE</b>
<b>Saraland, LLLP</b>	)	<b>COMPLIANCE ORDER</b>
	)	<b>ON CONSENT</b>
	)	
	)	
<b>Middle Georgia Road Builders And Developers, Inc.</b>	)	<b>Docket No.: CWA-04-2014-5765</b>
	)	
	)	
<b>Mr. Robert Sutton</b>	)	
	)	
<b>RESPONDENTS</b>	)	
<hr/>	)	

**I. Statutory Authority**

1. Section 309(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(a), provides that, whenever the U.S. Environmental Protection Agency (“EPA”) finds that any person is in violation of any condition or limitation which implements, *inter alia*, Sections 301 and 404 of the CWA, 33 U.S.C. §§ 1311 and 1344, the EPA may issue an order requiring such person to comply with such condition or limitation, and shall specify a time for compliance that the EPA determines to be reasonable.

2. The following Findings of Fact and Determinations of Law are made and this Administrative Compliance Order on Consent (“AOC”) is issued pursuant to the authority vested in the EPA by Section 309(a) of the CWA, 33 U.S.C. § 1319(a), as amended. The authority to issue this AOC has been delegated from the Administrator of the EPA to the Regional Administrator of the EPA, Region 4. The Regional Administrator has further delegated this authority to the Director of the Water Protection Division, EPA, Region 4.

**II. Findings of Fact and Determinations of Law**

Solely for the purposes of this AOC, the Respondents admit the jurisdictional allegations set out below but neither admit nor deny the EPA’s findings of fact set out below.

3. This AOC pertains to the deposition of dredged and/or fill material during the construction of a recreational lake approximately 200 acres in size. The discharges into jurisdictional wetlands and waters of the United States impounded approximately three (3) miles of unnamed tributaries and 94 acres of wetlands that are adjacent to the unnamed tributaries on property owned by Saraland, LLLP. Since the lake has been drained, the impacts have been

reduced to the fill in the dam footprint and impacts to several hundred feet of the tributaries and the wetlands adjacent to these tributaries. These tributaries flow into Gum Swamp Creek, which is impounded to form Little Ocmulgee Lake, a navigable-in-fact water of the United States in the State of Georgia, located near latitude 32.292282°N and longitude 83.139205°W (“Discharge Area”) (see Exhibits A and B).

4. Mr. Robert Sutton is a “person” as defined under Section 502(5) of the CWA, 33 U.S.C. § 1362(5). Saraland, LLLP, and Middle Georgia Road Builders and Developers, Inc. are companies duly organized under the laws of the State of Georgia and, as such, are also “persons” as defined under section 502(5) of the CWA, 33 U.S.C. § 1362(5). Mr. Robert Sutton, Saraland, LLLP, and Middle Georgia Road Builders and Developers, Inc. (“MGRB”) will be collectively referred to as the Respondents.

5. Saraland, LLLP, at all times relevant to this AOC, was the owner and operator of the tract of land located north of Ocmulgee Church Road near the city of Eastman, Dodge County, Georgia (“the Site”) that contained the Discharge Area. Lister Harrell was the president and majority owner of Saraland, LLLP.

6. The Respondents and Lister Harrell directed, supervised, and/or carried out the earthmoving activities that resulted in the discharges at the Site. The Respondents Mr. Robert Sutton and MGRB were operators on the Site during this time period.

7. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except in compliance with a permit issued under, *inter alia*, Section 404 of the CWA, 33 U.S.C. § 1344.

8. Commencing on or about May 2007, Respondents, and/or those acting on behalf of the Respondents discharged dredged and/or fill material into tributaries and wetlands on the Site using earth moving machinery during unauthorized activities associated with the construction of a recreational lake. To date, the unauthorized dredged and/or fill material remains in waters of the United States.

9. The discharged dredged and/or fill material, including earthen material deposited at the Discharge Area, are “pollutants” as defined under Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

10. The earth moving machinery employed by the Respondents to deposit the dredged and/or fill material at the Discharge Area are “point sources” as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

11. A “discharge of a pollutant” as defined in Section 502(12)(A) of the CWA, 33 U.S.C. § 1362(12)(A), is any addition of any pollutant to navigable waters from any point source.



12. The Respondents' placement of the dredged and/or fill material into the Discharge Area constitutes a "discharge of pollutants" as defined in Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

13. The term "navigable waters" as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), means the waters of the United States, including the territorial seas.

14. The Discharge Area includes "navigable waters" as that term is defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

15. At no time during the discharge of dredged and/or fill material into the Discharge Area from May 2007, to the present, did the Respondents possess a permit under Section 404 of the CWA, 33 U.S.C. § 1344, authorizing the discharge of dredged and/or fill material by the Respondents. Each discharge by the Respondents of pollutants into navigable waters without the required permit issued under Section 404 of the CWA, 33 U.S.C. § 1344, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

16. Each day the material discharged by the Respondents remains in waters of the United States without the required permit under Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a day of violation of Section 301 of the CWA, 33 U.S.C. § 1311.

17. Therefore, Respondents have violated Section 301 of the CWA, 33 U.S.C. § 1311, by discharging pollutants into navigable waters without a permit.

### **III. Agreement On Consent**

Based on the foregoing **FINDINGS OF FACT AND DETERMINATIONS OF LAW** and under the authority of Section 309(a) of the CWA, (33 U.S.C. §1319(a)), **THE RESPONDENTS HEREBY AGREE AND CONSENT TO THE PROVISIONS OF THE PARAGRAPHS BELOW.**

18. The Respondents agree to the following:

a. The Respondents will restore the Site in accordance with the Restoration Plan dated May 7, 2014 submitted by Marcus Rubenstein of Woodard & Curran and incorporated into this AOC as Exhibit C.

b. The Restoration Plan will consist of two phases that will be implemented in the field in the most efficient manner to achieve the desired restoration. Phase I, which may happen before, after or during portions of Phase II activities, will involve the complete removal of the dam constructed by Respondents along the southwest border of the drained lake (RA6) and the installation of an armored low water crossing at the Old Simmons Road location (RA5). Phase II will consist of stream and wetland restoration in four additional areas identified in the Restoration Plan: RA1, RA2, RA3 and RA4.

c. The Site includes five (5) parcels of real property owned by Saraland, LLLP. Complete legal descriptions of these parcels are attached hereto as Exhibit "A" and are hereby incorporated by this reference. A map indicating the location of each parcel and each Restoration Area is attached as Exhibit "B." The five (5) parcels, the approximate acreage of each parcel, and the relevant Restoration Area associated with each parcel include:

1. "Stamps," 909.25 acres, RA 1;
2. "Harrell," 254.8 acres, RA 2;
3. "Lancaster," 148 acres, RA 3;
4. "Simmons 1," 95.99 acres, RA 4; and
5. "404," 432.78 acres, RA 5 & 6.

d. The undersigned Trustee's agreement to the AOC is contingent upon approval by the United States Bankruptcy Court for the Southern District of Georgia, Dublin Division, in Chapter 11 Case No. 12-30112-SDB.

e. The dredged and/or fill material removed in Phase 1 shall be placed in an upland borrow area as specified in the Restoration Plan (see Exhibit C). Disposal areas must be stabilized using best management practices to prevent erosion and runoff.

g. The Respondents shall notify the EPA of the anticipated construction start date for the restoration within 30 days after receipt of the signed AOC. Restoration must be completed within 180 days after receipt of the signed AOC. Within 30 days after completion of the restoration, the Respondents shall submit to the EPA a written statement of completion and schedule an inspection of the restored site.

19. Any documentation required to be submitted to the EPA pursuant to this AOC shall be mailed using an overnight delivery service to the following address:

Mr. Joel Strange  
U.S. Environmental Protection Agency  
Wetlands Enforcement Section, 15<sup>th</sup> Floor  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8960

In addition, copies of the documentation shall be provided to Philip Mancusi-Ungaro of the EPA and Martin McDermott of the United States Department of Justice at the following addresses:

Mr. Philip Mancusi-Ungaro  
U.S. Environmental Protection Agency  
Office of Regional Counsel, 13<sup>th</sup> Floor  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8960

Mr. Martin F. McDermott  
United States Dept. of Justice  
Environment and Natural Resources Division  
601 D Street NW, Suite 8000  
Washington, DC 20004

**IV. General Provisions**

20. The Respondents MGRB and Mr. Sutton have agreed to assume the responsibility for completing the Phase I restoration of RA6, including the removal of the dam and restoration of Stream 1 that was impacted by the construction of the lake and the installation of an armored low water crossing at the old Simmons road location (RA5). All work performed by MGRB and Mr. Sutton will be under the supervision of the Chapter 11 Trustee for Saraland, LLLP and Marcus Rubenstein of Woodard & Curran, or such on-site experts designated by the Trustee.

21. All of the costs for the Phase I restoration of RA6 and RA5 shall be the responsibility of Respondents MGRB and Mr. Sutton. The extent the Trustee can provide funds for these activities is contingent upon approval by the United States Bankruptcy Court for the Southern District of Georgia, Dublin Division, in Chapter 11 Case No. 12-30112-SDB and those funds can only be generated from the sale of Parcel 404.

22. The Trustee has agreed to assume the responsibility for the Phase II restoration which will consist of stream and wetland restoration in four additional areas identified in the Restoration Plan: RA1, RA2, RA3 and RA4, to the extent funds are available from the sale of each individual parcel and contingent upon approval by the United States Bankruptcy Court for the Southern District of Georgia, Dublin Division, in Chapter 11 Case No. 12-30112-SDB. The restoration costs identified for each of the four additional areas identified in the Restoration Plan can only be generated from the sale of the specific parcel that each restoration activity is located on.

23. Upon completion of the restoration obligations referenced in this AOC and final approval by the EPA, Saraland, MGRB, and Robert Sutton will be released from any further injunctive obligations related to the restoration of the Property in connection with the discharges described in Section II above. This release is intended for the benefit of the Respondents, and their successors and assigns.

24. The provisions of this AOC shall apply to and be binding upon the Respondents, their agents, servants, employees, successors, and assigns.

25. If the Site is transferred prior to completion of the requirements of this AOC, such transfer will not absolve the Respondents from the responsibility of implementing and completing the obligations under this AOC or ensuring that these requirements have been met. Completion of the requirements of this AOC will remain the responsibility of the Respondents.



26. This AOC is not and shall not be construed to be a permit under the CWA or its implementing regulations. This AOC does not exempt the Respondents from compliance with, or the requirements to obtain, any city, county, or state permits or authorizations before proceeding with the restoration activities.

27. Respondents acknowledge the jurisdiction of the EPA to issue this AOC.

28. Respondents waive any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondents may have with respect to any issue of fact or law set forth in this AOC, including, but not limited to, any right of judicial review of this AOC under the Administrative Procedure Act 5 U.S.C. §§ 701-706.

29. This AOC does not constitute a waiver, suspension, or modification of the terms and conditions of the CWA or its implementing regulations. Issuance of or compliance with this AOC does not relieve the Respondents from responsibility to comply with all requirements of the CWA, its implementing regulations, and any legal order issued under the CWA or its regulations.


30. Failure to comply with the terms of this AOC may result in the Respondents' liability for statutory civil penalties under Section 309(d) of the Act, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Should the EPA commence an action seeking penalties for violations of this AOC, a United States District Court may impose civil penalties if the court determines that the Respondents have violated the CWA and failed to comply with the terms of the AOC.

31. This AOC addresses only the requirements to restore the Site and to bring it into compliance with the CWA. This AOC does not address any civil penalty liabilities to be asserted against the parties, the amount of which is left for future determination

#### V. Effective Date

32. This AOC shall become effective upon the Respondents' receipt of the signed AOC except as to the obligations of Saraland, LLLP that are contingent upon approval as provided in Paragraph 18(d).


**FOR THE RESPONDENTS:**

  
\_\_\_\_\_  
Todd Boudreaux, Trustee, on behalf of  
Saraland LLP

Date 12/16/14


  
\_\_\_\_\_  
Middle Georgia Roadbuilders and Developers, Inc.

Date: 1/27/15

  
\_\_\_\_\_  
Mr. Robert Sutton

Date: 6-27-15

**FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:**

  
\_\_\_\_\_  
James D. Giattina  
Director  
Water Protection Division  
U.S. Environmental Protection Agency  
Region 4

Date: 2/11/15



# Exhibit A

## **STAMPS TRACT**

LEGAL - Page 1

Exhibit "A", Page 3 of 4

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6-1-00

STAMP TRACTS

A. All that tract or parcel of land situate, lying and being in the Nineteenth (19th) Land District of Dodge County, Georgia consisting of the whole of Land Lot 180 and all of whole Land Lot 179 lying southeast of Chester-Eastman Road (County Road #345) and a parcel lying southeast of Chester-Eastman Road (County Road #345) being part of the 2d.25 acres, more or less, in the north corner of Land Lot 182, said property is a part of the property more particularly shown on a Plat of Survey by Jake D. Haxrell, Land Surveyor, dated September, 1945 and recorded in Deed Book 58, page 181, Dodge County Records, which Plat is by this reference incorporated.

LESS AND EXCEPT: 0.51 acres, more or less, in Land Lot 182, conveyed by Stuckey Timberland, Inc. to Charles H. Thompson by Warranty Deed dated October 7, 1986 and recorded in Deed Book 210, Page 208, Dodge County Records.

B. All that tract or parcel of land situate, lying and being partly in the Sixteenth (16th) Land District and partly in the Nineteenth (19th) Land District of Dodge County, Georgia containing 320.25 acres, more or less, and being more particularly described as follows:

1. All of Land Lot 135 in the Sixteenth (16th) Land District except 1 acre on the southwest side, now or formerly owned by Georgia Home and Brotherhood Number 148, containing 201.8 acres, more or less.

2. The east half of Land Lot 151 in the Nineteenth (19th) Land District containing 101.25 acres, more or less, the western boundary line being a line drawn from the north corner of said lot to the south corner thereof.

3. 17.50 acres, more or less, in Land Lot 135 in the Sixteenth (16th) Land District described as beginning at the north corner of said lot and running along the northwest line thereof a distance of 350 yards; thence in a southeasterly direction a distance of 280 yards; thence in a northeasterly direction a distance of 350 yards to the northeast line of said lot; thence along the northeast lot line a distance of 210 yards to the north corner, the point of beginning.

LESS AND EXCEPT: 119.72 acres, more or less, in Land Lot 135, conveyed by Stuckey Timberland, Inc. to Carrol R. Giddens and Rosalee S. Giddens by Warranty Deed dated October 9, 1997 and recorded in Deed Book 229, Page 448-46, Dodge County Records.

LEGAL - Page 2

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Exhibit "A", Page 1 of 1

G. All that tract or parcel of land situate, lying and being in Land Lot 130 of the Sixteenth, (16th) Land District of Dodge County, Georgia containing 60 acres, more or less, in the form of a square in the east corner of said land lot.

The foregoing "Stamps" Tracts A, B, and C are part of the same property described in a Limited Warranty Deed from Trust Company Bank of Middle Georgia, N.A., as Trustee, to Stuckey Timberland, Inc. dated December 30, 1993 and recorded in Deed Book 179, page 134, Dodge County Records.

H. All that certain tract of land in the 19th Land District of Dodge County, Georgia, more particularly described as being all of the southwest corner of Lot of Land Number 130, containing 101.25 acres, more or less, bounded now or formerly as follows: On the Northwest by Phillips lands; Northwest by lands of T. F. Gullis; Southeast and Southwest by lands of Stuckey Timberland, Inc., formerly lands of Preston Stamps and being the same lands described in a deed from the State Life Insurance Company to B. L. Butler, which is recorded in the Office of the Clerk of Dodge Superior Court in Deed Book 49, page 55;

LESS AND EXCEPT: 1.09 acres, more or less, in Land Lot 150, conveyed by Stuckey Timberland, Inc. to Lydia Harrell and Minnie Harrell by Warranty Deed dated May 16, 1980 and recorded in Deed Book 202, Page 278, Dodge County Records;

E. All that certain tract or parcel of land located in the 19th Land District of Dodge County, Georgia; more particularly described as being all of the West 1/2 of Lot of Land Number 151, said tract of land being triangular in shape and bounded now or formerly on the southwest by the southwest lot line and lands of Stuckey Timberland, Inc.; formerly lands of Preston Stamps, on the Northwest by the Northwest lot line and lands of O. J. Self and on the East by a line running from the South corner to the North corner of said lot of land and lands of Stuckey Timberland, Inc., formerly lands of Preston Stamps and being the same lands described in a deed from Russell Harrell to Henry L. Butler recorded in Deed Book 64, Page 396, said Clerk's Office.

The above described lands in D and E being also the same land described in a deed from Ralph W. Rowland and Mrs. Joseph O. Rowland to Stuart H. Floyd which is recorded in said Clerk's Office in Deed Book 129, pages 840-849.

RECORDED

APR 29 2008

RHETT WALKER  
Clerk

## **HARRELL TRACT**

All that tract or parcel of land lying and being in the 16<sup>th</sup> Land District of Dodge County, Georgia, and being 135.4 acres of Land Lot No. 136 and 119.4 acres of Land Lot No. 137, bounded by a line extending as follows: BEGINNING at the West corner of Lot 136, and running thence southeast along the lot line 31 chains, more or less, to the South corner of Lot 137; thence Northeast along the Southeast line of said Lot 28.25 chains; thence North 45 degrees West 45.3 chains, more or less, to the Northwest line of Lot 137; thence South West along said lot line 4.75 chains; thence North 45 degrees West 22.75 chains thence North 45 degrees East 23.25 chains to the Northeast line of Lot 136; thence Northwest along said lot line 14.25 chains; thence South 80 degrees West 13 chains thence North 35 degrees West 12.6 chains, more or less, to the Northwest line of Lot 136; thence Southwest along said lot line 27.85 chains, more or less, to the POINT OF BEGINNING, as shown by Plat of Survey thereof recorded in Plat Book 1, page 268, of the records of said County. Harrell Tract

# LANCASTER TRACT

LEGAL

150

*Lancaster*     $\frac{79.15 \text{ Acres}}{6.59 \text{ Acres}} = 15.187$

99-3

All those tracts or parcels of land containing 92 1/2 acres, more or less, of Lot of Land No. 164 in the 16<sup>th</sup> Land District of Dodge County, Georgia, bounded by a line running as follows: Beginning at the north corner of said lot and running south 45 degrees west along the northwest lot line of said lot a distance of 1,340' to the corner of lands sold by Ernest L. Smith to J. M. Lancaster by deed dated June 6, 1925; thence running in a direction of south 45 degrees east to a public road known as the A. L. Harris and Bee Hive Public Road; thence running along said road in an easterly direction to the intersection of said road with the southeast line of said lot; thence running north 45 degrees east along said southeast lot line to the east corner of said lot; thence running north 45 degrees west along the northeast line of said lot to the point of beginning.

Also, 6.37 acres of land in Land Lot No. 163 in the 16<sup>th</sup> Land District of Dodge County, Georgia, bounded by a line running as follows: Beginning at the north corner of said lot and running south 45 degrees west along the northwest line of said lot 1,110' to the road known as the A. L. Harris and the Bee Hive Public Road; thence running in a direction of north 66 degrees east 1,217' to the northeast lot line of said lot; thence running northwest along said lot line to the point of beginning.

The above described tracts of land being the same lands described in a warranty deed from Ernest L. Smith to J. L. Lancaster which is recorded in the Office of the Clerk of Dodge Superior Court in Deed Book 25, Page 286.

Also, all that tract or parcel of land situate, lying and being on Lot of Land Nos. 163 and 164 in the 16<sup>th</sup> Land District of Dodge County, Georgia, more particularly described as beginning at a point on the southwest lot line of Lot of Land No. 163 midway between the south corner and the west corner of said lot and running thence north 45 degrees east 1,293'; thence running in a direction of north 31 1/4 degrees west to a point located on the Bee Hive Public Road in Lot of Land No. 164; thence running in a southerly direction along said Bee Hive Public Road to the intersection of said road with the southwest line of Lot of Land No. 164; thence running in a direction of south 45 degrees east along the southwest lot lines of Lot of Land No. 164 and 163 a distance of 1,860' to the point of beginning, containing 58 acres, more or less, and being the same lands described in a deed from J. K. Lancaster to J. L. Lancaster which is recorded in said Clerk's Office in Deed Book 29, Page 480.

**LESS AND EXCEPT:** a one acre tract conveyed to Donald L. Terry and Rhonda L. Terry by deed recorded Deed Book 231, Page 611, Dodge County, Georgia Records.

**LESS AND EXCEPT:** 0.68 acres conveyed to Raudy Knight by deed recorded Deed Book 232, Page 46, Dodge County, Georgia Records.



## LEGAL

TRACT 9: All that tract or parcel of land lying and being in original Land Lot No. 163 in the 16<sup>th</sup> Land District of Dodge County, Georgia, more particularly described as follows: To find the point of beginning, begin at the intersection of the southwest land lot line of said Land Lot No. 163 and the northeast right of way line of the extended-center line of Ocmulgee Church Road (a/k/a County Road No. 219A) and run in a direction of south 72 degrees 47 minutes 55 seconds west a distance of 573.2' to a point; thence run in a direction of north 17 degrees 12 minutes 05 seconds west a distance of 21.09' to an iron pin and the point of beginning. From the point of beginning thus established, run in a direction of south 72 degrees 47 minutes 55 seconds west a distance of 183.54' to an iron pin; thence run in a direction of north 20 degrees 7 minutes 10 seconds a distance of 156.94' to an iron pin; thence run in a direction of north 63 degrees 16 minutes 02 seconds east a distance of 161.68' to an iron pin; thence run in a direction of south 27 degrees 7 minutes 4 seconds east a distance of 186.29' to an iron pin and the point of beginning. Said tract or parcel containing 0.68 acres, more or less, and being more particularly described on that certain plat of survey made by Olin McLeod for Randy Knight, dated February 2, 1993, of record in the Office of the Clerk of Dodge Superior Court in Plat Book 25, Page 238. Said plat being by reference incorporated herein for descriptive and all other legal purposes.

**SIMMONS 1 TRACT**

UAAR®

File No. # Saraland-Lake Tract

Legal Description

All that tract or parcel of land situated lying and being in Lot of Land No. 164 in the 16<sup>th</sup> Land District of Dodge County, Georgia, more particularly described as follows:  
 To find the point of beginning begin at a one and one-half inch iron bar found at the western most corner of Lot of Land No. 137, which is also the North east of Lot of Land No. 164 and from said point of beginning run thence South 43 degrees 34 minutes 00 seconds West for a distance of 1471.80 feet to the POINT OF BEGINNING and from the point of beginning thus establish run South 43 degrees 43 minutes 12 seconds East for a distance of 2868.18 feet to a point in the centerline of County Road 210-A; thence south 68 degrees 13 minutes 16 seconds West for a distance of 553.56 feet to a spike set in the centerline of said county road; thence South 66 degrees 26 minutes 36 seconds West for a distance of 110.52 feet to a spike set in the centerline of said county road; thence South 62 degrees 57 minutes 58 seconds West for a distance of 92.56 feet to a spike set in the centerline of said county road; thence South 54 degrees 06 minutes 04 seconds West for a distance of 76.35 feet to a spike set in the centerline of said county road; thence South 44 degrees 30 minutes 14 seconds West for a distance of 159.70 feet to a spike in the centerline of said county road; thence south 42 degrees 37 minutes 30 seconds West for a distance of 217.84 feet to a point in the centerline of said county road; thence North 63 degrees 45 minutes 55 seconds West for a distance of 169.30 feet to a 3/4 inch iron pipe found; thence South 32 degrees 32 minutes 05 seconds West for a distance of 294.80 feet to a 1/2 inch iron pipe set; thence South 47 degrees 26 minutes 55 seconds East for a distance of 111.80 feet to a point in the centerline of said county road; thence South 50 degrees 59 minutes 15 seconds West for a distance of 17.17 feet to a 1/2 inch rebar set; thence North 53 degrees 30 minutes 02 seconds West for a distance of 24.05 feet to a 3/8 inch rebar found; thence North 43 degrees 19 minutes 45 seconds West for a distance of 568.26 feet to a 1 inch conduit found; thence North 43 degrees 31 minutes 38 seconds West for a distance of 181.42 feet to a 1/4 inch iron bar found; thence North 44 degrees 19 minutes 41 seconds West for a distance of 752.88 feet to a point; thence North 45 degrees 40 minutes 35 seconds West for a distance of 1130.28 feet to a 3/8 inch rebar found; thence North 47 degrees 25 minutes 30 seconds East for a distance of 1482.77 feet to a 3/4 inch iron pipe found; thence North 43 degrees 34 minutes 00 seconds East for a distance of 126.54 feet to the Point of beginning; together with and subject to covenants, easements, and restrictions of record; said property contains 96.85 acres, more or less, and being the same lands shown on a plat of a survey made by Robert D. Smith, Jr., Registered Land Surveyor, which plat is recorded in the Office of the Clerk of Dodge Superior Court in Plat Book 21, Page 118, said plat together with the record thereof being by reference incorporated herein for descriptive and all other legal purposes.

Simmons # 1 - 96.85 Acres



**404 TRACT**

UAA@

File No. # Saraland-Lake Tract

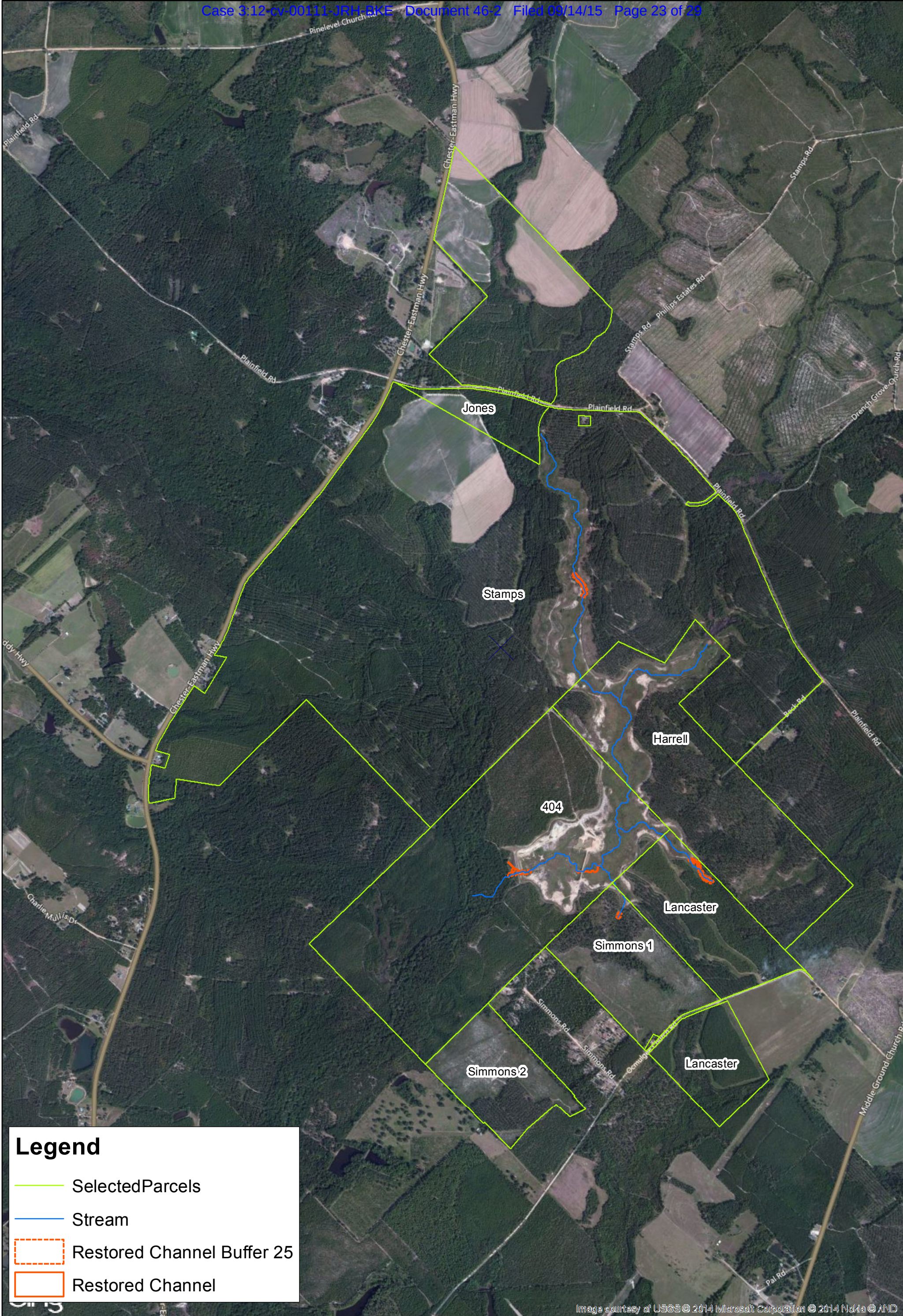
Legal Description

- Tract 1 - All that tract or parcel of land described as being all of original Land Lot No. 166 lying and being in the 16<sup>th</sup> Land District of Dodge County, Georgia, consisting of 211.6 acres, more or less.
- Tract 2 - All that tract or parcel of land lying and being in the 16<sup>th</sup> Land District of Dodge County, Georgia, known as whole Lot of Land No. 165, and being the same lands conveyed to E. B. Simmons by Mrs. Clara Waldrop, et al., by deed dated September 22, 1974, and recorded in the Office of the Clerk of Dodge County Superior Court in Deed Book 141, Page 224, containing 212.2 acres, more or less, and being shown on Plat of Survey made by Jim H. Ross which is recorded in the office of the Clerk of Dodge Superior Court in Plat Book 14, Page 51 and by reference incorporated herein and made a part hereof.
- ALSO, all the right title and interest of the parties of the first part in and to an easement road 20 feet in width running along the northeast lot line of Lot of Land No. 167 and the northeast lot line of Lot of Land No. 166, more particularly described and shown on a plat of a survey made by Jim H. Ross, surveyor, which plat is recorded in the Office of the Clerk of Dodge Superior Court in Plat Book 14, page 32, and being the same easement referred to in an easement from J. E. Simmons to Fred A. Smith, III, et al., which is recorded in Deed Book 141, Pages 376-378 both said plat and recorded easement being by reference incorporated herein and made a part hereof.

40.4 Tract

# Exhibit B

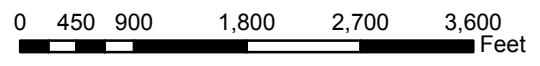
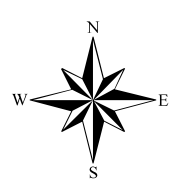




**Legend**

- SelectedParcels
- Stream
- Restored Channel Buffer 25
- Restored Channel

**Saraland Parcels**  
**EPA Order No: CWA-04-2008-5751**  
**Dodge County, Georgia**  
**for**  
**Saraland, LLLP**



09.23.14

Image courtesy of USGS © 2014 Microsoft Corporation © 2014 Nokia © AND



# Exhibit C





## MEMORANDUM

**TO:** Phillip Mancusi-Ungaro, USEPA  
**FROM:** Marcus Rubenstein, Woodard & Curran  
**DATE:** December 9, 2014  
**RE:** Saraland Restoration Plan – Written Summary (UPDATE)

Following a site visit to the Saraland lake property on December 4, 2014, Woodard & Curran scientists noted that there are some areas previously proposed for restoration activities that, at present have stabilized and are naturalizing successfully. As such, the following is an updated narrative plan, amended from the May 7, 2014 Saraland Restoration Plan – Written Summary.

The information below outlines the existing conditions of the restoration areas on site and a summary of the proposed changes. These changes will take place in two phases. Phase 1 includes the dam removal and the low-water road crossing, and Phase 2 includes the stream restoration areas.

Based on field data collected, restoration planning efforts have divided the site's restoration needs into separate Restoration Areas (RAs). Phase 1 includes Area 5 and Area 6. The main dam and associated stream restoration is Area 6 and Simmons Road is Area 5. Phase 2 includes Areas 1 and 3, where stream restoration is proposed.

### **Phase 1 Existing and Proposed Conditions – Saraland Dam and Simmons Road**

#### **Restoration Area 6 / Saraland Dam Existing Conditions**

Restoration Area 6 is located within the Stream 1 valley at the main dam along the southwest boundary of the drained lake. The dam is comprised of approximately 50,000 cubic yards of fill and measures roughly 525 feet long, 200 feet wide, and 22 feet high at the outlet control structure (OCS). A portion of the dam and the riser structure were removed in June 2013 to allow the lake to drain. The dam currently impounds Stream 1. Upstream of the dam, the stream 1 channel has a stable pattern, profile, and dimension. The riparian buffer is stabilizing with emergent vegetation, however lacks a stand of woody vegetation. Stream 1 enters RA6 through a filter ring in the body of the old lake, flows through a 36-inch culvert, and discharges into a large forested stream/wetland complex downstream from the project site. This well-established bottomland hardwood wetland carries flows from the dam outlet to Gum Swamp Creek through multiple channels in the wetland.

#### **Restoration Area 6 / Saraland Dam Proposed Conditions**

RA 6 includes the removal of the dam and the restoration of a section of Stream 1 impacted by the construction of the dam. Proposed plans call for the removal of the entire dam, the material of which will be returned to its original location, situated generally between the dam site and the north end of Simmons Road, in the uplands of the old lakebed. This fill will be returned to areas adjacent to the existing dam and, as necessary, will extend up to approximately 1,500 feet to the east of the dam. Once the dam and associated culvert has been removed, fill returned to its original locations and stabilized with vegetation, the old dam site will be graded to tie into the existing upstream and downstream elevations, and the area will be stabilized with appropriate erosion control measures and vegetation as laid out by the plan (this work is to be completed by the Middle Georgia Road Builders crew with oversight from Woodard & Curran personnel).

Once the dam has been removed, as described above, the environmental contractor will construct a new 300-350 foot channel with associated banks, in-stream structures, and stabilization measures to connect the upstream channel in lake with the existing downstream channel. The existing plunge pool will be filled in to match the designed channel width. In addition to the new main channel, a secondary channel will be constructed at a flood prone elevation, above base flow, in order for the wetland area located to the north of the primary



channel to be re-hydrated. This secondary channel will extend approximately 400-450 linear feet, and if possible, will exist independent of the primary channel.

#### **Restoration Area 5 / Simmons Road Existing Conditions**

RA5 is located within the Stream 1 valley where Simmons Road crosses the southern and western portion of the lakebed. Simmons Road is an access road, known to be used primarily for silvicultural activities. The road extends approximately 400 feet across the Stream 1 valley and is built up approximately 15 feet at its culvert, which is currently undersized and collapsed. RA5 is severely impacted from the undersized and collapsed road culvert, contains exposed soil with no vegetation, and has an excavated pit on the northeast side of the area (likely due to the construction of the dam). It appears that historically, Simmons Road was constructed with a single 36-inch culvert across the broad floodplain valley of Stream 1. This caused water to back up behind Simmons Road, which created a wetland adjacent to Stream 1 that is likely larger than it was before the road was constructed. As such, Simmons Road itself is serving as a dam and impeding the free flowing passage of the subject waterways into Gum Swamp Creek and the greater watershed. The construction of the Saraland Lake Dam has resulted in further destabilization of this road/culvert. Existing impacts to Stream 1 at RA5 include the undersized and collapsed culvert, the areas of exposed soil with little vegetative cover or observed regeneration, and the excavated pit on the north side of the road.

#### **Restoration Area 5 / Simmons Road Proposed Conditions**

Impacts associated with RA5 includes a section of Stream 1 that was impacted by the previous construction of Simmons Road and its undersized culvert, and further degraded by the unauthorized construction of the Saraland Lake. Because Simmons Road is the only access to otherwise landlocked tracts of forest land, it is necessary for this road to be maintained for use. In its proposed condition, the road will be maintained in a manner sufficient to pass expected flows. The repair of RA5 will include lowering the elevation of the road and constructing a stable at-grade low water crossing/rock ford. This structure will be constructed sufficient to pass base flows while allowing the necessary movement of vehicles. In the event of larger storms, the road may become inundated and impassable until storm flows have passed over the road. This work is to be completed by the Middle Georgia Road Builders crew with oversight from Woodard & Curran personnel.

The extent and amount of stream restoration required in this area will depend on the exact location of the low water crossing. This location will be determined in the field with the goal of establishing the greatest stabilization potential of the low water crossing/rock ford.

The extent of necessary stream restoration in RA5 will vary, depending on the location of the low water crossing. If the crossing is installed in line with the current culvert, and the ford can transition smoothly into the downstream plunge pool, no stream restoration activities would be required. If there is a considerable elevation change between the ford and the plunge pool, a single wood cross vane structure may need to be established check the elevation and to prevent the ford from eroding as a headcut. If the low water crossing is installed to the north of the existing culvert location, a new stream channel may need to be constructed to tie into the currently stable upstream and downstream section of Stream 1. Under this scenario, the plunge pool would be decommissioned, and a new stream channel will flow across the low water crossing.

Depending on the best method outline above, an expected range of 0 linear feet to 150 linear feet of stream construction will be implemented adjacent to the low water crossing in RA5.



## **Phase 2 Existing and Proposed Conditions – Stream Restoration**

### **Restoration Area 1 Existing Conditions**

Restoration Area 1 is located along Stream 1 at the north end of the lakebed. This area is impacted by the placement of a 36-inch culvert and fill to construct a road over the stream valley. This crossing was installed as part of the road constructed around the lake. RA1 includes the portion of Stream 1 where the channel has been damaged and replaced with undefined pooled areas on either side of the road crossing. Approximately 400 to 600 linear feet of stream was damaged by the land disturbing activities that took place to install the perimeter road and the culvert over Stream 1. On the downstream side of the road crossing, beyond the pooled area, the stream re-forms a distinct and stable stream channel.

### **Restoration Area 1 Proposed Conditions**

Proposed activities include the removal of an earthen road crossing and culvert, restoration of the stream channel and banks, installation of in-stream structures and stabilization measures, and buffer re-plantings. RA1 will result in the restoration of approximately 450 to 500 linear feet of stream and associated riparian buffer. The environmental contractor will “notch” the dam the minimum amount required to perform the work and accomplish design requirements, remove the culvert, and use the spoils from the dam to fill in the over wide areas of the channel to the designed width. A new channel and bankful bench will be created along the reach. Additional soil if need will be taken from the terrace area most appropriate to the area of work. Trees needed for structures, brush mats, root wads etc. will be harvested as close to work area as possible.

### **Restoration Area 2 Existing Conditions**

Restoration Area 2 is located in a wetland area at the upstream limits of the lakebed. This area was impacted by the placement of fill to construct a road over the valley as part of the perimeter road around the lake. While the earthen perimeter road is evident across the waterway, the culvert has washed away and the earthen dam is passing water. In the existing condition (updated at 12/04/14 site visit), vegetation is growing in areas throughout the wetland on both sides of the earthen fill. The water continues to flow out of this wetland area beyond RA2 and then forms a defined stream channel (Stream 2) downstream in the body of the old lakebed, prior to merging with Stream 1.

This wetland area originally called for the environmental contractor to notch the dam and connect the “open water” area to the existing channel to the south of the dam. Following the December 4, 2014 site visit, it was evident that the entire area proposed for wetland restoration is currently well established and stable as an open water/emergent wetland. Due to active vegetation and the likely presence of beaver activity, it is recommended that this area is left alone and no restoration or earth moving activities take place.

### **Restoration Area 3 Existing Conditions**

Restoration Area 3 is located at the far end of the southeastern finger of the lake along Stream 3. RA 3 has been disturbed by grading and clearing activities associated with the construction of the lake and the perimeter road. This area has developed a wide floodplain with sand deposits and vegetated areas. The stream itself lacks any defined bed/bank structure through RA3, and water spreads across the floodplain that ranges from 25 to 75 feet wide with one large spoil area in the middle of the floodplain. Downstream of RA3, beyond the disturbed and graded area, the stream reforms a distinct and stable channel that flows in a well-connected floodplain system with a riparian buffer dominated by woody vegetation.

### **Restoration Area 3 Proposed Conditions**

Proposed restoration activities include the construction of a new thalweg (channel), and to use the existing floodplain as bankful bench. As required, this will include the creation of a new channel, stream banks, installation of in-stream structures and stabilization measures, and buffer re-plantings. The new channel will reconnect with the original, stable channel downstream. RA1 will result in the restoration of approximately 650 to 800 linear feet of stream and associated riparian buffer.



#### Restoration Area 4 Existing Conditions

Restoration Area 4 is located where the perimeter road intersects Stream 4. Stream 4 is a small tributary to Stream 1 located at the southern extent of the lakebed. The perimeter lake road was constructed with no culvert installed in this stream. This resulted in a head cut on the downstream side of the road and potential erosion of the Stream 4 channel. Downstream from RA4 and the perimeter road, the stream is stable in the drained lakebed. While restoration activities originally called for the creation of a ford across the road with log structures on either side of the road (intended for grade control and head cut prevention), during the follow up visit on December 4, 2014, the road is stable and there is currently no water flowing upstream or across the existing road. As such, it is recommended that no work take place in this area. Should flows emerge during construction, and the need for grade control become evident, the environmental contractor will install a log cross vane on the downstream side of the road.

#### Saraland Re-vegetation Plan

The drained lakebed is currently naturally regenerating with a native wetland plant community. The plant community colonizing the recently exposed soils is quite diverse and well established, although some areas remain bare, especially where a clay hardpan is exposed at the surface. During restoration construction, it is anticipated that substantial plant material that can be cut and re-planted as live stakes or dug up and replaced in mats will be available onsite for much of the re-vegetation. An abundance of black willow, buttonbush, sedges and rushes are apparent within the project area and likely many more species provided in the plant list will be naturally occurring. Because of the highly successful natural regeneration that has occurred in the area, our re-vegetation strategy is primarily to stabilize soils and enhance succession that is already occurring.

Un-rooted hardwood cuttings and transplanted woody species will be sourced from the project area. If necessary, mast producing species such as Overcup Oak, Swamp Chestnut Oak and Swamp Tupelo, would be planted as purchased bare root stems. Most of these climax species hardwoods would be placed in the lakebed areas at the lower end of the property, left to transition into a community similar to that found beyond the dam, a Bottomland Forested Wetland. Fast growing tree and shrubs will be used along restored stream banks and low-competitive grasses and other herbs will be used as groundcover to stabilize soils until areas become colonized naturally. Plantings of grasses and forbs will be 1-foot spacing, shrubs at 5-foot spacing, and trees at 10-foot spacing. A list of additional vegetation to be purchased as bare roots or potted plants will be installed, if needed, to satisfy the spacing requirements listed above. A list of such vegetation is as follows:

Options for un-rooted hardwood cuttings:

Common Name	Scientific Name
Black Willow	<i>Salix nigra</i>
Box Elder	<i>Acer negundo</i>
Elderberry	<i>Sambucus canadensis</i>
Arrowood Viburnum	<i>Viburnum denlatum</i>

Options for onsite transplanting or purchase of live rooted stock:

Common Name	Scientific Name
Red Maple	<i>Acer rubrum</i>
Green Ash	<i>Fraxinus pennsylvanica</i>
Smooth Alder	<i>Alnus serrulata</i>
Buttonbush	<i>Cephalanthus occidentalis</i>
Sweet Pepperbush	<i>Clethra alnifolia</i>
Silky Dogwood	<i>Cornus amomum</i>
Leucothoe	<i>Leucothoe axillaris</i>
Hibiscus	<i>Hibiscus spp.</i>



Swamp Tupelo	<i>Nyssa aquatica</i>
Overcup Oak	<i>Quercus lyrata</i>
Swamp Chestnut Oak	<i>Quercus michauxii</i>

## Options for herbaceous perennials

<b>Common Name</b>	<b>Scientific Name</b>
Rushes	<i>Juncus spp.</i>
Beak Sedges	<i>Rhynchospora spp.</i>
Nutsedge	<i>Carex spp.</i>
Bullrush	<i>Scirpus spp.</i>
Blue Flag	<i>Iris virginica</i>
Purple False Foxglove	<i>Agalinis purpurea</i>
Red Milkweed	<i>Asclepias lanceolata</i>
Obedient Plant	<i>Physostegia virginiana</i>
Thoroughwort	<i>Eupatorium spp.</i>
Swamp Sunflower	<i>Quercus lyrata</i>
Purslane	<i>Ludwigia spp.</i>
Smartweed	<i>Polygonum</i>
Lizard's Tail	<i>Saururus cernuus</i>
St. John's Wort	<i>Hypericum</i>
Virginia Dayflower	<i>Commelina Virginia</i>
Bluestem	<i>Andropogon spp.</i>
Panicgrass	<i>Panicum spp.</i>
Purpletop	<i>Tridens flavus</i>
Redtop	<i>Agrostis gigantea</i>