



**GENERAL GUIDELINES FOR
RESIDENTIAL SHORELINE PERMITTING
&
PERMIT TERMS AND CONDITIONS**

**SMITH LAKE
FERC Project No. 2165**

Corporate Real Estate – Shoreline Management
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For permitting and other information, please visit Alabama Power’s website:
<https://apcshorelines.com/>

Lake	Full Pool (Summer) Level	Alabama Power’s Fee Ownership	Alabama Power’s Flood Easement
Smith	510’ mean sea level contour (“MSL”)	510’ MSL	522’ MSL

PURPOSE OF THE GUIDELINES

The purpose of these General Guidelines for Residential Shoreline Permitting & Permit Terms and Conditions (“the Guidelines” or “these Guidelines”) is to help you understand Alabama Power Company’s (“Alabama Power”) general policies and parameters for residential permitting activities on and around lakes managed by Alabama Power. Alabama Power owns the pool properties of Smith Lake and has additional property rights along the shoreline of Smith Lake (“Project lands and/or waters” or “Project lands and waters”), and has constructed and is maintaining and operating a dam on Smith Lake for the purpose of generating electrical energy under a license issued by the Federal Energy Regulatory Commission (“FERC”). FERC has authorized Alabama Power to institute a system of permits for certain activities and uses of the Project lands and waters. **These Guidelines are not necessarily intended to be all-inclusive and feasibly cannot address every specific situation that may exist on Smith Lake. These Guidelines are implemented by Alabama Power to facilitate orderly and reasonable shoreline management of the lake, recognizing that peculiarities in shorelines and property lines exist and may require flexibility on the part of Alabama Power, you, and/or other landowners, and as ultimately may be determined by Alabama Power in its sole discretion.** Sizes and dimensions stated below are considered to be the ordinarily maximum allowed and may not be allowable in every situation.

If you have questions regarding your electric service from the power lines to the meter connection, you should contact the utility providing your electric service. For questions regarding your use or operation of, or problems with, your metered electric service/system, you should contact a licensed electrician.

ALABAMA POWER RESERVES THE RIGHT TO MAKE AND/OR REQUIRE EXCEPTIONS AND/OR MODIFICATIONS TO THESE GUIDELINES AT ITS SOLE DISCRETION.

OVERVIEW OF THE GUIDELINES

These Guidelines provide permitting procedures, criteria, provisions, terms and conditions, and fees applicable to, and otherwise concerning, the following categories of activity on Project lands and/or waters:

Residential Shoreline Construction and/or Related Activity: Includes the construction of (and/or related activity regarding) non-habitable structures, as well as other ground-disturbing activity, on or near the shoreline of the lake, such as and similar to: piers, landings, boat docks and associated anchors, decks, staircases, boathouses, access ramps, gazebos, dredging, sea walls and rip rap for bank stabilization, and re-grading (see Sections A-1 through A-4);

Elevated Single-Family Structures: Includes the construction of stilted single-family residential structures intended for or capable of human habitation that are located within Alabama Power’s flood easement (see Sections B-1 through B-4, if and as applicable);

Unenclosed Legacy Structures: Includes the maintaining of existing, non-fully walled structures that, although having been situated on Alabama Power’s fee-owned and/or flood easement lands with Alabama Power’s permission, generally are not encompassed by a written permit previously issued by Alabama Power and are not in strict compliance with these Guidelines (see Sections C-1 through C-4, if and as applicable); and/or

Enclosed Legacy Structures: Includes the maintaining of existing, fully walled structures that, although having been situated on Alabama Power’s fee-owned and/or flood easement lands with Alabama Power’s permission, generally are not encompassed by a written permit previously issued by Alabama Power and are not in strict compliance with these Guidelines (see Sections D-1 through D-4, if and as applicable).

These Guidelines are incorporated into, and made a part of, any written permit issued by Alabama Power in regard to any of the above categories of activity on Project lands and/or waters.

SECTION A-1

INITIAL STEPS FOR PERMITS REGARDING RESIDENTIAL SHORELINE CONSTRUCTION AND/OR RELATED ACTIVITY

Contact your local Alabama Power Company (“Alabama Power”) Shoreline Management Office via <https://apcshorelines.com/> prior to beginning any construction and/or structure repair work on or within Project Lands and/or waters. **A written permit must be obtained from Alabama Power and a pending permit tag must be affixed and readily visible before any construction and/or applicable structure installation/repair/modification work may take place on Alabama Power’s fee-owned and/or flood easement lands. Verbal approval is not sufficient. Further, Alabama Power does not issue any permits, or give verbal or written permission, to a permittee’s contractors.**

Alabama Power may require a meeting with you at the site to discuss and review your proposed work. In order to receive a permit, you must provide the following to your Alabama Power Shoreline Management representative:

1. A signed copy of these Guidelines;
2. A copy of the current deed for the property at issue or a copy of the lease if the property at issue is being leased;
3. A copy of a current survey for the property at issue in cases where Alabama Power determines that it is necessary to make an informed permit decision;
4. Your contact information including current mailing address, phone number, and e-mail address;
5. The name and contact information of any of your agents, employees, or contractors who/that you authorize/hire (or will authorize/hire) to construct/install/significantly repair any structure on Alabama Power’s fee-owned property and/or flood easement lands;
6. A sketch of all existing and proposed shoreline structures; and
7. Any other relevant documentation as determined and required by Alabama Power.

Alabama Power will review the requisite documentation and determine eligibility.

SECTION A-2

PERMIT CRITERIA AND PROVISIONS APPLICABLE TO RESIDENTIAL SHORELINE CONSTRUCTION AND/OR RELATED ACTIVITY

The following criteria and provisions pertain to Alabama Power’s issuance of a Residential Shoreline Permit regarding Residential Shoreline Construction and/or Related Activity (the “Permit”) to the owner(s) of the non-habitable shoreline structure(s) at issue (“Permittee” or “the Permittee”).

Lots with less than 100 linear feet of shoreline may be restricted or may not be eligible for structures. Regardless of the amount of linear feet that Permittee owns (and which adjoins Alabama Power’s fee-owned property along the shoreline), Permittee has no automatic right to place a structure on Alabama Power’s fee-owned property under or pursuant to Alabama law and/or Alabama Power’s FERC License(s).

SETBACK: Any and all lake front property construction (piers, walkways, boathouses, wet slips, personal watercraft flotations, etc.) should be set a minimum of 15 feet from an extension of Permittee’s property line into the lake or at a reasonable distance determined by Alabama Power in its sole discretion. It is solely Permittee’s responsibility to ensure the setback is maintained for the life of the structure. That being said, there is no right—whether under applicable law or these Guidelines—to a 15’ (or other length) minimum setback, and it is not reasonable for this setback to be feasible in all cases. Moreover, the Permittee has no property rights that extend into the lake, as Alabama Power owns in fee this property.

STRUCTURE SIZE AND CONFIGURATION: The total allowable square footage for structures (e.g., floating dock, boathouse, wet slip, etc.) is **1,444** square feet. Structures shall not exceed 92 feet in length. Any walkway to a structure (e.g., pier, boathouse, etc.) that is 6 feet or less in width is not counted in the allowable square footage. **Covered (roofed) structures must be open and cannot be walled or enclosed;** however, a portion of one exterior side may be walled for the placement/construction of an approved storage area. Storage areas must be placed on the

portion of the structure closest to the shoreline, excluding any walkway. **Pavilions, gazebos, or any other appurtenant structure cannot be enclosed or walled** except that screening may be used for the exterior walls of the structure. No garbage or foreign materials (*e.g.*, remnants of building material, old appliances, tires, etc.) are to be placed on or within the Project Lands and/or waters. Non-reflective materials must be used. **No habitable fixtures (*e.g.*, toilets, sinks, showers, bathtubs, etc.) are allowed.**

DEEP WATER ANCHORS: Alabama Power does not require Permittees to install deep water anchors (or any other similar floating structure-anchoring system) at Smith Lake. Should a Permittee wish to install deep water anchors, and provided the lakebed area at issue is sufficient to accommodate the same (whether from an environmental, water depth, and/or any other relevant standpoint, as may be determined by Alabama Power in its sole discretion), all methods and locations for any such floating structure-anchoring system must be documented in the application and any such floating structure-anchoring system must comport/comply with certain conditions, including but not necessarily limited to the following: i) all anchors (or anchoring hooks/instruments) must be installed, situated, and maintained so as not to create a navigation hazard or impediment; ii) all anchors (or anchoring hooks/instruments) must be of a sufficient size and weight so as not to create a navigation hazard or impediment; iii) all anchor cables must be installed, situated, and maintained so as not to create a navigation hazard or impediment; iv) each anchor cable must be placed in/directed through a vertical pipe extending downward from the floating structure/dock floor and into the water (and where each such pipe must measure at least 8' downward into the water); v) no fill material may be discharged into waters of the United States except for the concrete used for deep water anchor structures, and the total volume of deep water anchors shall not exceed twelve (12) cubic yards; vi) all anchors (or anchoring hooks/instruments) must sit flush with the lakebed bottom, must be situated at least 35' deep from the 510' MSL (or deeper, if needed in order to prevent the creation of a navigational hazard or impediment), and must be situated 25' or more from the water's edge at time of installation (or further, if needed in order to prevent the creation of a navigational hazard or impediment); vii) no environmentally unacceptable materials (*e.g.*, car batteries, tires, etc.) may be used as an anchoring device; and viii) any floating structure-anchoring system also must adhere to any applicable conditions, regulations, provisions, rules, laws, or codes of any local, state, or federal government entity or agency (including but not limited to the U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service).

NARROW SLOUGH: In a narrow slough, no structure can extend over 1/3 way across the slough (including vessels moored at the structure) when measured at full pool. Moreover, sloughs containing relatively restricted areas of space (as determined by Alabama Power in its sole discretion) may necessitate ever further limitations on structure extension. Further, a lot located within a narrow slough may not qualify for a Permit.

WALLED STORAGE STRUCTURES IN FLOOD EASEMENT: The owner of any walled storage structure (*e.g.*, storage building, storage shed, boat storage facility, etc.) situated on or within Alabama Power's flood easement area must accommodate Alabama Power's flood storage capabilities by either elevating the structure to where the base floor (or any portion located beneath the base floor) is located above Alabama Power's flood storage elevation or venting the structure to allow a sufficient amount of water to freely enter and exit the structure. For either measure chosen, Alabama Power may require the owner to provide Alabama Power with certification from a licensed engineer or contractor affirming the ability for a sufficient amount of water to freely enter and exit the structure and otherwise to accommodate Alabama Power's flood storage area, and Alabama Power reserves the right to require recertification of these requirements at any time. Alabama Power does not represent or warrant that any elevation and/or venting measure undertaken is safe or suitable for any structure. Alabama Power may require these elevation and/or venting measures **ONLY** to protect its flood storage capabilities and/or property rights and makes no warranty regarding the safety or suitability of any elevation and/or venting measure. Ultimately, whether any walled structure adequately allows for the free flowage of water and otherwise accommodates Alabama Power's flood storage area is to be determined by Alabama Power in its sole and unfettered discretion. Habitation of any walled storage structure situated on or within Alabama Power's flood storage area is not allowed.

FLOTATION: With regard to floating structures, flotation shall be encased or closed cell (extruded) expanded polystyrene of good quality and manufactured for marine use, which will not become waterlogged or sink when punctured. All beaded foam material being replaced shall be removed from the lake and properly disposed of upon completion of any permitted construction or significant repair activity. Certain other restrictions may apply according to seasonable water levels.

PWC FLOTATION: Permittee may be allowed up to two PWC (*i.e.*, personal watercraft) floats or lifts (or one of each), so long as the structure(s) is(are) in compliance with these Guidelines and the PWC floats maintain the requisite setback and length. A third or more PWC float or lift counts against the allowable square footage allotment and requires a written permit from Alabama Power.

RAMPS: Ramps (including boat ramps, access ramps, and follow the water structures) shall not exceed 20 feet in width (individually and/or cumulatively for all ramps on a property) and may extend into the lake only a reasonable distance from the shoreline, which will be determined by Alabama Power in its sole discretion. In areas identified as having the potential to be a Sensitive Resource Area, ramps may be limited in width and may extend into the lake only a reasonable distance from the shoreline as determined by Alabama Power in its sole discretion.

SENSITIVE RESOURCE AREA: In regard to a lot or site identified as a Sensitive Resource Area, no construction or other potentially disturbing activity may take place unless and until specifically authorized by Alabama Power in writing. Additional permitting requirements such as limited construction time periods and construction methods may be required. Prior to any construction or other potentially disturbing work being conducted in an area identified as environmentally sensitive, as well as following the conclusion of any authorized work, Permittee must contact the Alabama Power Shoreline Management office to document the permit close-out process.

BANK STABILIZATION: Rip-rap and natural bank stabilization are the preferred methods of erosion control; however, potential use of seawalls will be evaluated on a case-by-case basis. Approved seawalls should be constructed as close to the existing shoreline as possible for the purpose of preventing erosion of the shoreline bank. The source and kind of backfill must be approved by Alabama Power in its sole discretion. Backfill may be placed only to the contour of the natural slope of the property. No debris or foreign materials may be used as backfill. No new creosote products may be used. Rip-rap may be required at the toe of all new and reconstructed seawalls two feet above the lakebed and two feet out from the bottom of the seawall.

DREDGING: Dredging material from the lakebed must be approved by Alabama Power prior to the removal of any material. Applications for dredging will be reviewed on a case-by-case basis and may require additional documentation. The proposed location of the spoil site for placement of dredged materials requires approval by Alabama Power and must be identified and included within the application. Spoils may not be placed in areas identified as potentially environmentally sensitive, adjacent waters, bottomland hardwoods, or wetlands, and spoils shall be placed in a confined upland area in such a manner that sediment will not re-enter the waterway or interfere with natural drainage.

FENCES: Fences are prohibited at the shoreline and may be restricted in other areas, and fences may not impede Project access. In any event, no fence may be constructed on or within Alabama Power's fee-owned property without Alabama Power's express written consent (*i.e.*, via Alabama Power's issuance of a written Permit), and no fence may be constructed on or within Alabama Power's flood easement lands unless said fence allows for the free flowage of water.

LEVEES OR FLOODWALLS: No levee or floodwall may be placed or maintained on or within Alabama Power's fee-owned and/or flood easement lands.

CAMPER/TRAILER UNDERPINNINGS: In regard to a camper, trailer, or similar facility situated within Alabama Power's flood easement lands, no such facility may be outfitted with underpinnings or otherwise rendered to be anything other than immediately mobile in the event of a flood/water rising occurrence.

ROPE SWINGS: No rope swing may be placed or maintained on or within Alabama Power's fee-owned property.

SWIMMING POOLS/SPAS/HOT TUBS: No swimming pool (whether an "in-ground" or "above-ground" pool), spa, or hot tub may be placed/installed or maintained on or within Alabama Power's fee-owned and/or flood easement lands.

RESIDENTIAL WATER WITHDRAWAL: Permittee may withdraw water from the lake for residential use only. Permission may be temporarily suspended by Alabama Power in the event drought conditions exist. Nothing herein authorizes Permittee to withdraw water for commercial purposes.

COVENANTS/DESIGN SCHEMES: Alabama Power cooperates with developers and encourages compliance with covenants and/or other regulatory/design schemes put in place by developers in order to encourage best practices for shoreline management within the developments. It is Permittee's responsibility to obtain the necessary architectural board and/or other approvals, if such approval is a requirement, prior to any construction. **Lots purchased within Alabama Power subdivisions may be subject to additional restrictions.**

PERMIT ISSUANCE: Upon approval by Alabama Power and payment of the requisite permit fee, Permittee will be issued a complete Permit and a pending permit tag will be placed at or near Permittee's lot. The Permittee will have one year to complete construction and/or other permitted activity. Once the construction and/or permitted activity is complete, Permittee must notify Alabama Power of the completed construction and/or permitted activity, and an Alabama Power representative will confirm compliance with the terms of the permit and take photographs of the structure(s), remove the pending permit tag, and affix a permit tag at or near Permittee's lot that may not be removed for the life of the Permit.

ALABAMA POWER RESERVES THE RIGHT TO MAKE AND/OR REQUIRE EXCEPTIONS AND/OR MODIFICATIONS TO THE ABOVE CRITERIA AND PROVISIONS AT ITS SOLE DISCRETION.

SECTION A-3

TERMS AND CONDITIONS OF PERMITS REGARDING RESIDENTIAL SHORELINE CONSTRUCTION AND/OR RELATED ACTIVITY

Any Permit regarding Residential Shoreline Construction and/or Related Activity granted by Alabama Power to the Permittee does and shall include and incorporate the following Terms and Conditions, and such Permit does and shall require the Permittee to comply with, and otherwise adhere to, the following Terms and Conditions:

- A-3.1 The Permit granted by Alabama Power to the Permittee is solely for the purpose described in the Permit.
- A-3.2 For any structure to be modified or constructed, the Permittee shall have obtained Alabama Power's written approval prior to beginning modification or construction, and no addition or design change shall be made to any permitted structure without the prior written approval of Alabama Power.
- A-3.3 The Permittee agrees to complete any permitted activity within one (1) year of the Permit issuance date. The Permit shall become null and void if the permitted activity is not completed within that period, unless Permittee obtained an extension in writing from Alabama Power prior to the expiration of the initial one (1) year period. An extension of the Permit will be treated as a modification of the Permit,

and the Permittee may be required to pay a Permit Modification Fee (see Section A-4) prior to being issued an extension (and the maximum extension will be for ninety (90) days).

- A-3.4 The Permit Criteria and Provisions Applicable to Residential Shoreline Construction and/or Related Activity set forth above in Section A-2 shall apply to all Permits, and Permittee shall be bound thereby, unless and only to the extent that the Permit expressly provides or allows otherwise.
- A-3.5 Alabama Power must and does retain the full, unconditional, unrestricted, and complete right and privilege to raise or lower, restrict, control, store, retain, withhold, increase, decrease, retard, stop, obstruct, divert, or use the waters of the subject reservoir in any manner Alabama Power, its successors and assigns, may deem expedient; and the Permittee's erection, operation, maintenance, and use of facilities shall in no way interfere with such uses, regulations, or control of said reservoir or the waters thereof. The Permittee agrees that if subsequent operations by Alabama Power require an alteration in the location of any permitted facility, or if in the opinion of Alabama Power any permitted facility shall cause unreasonable obstruction to navigation or that the public interest so requires, or if for any other reason as determined by Alabama Power in its sole discretion, the Permittee shall be required, upon written notice from Alabama Power, to remove, alter, or relocate any permitted facility, without expense to Alabama Power.
- A-3.6 The Permit constitutes a mere license for use of Alabama Power's lands and/or waters, and Permittee agrees, on behalf of Permittee and Permittee's heirs, administrators, successors, and assigns, that no attempt will be made to set up any claim of property rights or interest in or to the subject reservoir or the adjacent lands of Alabama Power by reason of the use of any of the permitted facilities hereunder. The Permit does not convey any property rights, either in real estate or material, and does not authorize any unpermitted injury to private property or invasion of private rights or any infringement of Federal, State, or local laws or regulations. In keeping with the foregoing, should the Permittee cause (or allow to be caused) any unauthorized damage to Alabama Power's fee-owned lands (or any unauthorized interference to/with Alabama Power's flood easement rights), Alabama Power may require the Permittee to remediate any such damage (or any such interference) and, if so, the Permittee must complete such remediation work within the time period prescribed by Alabama Power and at the Permittee's sole expense (and the Permittee further may be subject to any applicable Permit Fee as determined by Alabama Power (see Section A-4)). This Permit does not eliminate the necessity of the Permittee obtaining any Federal, State, or local assent required by law for the construction, operation, or maintenance of any permitted facility. The Permit does not convey a view or easement in light or air, and Alabama Power makes no guarantee of any particular view. The Permittee acknowledges that there is no right to a view or light or air under Alabama law.
- A-3.7 The Permittee agrees and covenants to indemnify, release, and hold harmless Alabama Power, its officers, agents, and employees, from and against any and all causes of action, suits at law or equity, or claims or demands, or from any liability of any nature whatsoever for or on account of any actual or alleged damages to persons or property, including any permitted facility (including but not limited to any floating structure anchor/deep water anchor) and including without limitation any and all alleged damages resulting from any issue existing between Permittee and Permittee's adjoining landowners (*i.e.*, neighbors), growing out of Alabama Power's issuance of this Permit or the ownership, construction, operation, and/or maintenance by the Permittee of any of the permitted or other facilities situated within the Project boundary.
- A-3.8 Alabama Power shall in no case be liable for any damage or injury to any permitted facility that may be caused by nature or caused by or result from subsequent operations undertaken by Alabama Power, or any Federal, State, or local government agency, for the improvement of navigation or for other lawful purposes, and no claims or right to compensation shall accrue from any such damage. Moreover, no attempt shall be made by the Permittee to forbid the full and free use by the public of all navigable waters or Project lands adjacent to any permitted facility or to unreasonably interfere with navigation in connection with the ownership, construction, operation, and/or maintenance of any of the permitted facilities.
- A-3.9 The Permittee shall at all times ensure that the permitted facilities are constructed and maintained in such a manner as to be consistent with shoreline aesthetic values (as may be determined by Alabama Power in its sole discretion), and comply with all applicable Federal, State, and local health and safety codes, rules, ordinances, laws, and regulations.
- A-3.10 The construction, operation, maintenance, and use of any permitted facility are subject to all applicable Federal, State, and local laws, codes, rules, ordinances, and regulations, as well as all directives, instructions, or requirements of Alabama Power. All expenses and responsibilities for the construction and maintenance of the permitted facilities, including the expenses of obtaining any necessary Federal, State, and local permits or approvals, shall be borne solely by the Permittee.
- A-3.11 The Permittee is solely responsible for proper design, engineering, construction, modification, and/or maintenance of the permitted facilities. Issuance of the Permit is not a guarantee or assurance that Permittee's facilities (and/or any modifications thereto) are safe, proper, or adequate for the purpose intended. The Permittee solely shall have the obligation of ensuring that the permitted facilities are constructed, modified, and/or maintained in a good state of repair.
- A-3.12 The Permittee shall construct, operate, and/or maintain the permitted facilities in a manner so as to minimize any adverse impact on fish, wildlife, shoreline wetlands, adjacent streams, lake waters, or cultural resources.

- A-3.13 In the event artifacts or archaeological features are encountered or are believed to be encountered during construction or other activity, all potentially disturbing work/activity shall cease and Permittee shall immediately contact the appropriate Alabama Power Shoreline Management office.
- A-3.14 No permitted structures shall be used (or be usable) for human habitation on Alabama Power's fee-owned or flood easement lands, and no habitable fixture (*e.g.*, toilet, sink, shower, bathtub, etc.) may be placed in or attached to any permitted structure.
- A-3.15 Save for the occasional (*i.e.*, non-primary) temporary rental-by-owner arrangement (*e.g.*, "Airbnb" or "VRBO"), Permittee shall not charge others for use of any permitted facility, and no commercial activity may be engaged in, on Alabama Power's fee-owned property. The Permittee hereby covenants and agrees that the Permittee will not cause or allow any illegal activity to take place on Alabama Power's fee-owned property.
- A-3.16 The size, design, location, and material (when specified by the Permit) of all permitted facilities shall conform to what is shown in the Permit's "Sketch of Permitted Structures" and/or as otherwise set forth in the Permit. Any proposed changes must be approved in writing by Alabama Power, and any applicable Permit Modification Fee (or any other applicable fee; see Section A-4) must be paid prior to any construction/modification activity.
- A-3.17 Permittee shall cooperate with and participate in the program of solid waste disposal in effect in the area of any permitted facility. Permittee shall keep the lands and waters occupied by and surrounding the permitted facilities free of all waste, garbage, and other unsightly debris, possessions, and materials (including but not limited to those of useless or limited value). Further, Permittee shall comply with all local health codes, rules, ordinances, laws, and regulations.
- A-3.18 The Permit is non-transferable absent Alabama Power's written consent; the Permit and Permittee's rights thereunder are personal to Permittee and may not be assigned without the express written consent of Alabama Power, which Alabama Power may grant or withhold in its sole discretion and without regard to any standard of reasonableness or otherwise. In the event Permittee conveys or otherwise transfers the adjacent land or leasehold, Permittee shall give to Alabama Power notice in writing of the name and address of the intended transferee at least seven (7) days prior to the transfer. Permittee shall provide prior notice to any potential transferee of the existence and terms of the Permit. In the event that Alabama Power shall not give its written consent to the assignment of the Permit to any purported transferee, any attempted transfer of the Permit shall be voidable by Alabama Power, but such purported transferee shall nonetheless be bound by the terms, conditions, and provisions of the Permit, and the continued use of the permitted facilities by any such purported transferee shall conclusively be deemed the purported transferee's agreement to be bound by all the terms, conditions, and provisions hereof.
- A-3.19 If, in the sole opinion of Alabama Power, the Permittee has failed to comply with any of the terms, conditions, and/or provisions hereof, or with any additional conditions imposed by Alabama Power, or any Federal, State, or local government agency, the Permittee shall take appropriate action to correct the violation. If the violation continues for a period of thirty (30) days after notice thereof by Alabama Power, Alabama Power may in its sole discretion, cancel/revoke/terminate the Permit and Alabama Power may remove or require Permittee to remove, or cause to be removed from the Project lands and waters within thirty (30) days, any facility constructed or maintained thereunder, at Permittee's sole expense and without any additional notice to Permittee. If the Permittee fails to remove and so restore to the satisfaction of Alabama Power, Alabama Power may do so and may recover the cost thereof from the Permittee.
- A-3.20 Notwithstanding the preceding condition, if in the opinion of Alabama Power emergency circumstances dictate or the public interest necessitates, or for any other reason whatsoever as determined by Alabama Power in its sole discretion, Alabama Power may summarily revoke the Permit. Once the Permit has been revoked, the Permittee must remove the permitted facilities within thirty (30) days and restore the Project lands and/or waters to their former condition at the Permittee's expense. If the Permittee fails to remove and so restore to the satisfaction of Alabama Power, Alabama Power may do so without any additional notice to Permittee and may recover the cost thereof from the Permittee.
- A-3.21 In the event Alabama Power removes any permitted facility for any reason herein, Alabama Power may, at its sole discretion, dispose of or destroy the same.
- A-3.22 Alabama Power's rights contained herein, including without limitation Alabama Power's rights to remove the Permittee's facilities upon revocation, cancellation, expiration, or termination of the Permit, rights to recover the cost thereof from the Permittee, and rights to recover attorneys' fees, shall survive the revocation, cancellation, expiration, or termination of the Permit.
- A-3.23 If it is determined by Alabama Power, the Permittee, or a Federal or State agency that the Permittee is performing work that may affect species listed as threatened or endangered under the Endangered Species Act or the habitat of such species, the Permittee must notify Alabama Power in writing (if determined by any person or entity other than Alabama Power) and must cease and desist any and all potentially affecting work until further notified in writing by Alabama Power.
- A-3.24 Any Permittee that is issued a Programmatic General Permit ("PGP") by Alabama Power on behalf of the U.S. Army Corps of Engineers will be responsible for complying with the Special and General Conditions contained within the PGPs and with any project specific conditions provided. A copy of the PGPs for minor activities on Alabama Power reservoirs is available from Alabama Power's Shoreline Management office and/or on the web sites of Alabama Power (<https://apcshorelines.com/shoreline-management/>) and the U.S. Army Corps of Engineers: <http://www.sam.usace.army.mil/Missions/Regulatory/GeneralPermits.aspx>. The Permittee further shall minimize adverse impacts to State waters by strictly adhering to the ADEM Special Conditions and Best

Management Practices that can be found on Alabama Power's Shoreline Management website at: <https://apcshorelines.com/shoreline-management/>. The Permittee further shall comply with any specific terms and conditions as listed in any Approval Letter provided from Alabama Power's Environmental Affairs Department.

- A-3.25 Should Permittee fail to comply with any term, condition, criterion, or provision herein (and/or any other requirement or directive of Alabama Power or any government agency) regarding the protection of a Sensitive Resource Area, Permittee shall be solely responsible for correcting and remedying any and all such non-compliance within a time period determined by Alabama Power in its sole discretion.
- A-3.26 No delay or omission of Alabama Power to exercise any right, power, or remedy hereunder shall exhaust or impair any such right, power, or remedy or shall be construed to be a waiver of the same or a waiver of any default by the Permittee, or acquiescence in such a default; and every right, power, and remedy given hereunder to Alabama Power may be exercised from time to time and as often as Alabama Power may elect. No waiver of any default hereunder shall extend to or shall affect any subsequent or any other then existing default or shall impair any rights, powers, or remedies of Alabama Power. No right, power, or remedy conferred upon or reserved to Alabama Power under the Permit is intended to be exclusive of any other right, power, or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power, and remedy given hereunder or otherwise available at law or in equity. It is agreed that in any proceeding by Alabama Power to enforce the Permit (whether in whole or in part), damages alone may not be an adequate remedy, and Alabama Power shall have the unfettered right to seek and obtain injunctive and other equitable relief in addition to monetary damages. The obligations of the Permittee under the Permit are joint and several.
- A-3.27 The Permit and the rights of Alabama Power under the Permit may be assigned by Alabama Power, and the Permit shall be enforceable by any assignee, transferee, or successor of Alabama Power.
- A-3.28 The Permittee shall assess and pay all taxes attributable to any of the permitted facilities and all land and personal property of the Permittee.
- A-3.29 The Permit and the permission given hereby are subject to all easements, restrictions, reservations, and other matters that may affect Alabama Power's right, title, and interest in and to the Project lands and/or waters, whether the same are of record, are discoverable by an accurate survey or inspection of the Project lands and/or waters, or are shown in drawings on file with Alabama Power which shall be made available to the Permittee for inspection upon request made reasonably in advance of such inspection.
- A-3.30 The Permittee agrees and represents that the construction and use of any of the permitted facilities by the Permittee is with Alabama Power's consent and permission only and in consideration of the Permittee's recognition of Alabama Power's superior rights and the Permittee's agreement to comply with all of the terms and conditions of the Permit.
- A-3.31 Where written notice from Alabama Power to the Permittee is contemplated herein, any such notice shall be addressed to the Permittee at the Permittee's address set forth in the Permit. Where written notice from the Permittee to Alabama Power is contemplated herein, any such notice shall be addressed to Alabama Power's Shoreline Management office (5558 Curry Highway, Suite #3, Jasper, AL 35503).
- A-3.32 The Permit sets forth the entire understanding and agreement among and/or between Permittee and Alabama Power with respect to the subject matter of the Permit and supersedes any prior or contemporaneous oral and/or written agreements or representations among and/or between Permittee and Alabama Power with respect to the subject matter of the Permit.
- A-3.33 Should any of the terms, conditions, and/or provisions set forth in this Section A-3 be determined to be invalid by any court, agency, or any other tribunal of competent jurisdiction, such determination shall not affect the enforceability of the other terms, conditions, and/or provisions herein, and to this end the terms, conditions, and/or provisions of this Section A-3 are declared severable.

SECTION A-4

APPLICABLE PERMIT FEES REGARDING RESIDENTIAL SHORELINE CONSTRUCTION AND/OR RELATED ACTIVITY

The Permittee acknowledges and agrees to pay any below-described fee (as deemed applicable and appropriate by Alabama Power in its sole discretion) to Alabama Power:

General Construction Fee: \$400.00

This non-refundable fee applies to any and all new residential shoreline construction activity (other than for an Elevated Structure) authorized by a single Permit (*e.g.*, a Permit issued to the Permittee authorizing the Permittee's construction of a new pier, boathouse, seawall (or adding linear footage to an existing seawall), rip rap (or adding linear footage to existing rip rap), boat ramp, stairs, steps, gazebo, pavilion, float, boardwalk, camper pad/cover, deck, wet slip, lakebed pylons/posts, etc.), and the Permittee shall pay this fee to Alabama Power prior to or at Alabama Power's issuance of the Permit. The Permittee must contact his or her local Alabama Power Shoreline Management office prior to conducting any construction activity.

Elevated Structure Construction Fee: \$500.00

This non-refundable fee applies to any construction of an Elevated Structure authorized by a single Permit, and the Permittee shall pay this fee to Alabama Power prior to or at Alabama Power's issuance of the Permit. The Permittee must contact his or her local Alabama Power Shoreline Management office prior to conducting any Elevated Structure construction activity.

General Repair Fee: \$200.00

This non-refundable fee applies to any and all residential shoreline structure repair activity of a substantial degree (including **but not limited to** adding rip rap to an existing rip rap footprint); whether such activity arises to a “substantial degree” shall be determined by Alabama Power in its sole discretion. The Permittee must contact his or her local Alabama Power Shoreline Management office prior to conducting any potentially substantial repair work; indeed, under certain circumstances, it may be that the Permittee first must obtain a new Permit from Alabama Power before the Permittee can conduct (or cause to be conducted) any substantial repair work of the structure at issue. The Permittee shall pay this fee to Alabama Power prior to the performance of any applicable repair work. (Note: A permitted dock or similar permitted structure may be moved offsite for purposes of repair work so long as the dock or similar permitted structure is placed back in its same prior permitted location, and this General Repair Fee will apply to such an occurrence.)

Permit Modification Fee: \$100.00

This non-refundable fee applies to any modification, revision, or change to an applied-for Permit, where such modification, change, or revision is requested or otherwise prompted by the Permittee after his or her Permit request has been approved by Alabama Power but before construction is complete. The Permittee shall pay this fee to Alabama Power prior to the issuance of any modified Permit.

Unauthorized Construction Fee: \$600.00

This non-refundable fee applies to any instance where the Permittee constructs (or allows the construction of) a structure within the Project lands and/or waters (including on or within Alabama Power’s fee-owned and/or flood easement lands) without first having obtained Alabama Power’s written approval. This fee shall be due to be paid by Permittee to Alabama Power within thirty (30) days of demand for payment made by Alabama Power; moreover, all unauthorized construction activity must cease unless and until Alabama Power permits the same in writing. Additionally, should the Permittee construct such an unauthorized structure, the Permittee may be required to remove the unauthorized constructed structure or bring the unauthorized constructed structure into compliance with these Guidelines (as determined and instructed by Alabama Power, and within the time period prescribed by Alabama Power) at the Permittee’s sole expense.

Unauthorized Structure Repair Fee: \$400.00

This non-refundable fee applies to any instance where the Permittee substantially repairs or modifies (or allows the substantial repair or modification of) a structure within the Project lands and/or waters (including on or within Alabama Power’s fee-owned and/or flood easement lands) without first having obtained Alabama Power’s written approval to do so; whether such activity arises to a “substantial” degree shall be determined by Alabama Power in its sole discretion. This fee shall be due to be paid by Permittee to Alabama Power within thirty (30) days of demand for payment made by Alabama Power; moreover, all unauthorized structure repair and/or modification activity must cease unless and until Alabama Power permits the same in writing.

Non-Compliance Fee: \$800.00

This non-refundable fee applies to any instance where the Permittee has obtained Alabama Power’s written approval to conduct certain construction and/or repair or modification activity, but thereafter the Permittee constructs (or allows the construction of) and/or repairs or modifies (or allows the repair or modification of) a structure within the Project lands and/or waters (including on or within Alabama Power’s fee-owned and/or flood easement lands), and such construction and/or repair/modification activity does not comport with the specifications, dimensions, materials, and/or the like previously permitted or otherwise approved in writing by Alabama Power. This fee shall be due to be paid by Permittee to Alabama Power within thirty (30) days of demand for payment made by Alabama Power. Moreover, in addition to being required to pay this Non-Compliance Fee, the Permittee acknowledges and agrees that the Permittee must bring the subject structure(s) into compliance with the specifications, dimensions, materials, and/or the like previously permitted or otherwise approved in writing by Alabama Power and within the time period prescribed by Alabama Power and at the Permittee’s sole expense.

The Permittee acknowledges and agrees that the Permittee also shall be responsible for the payment of all costs and expenses, including but not necessarily limited to attorneys’ fees and court costs, incurred by Alabama Power in connection with Alabama Power’s effort to collect any of the fees outlined in this section.

Should a previously permitted structure be totally destroyed by natural causes (*e.g.*, storm, fire, etc.), the Permittee may apply to Alabama Power for a permit to construct a replacement structure in compliance with and pursuant to these Guidelines, and the Permittee will not be subject to any of the above Permit Fees so long as application is made within one hundred eighty (180) days of the structure’s destruction.

ATTORNEYS’ FEES

By accepting a Permit from Alabama Power Company and/or maintaining a structure or structures on Alabama Power’s fee-owned and/or flood easement lands, the Permittee agrees and acknowledges that Alabama Power has a right to request, and the Permittee has an obligation to pay, any and all attorneys’ fees, expenses, and/or costs incurred by Alabama Power relating to the enforcement of any of the provisions, terms, and/or conditions of the Permit (which includes these Guidelines), including, without limitation, any and all attorneys’ fees, expenses, and costs incurred by Alabama Power relating to remedying any action, construction, or activity that is not in compliance with the Permit (which includes these Guidelines), whether caused by the Permittee and/or the Permittee’s family members, guests, agents, employees, and/or contractors.

Permittee Statement: I have received, read, understand, and agree to abide by and otherwise adhere to these Guidelines.

Signed: _____ Date: _____
Permittee

SECTION B-1

INITIAL STEPS FOR PERMITS REGARDING ELEVATED SINGLE-FAMILY STRUCTURES

Contact your local Alabama Power Company (“Alabama Power”) Shoreline Management Office via <https://apcshorelines.com/> prior to beginning any construction on or within Project Lands and/or waters. **A written permit must be obtained from Alabama Power before any construction work may take place on Alabama Power’s fee-owned and/or flood easement lands. Verbal approval is not sufficient.**

An appropriate elevated single-family habitable structure (“Elevated Structure”; sometimes referred to in the plural as “Elevated Structures”) will be conditionally allowed within Alabama Power’s flood easement area of the Project lands via Alabama Power’s issuance of a Residential Shoreline Permit (the “Permit”) to the Elevated Structure owner(s) (“Permittee” or “the Permittee”).

A representative of Alabama Power will be available to meet with you at the site to discuss and review your proposed Elevated Structure work. In order to receive a Permit, you must provide the following to your Alabama Power Shoreline Management representative:

1. A signed copy of these Guidelines;
2. A copy of the current deed for the property at issue or a copy of the lease if the property at issue is being leased;
3. Conceptual plans for, or other documentation regarding, the proposed Elevated Structure confirming, to Alabama Power’s satisfaction, that the Elevated Structure is a single-family residential structure and that no enclosures or flooring or building materials beyond those necessary for elevating the structure (*e.g.*, footings, stilts, etc.) will be located within Alabama Power’s fee-owned property and/or flood easement;
4. A sketch of all existing and additionally proposed shoreline structures (*i.e.*, additional to the proposed Elevated Structure);
5. A survey of the property that identifies the location of the proposed Elevated Structure vis-à-vis the adjoining property lines and the full pool elevation, and confirms that the lowest floor of the proposed Elevated Structure is located above the applicable flood easement elevation;
6. A certification from the applicable local health department approving the sanitation system associated with the proposed Elevated Structure; and
7. Any other relevant documentation as determined and required by Alabama Power.

Alabama Power will review the requisite documentation and determine eligibility.

SECTION B-2

PERMIT CRITERIA AND PROVISIONS APPLICABLE TO ELEVATED SINGLE-FAMILY STRUCTURES

Alabama Power makes no representation or warranty that any Elevated Structure is safe or suitable. The Permittee of an Elevated Structure accepts sole responsibility for complying with all applicable restrictions, subdivision covenants, ordinances, health and sanitation regulations and codes, and building codes with regard to his or her Elevated Structure(s).

All Elevated Structures must maintain a 25 foot setback from the full pool elevation. No flooring or other building materials beyond those necessary for elevating the Elevated Structure (*e.g.*, footings, stilts, etc.) may be located on Alabama Power’s fee-owned property and/or within Alabama Power’s flood easement elevation. No storage rooms may be installed or otherwise implemented underneath the flooring of an Elevated Structure, and only screen or a

chain-link fence may be used to enclose (or otherwise installed underneath the flooring of) an Elevated Structure. All septic systems must be approved by proper authorities prior to Permit issuance and prior to beginning construction.

The Permit Criteria and Provisions Applicable to Residential Shoreline Construction and/or Related Activity set forth in Section A-2 shall apply to the Permittee's Permit concerning an Elevated Structure (and Permittee shall be bound thereby) unless and only to the extent that the Permittee's Permit provides or allows otherwise.

The Permittee will have one year to complete construction of the Elevated Structure. Once the construction is complete, the Permittee must notify Alabama Power of the completed construction, and an Alabama Power representative will confirm compliance with the terms of the Permit and take photographs of the Elevated Structure, remove the pending permit tag, and affix a permit tag at the Permittee's lot that may not be removed for the life of the Permit.

PROBATE COURT RECORDING: The Permittee acknowledges and understands that Alabama Power may record a copy of the Permittee's Permit for the Elevated Structure (which will include these Guidelines and any other appropriate documentation, as determined by Alabama Power in its sole discretion) in the applicable local probate court.

ALABAMA POWER RESERVES THE RIGHT TO MAKE AND/OR REQUIRE EXCEPTIONS AND/OR MODIFICATIONS TO THE ABOVE CRITERIA AND PROVISIONS AT ITS SOLE DISCRETION.

SECTION B-3

TERMS AND CONDITIONS OF PERMITS REGARDING ELEVATED SINGLE-FAMILY STRUCTURES

Any Permit regarding an Elevated Structure granted by Alabama Power to the Permittee does and shall include and incorporate the following Terms and Conditions, and such Permit does and shall require the Permittee to comply with, and otherwise adhere to, the following Terms and Conditions:

- B-3.1 The Permit granted by Alabama Power to the Permittee is solely for the purpose described in the Permit.
- B-3.2 Alabama Power expressly gives its consent and permission to the Permittee to construct and maintain the Elevated Structure upon the Subject Land, subject to the terms and conditions of this Section B-3; the Elevated Structure and the Subject Land are more particularly described in the "Appendix: Elevated Structure(s)" attached hereto, which is incorporated in, and made a part of, the Permit. The Permittee agrees to complete construction of the Elevated Structure within one (1) year of the Permit issuance date. The Permit shall become null and void if the construction is not completed within that period, unless Permittee obtained an extension in writing from Alabama Power prior to the expiration of the initial one (1) year period. An extension of the Permit will be treated as a modification of the Permit, and the Permittee may be required to pay a Permit Modification Fee (see Section A-4) prior to being issued an extension (and the maximum extension will be for no more than ninety (90) days). All expenses and responsibilities for the construction and maintenance of the Elevated Structure, including the expenses of obtaining any necessary Federal, State, and local permits or approvals, shall be borne solely by the Permittee. The size, design, location, and material (when specified by the Permit) of the Elevated Structure shall conform to what is shown in the attached "Appendix: Elevated Structure(s)" and/or as otherwise set forth in the Permit. Any applicable Permit Modification Fee (or any other applicable fee; see Section A-4) must be paid prior to any construction/modification activity.
- B-3.3 The Permit applies only to the Elevated Structure described in the "Appendix: Elevated Structure(s)" attached hereto and made a part hereof as approved by Alabama Power. The Permit does not give the Permittee any right to modify or expand the Elevated Structure without prior written approval of Alabama Power. The Permit constitutes a mere license and does not convey any property rights, either in real estate or material, and does not authorize any unpermitted injury to private property or invasion of private rights or any infringement of Federal, State, or local laws or regulations. In keeping with the foregoing, should the Permittee cause (or allow to be caused) any unauthorized damage to Alabama Power's fee-owned lands (or any unauthorized interference to/with Alabama Power's flood easement rights), Alabama Power

may require the Permittee to remediate any such damage (or any such interference) and, if so, the Permittee must complete such remediation work within the time period prescribed by Alabama Power and at the Permittee's sole expense (and the Permittee further may be subject to any applicable Permit Fee as determined by Alabama Power (see Section A-4)). This Permit does not eliminate the necessity of the Permittee obtaining any Federal, State, or local permission required by law for the construction, operation, or maintenance of the Elevated Structure. The Permittee agrees that neither by the occupancy of the Elevated Structure, nor in any other way, does or shall the Permittee: a) make any claim of property rights or interests in or to Alabama Power's fee-owned and/or flood easement lands adverse to Alabama Power's rights therein; b) make any other claim adverse to Alabama Power; or c) deny or impair Alabama Power's right to use and enjoy its fee-owned and/or flood easement lands.

- B-3.4 The Permit Criteria and Provisions Applicable to Residential Shoreline Construction and/or Related Activity set forth in Section A-2 shall apply to Permittee's Permit concerning the Elevated Structure (and Permittee shall be bound thereby) unless and only to the extent that the Permit provides or allows otherwise. Likewise, the Permit Criteria and Provisions Applicable to Elevated Single-Family Structures set forth above in Section B-2 shall apply to Permittee's Permit concerning the Elevated Structure, and Permittee shall be bound thereby, unless and only to the extent that the Permit provides or allows otherwise.
- B-3.5 The Permittee agrees and represents that the construction and use of the Elevated Structure on the Subject Land by the Permittee is with Alabama Power's consent and permission only and in consideration of the Permittee's recognition of Alabama Power's superior rights and the Permittee's agreement to comply with all of the terms and conditions of the Permit.
- B-3.6 The Permittee acknowledges that Project No. 2165 is the property of Alabama Power and that Smith Dam was built and is being operated and maintained to hold back, retain, accumulate, store, release, and assist in controlling the waters of the Black Warrior River and its tributaries. In connection therewith, FERC has issued to Alabama Power a license for Project No. 2165 (together with any modification thereof or replacement license, the "FERC License"). Alabama Power reserves the full, unconditional, unrestricted, and complete right and privilege to raise or lower, restrict, control, store, retain, withhold, increase, decrease, retard, stop, obstruct, divert, release, or use the waters of the subject reservoir (*i.e.*, Smith Lake) in any manner Alabama Power, its successors and assigns may deem appropriate. The Permittee is informed and understands that in the operation of Alabama Power's business and in the exercise of Alabama Power's rights on the Subject Land, there may be fluctuations in the water level in the subject reservoir, and it is understood and agreed that the Permit shall be subject at all times to the right of Alabama Power, its successors and assigns, which right is hereby reserved from the rights granted to the Permittee hereunder, for and on behalf of Alabama Power, to raise and lower the waters of the subject reservoir from time to time and to flood any and all applicable portions of the Subject Land and/or Elevated Structure continuously or from time to time.
- B-3.7 Alabama Power shall in no case be liable for any damage or injury to the Elevated Structure or any personal property therein or the Subject Land that may be caused by or result from Alabama Power's operations or those of any Federal, State, or local governmental body for the improvement of navigation or for other lawful purposes, and no claims or right to compensation shall accrue from any such damage. Except to the extent caused by the negligence of Alabama Power or its employees, agents, or contractors, the Permittee agrees and covenants to release, indemnify, and hold harmless Alabama Power, its officers, agents, and employees, from and against any and all claims and demands by the Permittee, any guest, employee, agent, or contractor or other invitee or licensee of the Permittee, or any other persons whomever, for damages to property or injury or death to persons which may arise out of or be caused directly or indirectly by the Permittee's or any other person's use or occupancy of the Subject Land or Elevated Structure, including without limitation any of the same arising out of or directly or indirectly caused by any flooding of the Subject Land or Elevated Structure or other exercise of Alabama Power's rights with respect to the Subject Land or its FERC License (and including without limitation any and all alleged damages resulting from any issue existing between Permittee and Permittee's adjoining landowners (*i.e.*, neighbors)). It is specifically intended and agreed that no flooding of the Subject Land or Elevated Structure or other exercise of Alabama Power's rights with respect to the Subject Land or its FERC License, however and whenever occurring, shall constitute negligence in any way. This indemnification shall survive the expiration or termination of the Permit, the exercise of any right or

remedy under the Permit, and any subsequent sale or transfer of the Elevated Structure and all similar or related events or occurrences.

- B-3.8 The Permittee acknowledges Alabama Power's rights in Alabama Power's fee-owned and flood easement lands, and the Permittee acknowledges and agrees that all rights of the Permittee under the Permit shall at all times be subject to the FERC License and all orders, directives, requests, rules, regulations, and other laws relating thereto.
- B-3.9 The Permittee acknowledges and agrees that: a) the Subject Land is within the Project boundary of Project No. 2165, which Alabama Power operates and maintains under its FERC License; and b) all rights of the Permittee under the Permit are subject to the terms, conditions, and requirements of such FERC License. The Permittee acknowledges and agrees that, if Alabama Power is required to do so in order to comply with the terms, conditions, or requirements of the FERC License, or if Alabama Power is directed to do so by FERC, or if FERC imposes on Alabama Power any conditions with respect to the Permit, the Subject Land or premises, the FERC License, or Project No. 2165, Alabama Power may, in its sole and absolute discretion, immediately or at any time thereafter cancel or terminate the Permit as to all or a portion of the Subject Land.
- B-3.10 Save for the occasional (*i.e.*, non-primary) temporary rental-by-owner arrangement (*e.g.*, "Airbnb" or "VRBO"), Permittee shall not charge others for use of the Elevated Structure. The Permittee hereby covenants and agrees that the Permittee will not cause or allow any illegal activity to take place on the Subject Land.
- B-3.11 The Permittee solely shall have the obligation of ensuring that the Elevated Structure is constructed and maintained in a good state of repair and in compliance with all applicable Federal, State, and local health, safety, and other codes, ordinances, regulations, rules, and laws and also in such a manner as to be consistent with shoreline aesthetic values (as may be determined by Alabama Power in its sole discretion). The Permittee shall comply promptly with any lawful regulations or instructions of any Federal, State, or local governmental agency or other governmental authority, as well as with any directive or instruction of Alabama Power. The Permittee agrees that the Permittee will maintain the Elevated Structure in a manner so as to minimize any adverse impact on fish and wildlife habitat and natural environmental values, and the Permittee shall maintain the Elevated Structure in such a manner as to not endanger health, create a nuisance, or otherwise be incompatible with the overall recreational use of the Smith Dam Project lands and/or waters (as may be determined by Alabama Power in its sole discretion). Further, the Permittee shall take all reasonable precautions to ensure that the scenic, recreational, and environmental values of the Project lands and/or waters are protected on the Subject Land. The Permittee shall not impair Alabama Power's flood storage capabilities unless and only to the extent expressly contemplated in the Permit. The Permittee shall not impair the full and free use by the public of all navigable waters at or adjacent to the Subject Land or interfere with navigation thereon through ownership, use, or maintenance of the Elevated Structure.
- B-3.12 The Permittee shall comply with all laws applicable to the use of the Elevated Structure, and without limiting the generality hereof, shall comply with all applicable Federal, State, and local environmental, health, and safety regulations, and any laws or regulations concerning the preservation of public order, and without limitation to the foregoing, the Permittee agrees as follows:
- (a) No Hazardous Materials (as hereinafter defined) or Pesticides/Herbicides (as hereinafter defined) will be contained in, treated, stored, handled, generated, located on, discharged from, or disposed of on, or constitute a part of, the Elevated Structure or the Subject Land or treated, stored, handled, generated, located on, or disposed of on Smith Lake. As used herein, the term "Hazardous Materials" includes, without limitation, any asbestos, petroleum, or petroleum products, scrap tires, dry cleaning agents, urea formaldehyde foam insulation, flammable explosives, lead-based paints, polychlorinated biphenyls (hereinafter referred to as "PCBs"), radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related or unrelated substances or materials defined, regulated, controlled, limited, or prohibited in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. §§ 9601, *et seq.*) ("CERCLA"), the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801, *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901, *et seq.*) ("RCRA"), the Clean Water Act (33 U.S.C. §§ 1251, *et seq.*), the Oil Pollution Act (33 U.S.C. §§ 2701, *et seq.*), the Clean Air Act (42 U.S.C. §§ 7401, *et seq.*), the Toxic Substances Control Act (15 U.S.C. §§ 2601,

et seq.), the Alabama Water Pollution Control Act (ALA. CODE §§ 22-22-1, *et seq.*), the Alabama Solid Wastes Disposal Act (ALA. CODE §§ 22-27-1, *et seq.*), the Alabama Hazardous Wastes Management and Minimization Act (ALA. CODE §§ 22-30-1, *et seq.*), the Alabama Hazardous Substance Cleanup Fund Act (ALA. CODE §§ 22-30A-1, *et seq.*), the Alabama Underground and Aboveground Storage Tank Trust Fund Act (ALA. CODE §§ 22-35-1, *et seq.*), the Alabama Lead Ban Act of 1988 (ALA. CODE §§ 22-37-1, *et seq.*), the Alabama Lead Reduction Act of 1997 (ALA. CODE §§ 22-37A-1, *et seq.*), the Alabama Drycleaning Environmental Response Trust Fund Act (ALA. CODE §§ 22-30D-1, *et seq.*), the Alabama Pesticide Act (Ala. Code §§ 2-27-1, *et seq.*), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136, *et seq.*), the Occupational Safety and Health Act (29 U.S.C. §§ 651, *et seq.*), and the Alabama Scrap Tire Disposal Act (ALA. CODE §§ 22-40-1, *et seq.*), each such Act as amended from time to time, and in the rules and regulations adopted and publications promulgated pursuant thereto, and in the rules and regulations of the Occupational Safety and Health Administration (“OSHA”) pertaining to occupational exposure to asbestos, as amended from time to time, or in any other federal, state, or local environmental, health, and/or safety laws, statutes, codes, rules, regulations, or ordinances now or hereafter in effect (hereinafter collectively referred to as “Environmental Laws”). As used herein, the term “Pesticides/Herbicides” includes, without limitation, any pesticides, insecticides, nematocides, fungicides, rodenticides, herbicides, desiccants, and/or defoliant, or related or unrelated substances or materials defined, regulated, controlled, limited, or prohibited in the Alabama Pesticide Act (ALA. CODE §§ 2-27-1, *et seq.*), the Federal Insecticide, Fungicide and Rodenticide Act, the Occupational Safety and Health Act, RCRA, CERCLA, or in any other Environmental Law. Under no circumstances shall underground or aboveground storage tanks be constructed or used in conjunction with the Elevated Structure. Notwithstanding anything to the contrary in the foregoing, the Permittee shall be permitted to use reasonable amounts of those Hazardous Materials and Pesticides/Herbicides that are necessary to occupy the Elevated Structure; provided, however, that any such use shall be in compliance with all Federal, State, and local Environmental Laws. For purposes of the preceding sentence, Alabama Power shall be the sole judge as to what constitutes “reasonable amounts” and which Hazardous Materials are “necessary” to occupy with the Elevated Structure.

- (b) Under no circumstances, however, shall the Subject Land or the Elevated Structure be utilized in such a manner as to constitute an “establishment” as that term is defined in 7 U.S.C. § 136(dd).
- (c) **The Permittee shall ensure that all of the Subject Land and the Elevated Structure comply at all times and in all respects with all Environmental Laws.**
- (d) The Permittee shall give immediate oral and written notice to Alabama Power’s Shoreline Management office (205-384-7385; 5558 Curry Highway, Suite #3, Jasper, AL 35503) of the Permittee’s receipt of any written or oral notice of a violation of any of the Environmental Laws on or about the Elevated Structure or the Subject Land or any land adjacent thereto or of any written or oral notice of other claim relating to the environmental or physical condition of any of the same, or of the Permittee’s discovery of any matter which would make the representations, warranties, and/or covenants herein to be inaccurate or misleading in any respect.

B-3.13 In addition to, and not in substitution for or in limitation of, any other indemnification clause set forth herein, the Permittee agrees to and does hereby indemnify and hold Alabama Power, and its successors, assigns, directors, officers, agents, servants, and employees harmless from all loss, cost, damage, claim, and expense incurred by Alabama Power arising from or related to: a) the violation of any representation or warranty set forth in B-3.12 above; b) the Permittee’s failure to perform any obligations of Paragraph B-3.12 above; c) the Permittee’s, the Elevated Structure’s, or the Subject Land’s failure to fully comply with all Environmental Laws; or d) any other matter related to environmental or physical conditions on, under, or affecting the Elevated Structure or the Subject Land. This indemnification expressly includes, but is not limited to, any claims for cost recovery or contribution that Alabama Power may make against the Permittee pursuant to CERCLA, and the Permittee waives any right of contribution against Alabama Power under CERCLA. This indemnification clause shall be given effect in accordance with its plain meaning and no rule of interpretation shall be given effect as to construe it contrary to the party responsible for its drafting. This indemnification shall survive the expiration, revocation, cancellation, or

termination of the Permit, the exercise of any right or remedy under the Permit, and any subsequent sale or transfer of the Elevated Structure and all similar or related events or occurrences. However, this indemnification shall not apply to any Hazardous Materials or Pesticides/Herbicides contained in, treated, stored, handled, generated, located on, discharged from, or disposed of on, or constituting a part of, the Subject Land before the Permittee's occupation of either the Elevated Structure or the Subject Land or after the termination, revocation, cancellation, or expiration of the Permit and the subsequent vacation of, and removal from the Subject Land of, the Elevated Structure.

- B-3.14 The Permittee represents that the Permittee owns the Elevated Structure and that the same is in good order and satisfactory condition. Alabama Power does not represent or warrant that the Elevated Structure is safe or suitable for the purposes for which it is permitted to be used under the terms of the Permit or represent or warrant anything else with respect to the Elevated Structure. The Permittee is solely responsible for proper design, engineering, certification, construction, and maintenance of the Elevated Structure and of the supporting sanitation system. **FURTHER, ALABAMA POWER MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND AS TO THE SUITABILITY OR ADEQUACY OF THE SOIL OR SUBSURFACE OR OTHER CONDITIONS IN, ON, OR UNDER EITHER THE ELEVATED STRUCTURE OR THE SUBJECT LAND.** Neither Alabama Power, nor its successors, assigns, directors, officers, agents, servants, or employees, shall be liable to the Permittee, or the Permittee's heirs, assigns, employees, servants, agents, family members, guests, invitees, or any other persons or entities whomsoever, for loss or damage on account of injuries to the Elevated Structure or any personal property in or around the Elevated Structure, or on account of any past or future injuries to the Permittee, or the Permittee's heirs, assigns, employees, servants, agents, family members, guests, invitees, or any other persons or entities whomsoever, in or upon any portion of the Elevated Structure, which are caused by, or arise as a result of soil and/or subsurface conditions, known or unknown (including, without limitation, underground mines, tunnels, sinkholes, or other geological formations or conditions) in, on, or under either the Elevated Structure or the Subject Land.
- B-3.15 Alabama Power shall have no obligation to approve any proposed new structure or material or any modification of the Elevated Structure and may withhold its consent for any reason it may desire (without regard to any standard of reasonableness or otherwise). The Permittee shall obtain, comply with, and promptly provide to Alabama Power upon request copies of all Federal, State, and local governmental or other permits and approvals required in connection with any repair.
- B-3.16 The Permittee agrees to cooperate with and participate in any present or future program of solid waste disposal in effect in the area of the Subject Land. The Permittee shall keep the Elevated Structure and adjacent lands and waters free of all waste, garbage, and other unsightly debris, structures, or other materials (including but not limited to those of useless or limited value), and the Permittee shall comply with all local health statutes, codes, ordinances, rules, laws, and regulations.
- B-3.17 In the event previously unidentified archeological or historic items or properties are uncovered during the course of the Permittee's use or occupancy of the Subject Land, the Permittee shall immediately stop all activity in the vicinity of the area where such properties are uncovered. The Permittee shall immediately notify Alabama Power, the Alabama State Historic Preservation Officer, and any Indian Tribe attaching religious or cultural significance to such finding, and consult with these entities to determine the need for an additional cultural resource management plan. Such plan shall include, but not be limited to, a description of the potential effect of the Permittee's activities, the proposed measures for avoiding or mitigating any adverse impacts, documentation of consultation with the State Historic Preservation Officer and any Indian Tribe attaching religious or cultural significance, and a schedule for mitigating the impacts. Alabama Power may file such plan and evidence of the Permittee's consultation with Alabama Power, the State Historic Preservation Officer, and any Indian Tribe attaching religious or cultural significance with the Alabama State Historic Preservation Commission (the "Commission") for approval and no activities adversely affecting such archaeological or historic items or properties may resume until authorized in writing by Alabama Power or the Commission.
- B-3.18 If it is determined by Alabama Power, in the sole discretion of Alabama Power, that the Permittee has failed to comply with any of the terms, conditions, and/or provisions of the Permit, or with any additional requirements, directives, instructions, and/or conditions imposed by Alabama Power, or with any law, code, rule, regulation, ordinance, or directive of any Federal, State, or local governmental authority, the

Permittee shall take appropriate action to correct such violation. If said violation shall continue for a period of thirty (30) days after notice thereof by Alabama Power, Alabama Power may, in its sole discretion, terminate the Permit and all rights of the Permittee to maintain the Elevated Structure and require the Permittee to remove, or cause to be removed, from the Subject Land within thirty (30) days the Elevated Structure at the Permittee's sole expense. In the event Alabama Power institutes court proceedings to enforce the provisions of the Permit or to require the Permittee to remove the Elevated Structure, then the Permittee expressly waives hereby any defenses of estoppel, laches, the statute of limitations, and/or similar defenses. Further, the Permittee expressly agrees to reimburse Alabama Power for all costs and expenses, including but not limited to attorney's fees, incurred by Alabama Power in the enforcement of the Permit and any and all costs and expenses incurred by Alabama Power to remove and dispose of the Elevated Structure or any part thereof.

- B-3.19 The Permittee agrees that: a) upon requirement of a regulatory agency; or b) if Alabama Power determines, in its sole discretion, that emergency circumstances necessitate; or c) if Alabama Power determines, in its sole discretion, that Alabama Power's subsequent operations necessitate; or d) if Alabama Power determines, in its sole discretion, that the Elevated Structure may cause obstruction of navigation; or e) if Alabama Power determines, in its sole discretion, for any other reason whatsoever, then within thirty (30) days from written notice from Alabama Power, or within such lesser period from written notice from Alabama Power as Alabama Power may determine in its sole discretion in the event of any of the circumstances described in clauses a) through e), Alabama Power may terminate the Permit and all rights of the Permittee to maintain the Elevated Structure and/or require the Permittee to remove, alter, or relocate the Elevated Structure at the Permittee's sole expense without any further notice to Permittee.
- B-3.20 Upon any termination, cancellation, revocation, or expiration of the Permit for any reason, the Permittee shall at the Permittee's sole expense within thirty (30) days, or at such earlier time as required pursuant to Paragraph B-3.19 above, remove from the Subject Land the Elevated Structure and anything else left by the Permittee. In the event the Permittee shall fail to so remove the Elevated Structure or anything else left by the Permittee, Alabama Power may elect to treat the same as abandoned by the Permittee, and Alabama Power may dismantle, discard, convey, or otherwise dispose of or destroy the same in any manner Alabama Power may elect and may recover the costs incurred in connection therewith from the Permittee without any additional notice to Permittee.
- B-3.21 The Permit and the Permittee's rights under the Permit are personal to the Permittee, and may not be assigned without the express written consent of Alabama Power, which Alabama Power may grant or withhold in its sole discretion and without regard to any standard of reasonableness or otherwise. In the event the Permittee conveys or otherwise transfers the Elevated Structure (other than a transfer resulting from the death of the Permittee), the Permittee shall give to Alabama Power notice in writing of the name and address of the intended transferee at least seven (7) days prior to the transfer. The Permittee shall provide prior notice to any potential transferee of the existence and terms of the Permit. In the event that Alabama Power shall not give its written consent to the assignment of the Permit to any purported transferee of the Elevated Structure, any attempted transfer shall be voidable by Alabama Power but such purported transferee shall nonetheless be bound by the terms, conditions, and provisions of the Permit and the continued use of the Elevated Structure by any such purported transferee shall conclusively be deemed the purported transferee's agreement to be bound by all the terms, conditions, and provisions hereof.
- B-3.22 No delay or omission of Alabama Power to exercise any right, power, or remedy hereunder shall exhaust or impair any such right, power, or remedy or shall be construed to be a waiver of the same or a waiver of any default by the Permittee, or acquiescence in such a default; and every right, power, and remedy given hereunder to Alabama Power may be exercised from time to time and as often as Alabama Power may elect. No waiver of any default hereunder shall extend to or shall affect any subsequent or any other then existing default or shall impair any rights, powers, or remedies of Alabama Power. No right, power, or remedy conferred upon or reserved to Alabama Power under the Permit is intended to be exclusive of any other right, power, or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power, and remedy given hereunder or otherwise available at law or in equity. It is agreed that in any proceeding by Alabama Power to enforce the Permit, damages alone may not be an adequate remedy, and Alabama Power shall have the right to seek and

obtain injunctive and other equitable relief in addition to monetary damages. The Permittee agrees that the obligations of the Permittee under the Permit are joint and several.

- B-3.23 The Permit and the rights of Alabama Power under the Permit may be assigned by Alabama Power, and the Permit shall be enforceable by any assignee, or transferee, or successor of Alabama Power.
- B-3.24 The Permittee shall assess and pay all taxes attributable to the Elevated Structure and all land and personal property of the Permittee.
- B-3.25 The Permit and the permission given hereby are subject to all easements, restrictions, reservations, and other matters that may affect Alabama Power's right, title, and interest in and to the Subject Land, whether the same are of record, are discoverable by an accurate survey or inspection of the Subject Land, or are shown in drawings on file with Alabama Power which shall be made available to the Permittee for inspection upon request made reasonably in advance of such inspection.
- B-3.26 The Permittee will pay or reimburse Alabama Power for all reasonable attorneys' fees, costs, and expenses incurred by Alabama Power in any proceeding involving the estate of a decedent or an insolvent, or, excluding those actions described in Paragraph B-3.27 below, in any action, proceeding, or dispute of any kind in which Alabama Power is made a party, or appears as party plaintiff or defendant, affecting the Permit, the Elevated Structure, or the Subject Land, including but not limited to the sale or other exercise of remedies under any mortgage or security interest affecting the Elevated Structure or the Permittee. If the Permittee shall default under any of the terms, conditions, or provisions of the Permit on the Permittee's part to be performed or observed, Alabama Power may but shall not be obligated to satisfy or perform the same on behalf of the Permittee and in the event it does so, Alabama Power shall be entitled to collect from the Permittee interest on any monies expended on behalf of the Permittee and any costs or expenses incurred by Alabama Power, at a rate per annum equal to the lesser of: a) the highest rate allowable by law; or b) 12% per annum. The Permittee expressly waives all exemptions secured to the Permittee under the laws of the State of Alabama or any State in the United States as against the collection of any debt herein or hereby incurred or secured.
- B-3.27 In the event that the whole or any part of the Elevated Structure and Subject Land shall be taken by any public authority under the power of eminent domain or like power or transferred in lieu thereof, then the Permit shall terminate effective as of the date possession thereof shall be required to be delivered pursuant to the instrument of transfer or the final order, judgment, or decree entered in the proceedings in exercise of such power. All damages awarded for a taking of the Elevated Structure and the Permittee's property, or any part thereof shall be payable in the full amount thereof to and the same shall be the property of the Permittee, including but not limited to, any sum paid or payable as compensation for loss of value of any leasehold or any other right of the Permittee with respect to any part of the Elevated Structure and the Permittee's property. Any award attributable to any taking of any of Alabama Power's property shall belong and be paid to Alabama Power.
- B-3.28 With respect to any action by Alabama Power to enforce any term, condition, or provision of the Permit or any action for the interpretation of any term, condition, or provision of the Permit or the parties' rights with respect to the Elevated Structure and/or the Subject Land, the Permittee hereby expressly waives any defense of estoppel, waiver, laches, the statute of limitations, and similar defenses. Further, the Permittee expressly agrees to reimburse Alabama Power for all costs and expenses, including attorneys' fees and other legal expenses, incurred in the interpretation or enforcement of any provision of the Permit where Alabama Power is the prevailing party, and for any and all costs and expenses incurred by Alabama Power to remove and/or dispose of the Elevated Structure or any part thereof or anything else left by the Permittee on Alabama Power's fee-owned and/or flood easement lands.
- B-3.29 The Permit does not convey a view or easement in light or air, and Alabama Power makes no guarantee of any particular view. Permittee agrees and acknowledges that there is no right to a view or light or air under Alabama law.
- B-3.30 Any Permittee that is issued a Programmatic General Permit ("PGP") by Alabama Power on behalf of the U.S. Army Corps of Engineers will be responsible for complying with the Special and General Conditions contained within the PGPs and with any project specific conditions provided. A copy of the PGPs for minor activities on Alabama Power reservoirs is available from Alabama Power and on the web sites of Alabama Power (<https://apcshorelines.com/shoreline-management/>) and the U.S. Army Corps of

Engineers (<http://www.sam.usace.army.mil/Missions/Regulatory/GeneralPermits.aspx>). The Permittee shall minimize adverse impacts to State waters by strict adherence to the ADEM Special Conditions and Best Management Practices that can be found on Alabama Power's Shoreline Management website at: <https://apcshorelines.com/shoreline-management/>. If it is determined by Alabama Power, the Permittee, or a Federal or State agency that the Permittee is performing work that may affect species listed as threatened or endangered under the Endangered Species Act or the habitat of such species, the Permittee must notify Alabama Power in writing and must cease and desist any and all potentially affecting work until further notified in writing by Alabama Power. Moreover, the Permittee shall comply with any specific terms and conditions as listed in any Approval Letter provided from Alabama Power's Environmental Affairs Department.

- B-3.31 Should Permittee fail to comply with any term, condition, criterion, or provision herein (and/or any other requirement or directive of Alabama Power or any government agency) regarding the protection of a Sensitive Resource Area, Permittee shall be solely responsible for correcting and remedying any and all such non-compliance within a time period determined by Alabama Power in its sole discretion.
- B-3.32 Alabama Power's rights contained herein, including without limitation Alabama Power's rights to remove the Elevated Structure upon revocation, cancellation, expiration, or termination of the Permit, rights to recover the cost thereof from the Permittee, and rights to recover attorneys' fees, shall survive the revocation, cancellation, expiration, or termination of the Permit.
- B-3.33 Where written notice from Alabama Power to the Permittee is contemplated herein, any such notice shall be addressed to the Permittee at the Permittee's address set forth in the Permit. Where written notice from the Permittee to Alabama Power is contemplated herein, any such notice shall be addressed to Alabama Power's Shoreline Management office (5558 Curry Highway, Suite #3, Jasper, AL 35503).
- B-3.34 The Permit sets forth the entire understanding and agreement among and/or between Permittee and Alabama Power with respect to the subject Elevated Structure(s) and supersedes any prior or contemporaneous oral and/or written agreements or representations among and/or between Permittee and Alabama Power with respect to the subject Elevated Structure(s).
- B-3.35 Should any of the terms, conditions, and/or provisions set forth in this Section B-3 be determined to be invalid by any court, agency, or any other tribunal of competent jurisdiction, such determination shall not affect the enforceability of the other terms, conditions, and/or provisions herein, and to this end the terms, conditions, and/or provisions of this Section B-3 are declared severable.

SECTION B-4

APPLICABLE PERMIT FEES REGARDING ELEVATED SINGLE-FAMILY STRUCTURES

The Permit fee schedule and structure set forth in Section A-4 do and shall apply to all Permits for Elevated Structures, and the Permittee agrees to pay any such fee (as deemed applicable and appropriate by Alabama Power in its sole discretion) to Alabama Power. The Permittee further acknowledges and agrees that the Permittee also shall be responsible for the payment of all costs and expenses, including but not necessarily limited to attorneys' fees and court costs, incurred by Alabama Power in connection with Alabama Power's efforts to collect any of the fees outlined in Section A-4 that are owed by the Permittee to Alabama Power.

ATTORNEYS' FEES

By accepting a Permit from Alabama Power Company and/or constructing and keeping an Elevated Structure on Alabama Power's fee-owned and/or flood easement lands, the Permittee agrees and acknowledges that Alabama Power has a right to request, and the Permittee has an obligation to pay, any and all attorneys' fees, expenses, and/or costs incurred by Alabama Power relating to the enforcement of the rules, regulations, provisions, terms, and/or conditions of the Permit (which includes these Guidelines), including, without limitation, any and all attorneys' fees, expenses, and costs incurred by Alabama Power relating to remedying any action, construction, or activity that is not in compliance with the Permit (which includes these Guidelines), whether caused by the Permittee and/or the Permittee's family members, guests, agents, employees, and/or contractors.

Permittee Statement: I have received, read, understand, and agree to abide by and otherwise adhere to these Guidelines.

Signed: _____ **Date:** _____
Permittee

SECTION C-1

ISSUANCE OF PERMITS REGARDING UNENCLOSED LEGACY STRUCTURES

The owner of an Unenclosed Legacy Structure—*i.e.*, a Legacy Structure (an existing structure that generally is not encompassed by a written permit previously issued by Alabama Power Company (“Alabama Power”) and is not in strict compliance with these Guidelines) where at least one side of said structure is not walled and thus does allow for the adequate flow of water, as determined by Alabama Power in its sole discretion—need not apply for a Residential Shoreline Permit (the “Permit”). Rather, Alabama Power will issue Permits for Unenclosed Legacy Structures to the owners of said structures at Alabama Power’s sole discretion.

SECTION C-2

PERMIT CRITERIA AND PROVISIONS APPLICABLE TO UNENCLOSED LEGACY STRUCTURES

The Permit Criteria and Provisions Applicable to Residential Shoreline Construction and/or Related Activity set forth in Section A-2 do and shall apply to any and all Permits concerning an Unenclosed Legacy Structure (and Permittee is and shall be bound thereby) unless and only to the extent that the Permittee’s Permit for the Unenclosed Legacy Structure(s) provides or allows otherwise.

ALABAMA POWER RESERVES THE RIGHT TO MAKE AND/OR REQUIRE EXCEPTIONS AND/OR MODIFICATIONS TO THE ABOVE CRITERIA AND PROVISIONS AT ITS SOLE DISCRETION.

SECTION C-3

TERMS AND CONDITIONS OF PERMITS REGARDING UNENCLOSED LEGACY STRUCTURES

The Terms and Conditions of Permits Regarding Residential Shoreline Construction and/or Related Activity set forth in Section A-3 do and shall apply to all Permits concerning an Unenclosed Legacy Structure (and Permittee is and shall be bound thereby) unless and only to the extent that the Permit provides or allows otherwise.

Further, the Permit Criteria and Provisions Applicable to Residential Shoreline Construction and/or Related Activity set forth in Section A-2 shall apply to Permittee’s Permit concerning the Unenclosed Legacy Structure(s) (and Permittee shall be bound thereby) unless and only to the extent that the Permittee’s Permit provides or allows otherwise. The Permit Criteria and Provisions Applicable to Unenclosed Legacy Structures set forth in Section C-2 shall apply to Permittee’s Permit concerning the Unenclosed Legacy Structure(s), and Permittee must comply with such criteria and provisions.

Further, the Permittee may not enlarge or otherwise modify the Permittee’s Unenclosed Legacy Structure(s) without first obtaining Alabama Power’s written permission to do so. Any such enlargement or modification will subject Permittee to payment of any applicable Alabama Power permitting program fee (see Section A-4).

Further, the Permit sets forth the entire understanding and agreement among and/or between Permittee and Alabama Power with respect to the subject Unenclosed Legacy Structure(s) and supersedes any prior or contemporaneous oral and/or written agreements or representations among and/or between Permittee and Alabama Power with respect to the subject Unenclosed Legacy Structure(s).

Further, should the Unenclosed Legacy Structure(s) be destroyed or incur significant damage—whether due to a weather-related reason or due to any other reason whatsoever—the Permittee may not rebuild or repair the Unenclosed Legacy Structure(s) without first obtaining Alabama Power’s written permission to do so, and Alabama Power

reserves the right to require that any such rebuild or repair activity comply with, and otherwise be in accord with, the current Guidelines. Alabama Power is the sole judge as to what constitutes “significant damage.”

SECTION C-4

APPLICABLE PERMIT FEES REGARDING UNENCLOSED LEGACY STRUCTURES

There is no fee associated with the issuance of a Permit solely applicable to the authorization of an Unenclosed Legacy Structure. The Permit fee schedule and structure regarding the General Repair Fee, Unauthorized Construction Fee, Unauthorized Structure Repair Fee, and Non-Compliance Fee set forth in Section A-4 do and shall apply to all Permits for Unenclosed Legacy Structures, and the Permittee shall pay any such fee (as deemed applicable and appropriate by Alabama Power in its sole discretion) to Alabama Power. The Permittee also shall be responsible for the payment of all costs and expenses, including but not necessarily limited to attorneys’ fees and court costs, incurred by Alabama Power in connection with Alabama Power’s efforts to collect any of the aforementioned applicable fees outlined in Section A-4 that are owed by the Permittee to Alabama Power.

ATTORNEYS’ FEES

Alabama Power has a right to request, and the Permittee has an obligation to pay, any and all attorneys’ fees, expenses, and/or costs incurred by Alabama Power relating to the enforcement of the rules, regulations, provisions, terms and/or conditions of the Permit (which includes these Guidelines), including, without limitation, any and all attorneys’ fees, expenses, and costs incurred by Alabama Power relating to remedying any action, construction, or activity that is not in compliance with the Permit (which includes these Guidelines), whether caused by the Permittee and/or the Permittee’s family members, guests, agents, employees, and/or contractors.

By and through the act of receiving a Permit encompassing an Unenclosed Legacy Structure and thereafter keeping said Unenclosed Legacy Structure on Alabama Power’s fee-owned and/or flood easement lands (rather than removing said Unenclosed Legacy Structure(s) from Alabama Power’s fee-owned and/or flood easement lands), the Permittee acknowledges and agrees that the Permittee shall be deemed to have read, understood, accepted, and agreed to be bound by these Guidelines (including but not limited to the criteria and provisions, terms and conditions, fee schedule and structure, and other matters set forth in Sections C-1 through C-4 above), regardless of whether these Guidelines are signed by the Permittee.

SECTION D-1

ISSUANCE OF PERMITS REGARDING ENCLOSED LEGACY STRUCTURES

The owner of an Enclosed Legacy Structure—a Legacy Structure (an existing structure that generally is not encompassed by a written permit previously issued by Alabama Power Company (“Alabama Power”) and is not in strict compliance with these Guidelines) that is walled on all sides, as determined by Alabama Power in its sole discretion—need not apply for a Residential Shoreline Permit (the “Permit”). Rather, Alabama Power will issue Permits for Enclosed Legacy Structures to the owners of said structures at Alabama Power’s sole discretion.

SECTION D-2

PERMIT CRITERIA AND PROVISIONS APPLICABLE TO ENCLOSED LEGACY STRUCTURES

The guidance and other matters discussed in these Sections D-1 through D-4 are intended for use in permitting and potentially retrofitting and/or modifying (if necessary) Enclosed Legacy Structures. The presence of enclosed structures on Alabama Power’s fee-owned and/or flood easement lands impedes Alabama Power’s ability to exercise its property ownership, flood easement, and/or other rights, and these Sections D-1 through D-4 discuss the matters associated with Alabama Power’s issuance of a Permit for an Enclosed Legacy Structure to an owner or owners of such a structure.

Alabama Power has instituted its Enclosed Legacy Structure permit program as a way to transition existing, non-compliant, enclosed structures into the permitting and compliance program and to ensure Alabama Power’s property ownership, flood storage, and/or related rights are protected. However, this program is limited to the life of any at issue Enclosed Legacy Structure as it exists at the time of the issuance of the Permit (subject to any necessary retrofitting or modification work).

Upon Alabama Power’s issuance of a Permit for an Enclosed Legacy Structure, the Permittee is and shall be required to determine whether said Enclosed Legacy Structure must be retrofitted or modified in order to accommodate fully Alabama Power’s flood storage capacity by allowing for rising water to freely enter and exit the Enclosed Legacy Structure (*e.g.*, elevating the Enclosed Legacy Structure so that the entirety of the enclosed portion(s) is situated above and outside of Alabama Power’s flood easement elevation or “wet flood-proofing” the Enclosed Legacy Structure by venting or otherwise modifying said structure to allow for the free flow of water into and out of the enclosed portion(s) situated within Alabama Power’s flood easement elevation). The Permittee need not retrofit or modify the Enclosed Legacy Structure if the Permittee obtains written certification from a licensed engineer or contractor in good standing attesting to either of the following:

1. The portion, if any, of the Enclosed Legacy Structure located beneath Alabama Power’s applicable flood storage area elevation can be shown to allow water to freely enter and exit the structure (as ultimately may be determined by Alabama Power in its sole discretion)—Alabama Power may require the Permittee to provide Alabama Power with certification from a licensed engineer or contractor affirming the ability for water to freely enter and exit the Enclosed Legacy Structure, and Alabama Power reserves the right to require recertification at any time; or
2. The entirety of the lowest floor of the Enclosed Legacy Structure is located above Alabama Power’s applicable flood storage elevation, and the portion, if any, of the structure located beneath the lowest floor can be shown to allow water to freely enter and exit the structure (as ultimately may be determined by Alabama Power in its sole discretion)—Alabama Power may require the Permittee to provide Alabama Power with certification from a licensed engineer or contractor affirming the ability for water to freely enter and exit any relevant portion of the Enclosed Legacy Structure, and Alabama Power reserves the right to require recertification at any time.

Any Permittee who is unable to satisfy either of the conditions shown above is and shall be required to retrofit or modify the Enclosed Legacy Structure in order to accommodate Alabama Power’s flood storage capacity by allowing for the free flowage of water into and out of said structure; the Permittee is and shall be solely

responsible for any and all costs and expenses associated with retrofitting or modifying the Enclosed Legacy Structure, and the Permittee is and shall be solely responsible for ensuring that the Enclosed Legacy Structure is retrofitted or modified in adequate fashion within one year of the issuance of the Permit. At any time after this one-year retrofit/modification deadline, Alabama Power may request from the Permittee, and the Permittee is and shall be required to provide to Alabama Power, written certification (or subsequent written recertification) from a licensed engineer or contractor in good standing affirming that the completed retrofit and/or modification work has resulted in the full and complete accommodation of Alabama Power's flood storage capacity by allowing for water to freely enter and exit the Enclosed Legacy Structure. In regard to any requisite retrofitting or modification work, the Permittee (and/or the Permittee's licensed engineer or contractor) may wish to refer to the methods for retrofitting/modifying (*i.e.*, making changes to existing) enclosed structures in floodplains outlined in FEMA's *Homeowner's Guide to Retrofitting*, FEMA P-312 (current edition available on FEMA's website: <http://www.fema.gov/library>).

Any requisite retrofitting or modification of an Enclosed Legacy Structure is for the sole purpose of protecting Alabama Power's flood storage area and/or other property rights; Alabama Power does not and shall not warrant the safety or suitability of any Enclosed Legacy Structure retrofit and/or modification work, and Alabama Power personnel is not authorized to confirm or otherwise opine as to whether the Permittee's retrofit and/or modification work results in compliance with any Federal, State, or local flood and/or other relevant laws, ordinances, codes, rules, or regulations. Alabama Power reserves the right to determine in its sole discretion whether the Permittee's subsequent retrofitting and/or modification work ultimately allows water to freely enter and exit the Enclosed Legacy Structure in an adequate fashion.

Alabama Power makes no representation or warranty that any Enclosed Legacy Structure is safe or suitable. The Permittee does and shall have sole responsibility for complying with all applicable restrictions, subdivision covenants, ordinances, health and sanitation codes, laws, rules, ordinances, and regulations, and building codes with regard to his or her Enclosed Legacy Structure(s).

Should the Enclosed Legacy Structure(s) be destroyed or incur significant damage—whether due to a weather-related reason or due to any other reason whatsoever—the Permittee may not rebuild or repair the Enclosed Legacy Structure(s) without first obtaining Alabama Power's written permission to do so, and Alabama Power reserves the right to require that any such rebuild or repair activity comply with, and otherwise be in accord with, the current Guidelines. Alabama Power is the sole judge as to what constitutes "significant damage." No expansion, rebuilding, substantial repair, and/or replacement of the Enclosed Legacy Structure may take place unless the Permittee first obtains Alabama Power's express written consent to do so. Any such unauthorized activity will subject Permittee to payment of any applicable Alabama Power permitting program fee (see Section A-4).

The Permit Criteria and Provisions Applicable to Residential Shoreline Construction and/or Related Activity set forth in Section A-2 do and shall apply to all Permits concerning an Enclosed Legacy Structure (and Permittee is and shall be bound thereby) unless and only to the extent that the Permittee's Permit for an Enclosed Legacy Structure provides or allows otherwise.

PROBATE COURT RECORDING: Alabama Power may record a copy of the Permittee's Permit for the Enclosed Legacy Structure(s) (which will include these Guidelines and any other appropriate documentation, as determined by Alabama Power in its sole discretion) in the applicable local probate court to provide notice of the Permit within the Permittee's chain of title.

ALABAMA POWER RESERVES THE RIGHT TO MAKE AND/OR REQUIRE EXCEPTIONS AND/OR MODIFICATIONS TO THE ABOVE CRITERIA AND PROVISIONS AT ITS SOLE DISCRETION.

SECTION D-3

TERMS AND CONDITIONS OF PERMITS REGARDING ENCLOSED LEGACY STRUCTURES

Any Permit regarding an Enclosed Legacy Structure granted by Alabama Power to Permittee does and shall include and incorporate the following Terms and Conditions, and such Permit does and shall require the Permittee to comply with, and otherwise adhere to, the following Terms and Conditions:

- D-3.1 The Permit granted by Alabama Power to the Permittee is solely for the purpose described in the Permit.
- D-3.2 Alabama Power expressly gives its consent and permission to the Permittee to maintain the Enclosed Legacy Structure upon the Subject Land, subject to the terms and conditions of this Section D-3; the Enclosed Legacy Structure and the Subject Land are referenced and/or more particularly described in the Permit (*e.g.*, see “Subject Land Coordinates/Information” and “SKETCH OF PERMITTED STRUCTURES”). All expenses and responsibilities regarding the Enclosed Legacy Structure, including the expenses of obtaining any necessary Federal, State, and local permits or approvals, shall be borne solely by the Permittee. The Permittee shall not enlarge the Enclosed Legacy Structure unless the Permittee first obtains Alabama Power’s express written consent to do so.
- D-3.3 The Permit applies only to the Enclosed Legacy Structure(s) referenced and/or more particularly described in the Permit as approved by Alabama Power. The Permit does not give the Permittee any right to expand the Enclosed Legacy Structure(s) without prior written approval of Alabama Power. The Permit constitutes a mere license and does not convey any property rights, either in real estate or material, and does not authorize any unpermitted injury to private property or invasion of private rights or any infringement of Federal, State, or local laws or regulations. In keeping with the foregoing, should the Permittee cause (or allow to be caused) any unauthorized damage to Alabama Power’s fee-owned lands (or any unauthorized interference to/with Alabama Power’s flood easement rights), Alabama Power may require the Permittee to remediate any such damage (or any such interference) and, if so, the Permittee must complete such remediation work within the time period prescribed by Alabama Power and at the Permittee’s sole expense (and the Permittee further may be subject to any applicable Permit Fee as determined by Alabama Power (see Section A-4)). This Permit does not eliminate the necessity of the Permittee obtaining any Federal, State, or local permission required by law for the operation or maintenance of the Enclosed Legacy Structure. Neither by the use of the Enclosed Legacy Structure, nor in any other way, does or shall the Permittee: a) make any claim of property rights or interests in or to Alabama Power’s fee-owned, flood easement, and/or control strip lands adverse to Alabama Power’s rights therein; b) make any other claim adverse to Alabama Power; or c) deny or impair Alabama Power’s right to use and enjoy its fee-owned, flood easement, and/or control strip lands.
- D-3.4 The Permit Criteria and Provisions Applicable to Residential Shoreline Construction and/or Related Activity set forth in Section A-2 apply to Permittee’s Permit concerning the Enclosed Legacy Structure(s) (and Permittee must comply with such criteria and provisions) unless and only to the extent that the Permit provides or allows otherwise. The Permit Criteria and Provisions Applicable to Enclosed Legacy Structures set forth above in Section D-2—including but not limited to the criteria and provisions concerning potentially required retrofitting and/or modification of the Enclosed Legacy Structure(s)—apply to Permittee’s Permit concerning the Enclosed Legacy Structure(s), and Permittee must comply with such criteria and provisions.
- D-3.5 The maintenance and use of the Enclosed Legacy Structure(s) on the Subject Land by the Permittee is with Alabama Power’s consent and permission only and in consideration of the Permittee’s recognition of Alabama Power’s superior rights and the Permittee’s compliance with all of the terms, conditions, and provisions of the Permit.
- D-3.6 Project No. 2165 is the property of Alabama Power, and Alabama Power’s associated dam (*i.e.*, Smith Dam) was built and is being operated and maintained to hold back, retain, accumulate, store, release, and assist in controlling the waters of the Black Warrior River and its tributaries. In connection therewith, FERC has issued to Alabama Power a license for Project No. 2165 (together with any modification thereof or replacement license, the “FERC License”). Alabama Power reserves the full, unconditional, unrestricted, and complete right and privilege to raise or lower, restrict, control, store, retain, withhold,

increase, decrease, retard, stop, obstruct, divert, release, or use the waters of each of the associated reservoir (*i.e.*, Smith Lake) in any manner Alabama Power, its successors, and assigns may deem appropriate. In the operation of Alabama Power's business and in the exercise of Alabama Power's property rights, there may be fluctuations in the water level in the aforementioned reservoir, and the Permit shall be subject at all times to the right of Alabama Power, its successors, and assigns, which right is hereby reserved from the rights granted to the Permittee hereunder, for and on behalf of Alabama Power, to raise and lower the waters of the aforementioned reservoir from time to time and to flood any and all portions of the Subject Land and/or the Enclosed Legacy Structure(s) continuously or from time to time.

- D-3.7 Alabama Power shall in no case be liable for any damage or injury to the Enclosed Legacy Structure(s) or any personal property therein or the Subject Land that may be caused by or result from Alabama Power's operations or those of any Federal, State, or local governmental body for the improvement of navigation or for other lawful purposes, and no claims or right to compensation shall accrue from any such damage. Except to the extent caused by the negligence of Alabama Power or its employees, agents, or contractors, the Permittee shall release, indemnify, and hold harmless Alabama Power, its officers, agents, and employees, from and against any and all claims and demands by the Permittee, any guest, employee, agent, or contractor or other invitee or licensee of the Permittee, or any other persons whomever, for damages to property or injury or death to persons which may arise out of or be caused directly or indirectly by the Permittee's or any other person's use of the Subject Land or the Enclosed Legacy Structure(s), including without limitation any of the same arising out of or directly or indirectly caused by any flooding of the Subject Land or the Enclosed Legacy Structure(s) or other exercise of Alabama Power's rights with respect to the Subject Land or its FERC License (and including without limitation any and all alleged damages resulting from any issue existing between Permittee and Permittee's adjoining landowners (*i.e.*, neighbors)). It is specifically intended that no flooding of the Subject Land or the Enclosed Legacy Structure(s) or other exercise of Alabama Power's rights with respect to the Subject Land or its FERC License, however and whenever occurring, shall constitute negligence in any way. This indemnification shall survive the expiration, revocation, cancellation, or termination of the Permit, the exercise of any right or remedy under the Permit, and any subsequent sale or transfer of the Enclosed Legacy Structure(s) and all similar or related events or occurrences.
- D-3.8 Any right of the Permittee under the Permit shall at all times be subject to Alabama Power's property rights, as well as the FERC License and all orders, directives, requests, rules, regulations, and other laws relating thereto.
- D-3.9 The Subject Land is within the Project boundary of Project No. 2165, which Alabama Power operates and maintains under its FERC License, and all rights of the Permittee under the Permit are subject to the terms, conditions, and requirements of such FERC License. If Alabama Power is required to do so in order to comply with the terms, conditions, and requirements of the FERC License, or if Alabama Power is directed to do so by FERC, or if FERC imposes on Alabama Power any conditions with respect to the Permit, the Subject Land or premises, the FERC License, or Project No. 2165 (or any portion thereof), Alabama Power may, in its sole and absolute discretion, immediately or at any time thereafter cancel or terminate the Permit.
- D-3.10 Save for the occasional (*i.e.*, non-primary) temporary rental-by-owner arrangement (*e.g.*, "Airbnb" or "VRBO"), Permittee shall not charge others for use of the Enclosed Legacy Structure(s). The Permittee hereby covenants and agrees that the Permittee will not cause or allow any illegal activity to take place on the Subject Land.
- D-3.11 The Permittee solely shall have the obligation of ensuring that the Enclosed Legacy Structure(s) is maintained in a good state of repair and in compliance with all applicable Federal, State, and local health, safety, and other codes, ordinances, regulations, and laws and also in such a manner as to be consistent with shoreline aesthetic values (as may be determined by Alabama Power in its sole discretion). The Permittee shall comply promptly with any lawful regulations or instructions of any Federal, State, or local governmental agency or other governmental authority, as well as with any directive or instruction of Alabama Power. The Permittee shall maintain the Enclosed Legacy Structure(s) in a manner so as to minimize any adverse impact on fish and wildlife habitat and natural environmental values, and the Permittee shall maintain the Enclosed Legacy Structure(s) in such a manner as to not endanger health, create a nuisance, or otherwise be incompatible with the overall recreational use of the Project lands and/or waters (as may be determined by Alabama Power in its sole discretion). Further, the Permittee

shall take all reasonable precautions to ensure that the scenic, recreational, and environmental values of the Project lands and/or waters are protected on the Subject Land. The Permittee shall ensure the full and complete accommodation of Alabama Power's flood storage capabilities as set forth in Section D-2 above. The Permittee shall not impair the full and free use by the public of all navigable waters at or adjacent to the Subject Land or interfere with navigation thereon through ownership, use, or maintenance of the Enclosed Legacy Structure(s).

D-3.12 The Permittee shall comply with all laws applicable to the use of the Enclosed Legacy Structure(s), and without limiting the generality hereof, shall comply with all applicable Federal, State, and local environmental, health, and safety codes, rules, ordinances, laws, and regulations, and any laws or regulations concerning the preservation of public order, and without limitation to the foregoing, the Permittee shall comply with, and otherwise adhere to, the following:

- (a) No Hazardous Materials (as hereinafter defined) or Pesticides/Herbicides (as hereinafter defined) will be contained in, treated, stored, handled, generated, located on, discharged from, or disposed of on, or constitute a part of, the Enclosed Legacy Structure(s) or the Subject Land or treated, stored, handled, generated, located on, or disposed of on the reservoir associated with Project No. 2165 (*i.e.*, Smith Lake). As used herein, the term "Hazardous Materials" includes, without limitation, any asbestos, petroleum, or petroleum products, scrap tires, dry cleaning agents, urea formaldehyde foam insulation, flammable explosives, lead-based paints, polychlorinated biphenyls (hereinafter referred to as "PCBs"), radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related or unrelated substances or materials defined, regulated, controlled, limited, or prohibited in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. §§ 9601, *et seq.*) ("CERCLA"), the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801, *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901, *et seq.*) ("RCRA"), the Clean Water Act (33 U.S.C. §§ 1251, *et seq.*), the Oil Pollution Act (33 U.S.C. §§ 2701, *et seq.*), the Clean Air Act (42 U.S.C. §§ 7401, *et seq.*), the Toxic Substances Control Act (15 U.S.C. §§ 2601, *et seq.*), the Alabama Water Pollution Control Act (ALA. CODE §§ 22-22-1, *et seq.*), the Alabama Solid Wastes Disposal Act (ALA. CODE §§ 22-27-1, *et seq.*), the Alabama Hazardous Wastes Management and Minimization Act (ALA. CODE §§ 22-30-1, *et seq.*), the Alabama Hazardous Substance Cleanup Fund Act (ALA. CODE §§ 22-30A-1, *et seq.*), the Alabama Underground and Aboveground Storage Tank Trust Fund Act (ALA. CODE §§ 22-35-1, *et seq.*), the Alabama Lead Ban Act of 1988 (ALA. CODE §§ 22-37-1, *et seq.*), the Alabama Lead Reduction Act of 1997 (ALA. CODE §§ 22-37A-1, *et seq.*), the Alabama Drycleaning Environmental Response Trust Fund Act (ALA. CODE §§ 22-30D-1, *et seq.*), the Alabama Pesticide Act (Ala. Code §§ 2-27-1, *et seq.*), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136, *et seq.*), the Occupational Safety and Health Act (29 U.S.C. §§ 651, *et seq.*), and the Alabama Scrap Tire Disposal Act (ALA. CODE §§ 22-40-1, *et seq.*), each such Act as amended from time to time, and in the rules and regulations adopted and publications promulgated pursuant thereto, and in the rules and regulations of the Occupational Safety and Health Administration ("OSHA") pertaining to occupational exposure to asbestos, as amended from time to time, or in any other federal, state, or local environmental, health, and/or safety laws, statutes, codes, rules, regulations, or ordinances now or hereafter in effect (hereinafter collectively referred to as "Environmental Laws"). As used herein, the term "Pesticides/Herbicides" includes, without limitation, any pesticides, insecticides, nematocides, fungicides, rodenticides, herbicides, desiccants, and/or defoliant, or related or unrelated substances or materials defined, regulated, controlled, limited, or prohibited in the Alabama Pesticide Act (ALA. CODE §§ 2-27-1, *et seq.*), the Federal Insecticide, Fungicide and Rodenticide Act, the Occupational Safety and Health Act, RCRA, CERCLA, or in any other Environmental Law. Under no circumstances shall underground or aboveground storage tanks be constructed or used in conjunction with the Enclosed Legacy Structure(s). Notwithstanding anything to the contrary in the foregoing, the Permittee shall be permitted to use reasonable amounts of those Hazardous Materials and Pesticides/Herbicides that are necessary to use the Enclosed Legacy Structure(s); provided, however, that any such use shall be in compliance with all Federal, State, and local Environmental Laws. For purposes of the preceding sentence, Alabama Power shall be the sole judge as to what constitutes "reasonable amounts" and which Hazardous Materials are "necessary" to the use of the Enclosed Legacy Structure(s).

- (b) Under no circumstances, however, shall the Subject Land or the Enclosed Legacy Structure(s) be utilized in such a manner as to constitute an “establishment” as that term is defined in 7 U.S.C. § 136(dd).
- (c) **The Permittee shall ensure that all of the Subject Land and the Enclosed Legacy Structure(s) comply at all times and in all respects with all Environmental Laws.**
- (d) The Permittee shall give immediate oral and written notice to Alabama Power’s Shoreline Management office (205-384-7385; 5558 Curry Highway, Suite #3, Jasper, AL 35503) of the Permittee’s receipt of any written or oral notice of a violation of any of the Environmental Laws on or about the Enclosed Legacy Structure(s) or the Subject Land or any land adjacent thereto or of any written or oral notice of other claim relating to the environmental or physical condition of any of the same, or of the Permittee’s discovery of any matter which would contradict any of the terms, conditions, or provisions herein in any respect.

D-3.13 In addition to, and not in substitution for or in limitation of, any other indemnification clause set forth herein, the Permittee shall indemnify and hold Alabama Power, and its successors, assigns, directors, officers, agents, servants, and employees harmless from all loss, cost, damage, claim, and expense incurred by Alabama Power arising from or related to: a) the violation of any provision set forth in D-3.12 above; b) the Permittee’s failure to perform any obligations of Paragraph D-3.12 above; c) the Permittee’s, the Enclosed Legacy Structure’s(s’), or the Subject Land’s failure to fully comply with all Environmental Laws; or d) any other matter related to environmental or physical conditions on, under, or affecting the Enclosed Legacy Structure(s) or the Subject Land. This indemnification expressly includes, but is not limited to, any claims for cost recovery or contribution that Alabama Power may make against the Permittee pursuant to CERCLA, and the Permittee shall have no right of contribution against Alabama Power under CERCLA. This indemnification clause shall be given effect in accordance with its plain meaning and no rule of interpretation shall be given effect as to construe it contrary to the party responsible for its drafting. This indemnification shall survive the expiration or termination of the Permit, the exercise of any right or remedy under the Permit, and any subsequent sale or transfer of the Enclosed Legacy Structure(s) and all similar or related events or occurrences. However, this indemnification shall not apply to any Hazardous Materials or Pesticides/Herbicides contained in, treated, stored, handled, generated, located on, discharged from, or disposed of on, or constituting a part of, the Subject Land before the Permittee’s use of either the Enclosed Legacy Structure(s) or the Subject Land or after the termination, revocation, cancellation, or expiration of the Permit and the subsequent vacation of, and removal from the Subject Land of, the Enclosed Legacy Structure(s).

D-3.14 Alabama Power does not represent or warrant that the Enclosed Legacy Structure(s) is safe or suitable for the purposes for which it is permitted to be used under the terms of the Permit or represent or warrant anything else with respect to the Enclosed Legacy Structure(s). The Permittee is solely responsible for proper design, engineering, certification, modification/retrofitting (to allow water to flow freely through), and maintenance of the Enclosed Legacy Structure(s). **FURTHER, ALABAMA POWER MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND AS TO THE SUITABILITY OR ADEQUACY OF THE SOIL OR SUBSURFACE OR OTHER CONDITIONS IN, ON, OR UNDER EITHER THE ENCLOSED LEGACY STRUCTURE(S) OR THE SUBJECT LAND.** Neither Alabama Power, nor its successors, assigns, directors, officers, agents, servants, or employees, shall be liable to the Permittee, or the Permittee’s heirs, assigns, employees, servants, agents, family members, guests, invitees, or any other persons or entities whomsoever, for loss or damage on account of injuries to the Enclosed Legacy Structure(s) or any personal property in or around the Enclosed Legacy Structure(s), or on account of any past or future injuries to the Permittee, or the Permittee’s heirs, assigns, employees, servants, agents, family members, guests, invitees, or any other persons or entities whomsoever, in or upon any portion of the Enclosed Legacy Structure(s), which are caused by, or arise as a result of soil and/or subsurface conditions, known or unknown (including, without limitation, underground mines, tunnels, sinkholes, or other geological formations or conditions) in, on, or under either the Enclosed Legacy Structure(s) or the Subject Land.

D-3.15 Should the Enclosed Legacy Structure(s) be destroyed or damaged, Alabama Power shall have no obligation to approve any proposed replacement or repair work, and Alabama Power may withhold its consent for any reason it may desire (without regard to any standard of reasonableness or otherwise).

- D-3.16 The Permittee shall cooperate with and participate in any present or future program of solid waste disposal in effect in the area of the Subject Land. The Permittee shall keep the Enclosed Legacy Structure(s) and adjacent lands and waters free of all waste, garbage, and other unsightly debris, structures, or other materials (including but not limited to those of useless or limited value), and the Permittee shall comply with all local health statutes, codes, ordinances, rules, laws, and regulations.
- D-3.17 In the event previously unidentified archeological or historic items or properties are uncovered during the course of the Permittee's use of the Subject Land, the Permittee shall immediately stop all activity in the vicinity of the area where such properties are uncovered. The Permittee shall immediately notify Alabama Power, the Alabama State Historic Preservation Officer, and any Indian Tribe attaching religious or cultural significance to such finding, and consult with these entities to determine the need for an additional cultural resource management plan. Such plan shall include, but not be limited to, a description of the potential effect of the Permittee's activities, the proposed measures for avoiding or mitigating any adverse impacts, documentation of consultation with the State Historic Preservation Officer and any Indian Tribe attaching religious or cultural significance, and a schedule for mitigating the impacts. Alabama Power may file such plan and evidence of the Permittee's consultation with Alabama Power, the State Historic Preservation Officer, and any Indian Tribe attaching religious or cultural significance with the Alabama State Historic Preservation Commission (the "Commission") for approval and no activities adversely affecting such archaeological or historic items or properties may resume until authorized in writing by Alabama Power or the Commission.
- D-3.18 At any time after one year from the issuance date of the Permit, Alabama Power may request from the Permittee, and the Permittee is and shall be required to provide to Alabama Power, written certification (or subsequent written recertification) from a licensed engineer or contractor in good standing affirming that the Enclosed Legacy Structure(s) fully and completely accommodates Alabama Power's flood storage capacity by allowing for water to freely enter and exit any portion of the Enclosed Legacy Structure(s) that is situated within Alabama Power's applicable flood easement elevation. Should the Permittee fail to provide such written certification (or subsequent written recertification) to Alabama Power within thirty (30) days of Alabama Power's request, the same shall be deemed a violation of the terms, conditions, and/or provisions of the Permit, and Alabama Power, in turn, shall be entitled to pursue any and all of its resulting rights, remedies, and powers articulated herein.
- D-3.19 If it is determined by Alabama Power, in the sole discretion of Alabama Power, that the Permittee has failed to comply with any of the terms, conditions, and/or provisions of the Permit, or with any additional requirements, directives, instructions, and/or conditions imposed by Alabama Power, or with any law, code, rule, regulation, ordinance, or directive of any Federal, State, or local governmental authority, the Permittee shall take appropriate action to correct such violation. If said violation shall continue for a period of thirty (30) days after notice thereof by Alabama Power, Alabama Power may, in its sole discretion, terminate the Permit and all rights of the Permittee to maintain the Enclosed Legacy Structure(s) and require the Permittee to remove, or cause to be removed, from the Subject Land within thirty (30) days the Enclosed Legacy Structure(s) at the Permittee's sole expense and without any additional notice from Alabama Power. In the event Alabama Power institutes court proceedings to enforce the provisions of the Permit or to require the Permittee to remove the Enclosed Legacy Structure(s), then the Permittee shall waive any defenses of estoppel, laches, the statute of limitations, and/or similar defenses. Further, the Permittee shall reimburse Alabama Power for all costs and expenses, including attorney's fees incurred in the enforcement of the Permit and any and all costs and expenses incurred by Alabama Power to remove and dispose of the Enclosed Legacy Structure(s) or any part thereof.
- D-3.20 If: a) required by a regulatory agency; or b) Alabama Power determines, in its sole discretion, that emergency circumstances necessitate; or c) Alabama Power determines, in its sole discretion, that Alabama Power's subsequent operations necessitate; or d) Alabama Power determines, in its sole discretion, that the Enclosed Legacy Structure(s) may cause obstruction of navigation; or e) Alabama Power determines, in its sole discretion, for any other reason whatsoever, then within thirty (30) days from written notice from Alabama Power, or within such lesser period from written notice from Alabama Power as Alabama Power may determine in its sole discretion in the event of any of the circumstances described in clauses a) through e), Alabama Power may terminate the Permit and all rights of the Permittee

to maintain the Enclosed Legacy Structure(s) and/or require the Permittee to remove, alter, or relocate the Enclosed Legacy Structure(s) at the Permittee's sole expense.

- D-3.21 Upon any termination, cancellation, revocation, or expiration of the Permit for any reason, the Permittee shall at the Permittee's sole expense within thirty (30) days, or at such earlier time as required pursuant to Paragraph D-3.20 above, remove from the Subject Land the Enclosed Legacy Structure(s) and anything else left by the Permittee. In the event the Permittee shall fail to so remove the Enclosed Legacy Structure(s) or anything else left by the Permittee, Alabama Power may elect to treat the same as abandoned by the Permittee, and Alabama Power may dismantle, discard, convey, or otherwise dispose of or destroy the same in any manner Alabama Power may elect and may recover the costs incurred in connection therewith from the Permittee without any further notice to Permittee.
- D-3.22 The Permit and the Permittee's rights under the Permit are personal to the Permittee, and may not be assigned without the express written consent of Alabama Power, which Alabama Power may grant or withhold in its sole discretion and without regard to any standard of reasonableness or otherwise. In the event the Permittee conveys or otherwise transfers the Enclosed Legacy Structure(s) (other than a transfer resulting from the death of the Permittee), the Permittee shall give to Alabama Power notice in writing of the name and address of the intended transferee at least seven (7) days prior to the transfer. The Permittee shall provide prior notice to any potential transferee of the existence and terms of the Permit. In the event that Alabama Power shall not give its written consent to the assignment of the Permit to any purported transferee of the Enclosed Legacy Structure(s), any attempted transfer shall be voidable by Alabama Power but such purported transferee shall nonetheless be bound by the terms, conditions, and provisions of the Permit and the continued use of the Enclosed Legacy Structure(s) by any such purported transferee shall conclusively be deemed the purported transferee's agreement to be bound by all the terms, conditions, and provisions hereof.
- D-3.23 No delay or omission of Alabama Power to exercise any right, power, or remedy hereunder shall exhaust or impair any such right, power, or remedy or shall be construed to be a waiver of the same or a waiver of any default by the Permittee, or acquiescence in such a default; and every right, power, and remedy given hereunder to Alabama Power may be exercised from time to time and as often as Alabama Power may elect. No waiver of any default hereunder shall extend to or shall affect any subsequent or any other then existing default or shall impair any rights, powers, or remedies of Alabama Power. No right, power, or remedy conferred upon or reserved to Alabama Power under the Permit is intended to be exclusive of any other right, power, or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power, and remedy given hereunder or otherwise available at law or in equity. It is agreed that in any proceeding by Alabama Power to enforce the Permit, damages alone may not be an adequate remedy, and Alabama Power shall have the right to seek and obtain injunctive and other equitable relief in addition to monetary damages. The obligations of the Permittee under the Permit are joint and several.
- D-3.24 The Permit and the rights of Alabama Power under the Permit may be assigned by Alabama Power, and the Permit shall be enforceable by any assignee, transferee, or successor of Alabama Power.
- D-3.25 The Permittee shall assess and pay all taxes attributable to the Enclosed Legacy Structure(s) and all land and personal property of the Permittee.
- D-3.26 The Permit and the permission given hereby are subject to all easements, restrictions, reservations, and other matters that may affect Alabama Power's right, title, and interest in and to any of the Project lands and waters and/or the Subject Land, whether the same are of record, are discoverable by an accurate survey or inspection of the Subject Land, or are shown in drawings on file with Alabama Power which shall be made available to the Permittee for inspection upon request made reasonably in advance of such inspection.
- D-3.27 In the event that the whole or any part of the Enclosed Legacy Structure(s) and Subject Land shall be taken by any public authority under the power of eminent domain or like power or transferred in lieu thereof, then the Permit shall terminate effective as of the date possession thereof shall be required to be delivered pursuant to the instrument of transfer or the final order, judgment, or decree entered in the proceedings in exercise of such power. All damages awarded for a taking of the Enclosed Legacy Structure(s) and the Permittee's property, or any part thereof shall be payable in the full amount thereof

to and the same shall be the property of the Permittee, including but not limited to, any sum paid or payable as compensation for loss of value of any right of the Permittee with respect to any part of the Enclosed Legacy Structure(s) and the Permittee's property. Any award attributable to any taking of any of Alabama Power's property shall belong and be paid to Alabama Power.

- D-3.28 With respect to any action by Alabama Power to enforce any term, condition, or provision of the Permit or any action for the interpretation of any term, condition, or provision of the Permit or the parties' rights with respect to the Enclosed Legacy Structure(s) and/or the Subject Land, the Permittee shall expressly waive any defense of estoppel, waiver, laches, the statute of limitations, and similar defenses. Further, the Permittee shall reimburse Alabama Power for all costs and expenses, including attorneys' fees and other legal expenses, incurred in the interpretation or enforcement of any provision of the Permit where Alabama Power is the prevailing party, and for any and all costs and expenses incurred by Alabama Power to remove and/or dispose of the Enclosed Legacy Structure(s) or any part thereof or anything else left by the Permittee on Alabama Power's fee-owned and flood easement lands.
- D-3.29 The Permit does not convey a view or easement in light or air, and Alabama Power makes no guarantee of any particular view. The Permittee agrees and acknowledges that there is no right to a view or light or air under Alabama law.
- D-3.30 Should the Enclosed Legacy Structure(s) be destroyed or incur significant damage—whether due to a weather-related reason or due to any other reason whatsoever—the Permittee may not rebuild or repair the Enclosed Legacy Structure(s) without first obtaining Alabama Power's written permission to do so, and Alabama Power reserves the right to require that any such rebuild or repair activity comply with, and otherwise be in accord with, the Guidelines. Alabama Power is the sole judge as to what constitutes "significant damage." No expansion, rebuilding, substantial repair, and/or replacement of the Enclosed Legacy Structure(s) may take place unless the Permittee first obtains Alabama Power's express written consent to do so.
- D-3.31 Any Permittee that is issued a Programmatic General Permit ("PGP") by Alabama Power on behalf of the U.S. Army Corps of Engineers will be responsible for complying with the Special and General Conditions contained within the PGPs and with any project specific conditions provided. A copy of the PGPs for minor activities on Alabama Power reservoirs is available from Alabama Power and on the web sites of Alabama Power (<https://apcshorelines.com/shoreline-management/>) and the U.S. Army Corps of Engineers (<http://www.sam.usace.army.mil/Missions/Regulatory/GeneralPermits.aspx>). The Permittee shall minimize adverse impacts to State waters by strict adherence to the ADEM Special Conditions and Best Management Practices that can be found on Alabama Power's Shoreline Management website at: <https://apcshorelines.com/shoreline-management/>. If it is determined by Alabama Power, the Permittee, or a Federal or State agency that the Permittee is performing work that may affect species listed as threatened or endangered under the Endangered Species Act or the habitat of such species, the Permittee must notify Alabama Power in writing and must cease and desist any and all potentially affecting work until further notified in writing by Alabama Power. Moreover, the Permittee shall comply with any specific terms and conditions as listed in any Approval Letter provided from Alabama Power's Environmental Affairs Department.
- D-3.32 Should Permittee fail to comply with any term, condition, criterion, or provision herein (and/or any other requirement or directive of Alabama Power or any government agency) regarding the protection of a Sensitive Resource Area, Permittee shall be solely responsible for correcting and remedying any and all such non-compliance within a time period determined by Alabama Power in its sole discretion.
- D-3.33 Alabama Power's rights contained herein, including without limitation Alabama Power's rights to remove the Enclosed Legacy Structure(s) upon revocation, expiration, cancellation, or termination of the Permit, rights to recover the cost thereof from the Permittee, and rights to recover attorneys' fees, shall survive the revocation, cancellation, expiration, or termination of the Permit.
- D-3.34 Where notice from Alabama Power to the Permittee is contemplated herein, any such notice shall be addressed to the Permittee at the Permittee's address set forth in the Permit. Where written notice from the Permittee to Alabama Power is contemplated herein, any such notice shall be addressed to Alabama Power's Shoreline Management office (5558 Curry Highway, Suite #3, Jasper, AL 35503).

D-3.35 The Permit sets forth the entire understanding and agreement among and/or between Permittee and Alabama Power with respect to the subject Enclosed Legacy Structure(s) and supersedes any prior or contemporaneous oral and/or written agreements or representations among and/or between Permittee and Alabama Power with respect to the subject Enclosed Legacy Structure(s).

D-3.36 Should any of the terms, conditions, and/or provisions set forth in this Section D-3 be determined to be invalid by any court, agency, or any other tribunal of competent jurisdiction, such determination shall not affect the enforceability of the other terms, conditions, and/or provisions herein, and to this end the terms, conditions, and/or provisions of this Section D-3 are declared severable.

SECTION D-4

APPLICABLE PERMIT FEES REGARDING ENCLOSED LEGACY STRUCTURES

There is no fee associated with the issuance of a Permit solely applicable to the authorization of an Enclosed Legacy Structure. The Permit fee schedule and structure regarding the General Repair Fee, Unauthorized Construction Fee, Unauthorized Structure Repair Fee, and Non-Compliance Fee set forth in Section A-4 do and shall apply to all Permits for Enclosed Legacy Structures, and the Permittee shall pay any such fee (as deemed applicable and appropriate by Alabama Power in its sole discretion) to Alabama Power. The Permittee also shall be responsible for the payment of all costs and expenses, including but not necessarily limited to attorneys' fees and court costs, incurred by Alabama Power in connection with Alabama Power's efforts to collect any of the aforementioned applicable fees outlined in Section A-4 that are owed by the Permittee to Alabama Power.

ATTORNEYS' FEES

Alabama Power has a right to request, and the Permittee has an obligation to pay, any and all attorneys' fees, expenses, and/or costs incurred by Alabama Power relating to the enforcement of the rules, regulations, provisions, terms and/or conditions of the Permit (which includes these Guidelines), including, without limitation, any and all attorneys' fees, expenses, and costs incurred by Alabama Power relating to remedying any action, construction, or activity that is not in compliance with the Permit (which includes these Guidelines), whether caused by the Permittee and/or the Permittee's family members, guests, agents, employees, and/or contractors.

By and through the act of receiving a Permit encompassing an Enclosed Legacy Structure and thereafter keeping said Enclosed Legacy Structure on Alabama Power's fee-owned and/or flood easement lands (rather than removing said Enclosed Legacy Structure from Alabama Power's fee-owned and/or flood easement lands), the Permittee acknowledges and agrees that the Permittee shall be deemed to have read, understood, accepted, and agreed to be bound by these Guidelines (including but not limited to the criteria and provisions, terms and conditions, fee schedule and structure, and other matters set forth in Sections D-1 through D-4 above), regardless of whether these Guidelines are signed by the Permittee.