

# ADEM



## ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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MONTGOMERY, ALABAMA

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(334) 271-7700

ONIS "TREY" GLENN, III, P.E.

DIRECTOR

AUG 16 2005

BOB RILEY

GOVERNOR

### CERTIFIED MAIL RETURN RECEIPT REQUESTED

Mr. David Watkins, Manager  
City of Auburn  
144 Tischenor Avenue Suite 1  
Auburn, Alabama 36830

Dear Mr. Watkins:

RE: Auburn Northside WPCF  
Lee County  
Consent Order No. 05-113-CWP

Please find enclosed ADEM Consent Order No. 05-113-CWP which requires you to take certain actions at the Auburn Northside WPCF in regard to alleged violations of the Alabama Water Pollution Control Act. This Consent Order has been issued with the consent of the City of Auburn and the Department. Please note that the assessed civil penalty is due within 45 days.

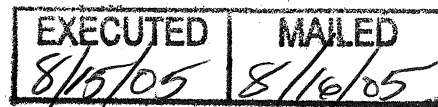
If you have any questions, please do not hesitate to contact me at (334) 271-7823.

Sincerely,

James E. McIndoe, Chief  
Water Division

Enclosures

Cc: Glenda Dean, ADEM-Water Division (e-mail)  
Olivia H. Rowell, Office of General Counsel  
ADEM-Public Affairs Office (e-mail)  
Arthur Collins, US EPA Region IV  
Honorable Bill Ham Jr.  
Scott Cummings, City of Auburn



Birmingham Branch  
110 Vulcan Road  
Birmingham, Alabama 35209-4702  
(205) 942-6168  
(205) 941-1603 [Fax]

Decatur Branch  
2715 Sandlin Road, S.W.  
Decatur, Alabama 35603-1333  
(256) 353-1713  
(256) 340-9359 [Fax]

Mobile Branch  
2204 Perimeter Road  
Mobile, Alabama 36615-1131  
(251) 450-3400  
(251) 479-2593 [Fax]

Mobile - Coastal  
4171 Commanders Drive  
Mobile, Alabama 36615-1421  
(251) 432-6533  
(251) 432-6598 [Fax]



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ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF )  
 )  
CITY OF AUBURN )  
AUBURN NORTHSIDE WPCF ) CONSENT ORDER  
 )  
NPDES Permit No. AL0050245 ) NO.05-113 -CWP  
 )  
AUBURN, LEE COUNTY, ALABAMA, )  
 )

**FINDINGS**

Pursuant to the provisions of the Alabama Environmental Management Act, Code of Alabama (1975), § 22-22A-1 through 22-22A-16, as amended, and the Alabama Water Pollution Control Act, Code of Alabama (1975), § 22-22-1 through 22-22-14, as amended, and the ADEM Administrative Code of Regulations (hereinafter "ADEM Admin. Code R.") promulgated pursuant thereto, and without the adjudication of any issues of fact or law and upon the consent of the parties concerned hereto, the Alabama Department of Environmental Management (hereinafter "the Department") makes the following FINDINGS;

1. City of Auburn (hereinafter "the Permittee"), owns and contracts operations for a wastewater treatment facility known as Auburn Northside WPCF located at 214 Donahue Drive, Auburn in Lee County, Alabama. The wastewater treatment facility discharges pollutants from a point source into Saugahatchee Creek, a water of the state.

2. The Alabama Department of Environmental Management (herein after the Department) is a duly constituted department of the State of Alabama pursuant to §22- 22A-1 through 22-22A-16, Code of Alabama 1975, as amended.

3. Pursuant to § 22-22A-4(n), Code of Alabama 1975, the Department is the state agency responsible for the promulgation and enforcement of water pollution control regulations

in accordance with the federal Water Pollution Control Act, 33 U.S.C. §§ 1342 *et seq.* In addition, the Department is authorized to administer and enforce the provisions of the Alabama Water Pollution Control Act, §§ 22- 22-1 through 22-22-14, Code of Alabama 1975, as amended.

4. On July 6, 2001, pursuant to the National Pollutant Discharge Elimination System (NPDES), administered by the Alabama Department of Environmental Management and approved by the Administrator of the U.S. Environmental Protection Agency pursuant to the Federal Water Pollution Control Act §402, 33 U.S.C. § 1342, the Department issued the Permittee NPDES Permit Number AL0050245 (hereinafter “the Permit”) which established limitations on the discharge of pollutants from such point source, designated therein as outfall number 001, into Saugahatchee Creek. The Permit requires that the Permittee monitor its discharges and submit periodic Discharge Monitoring Reports to the Department describing the results of the monitoring. The Permit also requires that the Permittee maintain in good working order all systems used by the Permittee to achieve compliance with the terms and conditions of the Permit.

5. Discharge Monitoring Reports submitted to the Department by the Permittee indicate that the Permittee has discharged pollutants from such point source into the aforementioned Saugahatchee Creek in violation of the limitations established in the Permit. The months the violations occurred along with the parameters violated are listed in Attachment 1.

6. The Permittee has implemented measures at the Northside WPCF that include the upgrade of its disinfection system to improve chlorination and dechlorination to comply with effluent limitations and monitoring requirements.

7. The Permittee has implemented measures at the Northside WPCF that include a portable waste sludge filter press to improve the operations and performance of the existing equipment and processes and solids management.

8. The Permittee will be submitting a NPDES permit renewal request in January of 2006 for the Northside WPCF.

9. The Department is currently working on Total Maximum Daily Loads (TMDLs) and Waste Load Allocations (WLAs) for Saugahatchee Creek. Yates Reservoir (Saugahatchee Creek embayment) is listed on the 2002 §303(d) List as being impaired due to nutrients and organic enrichment/dissolved oxygen.

10. The Department has determined that protection of Saugahatchee Creek from run off, erosion and other non-point sources through the acquisition and protection of green spaces adjacent to the Creek would be beneficial to water quality in Saugahatchee Creek

11. The Permittee neither agrees nor disagrees with the Findings presented in this Consent Order; and, in an effort to cooperate with the Department and to comply with the provisions of the Alabama Water Pollution Control Act, the Permittee has consented to the terms of this Consent Order.

12. The Department has agreed to the terms of this Consent Order in order to resolve the violations cited in this Consent Order, and the Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

## ORDER

Based on the foregoing FINDINGS and pursuant to Code of Alabama (1975), § 22-22A-5(10), 22-22A-5(12), 22-22A-5(18), and 22-22-9(i), as amended, and with the consent of the Permittee, it is hereby ORDERED:

A. That, unless the Permittee chooses and fulfills the requirements of the alternative penalty payment method outlined in Paragraph B below, not later than 45 days after the effective date of this Consent Order, the Permittee shall pay to the Department a civil penalty in the amount \$9,600 for the violations cited herein.

B. That, alternatively, the Permittee may elect to perform the Supplemental Environmental Project ("SEP") referenced in Attachment 2 hereto to offset a portion of the remaining civil penalty referenced in Paragraph A above. This SEP may, at the sole discretion of the Department, offset a portion of the penalty at a ratio of \$1 for every \$7.50 spent on the SEP but in no event shall the penalty be offset below \$3,200. Should the Permittee elect to perform the SEP, the Permittee shall, within 45 days of the effective date of this Consent Order, pay to the Department a civil penalty of \$3,200 and shall notify the Department of its election to perform the SEP. Adequate documentation of all expenses related to the SEP shall be submitted to the Department for review and concurrence in determining the amount of the penalty to be offset no later than 30 days after the approved completion date of the SEP or the completion of the SEP, whichever is earlier. Routine operating costs (i.e., those costs which would normally be incurred by the Permittee absent the requirements of the SEP) and costs related to routine compliance requirements, including the costs of complying with the requirements of Paragraphs C through E below, shall not be considered for penalty offset. Should the Permittee not offset the total amount of the penalty allowed, the remaining amount of the penalty required which is

not offset shall be due and payable within 30 days of the Department's notifying the Permittee of the remaining amount of penalty due to be paid. If the SEP is implemented, the Permittee shall submit monthly status reports to the Department documenting actual accomplishments and implementation costs.

C. That not later than 90 days after the effective date of this Consent Order, the Permittee shall prepare and submit to the Department an engineering report, to include a schedule for implementation, which identifies the potential causes of noncompliance and investigates the need for changes necessary for the Permittee to achieve compliance with discharge limitations contained in NPDES Permit Number AL0050245. At a minimum, the Permittee shall consider each of the following in making that determination: the need for changes in maintenance and operating procedures, the need for modification of existing treatment works, and the need for new or additional treatment works. The engineering report shall be prepared by a professional engineer, licensed to practice in the State of Alabama. If the Department determines through its review of the submitted engineering report that it is not sufficient to accomplish compliance with NPDES permit effluent limitations, it shall be modified so that it does accomplish compliance. Modifications to the engineering report, if required, shall be made by the City and submitted to the Department no later than 30 days after receipt of the Department's comments.

D. That the Permittee shall prepare and submit to the Department a progress report describing in detail the Permittee's progress toward compliance with items in the compliance plan on or before January 31<sup>st</sup> and July 31<sup>st</sup> of each year that the Permittee's performance of the obligations under this Consent Order remains incomplete. In addition, not later than 14 days following each applicable due date that is contained in this Consent Order, the Permittee shall

submit a written notice of noncompliance with the requirements of that paragraph, if applicable. Notices of noncompliance shall state the cause of noncompliance, corrective action taken, and the Permittee's ability to comply with any remaining requirements of this Consent Order.

E. That the Permittee shall comply with all terms, conditions, and limitations of the Permit no later than 540 days after the effective date of this Consent Order.

F. That after the effective date of this Consent Order for every violation of the NPDES Permit effluent limitations, except for upsets which have been properly documented and substantiated as required by Part II., C., 2. of NPDES Permit Number AL0050245, the Permittee shall pay to the Department the sum of \$100.00 for each and every daily maximum, daily minimum, weekly average, and minimum percent removal violation and \$200.00 for each and every monthly average violation.

G. That should violations continue to occur after 540 days after the effective date of this Consent Order, then the Department shall be free to file suit against the Permittee in the Circuit Court of Montgomery County or other court of competent jurisdiction to enforce compliance of this Consent Order.

H. That payment of stipulated penalties for violations of effluent limitations under this Consent Order shall be due not later than the 28<sup>th</sup> day of the month following the monitoring period in which there were violations. Notification to the Permittee by the Department of the assessment of any stipulated penalty is not required.

I. That all penalties due pursuant to this Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel  
Alabama Department of Environmental Management  
PO Box 301463  
Montgomery, Alabama 36130-1463

J. That this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

K. That subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

L. That the Permittee is not relieved from any liability if it fails to comply with any provision of this Consent Order.

M. That, for purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in a court of competent jurisdiction, including, but not limited to, Montgomery County Circuit Court. The Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement, and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee) including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to be beyond the reasonable



control of the Permittee) and which delays or prevents performances by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of 30 days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the specific circumstances. The Department may also grant any other additional time extension for good cause shown but is not obligated to do so.

N. That the sole purpose of the Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the facility which would constitute possible violations not addressed in this Consent Order or different in kind or degree from those violations addressed, then such future violations shall be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the Permittee shall not object to such future orders, litigation, or enforcement action based on the issuance of this Consent Order if future Order, litigation or other enforcement action address new matters not raised, or matters different in kind or degree raised in this Consent Order.

O. It is the express purpose of the parties entering into this Consent Order to further the objectives set forth in the Alabama Water Pollution Control Act, § 22-22-1 through 22-22-14,

Code of Alabama 1975, as amended, and the Clean Water Act. In light of the objectives, the Permittee agrees to, inter alia, cause the expeditious implementation of the remedial measures as herein set forth and in accordance with the schedules approved by the Alabama Department of Environmental Management, take all steps necessary to: (1) achieve full compliance with its NPDES permit, (2) achieve full compliance with the Alabama Water Pollution Control Act, and (3) comply with all other conditions of this Consent Order.

P. That, by agreement of the parties, this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

Executed in duplicate with each part being an original

CITY OF AUBURN

K. Sed Wilson  
(Name of Authorized Representative)

Mayor Pro Tem

Title

Date Signed: May 4, 2005

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

Onis "Trey" Glenn, III

Director

Date Signed: 8/13/05

# Attachment 1

AL0050245 AUBURN NORTHSIDE WWTP

DMR Value Limit Units Averaging Time

Outfall ID: 0011

TSS

January, 2004

|    |      |     |         |                 |
|----|------|-----|---------|-----------------|
| 26 | 36.1 | 30  | mg/l    | Monthly Average |
| 27 | 153  | 45  | mg/l    | Weekly Average  |
| 28 | 539  | 400 | lbs/day | Monthly Average |
| 29 | 2309 | 600 | lbs/day | Weekly Average  |

FECAL COLIFORM WINTER

|   |       |      |          |               |
|---|-------|------|----------|---------------|
| 1 | 60000 | 2000 | #/100 ml | Daily Maximum |
|---|-------|------|----------|---------------|

February, 2004

SOLIDS SUSP PERCENT REMOV

|   |    |    |         |                 |
|---|----|----|---------|-----------------|
| 2 | 84 | 85 | Percent | Monthly Average |
|---|----|----|---------|-----------------|

May, 2004

BOD CARBONACEOUS SUMMER

|   |      |      |         |                 |
|---|------|------|---------|-----------------|
| 3 | 9.6  | 9    | mg/l    | Monthly Average |
| 4 | 23.5 | 13.5 | mg/l    | Weekly Average  |
| 5 | 121  | 120  | lbs/day | Monthly Average |
| 6 | 303  | 180  | lbs/day | Weekly Average  |

SOLIDS SUSP PERCENT REMOV

|   |    |    |         |                 |
|---|----|----|---------|-----------------|
| 7 | 82 | 85 | Percent | Monthly Average |
|---|----|----|---------|-----------------|

TSS

|    |      |     |         |                 |
|----|------|-----|---------|-----------------|
| 8  | 120  | 30  | mg/l    | Monthly Average |
| 9  | 407  | 45  | mg/l    | Weekly Average  |
| 10 | 1526 | 400 | lbs/day | Monthly Average |
| 11 | 5218 | 600 | lbs/day | Weekly Average  |

June, 2004

FECAL COLIFORM SUMMER

|    |       |      |          |                  |
|----|-------|------|----------|------------------|
| 12 | 204   | 200  | #/100 ml | Monthly Geo Mean |
| 13 | 15000 | 2000 | #/100 ml | Daily Maximum    |

July, 2004

FECAL COLIFORM SUMMER

|    |      |      |          |               |
|----|------|------|----------|---------------|
| 14 | 2400 | 2000 | #/100 ml | Daily Maximum |
|----|------|------|----------|---------------|

SOLIDS SUSP PERCENT REMOV

|    |    |    |         |                 |
|----|----|----|---------|-----------------|
| 15 | 79 | 85 | Percent | Monthly Average |
|----|----|----|---------|-----------------|

TSS

|    |       |     |         |                 |
|----|-------|-----|---------|-----------------|
| 16 | 38.5  | 30  | mg/l    | Monthly Average |
| 17 | 124.9 | 45  | mg/l    | Weekly Average  |
| 18 | 612   | 400 | lbs/day | Monthly Average |
| 19 | 2131  | 600 | lbs/day | Weekly Average  |

August, 2004

FECAL COLIFORM SUMMER

|    |      |      |          |               |
|----|------|------|----------|---------------|
| 20 | 3700 | 2000 | #/100 ml | Daily Maximum |
|----|------|------|----------|---------------|

TSS

|    |      |     |         |                |
|----|------|-----|---------|----------------|
| 21 | 96.4 | 45  | mg/l    | Weekly Average |
| 22 | 1305 | 600 | lbs/day | Weekly Average |

September, 2004

BOD CARBONACEOUS SUMMER

|    |      |      |         |                |
|----|------|------|---------|----------------|
| 23 | 14.9 | 13.5 | mg/l    | Weekly Average |
| 24 | 225  | 180  | lbs/day | Weekly Average |

FECAL COLIFORM SUMMER

|    |       |      |          |               |
|----|-------|------|----------|---------------|
| 25 | 60000 | 2000 | #/100 ml | Daily Maximum |
|----|-------|------|----------|---------------|

## Attachment 2

### **Supplemental Environmental Project for the Purchase of Greenway/Greenspace Lands in the Saugahatchee Creek Watershed**

The City of Auburn agrees to obtain by the purchase of Greenway/Greenspace within the Saugahatchee Creek Watershed as a Supplemental Environmental Project (SEP) in an amount of \$50,000. The target area of this SEP Greenway/Greenspace will lie between North College Street and North Donahue Drive along Saugahatchee Creek as shown on the attached Exhibit A.

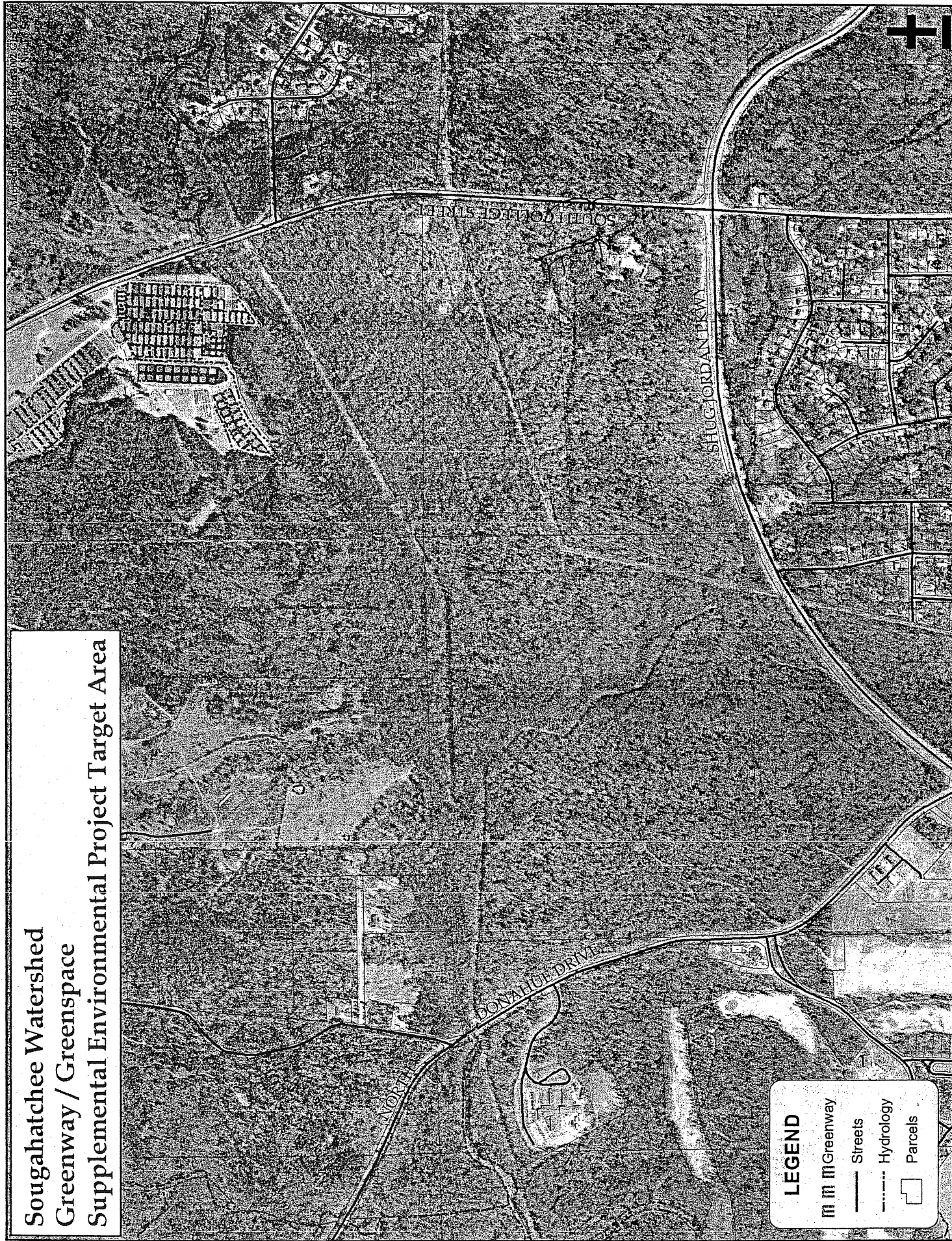
The City shall hire a land trust to help identify and coordinate the purchase of this land on which restrictive covenants would then be recorded for the preservation and protection of Saugahatchee Creek's riparian zone. The property being considered is part of the City's Greenway/Greenspace Masterplan through which the City proposes in the future to construct passive walking trails for the community as would be described as a permissive use in the conservation easements. The City of Auburn established a Greenway/Greenspace Master Plan to provide a means by which to target areas for resource management, passive walking and bike trails, and environmental education zones.

Eligible costs associated with this SEP will include direct costs for services provided by the selected land trust, land surveyor, appraiser, and attorney in addition to the purchase price of the property and additional closing costs. Invoices and appropriate documentation verifying these expenditures will be delivered to the Alabama Department of Environmental Management to demonstrate the accomplishment of this SEP. The following items are included in the workplan for the City of Auburn to accomplish this SEP:

- Identify and hire a land trust
- Coordinate with Property Owner(s)
- Perform land surveying and property appraisals
- Negotiate the purchase of the Greenway/Greenspace
- Prepare and record conservation easements for the Greenway/Greenspace
- Prepare a final report to demonstrate the accomplishment of the SEP

The City of Auburn proposes to complete the items associated with this SEP as listed herein within 18-months from the date of execution of the Consent Order with the Alabama Department of Environmental Management to which this SEP is assigned. The City of Auburn shall prepare and submit to the Department monthly progress reports describing in detail the City's progress towards compliance with the items in the SEP. These reports are due beginning on the first full month after the effective date of the SEP and on the first day of each month thereafter until completion of the SEP.

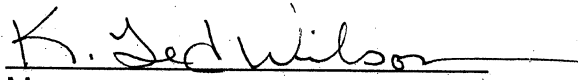
**Sougahatchee Watershed  
Greenway / Greenspace  
Supplemental Environmental Project Target Area**



RESOLUTION NO. 05-96

BE IT RESOLVED by the City Council of the City of Auburn, Alabama, that the Mayor be and he hereby is authorized and directed to execute a Consent Order Agreement by and between the City of Auburn and the Alabama Department of Environmental Management (ADEM) to respond to National Pollutant Discharge Elimination System effluent permit violations documented for the Northside Water Pollution Control Facility (WPCF) which is attached hereto and made a part hereof by reference.

ADOPTED AND APPROVED by the City Council of the City of Auburn, Alabama, this the 3<sup>rd</sup> day of May 2005.

  
Mayor

ATTEST:

  
City Manager