

BLANCHARD, MILLER, LEWIS & STYERS, P. A.

LAWYERS

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M. GRAY STYERS, JR.*
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OF COUNSEL

FILED
JAN 04 2010
Clerk's Office
N.C. Utilities Commission

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January 4, 2010

Renne Vance, Chief Clerk
North Carolina Utilities Commission
430 N. Salisbury Street
Raleigh, NC 27603

HAND DELIVERED

RE: *Briar Chapel Utilities, LLC, Docket No. W-1230, Sub 0*

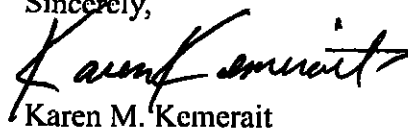
Dear Ms. Vance:

Please find enclosed for filing one original and seven (7) copies of the recorded Effluent Easement and Irrigation Agreement in the above-referenced docket. We would appreciate your filing the Effluent Easement and Irrigation Agreement and returning one "filed" stamped copy to me via our courier.

If you have any questions or comments, please do not hesitate to contact me.

Thank you in advance for your assistance and cooperation.

Sincerely,


Karen M. Kemeraut

skp

Enclosure

cc: All parties of record
William Grantmyre

AS
Brown
Riti
Legal
With
Econ
Acety

FILED

JAN 04 2010

Clerk's Office
N.C. Utilities Commission

BOOK **1494** PAGE **0824**

FILED
CHATHAM COUNTY NC
TREVA B. SEAGROVES
REGISTER OF DEEDS

FILED	Dec 29, 2009
AT	02:20:07 pm
BOOK	01494
START PAGE	0824
END PAGE	0837
INSTRUMENT #	13580
EXCISE TAX	(None)

EFFLUENT EASEMENT AND IRRIGATION AGREEMENT

RETURN TO:

Kilpatrick Stockton LLP (CAB)
3737 Glenwood Avenue, Suite 400
Raleigh, NC 27612

This EFFLUENT EASEMENT AND IRRIGATION AGREEMENT (the "**Effluent Easement**") is made and entered into as of the 30th day of October, 2009, by NNP-Briar Chapel, LLC, a Delaware limited liability company ("**Developer**"), and BRIAR CHAPEL UTILITIES, LLC, a Delaware limited liability company ("**Utility Company**").

WITNESSETH:

THAT WHEREAS, Developer is the developer of the Projects (defined below); and

WHEREAS, the Developer and Utility Company have entered into the Acquisition Agreement (defined below) whereby Utility Company will acquire the Wastewater Utility System (defined below) serving the Projects, with Utility Company owning and operating the facilities as a utility company regulated by the Commission (defined below) and DWQ (defined below) for wastewater service; and

WHEREAS, Utility Company is a public utility company in the business of providing wastewater service.

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Developer and Utility Company intending to be legally bound, agree as follows:

1. Definitions.

1.1 "*Acquisition Agreement*" shall mean that certain Agreement for the installation, conveyance, and operation of the Wastewater Utility System, dated as of October 30, 2009, executed between Developer and Utility Company.

1.2 "*Briar Chapel*" shall mean the property being developed by the Developer known as Briar Chapel located on NC Highway 15-501 in Chatham County, North Carolina, which shall consist of approximately 2,405 residential lots, business and retail centers, two schools, a civic center, a pool and clubhouse, athletic fields, trail system and other recreation and amenity areas.

- 1.3 "Commission" shall mean the North Carolina Utilities Commission.
- 1.4 "Declaration" shall mean the Declaration of Covenants, Conditions, and Restrictions for Briar Chapel recorded at Deed Book 1370, Page 1020 in the Chatham County Registry, North Carolina, as the same may be amended from time to time.
- 1.5 "Developer" shall mean NNP-Briar Chapel, LLC, a Delaware limited liability company and the developer of Briar Chapel.
- 1.6 "DWQ" shall mean the Division of Water Quality of the North Carolina Department of Environment and Natural Resources.
- 1.7 "Easement Property" shall mean the property described on Exhibit A attached hereto.
- 1.8 "Effluent Easement" shall mean this Effluent Easement and Irrigation Agreement, including all exhibits and schedules hereto, if any, as the same may be amended from time to time.
- 1.9 "GPD" shall mean gallons per day.
- 1.10 "Herndon Woods" shall mean the property known as Herndon Woods located at Hubert Herndon Road and U.S. Highway 15-501, which consists of approximately 25 residential lots.
- 1.11 "Monitoring Locations" shall mean the groundwater monitoring wells and surface water sampling points that may be located from time to time on the Easement Property in compliance with DWQ requirements.
- 1.12 "Permit" shall mean the permit for the operation of the Wastewater Utility System and Spray Irrigation Facilities (defined below) issued by DWQ, as the same may be modified or renewed from time to time.
- 1.13 "Projects" shall mean Briar Chapel and Herndon Woods.
- 1.14 "Reuse Effluent" shall mean the wastewater that has been treated by Utility Company to the point that it meets the effluent quality standards required by the Permit.
- 1.15 "Reuse Effluent Pumping Station" shall mean any pump house, pumps and controls located near the Reuse Effluent Storage Ponds that shall be used to pump Reuse Effluent to and through the Primary Spray Irrigation Facilities at the Projects.
- 1.16 "Reuse Effluent Storage Ponds" shall mean the Reuse Effluent storage ponds at the Project totaling 53.1 million gallons in which the Reuse Effluent is to be stored after treatment at the WWTP (defined below) and from which the Reuse Effluent is then pumped to be sprayed on the Spray Areas (defined below) and any additional effluent storage ponds permitted and constructed as part of the Wastewater Utility System.
- 1.17 "Spray Areas" shall mean all areas at the Projects that have been or may in the future be permitted by DWQ for spray irrigation of Reuse Effluent. The Spray Areas as of the date hereof are depicted on Exhibit B attached hereto.
- 1.18 "Spray Irrigation Facilities" shall mean all Reuse Effluent irrigation lines, pumps, booster pumps, irrigation and spray devices, controls and other devices used in the application of Reuse Effluent

from the Reuse Effluent Storage Ponds upon the Spray Areas (other than the Reuse Effluent Pumping Station).

1.19 "*Upset Storage Pond*" shall mean the 3.5 million-gallon, five-day storage pond to be located near the WWTP for the retention of wastewater during WWTP upsets or any other storage pond permitted by DWQ for the retention of wastewater during WWTP upsets and any additional upset storage ponds permitted and constructed as part of the Wastewater Utility System.

1.20 "*Utility Company*" shall mean the Briar Chapel Utilities, LLC, a Delaware limited liability company.

1.21 "*Wastewater Utility System*" shall mean the WWTP, the Wastewater Collection System, the Reuse Effluent Storage Ponds, the Upset Storage Pond, the Reuse Effluent Pumping Station, the Spray Irrigation Facilities, all lift stations, if any, and other facilities used in the collection, treatment, holding and discharge of the wastewater and, if constructed, any additional components of the wastewater utility system necessary to service the ESA including but not limited to additional components to the WWTP, additional Reuse Effluent Storage Pond and Upset Storage Pond capacity, and additional components of the Wastewater Collection System.

1.22 "*WWTP*" shall mean the wastewater treatment plant located within Briar Chapel.

1.23 "*WWTP Property*" shall mean the property upon which the WWTP is located, as more particularly described in Exhibit C.

2. Treatment and Storage. Utility Company shall treat the wastewater created by customers and common area facilities within the Projects in the WWTP and then discharge the Reuse Effluent into the Reuse Effluent Storage Ponds. The Reuse Effluent shall be treated by Utility Company to the standards established by DWQ in the Permit, and any modified or successive Permits issued by DWQ.

3. Withdrawal and Sprav Irrigation. Utility Company shall be responsible for all aspects of the daily operation of the Reuse Effluent Pumping Station and the Spray Irrigation Facilities by a certified spray irrigation operator.

4. Maintaining Reuse Effluent Storage Pond Levels. Utility Company shall require its certified spray irrigation operator to monitor the level of the Reuse Effluent in the Reuse Effluent Storage Ponds and to maintain the level in the Reuse Effluent Storage Ponds at or below the DWQ required freeboard level.

5. Addition of Fresh Water into Reuse Effluent Storage Ponds. Developer may in its reasonable discretion pump fresh water into the Reuse Effluent Storage Ponds for use in irrigating the Spray Areas, provided that the levels in the Reuse Effluent Storage Ponds are at all times maintained below the freeboard level required by the Permit.

6. Testing and Inspections. Utility Company shall be responsible for conducting any and all effluent, groundwater, surface water, and soil sampling, and associated recordkeeping and reporting required by the Permit. Pursuant to and in accordance with Section 11 below and with the utility easements under the Declaration, Utility Company shall have the right, at any time following reasonable notice to Developer, to enter the Easement Property to: (a) inspect and review the operation of the Spray Irrigation Facilities; (b) take soil borings and conduct any other tests required by the Permit; and (c) perform groundwater and surface water monitoring within the Spray Areas as required by the Permit

(including installation of Monitoring Locations); provided, however, that (x) Utility Company's testing and inspection activities on the Easement Property, unless otherwise required by the Permit or DWQ regulation, shall not interfere with the intended use of the Easement Property, and (y) Utility Company shall use commercially reasonable efforts to avoid damage to the Spray Irrigation Facilities and the Easement Property.

7. Reuse Effluent Quality. UTILITY COMPANY SHALL NOT BE RESPONSIBLE FOR ACHIEVING WATER QUALITY LEVELS IN THE REUSE EFFLUENT BEYOND THE REQUIREMENTS OF THE PERMIT.

8. Landscaping and Maintenance of Spray Areas. Developer shall be responsible for the landscape replacement and maintenance of the Spray Areas at Developer's sole cost and in accordance with the requirements of the Permit.

9. Service Interruption. In the event of service interruptions caused by a malfunction of the Wastewater Utility System or the Spray Irrigation Facilities, Utility Company shall exercise due diligence in completing the necessary repairs and restoring Reuse Effluent delivery to the Reuse Effluent Storage Ponds and functionality to the Spray Irrigation Facilities.

10. Insurance.

10.1 General Liability. Utility Company shall, at Utility Company's sole cost and expense, maintain, or cause to be maintained, general public liability insurance against claims for personal injury, death or property damage occurring upon, in or about the Spray Areas. The coverage under all such liability insurance shall be in such amounts as may be required by law, but in all events for limits of not less than \$1,000,000 per occurrence and not less than \$3,000,000 in the annual aggregate.

10.2 Policy Requirements and Endorsements. All insurance policies required by this WWTP Easement shall contain (by endorsement or otherwise) the following provisions:

- (a) All policies shall name the Developer as an additional insured;
- (b) All policies shall be written as primary policies not contributing with or in excess of any coverage that the Developer may carry;
- (c) The insurance carrier shall be required to give the Developer thirty (30) days' prior notice of cancellation; and
- (d) Utility Company shall deliver to the Developer certificates of insurance on the date hereof and before expiration of any then-current policy.

11. Grant of Easement to Utility Company.

11.1 Developer hereby grants and conveys to Utility Company, its successors and assigns forever, a perpetual non-exclusive easement appurtenant to the WWTP Property for the purpose of spraying Reuse Effluent, operating the Spray Irrigation Facilities and other activities related thereto as more fully set forth in this Effluent Easement. This easement allows such spraying and related activities, as more particularly described in this Effluent Easement, within the Spray Areas, which are located within

the Easement Property. The right to spray and monitor pursuant to this easement is given without payment of any fee or other charge being made therefor. Developer shall not further encumber the Spray Areas or engage in any activity therein, or grant any other interest or privilege therein to any other party that would interfere with Utility Company's enjoyment of its rights or fulfillment of its obligations created by this Effluent Easement.

11.2 In accordance with the utility easement under the Declaration, Developer further hereby grants to Utility Company, its successors and assigns forever, a perpetual non-exclusive easement appurtenant to the WWTP Property to the other portions of the Easement Property for ingress, egress, regress and access to and from the Spray Areas and Spray Irrigation Facilities, and over, across, upon, and through the Spray Areas and Spray Irrigation Facilities as necessary for Utility Company to enjoy the rights and to fulfill its obligations under this Effluent Easement, including the performance of soil borings and other testing required by the Permit, without payment of any fee or other charge being made therefor. Developer shall not interfere with or permit any other party to interfere with Utility Company's right of ingress, egress, regress and access granted hereby. In the exercise of Utility Company's right of ingress, egress, regress and access, Utility Company shall, where possible, use existing roads, paths, and other ways of travel to and from the Spray Areas. Utility Company shall have no obligation to maintain such roads, paths, or other ways of travel, but shall exercise ordinary care in its use of the same. Where roads, paths, or other ways of travel do not exist, Developer shall make reasonable efforts to specify ways of travel for Utility Company's use so as to permit Utility Company to enjoy the privileges and fulfill the obligations created by this Effluent Easement without undue interference. Utility Company shall use its best efforts to conduct its activities in the Spray Areas so as to avoid any unreasonable and adverse interference with the normal use of the Spray Areas and other Easement Property.

12. Grant of Easement to Developer. Utility Company hereby grants and conveys to Developer, its successors and assigns forever, a perpetual non-exclusive easement over, across, upon, and through the WWTP Property for ingress, egress, regress and access to and from the Reuse Effluent Storage Ponds for the purposes of (i) pumping fresh water into the Reuse Effluent Storage Ponds, (ii) operating, maintaining, repairing and replacing the conveyance lines from the fresh water source to the Reuse Effluent Storage Ponds, and (iii) other activities related thereto as more fully set forth in this Effluent Easement and as necessary for Developer to enjoy the rights and to fulfill its obligations under this Effluent Easement. This easement is appurtenant to the Easement Property and allows activities on and access to the WWTP Property without payment of any fee or other charge being made therefore. Utility Company shall not further encumber the WWTP Property, or engage in any activity therein, or grant any other interest or privilege therein to any other party, that would interfere with Developer's enjoyment of its rights or fulfillment of its obligations created by this Effluent Easement. In the exercise of Developer's right of ingress, egress, regress and access, Developer shall, where possible, use existing roads, paths, and other ways of travel to and from the Amenity Reuse Effluent Pumping Station. Developer shall have no obligation to maintain such roads, paths, or other ways of travel, but shall exercise reasonable care in its use of the same. Where roads, paths, or other ways of travel do not exist, Utility Company shall make reasonable efforts to specify ways of travel for Developer's use so as to permit Developer to enjoy the privileges and fulfill the obligations created by this Effluent Easement without undue interference.

13. General Provisions.

13.1 Binding upon Successors and Assigns. The conditions, restrictions and easements contained in this Effluent Easement are covenants running with the land; they are made by Utility Company and Developer for the benefit of themselves, their successors and assigns in title to all or part of the WWTP

Property or the Easement Property. In addition, Developer may assign its rights and delegate its duties under this Effluent Easement in whole or in part.

13.2 No Third Party Beneficiary Rights. Nothing expressed or referred to in this Effluent Easement will be construed to give any person other than the parties to this Effluent Easement any legal or equitable right, remedy or claim under or with respect to this Effluent Easement or any provision of this Effluent Easement, except such rights as shall inure to a successor or permitted assignee pursuant to Section 16.1 above.

13.3 Independent Contractor. The parties hereto are and shall be independent contractors to one another, and nothing herein shall be deemed to cause this Effluent Easement to create an agency, partnership, or joint venture between the parties hereto.

13.4 Counterparts. This Effluent Easement may be executed in one or more counterpart signature pages, each of which will be deemed to be an original of this Effluent Easement (and all of which, when taken together, will be deemed to constitute one and the same instrument). Signature pages transmitted by facsimile or other electronic means shall be deemed to be the original signatures of the parties for all purposes.

13.5 Headings. The headings of particular provisions of this Effluent Easement are inserted for convenience only and shall not be construed as a part of this Effluent Easement or serve as a limitation or expansion on the scope of any term or provision of this Effluent Easement.

13.6 Enforcement of Agreement. Each party acknowledges and agrees that the other party would be irreparably damaged if any of the provisions of this Effluent Easement are not performed in accordance with their specific terms and that any breach of this Effluent Easement by a party could not be adequately compensated in all cases by monetary damages alone. Accordingly, in addition to any other right or remedy to which a party may be entitled, at law or in equity, it shall be entitled to enforce any provision of this Effluent Easement by a decree of specific performance and to temporary, preliminary and permanent injunctive relief to prevent any breach or threatened breach of any of the provisions of this Effluent Easement, without posting any bond or other undertaking.

13.7 Notices. All notices and other communications required or permitted hereunder shall be in writing and shall be sent either (i) personally by hand delivery, (ii) by United States first-class mail, postage prepaid, (iii) by hand or nationally recognized overnight courier, or (iv) by facsimile addressed to the address or facsimile number indicated on the signature pages to this Effluent Easement (or at such other address or facsimile number as such party or permitted assignee shall have furnished to the other parties hereto in writing). All such notices and other written communications shall be effective on the date of delivery, mailing, or facsimile transmission.

13.8 Waiver. No waivers of, or exceptions to, any term, condition or provision of this Effluent Easement, in any instance, shall be deemed to be, or construed as, a further or continuing waiver of any such term, condition or provision.

13.9 Entire Agreement. This writing and the documents referred to herein embody the entire agreement and understanding between the parties with respect to the subject matter of the Effluent Easement and there are no other agreements or understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.

13.10 Modifications in Writing. This Effluent Easement shall not be modified, amended, or changed in any respect except in writing, duly signed by the parties hereto, and each party hereby waives any right to

amend this Effluent Easement in any other way. The parties acknowledge that any such modifications may be subject to DWQ or other regulatory agency approval.

13.11 Consent to Jurisdiction. The parties hereto agree that the state and federal courts of North Carolina shall have exclusive jurisdiction over this Effluent Easement and any controversies arising out of, relating to, or referring to this Effluent Easement, the formation of this Effluent Easement, and actions undertaken by the parties hereto as a result of this Effluent Easement, whether such controversies sound in tort law, contract law or otherwise. Each of the parties hereto expressly and irrevocably consents to the personal jurisdiction of such state and federal courts, agrees to accept service of process by mail, and expressly waives any jurisdictional or venue defenses otherwise available.

13.12 Governing Law. This Effluent Easement shall be governed by the internal substantive laws of the State of North Carolina, without regard to such state's conflict of law or choice of law rules.

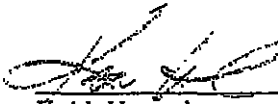
13.13 Recordation; Duration. Upon closing of the transactions contemplated by the Acquisition Agreement, Utility Company shall record this Effluent Easement in the Register of Deeds of Chatham County, North Carolina at Utility Company's expense. The provisions of this Effluent Easement will run with and bind title to the WWTP Property and the Easement Property, will be binding upon and inure to the benefit of all owners of any portion of the WWTP Property or the Easement Property, and will be and remain in effect until such time as a document terminating this Effluent Easement is signed by all of the owners of the WWTP Property and the Easement Property and recorded in the public land records of Chatham County.

13.14 Required Amendments. In the event that the Permit is modified, amended or expanded at any time to permit additional or different land to be used for spray irrigation of Reuse Effluent, the parties hereto shall execute and record an amendment to this Effluent Easement designating such additional or different areas as Spray Areas hereunder.

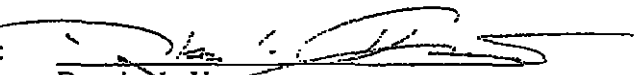
[Signature Page to Effluent Easement and Irrigation Agreement]

IN WITNESS WHEREOF, the parties have caused this Effluent Easement to be duly executed in their respective corporate names, all by authority duly given, the day and year first above written.

NNP-BRIAR CHAPEL, LLC

By: 
Keith Hurand
Vice President
Address: 16 Windy Knoll Circle
Chapel Hill, NC 27516
Fax: 919.951.0711

BRIAR CHAPEL UTILITIES, LLC

By: 
Douglas L. Hageman
Vice President & General Counsel
Address: 9820 Towne Centre Drive, Ste. 100
San Diego, CA 92121
Fax: 858.455.6142

STATE OF NC
COUNTY OF Chatham

I, the undersigned, a Notary Public of the County and State aforesaid, certify that Keith Hurand, whose identity has been proven by satisfactory evidence, said evidence being:

- ☒ I have personal knowledge of the identity of the principal(s)
☐ I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a _____

☐ A credible witness has sworn to the identity of the principal(s); who is the Vice President of NNP-Briar Chapel, LLC, a Delaware limited liability company, personally appeared before me this day and acknowledged that (s)he is Vice President of NNP-BRIAR CHAPEL, LLC, a Delaware limited liability company and that as Vice President being duly authorized to do so, voluntarily executed the foregoing instrument on behalf of said company for the purposes stated therein.

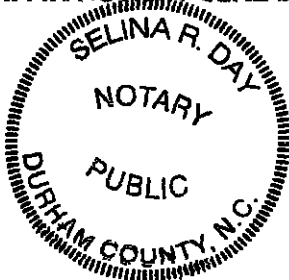
Witness my hand and official stamp or seal this 2 day of November, 2009.

Selina R. Day
Notary Public

Print Name: Selina R. Day

My Commission Expires: 8-30-2014

[AFFIX NOTARY SEAL BELOW-NOTE THAT SEAL MUST BE **FULLY LEGIBLE**]



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of SAN DIEGOOn 30 October 2009 before me, LIZ GROMAN, NOTARY PUBLIC
Date Here Insert Name and Title of the Officerpersonally appeared DOUGLAS L. HAGEMAN
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity~~(ies)~~, and that by his/~~her/their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached DocumentTitle or Type of Document: EFFLUENT EASEMENT AND IRRIGATION AGREEMENTDocument Date: 30 OCTOBER 2009 Number of Pages: —Signer(s) Other Than Named Above: KEITH HURAND**Capacity(ies) Claimed by Signer(s)**Signer's Name: DOUGLAS L. HAGEMAN☐ Individual☒ Corporate Officer — Title(s): VP & Gen. Counsel☐ Partner — ☐ Limited ☐ General☐ Attorney in Fact☐ Trustee☐ Guardian or Conservator☐ Other: _____Signer Is Representing: BLAIR CHAPEL UNITES.RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name: _____

☐ Individual☐ Corporate Officer — Title(s): _____☐ Partner — ☐ Limited ☐ General☐ Attorney in Fact☐ Trustee☐ Guardian or Conservator☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

EXHIBIT A

Easement Property

Being all that certain property defined as "Briar Chapel" or "Community" in the Declaration, as such terms are amended, modified, or enlarged from time to time and to which reference is *hereby made for a more particular description.*

EXHIBIT B

BOOK 1494 PAGE 0835

Spray Areas

(See attached.)

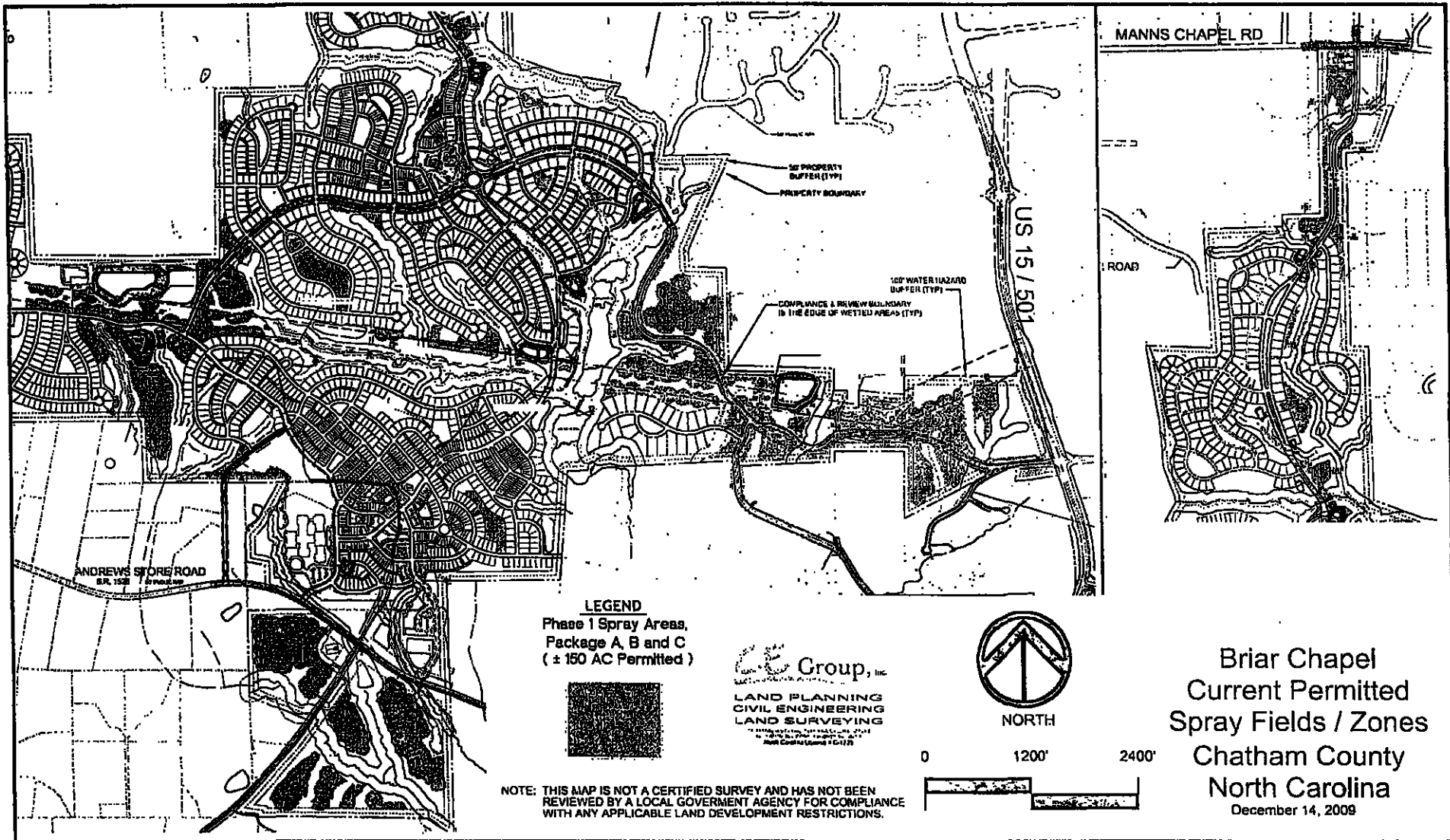


EXHIBIT C

BOOK 1494 PAGE 0837

WWTP Property

Being all that certain tract of land containing 21.24 acres, located in Baldwin Township, Chatham County, North Carolina, as shown as Reclamation Facility Tract A (North) and (South) Exempt Plat, on Plat Book 2008, Pages 131-132, Chatham County Registry, North Carolina, to which reference is hereby made for a more particular description.