

# File Room Document Transmittal Sheet

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Wilma Dykeman  
13018-09-11

I, OTTO W. DeBRUHL, REGISTER OF DEEDS OF  
BUNCOMBE COUNTY NORTH CAROLINA,  
DO HEREBY CERTIFY THIS TO BE A TRUE  
AND ACCURATE COPY AS RECORDED IN

BOOK 4295 PAGE 992  
WITNESS MY HAND AND OFFICIAL SEAL  
THIS THE 4 DAY OF October 20 06

Otto W. DeBruhl  
REGISTER OF DEEDS  
BY Cady Hancy Deputy



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Buncombe County, NC  
Otto W. DeBruhl Register of Deeds  
BK **4295** PG **992-1000**

**DECLARATION OF PERPETUAL LAND USE RESTRICTIONS**

**Asheville Manufactured Gas Plant Site, Buncombe County, North Carolina**

Parcel No. 1 and Parcel No. 2 – Carolina Power & Light Company d/b/a  
Progress Energy Carolinas, Inc. (“Progress Energy”), Owner

Parcel No. 3 – Public Service Company of North Carolina, Inc. (“PSNC”), Owner

Easement – Metropolitan Sewerage District of Buncombe County, North Carolina  
 (“Metropolitan Sewerage District”), Easement Holder

The real property which is the subject of this Declaration of Perpetual Land Use Restrictions (“Declaration”) is contaminated with hazardous substances, and constitutes an INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITE (hereinafter referred to as the “Site”) as defined by North Carolina’s Inactive Hazardous Sites Response Act, which consists of Section 130A-310 through Section 130A-310.19 of the North Carolina General Statutes (N.C.G.S.). This Declaration is part of a Remedial Action Plan for the Site that has been approved by the Secretary of the North Carolina Department of Environment and Natural Resources, or his/her delegate, as authorized by N.C.G.S. Section 130A-310.3(f). The North Carolina Department of Environment and Natural Resources shall hereinafter be referred to as “DENR.”

The Site is comprised of three (3) parcels (Parcel No. 1, Parcel No. 2, and Parcel No. 3) (hereinafter referred to individually as a “Parcel” and collectively as the “Parcels”) and one (1) easement (“Easement”), all located in the City of Asheville, Buncombe County, North Carolina. Record of these Parcels and Easement appears as follows in the Buncombe County Register of Deeds’ Office:

Progress Energy is the fee owner of Parcel No. 1, which is more particularly described as follows:

Being all of that certain tract or parcel of land containing 2.604 acres (gross), more or less, as shown on that survey plat entitled “Notice of Inactive Hazardous Substance or Waste Disposal Site, Former Asheville No. 1 MGP Site” recorded in

Ret. to: KERRY MacPHERSON  
PROGRESS ENERGY - P084  
410 SOUTH WILMINGTON ST.  
Raleigh, NC 27601

Book of Maps 106, Page 93, Buncombe County Registry, reference to which is made for a more particular description of said Parcel No. 1 of the Site; and being the same property, more or less, described in that deed from Public Service Company of North Carolina, Incorporated to Carolina Power & Light Company recorded on September 5, 1979 in Deed Book 1225, Page 408, Buncombe County Registry.

Except as otherwise disclosed on the survey plat referenced herein, Progress Energy is the fee owner of Parcel No. 2, which is more particularly described as follows:

Being all of that certain tract or parcel of land containing 0.966 acres (gross), more or less, as shown on that survey plat entitled "Notice of Inactive Hazardous Substance or Waste Disposal Site, Former Asheville No. 1 MGP Site" recorded in Book of Maps 106, Page 93, Buncombe County Registry, reference to which is made for a more particular description of said Parcel No. 2 of the Site.

PSNC is the fee owner of Parcel No. 3, which is more particularly described as follows:

Being all of that certain tract or parcel of land containing 0.318 acres (gross), more or less, as shown on that survey plat entitled "Notice of Inactive Hazardous Substance or Waste Disposal Site, Former Asheville No. 1 MGP Site" recorded in Book of Maps 106, Page 93, Buncombe County Registry, reference to which is made for a more particular description of said Parcel No. 3 of the Site; and being all or a portion of that property, more or less, described in Deed Book 553, Page 19, Buncombe County Registry.

The Easement is a sewer easement granted to the Metropolitan Sewerage District. The easement area is more particularly described as follows:

Being a strip of land twenty (20) feet in width over, across, and lying within Parcel No. 1 hereinabove described and generally depicted and shown on that survey plat entitled "Notice of Inactive Hazardous Substance or Waste Disposal Site, Former Asheville No. 1 MGP Site" recorded in Book of Maps 106, Page 93, Buncombe County Registry, as a hatched-line area with "SS" marking the centerline of said easement area, reference to which is made for a more particular description of said Easement of the Site; and being all or a portion of that easement area described in that Indenture by and between PSNC and Metropolitan Sewerage District recorded on July 10, 1967 in Deed Book 963, Page 587, Buncombe County Registry.

**This Declaration applies to Parcel No. 1, Parcel No. 2, Parcel No. 3, and the Easement, all of which comprise the Site.** The Site is also shown on a Notice of Inactive Hazardous Substance or Waste Disposal Site, incorporated by reference into this Declaration, constituting a survey plat entitled "Notice of Inactive Hazardous Substance or Waste Disposal Site, Former Asheville No. 1 MGP Site" that, simultaneously with the recordation of this

Declaration, is being recorded in Book of Maps \_\_\_\_\_, Page \_\_\_\_\_ in the Office of the Register of Deeds for Buncombe County.

For the purpose of protecting public health and the environment, Progress Energy (as to Parcel No. 1 and Parcel No. 2), PSNC (as to Parcel No. 3), and the Metropolitan Sewerage District (as to the Easement) hereby declare that all of the real property comprising the Site shall be held, sold and conveyed subject to the following perpetual land use restrictions, which shall run with the land; shall be binding on all parties having any right, title or interest in the real property comprising the Site or any part thereof, their heirs, successors and assigns; and shall, as provided in N.C.G.S. Section 130A-310.3(f), be enforceable without regard to lack of privity of estate or contract, lack of benefit to particular land, or lack of any property interest in particular land. These restrictions shall continue in perpetuity and cannot be amended or canceled unless and until the Buncombe County Register of Deeds Office receives and records the written concurrence of the Secretary of DENR (or its successor in function), or his/her delegate. If any provision of this Declaration is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

#### PERPETUAL LAND USE RESTRICTIONS

1. The Site shall be used exclusively for non-residential purposes but shall not be used for:

- a. child care centers or schools;
- b. timber production, agriculture or grazing;
- c. kennels, other forms of animal lodging or horse-riding; or
- d. mining or any other means of extracting coal, oil, gas or any other mineral or non-mineral substances.

2. The Metropolitan Sewerage District shall have the right to excavate, in the area of its Easement as necessary for the operation, maintenance, repair and replacement, if necessary of the existing sewer line on the Site, provided, however, any such excavation shall be subject to the approval of DENR or its successor in function and shall be done in accordance with terms and conditions imposed by DENR. The Metropolitan Sewerage District may conduct emergency repairs in the area of its Easement without DENR approval provided that the Metropolitan Sewerage District or its successor in function:

- a. notify DENR within two business days of learning of the emergency;
- b. within ten business days of completing the emergency repairs provide DENR a letter describing the emergency and the actions taken;
- c. employ appropriate health and safety precautions to protect workers and the public;
- d. properly manage the contaminated media in accordance with applicable regulations and guidelines; and
- e. restore the property to conditions that are as environmentally protective as those encountered prior to the emergency.

3. No construction, excavation, or disturbance of soils at depths of three feet or more, including installation of utilities, shall occur except upon such conditions as DENR or its successor in function determines are reasonable.

4. Any underground water shall not be used for any purpose. The installation of groundwater wells or other devices for access to groundwater for any purpose other than monitoring groundwater quality is prohibited without prior approval by DENR, or its successor in function.

5. Mowing of vegetation and tree pruning are permitted on the Site.

6. Other land use restrictions in this Declaration notwithstanding, the owner of each portion of any of the Parcels comprising the Site, shall be responsible for preventing human exposure to regulated substances on those portions, and for preventing erosion of the contaminated soil at those portions identified as containing regulated substances above unrestricted use standards on the plat referenced below in the "NOTICE" section of this Declaration, through the use of measures approved by DENR or its successor in function.

7. The owner of any real property comprising the Site shall submit a letter report, containing the notarized signature of the owner, in January of each year on or before January 31<sup>st</sup>, to DENR, or its successor in function, confirming that this Declaration is still recorded in the Buncombe County Register of Deeds Office and that activities and conditions at the Site (or portion thereof owned) remain in compliance with the land use restrictions herein.

8. No person conducting environmental assessment or remediation at the Site, or involved in determining compliance with applicable land use restrictions, at the direction of, or pursuant to a permit or order issued by, DENR or its successor in function may be denied access to the Site for the purpose of conducting such activities.

9. The owner of the property which is the subject of this Declaration shall cause any lease, grant, or other transfer of any interest in the property to include a provision expressly requiring the lessee, grantee, or transferee to comply with this Declaration. The failure to include such provision shall not affect the validity or applicability of any land use restriction in this Declaration to the property.

#### REPRESENTATIONS AND WARRANTIES

The owners, being Progress Energy (as to Parcel No. 1 and Parcel No. 2) and PSNC (as to Parcel No. 3), of the real property comprising the Site hereby represent and warrant to the other signatories hereto:

Progress Energy represents and warrants that this Declaration will not materially violate or contravene or constitute a material default under any other agreement, document or instrument

to which Progress Energy is a party or by which Progress Energy may be bound or affected.

PSNC represents and warrants that this Declaration will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which PSNC is a party or by which PSNC may be bound or affected.

### **ENFORCEMENT**

The above land use restrictions are an integral part of the remedy for the contamination at the Site. Adherence to the restrictions is necessary to protect public health and the environment. These land use restrictions shall be enforced by any owner, operator, or other party responsible for any part of the Site. The above land use restrictions may also be enforced by DENR through the remedies provided in N.C.G.S. Chapter 130A, Article 1, Part 2 or by means of a civil action, and may also be enforced by any unit of local government having jurisdiction over any part of the Site. Any attempt to cancel this Declaration without the approval of DENR or its successor in function shall constitute noncompliance with the Remedial Action Plan approved by DENR for the Site, and shall be subject to enforcement by DENR to the full extent of the law. Failure by any party required or authorized to enforce any of the above restrictions shall in no event be deemed a waiver of the right to do so thereafter as to the same violation or as to one occurring prior or subsequent thereto.

### **FUTURE SALES, LEASES, CONVEYANCES AND TRANSFERS**

When any portion of the Site or any Parcel is sold, leased, conveyed or transferred, pursuant to N.C.G.S. Section 130A-310.8(e) the deed or other instrument of transfer shall contain in the description section, in no smaller type than that used in the body of the deed or instrument, a statement that the real property being sold, leased, conveyed, or transferred has been used as a regulated substance or waste disposal site and a reference by book and page to the recordation of the Notice of Inactive Hazardous Substance or Waste Disposal Site referenced in the preceding paragraph above.

**[SIGNATURES APPEAR ON FOLLOWING PAGES]**

**OWNER'S SIGNATURE**  
**(PARCEL NO. 1 AND PARCEL NO. 2)**

CAROLINA POWER & LIGHT COMPANY D/B/A  
PROGRESS ENERGY CAROLINAS, INC.

By: *John R. McArthur*  
Name: John R. McArthur *done 8/21/06*  
Title: Senior Vice President

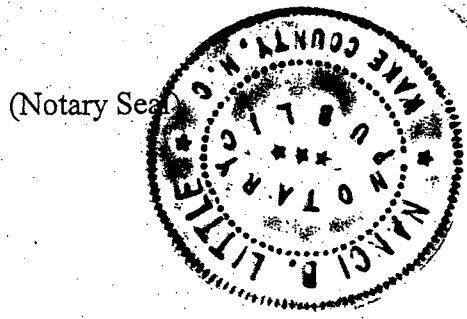
STATE OF NORTH CAROLINA  
COUNTY OF WAKE

I, *Nanci B. Little* a Notary Public of *Wake* County, North Carolina, certify that John R. McArthur either being personally known to me or proven by satisfactory evidence (said evidence being \_\_\_\_\_), personally appeared before me this day and acknowledged that he is a Senior Vice President of Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc., a corporation, and that by authority duly given, and as the act of Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc., he has signed this Declaration.

Witness my hand and notarial stamp or seal, this *11* day of *August*, 2006.

*Nanci B. Little*  
Notary Public  
*Nanci B. Little*  
Print Name

My commission expires: *July 1, 2010*



OWNER'S SIGNATURE (PARCEL NO. 3)

PUBLIC SERVICE COMPANY OF  
NORTH CAROLINA, INC.

By: [Signature]

Name: George J. Bullwinkel, Jr.

Title: Sr. Staff responsibility for PSNC

APPROVED  
AS TO  
LEGALITY  
AND FORM  
JH  
8/16/06

STATE OF S.C.

COUNTY OF Richland

I, Margaret Y. Mathias, a Notary Public of Richland County, S.C., certify that George J. Bullwinkel either being personally known to me or proven by satisfactory evidence (said evidence being \_\_\_\_\_), personally appeared before me this day and acknowledged that he/she is Sr. Staff Responsibility for PSNC of Public Service Company of North Carolina, Inc., a corporation, and that by authority duly given, and as the act of Public Service of North Carolina, Inc., he/she has signed this Declaration.

Witness my hand and notarial stamp or seal, this 17<sup>th</sup> day of August, 2006.

Margaret Y. Mathias  
Notary Public

Margaret Y. Mathias  
Print Name

My commission expires: My Commission Expires May 25, 2009 (Notary Seal)





EASEMENT HOLDER'S SIGNATURE  
(EASEMENT)

METROPOLITAN SEWERAGE DISTRICT OF  
BUNCOMBE COUNTY, NORTH CAROLINA

By: Thomas E. Hartye

Name: Thomas E. Hartye

Title: General Manager

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

I, Marsha S. Kiser, a Notary Public of Buncombe County,  
\_\_\_\_\_, certify that Thomas E. Hartye either being  
personally known to me or proven by satisfactory evidence (said evidence being  
\_\_\_\_\_), personally appeared before me this day and acknowledged that  
he/she is General Manager of Metropolitan Sewerage District of  
Buncombe County, North Carolina, a public body and body politic and corporate of the State of  
North Carolina, and that by authority duly given, and as the act of the Metropolitan Sewerage  
District of Buncombe County, North Carolina, he/she has signed this Declaration.

Witness my hand and notarial stamp or seal, this 8<sup>th</sup> day of August, 2006.

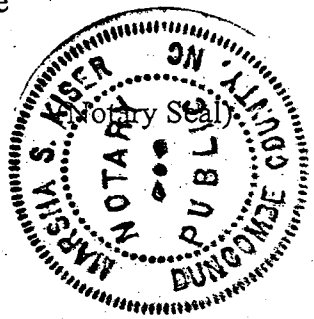
Marsha S. Kiser

Notary Public

Marsha S. Kiser

Print Name

My commission expires: 10-31-06



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**APPROVAL AND CERTIFICATION OF THE NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

The foregoing Declaration of Perpetual Land Use Restrictions is hereby approved and certified.

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

By: Jack Butler

Name: Jack Butler, P.E.

Title: Chief, Superfund Section  
Division of Waste Management

**REGISTER OF DEEDS CERTIFICATION**

The foregoing Declaration of Perpetual Land Use Restrictions is certified to be duly recorded at the date and time, and the Deed Book and Page, shown on the first page hereof.

REGISTER OF DEEDS FOR BUNCOMBE COUNTY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_