

January 11, 2014

**Certified Mail-Return Receipt**

Xavier D. Harris, Owner  
Woodley Memorial Gardens  
300 Wiltshire Drive  
Montgomery, Alabama 36117

**Re: Notice of Intent to Sue for Violations of General NPDES Permit No. ALR10A872 and Ala. Admin. Code Ch. 335-6-12**

Dear Mr. Harris:

Pursuant to the Clean Water Act § 505, 33 U.S.C. § 1365, and 40 C.F.R. Part 135, Subpart A, you are hereby notified that after the expiration of sixty (60) days following the date of this notice, Wetlands and Waters Association, an unincorporated association, may file suit against Xavier D. Harris for violations of General NPDES Permit No. ALR10A872 and Ala. Admin. Code Ch. 335-6-12 at the Woodley Memorial Gardens site located on Woodley Road in Montgomery, Alabama at Latitude 32.29978° N and Longitude 86.24317° West.

**I. History of Previous Violations**

On October 24, 2013, the Alabama Department of Environmental Management conducted an inspection of Woodley Memorial Gardens in response to a complaint. The inspector made the following observations:

Inspection conducted based on a complaint (7G-007ST4P75) received by the Department concerning the permit not being posted and construction pads were not constructed off of Woodley Road and Andover [sic] Road.

Facility ID and rain gauge could not be located at the time of inspection.

Silt fence did not appear to be properly implemented or maintained. Silt fence was not entrenched and was only installed along Woodley Road at the time of inspection.

Bare areas did not have temporary seed, mulch, other means of stabilization and/or BMPs installed to prevent/minimize potential off-site sediment discharges.

Construction exit pad(s) did not appear to be stabilized.

Exhibit A.

On November 6, 2013, the Alabama Department of Environmental Management sent a Warning Letter to Xavier D. Harris alleging possible violations of Ala. Admin. Code Ch. 335-6-12 as follows:

1. Appropriate, effective Best Management Practices (BMPs) for the control of pollutants in stormwater run-off have not been fully implemented and regularly maintained to the maximum extent practicable resulting in the potential for uncontrolled discharges of sediment

and other pollutants to an unnamed tributary to Catoma Creek, a water of the State of Alabama.

2. Construction exit pad(s) did not appear to be stabilized.
3. The facility identification was not displayed.

#### Exhibit B.

On December 3, 2013, Curtis T. Pierce, a Professional Engineer and Professional Land Surveyor (License No. 16175) for Xavier D. Harris, filed a response to the Warning Letter, stating as follows:

1. The silt fence has been entrenched eight (8) inches into the ground along Woodley Road and properly secured.
2. A construction entranced [sic] pad has been installed at the Woodley Road entrance using inch and a half (1 ½) crushed gravel at a layer depth of eight (8) inches.

As a part of the above referenced conversation, the clearing of the property perimeter has not been completed and once done the silt fence will be installed along the perimeter of the land disturbance. The facility I. D. and rain gauge are now displayed clearly at the property entrance.

The property grade level must be raised for proper drainage by bringing in fill dirt and this has not been completed therefore no temporary seed or mulch has been installed. Once property has been brought to grade, it will be seeded to prevent soil erosion.

#### Exhibit C.

### **II. Continuing Violations**

#### **A. Failure to Stabilize Woodley Road Entrance/Exit**

General NPDES Permit No. ALR10A872, Part III. A. 8. requires that all construction entrances and exits be stabilized and that off-site tracking of sediment be minimized.

The gravel used at the Woodley Road entrance/exit to the site is not eight (8) inches in depth for the entire length of the entrance as represented by the engineer. This entrance/exit has not been adequately stabilized to prevent erosion caused by vehicular and equipment traffic and to minimize off-site tracking of sediment in violation of General NPDES Permit No. ALR10A872, Part III. A. 8. Exhibits D-1, D-2. This violation has continued every day since October 9, 2013.

**B. Failure to Stabilize Andova Drive Entrance/Exit**

General NPDES Permit No. ALR10A872, Part III. A. 8. requires that all construction entrances and exits be stabilized and that off-site tracking of sediment be minimized.

The Andova Drive entrance/exit to the site was used to transport heavy equipment to the site in mid-September, 2013 and has since been used by site workers and their vehicles. The entrance/exit has not been adequately stabilized to prevent erosion and to minimize off-site tracking of sediment in violation of General NPDES Permit No. ALR10A872, Part III. A. 8. Exhibits D-3, D-4, D-5. This violation has continued every day since September 16, 2013.

**C. Failure to Implement/Install Sediment Controls**

General NPDES Permit No. ALR10A872, Part III. D. 2. provides that “[t]he Permittee shall properly *implement* and maintain the controls, practices, devices, and measures specified in the CBMPP.”

General NPDES Permit No. ALR10A872, Part III. A. provides in part:

The Permittee shall design, *install*, and maintain effective erosion controls and sediment controls, appropriate for site conditions to, at a minimum:

\* \* \*

- 5. Minimize sediment discharges from the site;

Silt fencing or other appropriate sediment control measures to minimize sediment discharges from the site have not been implemented or installed on the entire north perimeter of the site in violation of General NPDES Permit No. ALR10A872, Part III. D. 2. and Part III. A. 5. Exhibit D-6. This violation has continued every day since December 19, 2013.

**D. Failure to Maintain Sediment Controls**

General NPDES Permit No. ALR10A872, Part III. D. 2. provides that “[t]he Permittee shall properly implement and *maintain* the controls, practices, devices, and measures specified in the CBMPP.”

General NPDES Permit No. ALR10A872, Part III. A. provides in part:

The Permittee shall design, install, and *maintain* effective erosion controls and sediment controls, appropriate for site conditions to, at a minimum:

\* \* \*

- 5. Minimize sediment discharges from the site;

Silt fences on the north side and south side of the Woodley Road entrance have not been properly maintained and are in disrepair in violation of General NPDES Permit No. ALR10A872, Part III. D. 2. and Part III. A. 5. Exhibits D-7, D-8, D-9, D-10, D-11. This violation has continued every day since December 19, 2013.

**E. Failure to Provide Temporary Stabilization**

General NPDES Permit No. ALR10A872, Part III. A. provides in part:

The Permittee shall design, install, and maintain effective erosion controls and sediment controls, appropriate for site conditions to, at a minimum:

\* \* \*

3. Minimize the amount of soil exposed during construction activity through the use of project phasing or other appropriate techniques;

General NPDES Permit No. ALR10A872, Part III. B. provides in part:

Temporary stabilization of disturbed areas must be initiated immediately whenever work toward project completion and final stabilization of any portion of the site has temporarily ceased on any portion of the site and will not resume for a period exceeding thirteen (13) calendar days.

Work toward project completion and final stabilization at the site has temporarily ceased for at least thirteen (13) days. Temporary stabilization of exposed soils, including multiple dirt piles, has not been implemented in violation of General NPDES Permit No. ALR10A872, Part III. A. and Part III. B. Exhibits D-12, D-13, D-14, D-14, D-16, D-17, D-18, D-19. This violation has continued every day since December 24, 2013

**F. Improper Rain Gauge Placement**

General NPDES Permit No. ALR10A872, Part III. J. provides in part:

The Permittee shall measure and record all precipitation occurring at the construction site. Precipitation measurements shall be taken using continuous recorders or daily readings of an onsite rain gauge or other measurement device acceptable to the Department. Precipitation measurements must be representative of the Permittee's site.

The Permittee attached a rain gauge to the trunk of a tree. Rainfall is obstructed by branches, a leafy canopy and Spanish moss. Precipitation measurements are not representative of the rainfall



on the construction site in violation of General NPDES Permit No. ALR10A872, Part III. J. Exhibits D-20, D-21. This violation has continued every day since December 3, 2013.

### **G. Disturbance Outside Permitted Area**

Ala. Admin. Code r. 335-6-12-.07(2) provides that Ala. Admin. Code Ch. 335-6-12 is applicable to construction sites that are not subject to an individual or general permit. Ala. Admin. Code r. 335-6-12-.05(1) provides that an operator shall maintain a valid registration for an NPDES construction site/activity until disturbance activity is complete and all disturbed areas have been reclaimed or effective stormwater quality remediation has been achieved. Ala. Admin. Code r. 335-6-12-.11(1) provides that “continued operation of NPDES construction sites that have not submitted a complete and correct Notice of Registration (NOR) or application requesting coverage under a valid NPDES general permit, or individual permit, is prohibited.” The latter rule also provides that “commencement of construction at proposed NPDES construction sites that have not submitted a complete and correct NOR acceptable to the Department, or have not been granted NPDES permit coverage under a valid NPDES general permit, or individual permit, is prohibited.”

The Notice of Intent (NOI) on which General NPDES Permit No. ALR10A872 is based indicates that the total disturbed area will be 8.8 acres. This acreage reflects only the proposed cemetery and Woodley Road entrance/exit. It does not reflect the Andova Drive entrance/exit which extends from the southern terminus of Andova Drive in an easterly direction and thence northward to the permitted site of Woodley Memorial Gardens. Exhibit D-24. This entrance/exit has been used by heavy equipment and site workers to access the permitted site. Xavier D. Harris has engaged in and continues to engage in regulated construction activity that has resulted in land disturbance along the Andova Drive entrance/exit in violation of Ala. Admin. Code rs. 335-6-12-.05(1) and 335-6-12-.11(1). Exhibits D-22, D-23. This violation has continued every day since September 16, 2013.

### **III. Sanctions**

The Court may assess civil penalties of up to \$37,500 per violation per day and litigation costs (including attorney and expert witness fees). Suit may be avoided if these violations have been permanently abated before the expiration of sixty (60) days following the date of this notice. Please advise the undersigned of any measures that you may undertake which you contend have permanently abated these violations before suit is filed. Wetlands and Waters Association may be contacted through the undersigned.

Sincerely,



David A. Ludder  
Attorney for Wetlands and Waters Association

cc: Hon. Gina McCarthy, Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building (AR)  
1200 Pennsylvania Avenue N.W.  
Washington, D.C. 20004

Hon. A. Stanley Meiburg, Acting Regional Administrator  
Environmental Protection Agency  
Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, GA 30303-3104

Hon. Lance LeFleur, Director  
Alabama Department of Environmental Management  
P.O. Box 301463  
Montgomery, AL 36130-1463



Alabama Department of Environmental Management  
NPDES INSPECTION REPORT



Company/Operator/Permittee: Xavier D. Harris		FID 50070	Phone Number: (334) 657-5760	
Mailing Address: 300 Wiltshire Drive		City Montgomery	State AL	Zip Code 36117
Responsible Official/Operator Name: Xavier D. Harris, Owner				

Facility Name: Woodley Memorial Gardens	NPDES Permit #: ALR10A872	Permit Effect Date: 04/30/2013	Inspection Entry Date & Time: 10/24/2013 3:04 pm	County: Montgomery
Activity Description Cemetery and Fill Area	NMS Inspection #: 43037	Permit Expire Date: 03/31/2016	Inspection Exit Date & Time: 10/24/2013 3:22 pm	Report Complete Date: 11/5/2013
Inspection Type: (X) CEI ( ) CSI ( ) PAI    Routine ( )    Complaint (X)    Photos Taken (X)    Samples Collected ( )				

Township, Range, Section: T15N R18E S10

Physical Address/Location Description (include nearest city): Turn north off of Virginia Loop Road to Woodley Road. Travel north approximately 1/2 miles to the site on Woodley Road, in Montgomery.

Entrance Latitude & Longitude: 32.29988 & -86.24332

Discharge Point(s) Latitude & Longitude: 32° 17' 57.69" & -86° 14' 34.41" per NOI

Receiving Water(s): Unnamed Tributary to Catoma Creek

Weather Conditions: Clear skies, warm temperatures and no rain in the past 24 hours.

Summary:

Clearing has commenced onsite.  
 Inspection conducted based on a complaint (7G-007ST4P75) received by the Department concerning the permit not being posted and construction pads were not constructed off of Woodley Road and Andover Road.  
 Facility ID and rain gauge could not be located at the time of the inspection.  
 Silt fence did not appear to be properly implemented or maintained. Silt fence was not entrenched and was only installed along Woodley Road at the time of the inspection.  
 Bare areas did not have temporary seed, mulch, other means of stabilization and/or BMPs installed to prevent/minimize potential off-site sediment discharges.  
 Construction exit pad(s) did not appear to be stabilized.

Name(s) of On-site Representative(s) and Phone Numbers: No one available at the time of the inspection.		
Name of Inspector: Don Prempramot	Signature of Inspector: 	Date: 11/5/12
Name of Reviewing Supervisor: Richard Hulcher	Signature of Reviewing Supervisor: 	Date: 11/5/13

FOD Office: Montgomery

## NPDES CONSTRUCTION STORMWATER INSPECTION REPORT

FACILITY NAME: Woodley Memorial Gardens	NPDES PERMIT #: ALR10A872
<b>I. PERMIT VERIFICATION</b>	
a. Did the facility have a current registration at the time of inspection?	Yes
b. Did the disturbed acreage appear to be consistent with facility registration?	Yes
c. Were any unpermitted areas or activities observed at the time of inspection?	No
<b>II. FACILITY RECORDS</b>	
Was an on-site records review conducted at the time of inspection?	No
-No one available at the time of the inspection.	
If yes, were the following records available for review?	
a. CBMPP	
b. SPCC	
c. Copy of Application	
d. Inspection Reports	
e. Sample Records	
f. Rainfall Records	
<b>III. FACILITY SITE CONDITIONS</b>	
1. Was the facility ID properly displayed?	No
2. Was a rain gauge observed on-site?	No
3. Were BMPs properly implemented and maintained?	No
-Silt fence did not appear to be properly implemented or maintained.	
-Silt fence was not entrenched and was only installed along Woodley Road at the time of the inspection.	
4. Was on-site sediment accumulation and/or on-site erosion, with potential water quality concerns, observed at the time of inspection?	Yes
-Bare areas did not have temporary seed, mulch, other means of stabilization and/or BMPs installed to prevent/minimize potential off-site sediment discharges.	
5. Was off-site sediment accumulation and/or off-site erosion, with potential water quality concerns, observed at the time of inspection?	No
6. Were general housekeeping and solid wastes properly managed at the time of inspection?	Yes
7. Were fuels and/or chemicals properly managed at the time of inspection?	Yes
-None observed.	
8. Was the facility exit(s) constructed and maintained to prevent off-site vehicle tracking?	No
-Construction exit pad(s) did not appear to be stabilized.	
9. Was gray/process water (e.g. portable toilet, concrete truck washout) properly managed at the time of inspection?	Yes
-None observed.	
<b>IV. FACILITY DISCHARGES</b>	
1. Did all discharges appear to be properly permitted?	Yes
2. Was the facility discharging at the time of inspection?	No
3. Was a discharge sample obtained? If yes, sample results are provided below.	No
<b>V. RECEIVING WATERS</b>	
Was the receiving water(s) evaluated at the time of inspection?	No
-The receiving water(s) were not located on or near the facility.	
If yes,	
a. Was sediment accumulation in State water(s), as a result of facility activities, observed?	
b. Was there a substantial visual turbidity contrast observed in the receiving water(s) as a result of facility discharge(s)?	
c. Were instream turbidity samples obtained at the time of inspection? If yes, sample results are provided below.	

**LANCE R. LEFLEUR**  
DIRECTOR



**ROBERT J. BENTLEY**  
GOVERNOR

**Alabama Department of Environmental Management**  
adem.alabama.gov

1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463  
Montgomery, Alabama 36130-1463  
(334) 271-7700 ■ FAX (334) 271-7950

November 6, 2013  
CERTIFIED MAIL

Xavier D. Harris  
300 Wiltshire Drive  
Montgomery, AL 36117

RE: WARNING LETTER  
Construction & Land Disturbance  
NPDES Permit ALR10A872  
FID 50070  
ADEM Admin. Code Ch. 335-6-12  
Woodley Memorial Gardens  
Montgomery County (101)

Dear Mr. Harris:

Attached please find a report prepared as a result of an inspection conducted at Woodley Memorial Gardens on October 24, 2013.

The following concerns were noted during the inspection which may constitute violation(s) of the Alabama Water Pollution Control Act Ala. Code §§22-22-1 through 22-22-14 (2006 Rplc. Vol.), and ADEM Admin. Code Ch. 335-6-12.

1. Appropriate, effective Best Management Practices (BMPs) for the control of pollutants in stormwater run-off have not been fully implemented and regularly maintained to the maximum extent practicable resulting in the potential for uncontrolled discharges of sediment and other pollutants to an unnamed tributary to Catoma Creek, a water of the State of Alabama.
2. Construction exit pad(s) did not appear to be stabilized.
3. The facility identification was not displayed.

Please submit to Don Prempramot at Office of Field Services, 1350 Coliseum Blvd, Montgomery, AL 36110 within ten (10) days of receipt of this letter, unless extended in writing by the Department, confirmation detailing how and when corrective action was taken to effectively address any items noted above. Please provide photographs as supporting documentation of completed/repaired/enhance.

Upon receipt of this letter all necessary measures should immediately be implemented to the maximum extent practicable to prevent/minimize sediment and other pollutants in water used in the regulated disturbance activity/process or stormwater run-off from disturbed/unstabilized areas, from leaving the site or associated areas. Please be

**Birmingham Branch**  
110 Vulcan Road  
Birmingham, AL 35209-4702  
(205) 942-6168  
(205) 941-1603 (FAX)

**Decatur Branch**  
2715 Sandlin Road, S. W.  
Decatur, AL 35603-1333  
(256) 353-1713  
(256) 340-9359 (FAX)



**Mobile Branch**  
2204 Perimeter Road  
Mobile, AL 36615-1131  
(251) 450-3400  
(251) 479-2593 (FAX)

**Mobile-Coastal**  
4171 Commanders Drive  
Mobile, AL 36615-1421  
(251) 432-6533  
(251) 432-6598 (FAX)

Xavier D. Harris  
11/6/2013  
Page 2 of 2

advised that all requirements of ADEM Admin. Code ch. 335-6-12, are in effect regardless of the operator's permit status.

The determination to pursue further enforcement action will be dependent on the timeliness and content of your response to this letter, including but not limited to the documentation of site corrective actions implemented.

Should you have any questions concerning this matter, please contact **Don Prempramot by email at [dp@adem.state.al.us](mailto:dp@adem.state.al.us) or by phone at (334) 394-4319.**

Sincerely,

A handwritten signature in black ink, appearing to read 'RH', with a long horizontal flourish extending to the right.

Richard Hulcher, Chief  
Office of Field Services  
Field Operations Division

RH/dp

File: EWL/43644


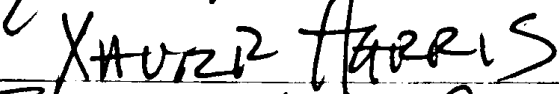
Enclosure: Inspection Report  
Photographs

Date: November 18, 2013

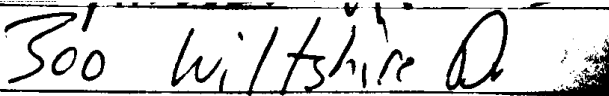
Mary Thompson:

The following is in response to your November 18, 2013 request for delivery information on your Certified Mail™ item number 9171999991703231095318. The delivery record shows that this item was delivered on November 13, 2013 at 1:32 pm in MONTGOMERY, AL 36117. The scanned image of the recipient information is provided below.

Signature of Recipient :

Signature	
X	
Certified mail	

Address of Recipient :

Delivery address	
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Thank you for selecting the Postal Service for your mailing needs.

If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,  
United States Postal Service

**EXHIBIT C**

RECEIVED  
DEC 11 2 2013  
ADEM

RECEIVED  
DEC 11 3 2013  
ADEM

TUSKEGEE LAND SURVEYING  
2073 Halcyon Blvd.  
Montgomery, Alabama 36117  
Phone: (334) 220-8214

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
1400 Coliseum Blvd.,  
Montgomery, Alabama 36130-1463

ATT: RICHARD HULCHER, CHIEF  
Field Operations Division

RE: WARNING LETTER For Woodley Memorial Gardens

DATE: December 3, 2013

The letter and attached pictures are being sent in response to the Warning Letter for construction land disturbance related to Woodley Memorial Gardens received November 19, 2013. After a conversation with Mr. Don Prempramot, Mr. Xavier D. Harris has taken the following corrective actions:

1. The silt fence has been entrenched eight (8) inches into the ground along Woodley Road and properly secured.
2. A construction entranced pad has been installed at the Woodley Road entrance using inch and a half (1 1/2) crushed gravel at a layer depth of eight (8) inches.

As a part of the above referenced conversation, the clearing of the property perimeter has not been completed and once done the silt fence will be installed along the perimeter of the land disturbance. The facility I. D. and rain gauge are now displayed clearly at the property entrance.

The property grade level must be raised for proper drainage by bringing in fill dirt and this has not been completed therefore no temporary seed or mulch has been installed. Once property has been brought to grade, it will be seeded to prevent soil erosion.

If you any further questions, please contact me at (334) 220-8214.

Sincerely,

Curtis T. Pierce, PE/PLS  
Tuskegee Land Surveying  
P. O. Box 830535  
Tuskegee, Alabama 36083  
Enclosure: Photographs



























**Failure to Stabilize Woodley Road Entrance/Exit  
12.26.2013**



**Failure to Stabilize Woodley Road Entrance/Exit  
12.26.2013**



**EXHIBIT D-3**



**Failure to Stabilize Andova Drive Entrance/Exit  
11.18.2013**



**EXHIBIT D-4**



**Failure to Stabilize Andova Drive Entrance/Exit  
11.19.2013**





**Sediment Tracking on Andova Drive  
11.18.2013**



**Failure to Implement/Install Sediment Control Measures**

**1.3.2014**





**Failure to Maintain Silt Fences  
12.23.2013**



**Failure to Maintain Silt Fences  
12.28.2013**





**Failure to Maintain Silt Fences  
12.28.2013**



**Failure to Maintain Silt Fences  
1.2.2014**



**Failure to Maintain Silt Fences  
1.3.2014**





**Failure to Provide Temporary Stabilization  
11.20.2013**



**Failure to Provide Temporary Stabilization  
12.21.2013**





**Failure to Provide Temporary Stabilization  
12.21.2013**



**Failure to Provide Temporary Stabilization  
12.21.2013**





**Failure to Provide Temporary Stabilization  
1.3.2014**



**Failure to Provide Temporary Stabilization  
1.3.2014**





**Failure to Provide Temporary Stabilization  
1.3.2014**



**Failure to Provide Temporary Stabilization  
1.3.2014**





**Improper Rain Gauge Placement  
12.23.2013**



**Improper Rain Gauge Placement  
12.23.2013**





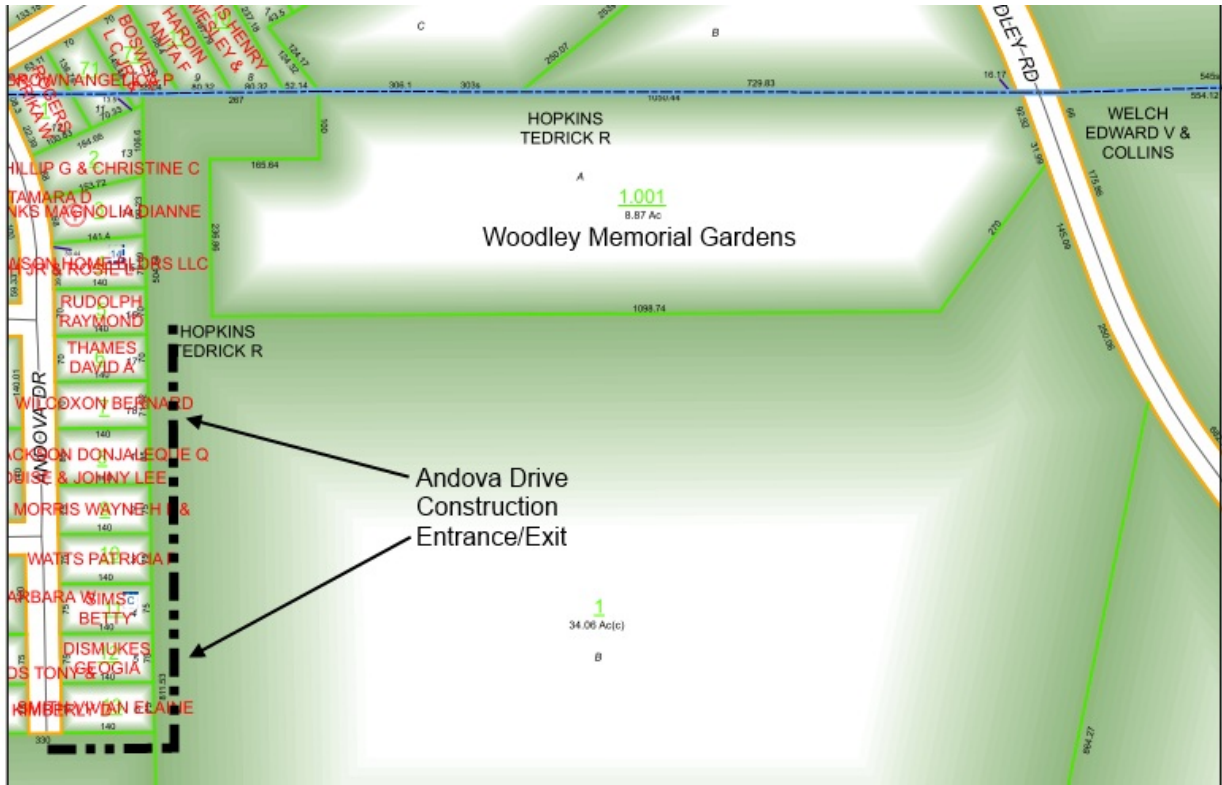
**Disturbance Outside Permitted Area  
11.18.2013**





**Disturbance Outside Permitted Area  
11.18.2013**

**EXHIBIT D-24**



**Disturbance Outside Permitted Area  
Andova Drive Construction Entrance/Exit**