

Meeting Date
February 7, 2017



AGENDA	
Section	Unfinished Business
Item No.	V.A.

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Proposed Settlement Agreement in the matter of <u>Deer Park Ranch, Ltd. v. Brevard County Solid Waste Management Department and Department of Environmental Protection</u> , DOAH Case No. 16-3549, and <u>Farmland Reserve, Inc. d/b/a Deseret Ranches of Florida v. Brevard County Solid Waste Management Department and Department of Environmental Protection</u> , DOAH Case No. 16-3550				
DEPT/OFFICE:	County Attorney's Office and Solid Waste Management Department Scott Knox, County Attorney, Christine Lepore, Assistant County Attorney Scott.Knox@brevardfl.gov ; Christine.Lepore@brevardfl.gov Euripides Rodriguez, Director, Solid Waste Management Department, Euripides.Rodriguez@brevardfl.gov				
Requested Action:	Staff requests that the Board approve the attached settlement agreement and authorize the chairman to sign it.				
Summary Explanation & Background:	<p>For the past several years, the County has been pursuing development permits for a solid waste management facility at the county-owned property on U.S. 1-92. In 2011, FDEP issued the construction permit for a Class III landfill (construction and demolition debris). On January 15, 2016, FDEP issued a notice of intent to issue an Environmental Resource Permit (ERP) for the Class III landfill and the future location of a Class I landfill. The neighboring property owners, Deseret Ranch and Deer Park Ranch filed petitions for administrative hearing to challenge whether the County's permit applications comply with state regulatory requirements. The two-week hearing is scheduled for May 2, 2017.</p> <p>The parties reached the proposed settlement agreement through informal negotiation. On January 24, 2017, the Board of County Commissioners met in an attorney-client private meeting and discussed the proposed settlement agreement.</p> <p>A summary of the agreement is attached. In a nutshell, the agreement allows the County to proceed with permitting for the construction of the Class III landfill without objection from the other parties, if the County's current permit application is revised to remove development of the Class I landfill. The agreement further provides that the County will not file an application for an FDEP solid waste or ERP permit for a Class I landfill on this site before October 1, 2036. Prior to deciding whether to build a Class I landfill, the County is required to evaluate alternative options, including out-of-county facilities, waste-to-energy technology and other reasonable alternatives. In exchange, the opposing parties agree to not challenge permits for an alternative technology facility. The County retains the right to pursue a Class I facility and the opposing parties retain the right to challenge a Class I landfill.</p> <p>Deseret may continue its cattle ranching operations on the property not needed for development of the Class III facility under the terms of its existing lease and the settlement agreement. The settlement agreement expires when the County closes all solid waste management facilities or October 1, 2076, which ever date occurs first.</p> <p>Fiscal impact: Not yet determined, however, costs to revise the permit applications will be minimal compared to the anticipated litigation costs.</p> <p>Commission District: 5 Fund Account/ Cost Code: 4011/352130</p>				
Clerk to the Board Instructions:					
Exhibits Attached:	January 23, 2017 letter from David Dee, Esq. summarizing the settlement agreement and a copy of the settlement agreement				
Contract /Agreement (If attached):	Reviewed by County Attorney	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
County Manager	Assistant County Manager	Department Director / Extension			
	Assistant County Manager	Euripides Rodriguez, Solid Waste Management Director			
		Scott Knox, County Attorney			



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

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February 8, 2017

M E M O R A N D U M

TO: Euripides Rodriguez, Solid Waste Management Director

RE: Item V.A., Proposed Settlement Agreement for Deer Park Ranch, Ltd. v. Brevard County Solid Waste Management Department and Department of Environmental Protection, DOAH Case No. 16-3549, and Farmland Reserve, Inc. d/b/a Deseret Ranches of Florida v. Brevard County Solid Waste Management Department and Department of Environmental Protection, DOAH Case No. 16-3550

The Board of County Commissioners, in regular session on February 7, 2017, granted approval of the proposed Settlement Agreement for Deer Park Ranch, Ltd. v. Brevard County Solid Waste Management Department and Department of Environmental Protection, DOAH Case No. 16-3549, and Farmland Reserve, Inc. d/b/a Deseret Ranches of Florida v. Brevard County Solid Waste Management Department and Department of Environmental Protection, DOAH Case No. 16-3550; and authorized the Chairman to execute the Agreement. Enclosed is the executed Agreement.

Upon execution by Farmland Reserve, Inc. and Deer Park Ranch, Ltd., please return the fully-executed Settlement Agreement to this office for inclusion in the official minutes.

Your continued cooperation is greatly appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/kp

Encl. (1)

cc: County Manager
County Attorney
Finance
Budget

SETTLEMENT AGREEMENT

This Settlement Agreement (“the Agreement”) is entered into as of this 7th day of February, 2017 (“the Effective Date”) by and between Farmland Reserve, Inc. (d/b/a Deseret Ranches of Florida or “Deseret”), a non-profit corporation authorized to conduct business in Florida, and Deer Park Ranch, Ltd. (“Deer Park”), a Florida limited partnership, and Brevard County (“County”), a political subdivision of the State of Florida.

BACKGROUND FACTS

A. The County owns certain real property (“the Site”) located adjacent to U.S. 192 in the western part of Brevard County, Florida. The Site contains approximately 2,980 acres and is more particularly described in Exhibit 1, which is attached to this Agreement. The County plans to use the Site for the development of the County’s future solid waste management facilities, including a “Class III” landfill, two “Class I” landfills, and other ancillary facilities. The County’s plans for the development of the Site are depicted in the “Phase II Development Site Plan” (“Site Plan”) that is attached to this Agreement as Exhibit 2.

B. On December 15, 2011, the Florida Department of Environmental Protection (“the Department” or “FDEP”) issued a construction permit (Permit No. SC05-0296030-001) and an operation permit (Permit No. SO05-0296030-002) that authorized the construction and operation of the first cell (i.e., disposal area) of the County’s proposed Class III landfill. These permits were issued pursuant to the FDEP solid waste rules in Chapter 62-701, Florida Administrative Code (“F.A.C.”). These two solid waste permits (“the Solid Waste Permits”) also authorized the construction and operation of other related facilities (“Related Facilities”), including but not limited to an entrance road, a scale house, leachate storage tanks, administrative offices, and a Multi-Use Area, which will be used for collecting, storing, and processing Yard Trash, White Goods, Waste Tires, and scrap metal. The approximate locations of the Class III landfill and the Multi-Use Area are depicted on the Site Plan that is attached hereto as Exhibit 2.

C. The County filed applications with the Department pursuant to Chapter 62-330, F.A.C., for two Environmental Resource Permits (“ERPs”)—i.e., a construction ERP and a conceptual ERP. If the ERPs are issued, the ERPs would authorize the County to (1) conduct dredging, filling, and other activities that will affect certain wetlands on the Site and (2) construct and operate certain stormwater management systems on the Site. The County’s ERP application for a construction permit (“the Construction Permit”) seeks FDEP’s approval of the development of the wetland areas and stormwater management systems to be used for the proposed Class III landfill and Related Facilities. In addition, the County’s ERP application for the Construction Permit seeks FDEP’s approval of the development of the wetland areas and stormwater management ponds to be used for the two proposed Class I landfills. The County’s ERP application for a conceptual permit (“Conceptual Permit”) seeks approval of the County’s

long range plans for the development of the County's Site, including but not limited to the build-out of the stormwater management systems for the proposed Class I landfills. On January 15, 2016, the Department gave notice of its intent to issue the Construction Permit (Permit No. 05-301799-004-EI) and the Conceptual Permit (Permit No. 05-301799-003-EC) sought by the County.

D. Deseret and Deer Park each filed a petition for a formal administrative hearing and thereby challenged the Department's decision to issue the Construction Permit and Conceptual Permit to the County. Deseret, Deer Park, the County, and the Department are now parties in two administrative proceedings that have been consolidated and are pending before the Florida Division of Administrative Hearings ("DOAH"). These DOAH cases (collectively, "the Lawsuits") are styled as follows: Deer Park Ranch, Ltd. v. Brevard County Solid Waste Management Department and Department of Environmental Protection, DOAH Case No. 16-3549, and Farmland Reserve, Inc. d/b/a Deseret Ranches of Florida v. Brevard County Solid Waste Management Department and Department of Environmental Protection, DOAH Case No. 16-3550.

E. Deseret, Deer Park, and the County have negotiated the terms of this Agreement to completely and permanently resolve the Lawsuits. Each of them agree that entering into and complying with the terms of this Agreement shall not be deemed to constitute an admission of law or fact by any Party and shall not be deemed to constitute a concession concerning the merits of any allegation or argument asserted by any Party in the Lawsuits.

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the Parties promises and agrees to comply with the following provisions of this Agreement:

1. Background Facts. The background facts set forth above in Paragraphs A, B, C, D, and E are true, correct and incorporated herein by this reference.

2. Definitions. The capitalized words and phrases in this Agreement are defined in Exhibit 3, which is attached hereto. The definitions in Chapter 403, Florida Statutes, and Title 62, Florida Administrative Code, shall supplement the definitions contained herein. If there is a conflict between the definitions contained in this Agreement and the definitions contained in any statute or rule, the definitions herein shall prevail when interpreting this Agreement.

3. Withdrawal of Conceptual Permit. After the Effective Date, the County will withdraw and no longer pursue its pending application for the Conceptual Permit. However, the withdrawal of the pending application does not waive the County's right to pursue the issuance of a conceptual ERP in the future, subject to the limitations contained herein.

4. Modification of Construction Permit. After the Effective Date, the County will modify its application for the Construction Permit. More specifically, the County shall withdraw the County's request to fill the wetlands that are located in the areas the County plans to develop for the proposed Class I landfills and the associated stormwater management ponds. The County

also shall withdraw its request to build the proposed stormwater management ponds that are located adjacent to the proposed Class I landfills. The two proposed Class I landfills are labeled as "Future Cell (376 acres)" and "Future Cell (122 acres)" in Exhibit 2. The stormwater management ponds associated with the Class I landfills are labeled as Stormwater Ponds 3, 5, and 6 in Exhibit 2. Since these modifications to the County's application will affect other parts of the County's plan for managing the stormwater on the Site, the County may modify its application further, as the County deems appropriate. Any such modifications will be designed to maintain or enhance the hydrology of the existing or proposed wetlands on the Site, or maintain or enhance the flows and stages of the stormwater moving across the Site, or comply with the requirements of a regulatory agency, or comply with the County's obligations to Deseret under this Agreement or other Contracts.

5. Joint Motion To Abate. Within fifteen (15) days after the Effective Date, the Parties shall jointly file a motion ("the Joint Motion to Abate") that requests the DOAH Administrative Law Judge ("ALJ") to cancel the final administrative hearing in the Lawsuits and hold the Lawsuits in abeyance while the County revises and the Department reviews the County's modified application for the Construction Permit. The Joint Motion to Abate shall be substantially the same as the form that is attached hereto as Exhibit 4. The Parties recognize, however, that the ALJ may transfer the Lawsuits back to the Department. In any event, at all times after the Effective Date, the Parties shall work diligently, promptly, and in good faith to ensure the timely issuance of the Final Construction Permit (as described below), subject to the requirements in this Agreement. Notwithstanding the Parties' best efforts, if for any reason the Department does not prepare and issue the Final Construction Permit within a timeframe that is acceptable to the County, the County may file a motion requesting the ALJ to reschedule the final administrative hearing for the Lawsuits or, if the Lawsuits have been transferred to the Department, the County may file a motion requesting the Department to transfer the Lawsuits back to DOAH for the rescheduling of the final administrative hearing. Deseret and Deer Park shall support the County's request, if the County deems it necessary to file such a motion. This Agreement shall terminate at 12:01 a.m. on the first day of the final administrative hearing for the Lawsuits.

6. Issuance of the Final Construction Permit. The County shall request the Department to prepare and issue a revised Construction Permit ("the Final Construction Permit") that is consistent with the plans in the County's modified application and the provisions of Paragraph 4, above. If the Department agrees to issue a Final Construction Permit that is consistent with Paragraph 4, above, when the Lawsuits are pending before DOAH, the Parties shall attach the proposed Final Construction Permit to a settlement stipulation and joint motion for relinquishment of jurisdiction ("the Settlement Stipulation"), which the Parties shall file with the ALJ. In the Settlement Stipulation, the Parties shall request the ALJ to issue an order relinquishing jurisdiction of the Lawsuits, closing the relevant files at DOAH, and transferring the Lawsuits to the Department for the issuance of the Final Construction Permit. The Settlement Stipulation shall be substantially the same as the form that is attached hereto as Exhibit 5. If the Lawsuits are transferred from DOAH to the Department before the Department prepares the draft Final Construction Permit, the Parties shall request the Department to prepare and promptly issue a Final Construction Permit that is consistent with the provisions in Paragraph 4, above.

7. County's Right to Construct Class I Landfills on the Site. Notwithstanding anything else contained herein, the County reserves its right to construct and operate Class I landfills on the Site in the future. The County acknowledges and agrees that that it must comply with all applicable laws and obtain all applicable permits and approvals if the County elects to construct a Class I landfill on the Site in the future. Among other things, the County would need to obtain an ERP pursuant to Chapter 62-330, F.A.C, and a solid waste permit pursuant to Chapter 62-701, F.A.C., or equivalent permits under the then applicable laws. The County also acknowledges and agrees that Deseret and Deer Park reserve their rights to challenge the issuance of the permits for a Class I landfill, except as otherwise provided in Paragraph 20, below.

8. No Class I Landfill before 2036.

(a) The County stipulates it will not file an application for the construction of a Class I landfill on the Site pursuant to Chapter 62-701, F.A.C., before October 1, 2036. The County also stipulates that it will not file an application for the construction of a stormwater management system for a Class I landfill on the Site pursuant to Chapter 62-330, F.A.C., before October 1, 2036.

(b) The stipulations in Paragraph 8(a), above, are based on the County's current estimate that the Class I landfills at the County's Central Disposal Facility will not be filled to their maximum design capacity before January 1, 2047. If the County determines in the future that the Central Disposal Facility will be filled to its maximum design capacity before January 1, 2047, the County may adjust the October 1, 2036 milestones in Paragraph 8(a) to account for the reduction in the active life of the Central Disposal Facility. Any such determination shall be based on the information provided to the Department in the County's annual report, which is required by Rule 62-701.500(13)(c), F.A.C., and which must contain "an annual estimate of the remaining life and capacity in cubic yards of the existing, constructed landfill and an annual estimate of the life and capacity in cubic yards of other permitted areas not yet constructed." Any adjustment to the milestones in Paragraph 8(a) shall be equal to (i.e., the same duration as) the reduction in the projected active life of the Central Disposal Facility. However, notwithstanding anything else contained in this Paragraph 8(b), the County shall not adjust the milestones in Paragraph 8(a), above, to any date earlier than October 1, 2031. For example, if the County determines that population growth, a hurricane, new regulatory requirements, or other factors will cause the Central Disposal Facility to be filled to its maximum design capacity by January 1, 2046 (i.e., one year earlier than currently projected), the County shall have the right to file its applications pursuant to Chapters 62-701 and 62-330, F.A.C., on or after October 1, 2035 (i.e., one year earlier than the milestones in Paragraph 8(a), above). The County shall notify Deseret and Deer Park promptly if the County concludes that it needs to adjust the milestones pursuant to this Paragraph 8(b).

9. Evaluation of Solid Waste Alternatives. No less than one year prior to filing an application for a solid waste permit or an ERP authorizing the construction of a Class I landfill on the Site, the County shall obtain an independent analysis of the alternatives to the construction and operation of a Class I landfill on the Site. The analysis shall consider the use of solid waste

management facilities that are in operation in Florida, as well as solid waste management technologies (e.g., waste-to-energy) that have been used successfully on a commercial scale in the United States. The analysis shall also consider the financial and environmental impacts associated with the proposed Class I landfill and the alternatives to the Class I landfill that are reasonably available. A technology or facility does not need to be considered unless it is a reasonable alternative – i.e., at a minimum, the technology or facility must be well demonstrated during commercial scale operations, commercially available, cost-effective, and otherwise practicable. The analysis of the County’s alternatives shall be performed by a qualified engineering or consulting firm. The analysis shall be in addition to the analyses and evaluations that were performed by the County before the Effective Date.

10. The County’s Fence. Upon or shortly after the date designated for the commencement of construction (“the Commencement of Construction”) pursuant to Paragraph 11, below, the County will build a fence, at its expense, extending from east to west across the Site. The fence will divide the Site into a northern area (“the Northern Area”) and a southern area (“the Southern Area”). The fence will be located approximately where it is shown in Exhibit 6, unless the Department or another regulatory agency requires the County to relocate it, or the County deems it necessary to move the fence slightly to provide a larger buffer around a wetland. The Northern Area is estimated to be approximately 1,083 acres, but this number may fluctuate, depending on the actual placement of the fence. The County will be responsible for the normal repair and maintenance of the fence. Deseret shall be responsible for the repair or replacement of the fence in areas where Deseret or Deseret’s cattle have caused damage in excess of normal wear and tear.

11. Deseret’s Use of the Site.

(a) Deseret currently uses the Site for cattle ranching pursuant to a Lease Agreement (“Lease”) dated December 2, 2003. The Lease shall remain in effect and shall continue to govern Deseret’s activities on the Site, except as otherwise provided herein. Accordingly, Deseret will be allowed to continue to use the entire Site, except those areas where Deseret’s activities interfere with the County’s efforts to develop the Site, until the County is ready to commence construction of the County’s proposed facilities. The County will provide periodic written updates to Deseret concerning the status of the County’s efforts to complete the steps necessary for the County to commence construction of the County’s proposed facilities on the Site. The County also will give Deseret written notice at least one hundred twenty (120) days before the date when the County anticipates that the Commencement of Construction will occur.

(b) After receiving the County’s notice designating the date for the Commencement of Construction, Deseret shall take all steps necessary to ensure that its cattle, equipment, and personal property are moved to the Northern Area before the date designated by the County in its notice. No later than the date designated by the County for the Commencement of Construction, Deseret shall cease all of its activities in the Southern Area. On and after the date designated for the Commencement of Construction, Deseret’s activities under the Lease shall be restricted to the Northern Area (e.g., Deseret shall have no right of access to the Southern Area).

(c) The notice requirements in this Paragraph 11 supersede and replace the notice provisions in Section 6 of the Lease.

12. Artesian Wells. Subject to the terms and conditions in the Lease and this Agreement, Deseret will be allowed to continue to operate the existing artesian wells located in the areas being used by Deseret. Notwithstanding the foregoing, the County intends to grout and abandon most or all of the artesian wells located in the Southern Area upon or after the Commencement of Construction. The County may continue to operate one or more of the existing wells in the Southern Area for the County's own purposes, including but not limited to fire protection or the irrigation of the proposed wetland creation areas. The County will not grout and abandon the wells in the Northern Area during the term of the Lease, unless Deseret's use of the wells interferes with the County's efforts to develop the Site.

13. New Structures. Consistent with Section 12 of the Lease, Deseret must request and receive the County's written consent before Deseret constructs or significantly alters any fence, building, structure, berm, ditch, culvert, drainage conveyance, or water control structure (collectively, "Improvements") on the Site. The County's consent will not be unreasonably delayed or withheld. The County's prior approval is not required for routine maintenance on an Improvement. Additionally, in the event of an emergency, Deseret may take necessary precautions and make necessary repairs or alterations to any Improvement. Promptly after the emergency conditions have passed, Deseret shall notify the County in writing if Deseret constructed or significantly altered any Improvements. Any new Improvement or significant alteration to an Improvement shall be subject to the County's after-the-fact review and written consent. If such consent is not granted, the Improvement shall be restored to its condition before the emergency.

14. Rent for Leased Area. Deseret must continue to pay rent for the areas that it leases from the County. Pursuant to Section 6 of the Lease, the rent paid by Deseret to the County will be reduced proportionately as development commences and the area utilized by Deseret is reduced. Since the area leased by Deseret will be reduced upon the Commencement of Construction, the rent paid by Deseret will be reduced proportionately upon the Commencement of Construction.

15. Extension of Lease. The Lease is scheduled to expire on December 2, 2023, but the Lease may be extended under certain conditions for two successive renewal terms. Each renewal term will be five years and, therefore, the Lease may be extended until December 2, 2033. The County and Deseret agree to extend the Lease beyond these two renewal terms by adding successive, renewable, five (5) year terms. Any renewal term shall be subject to the conditions and limitations in the Lease, as amended by this Agreement or otherwise. An extension of the Lease will authorize Deseret to continue to use part or all of the Site, but only to the extent that Deseret is authorized to use such land pursuant to the Lease at the time of renewal. For example, after the County's fence is constructed pursuant to Paragraph 10, above, an extension of the Lease will only authorize Deseret to use the land located in the Northern Area, and only to the extent that Deseret's activities do not interfere with the County's efforts to develop the Site. Notwithstanding anything else contained in this Agreement or the Lease, each extension of the Lease on or after December 2, 2033 shall be subject to the mutual consent of

Deseret and the County, which may be granted or withheld in their sole discretion. If either Party intends to withhold its consent to a renewal of the Lease, that Party must provide written notice of its intent to the other Party at least 365 days prior to the expiration of the then current term of the Lease.

16. Contamination at Cattle Pen. The County will remediate the arsenic and other contamination at the existing cattle pen area on the Site in accordance with applicable Department rules. The contamination is described in the "Limited Site Assessment Report" (dated March 9, 2012) prepared by Ardaman & Associates, Inc. The remediation activities shall be performed at the County's expense and shall begin upon or after the Commencement of Construction. The County anticipates that the remediation activities will require the removal of the structures that are currently located in the cattle pen area. After the County completes the remediation of the cattle pen area, Deseret may construct new cattle pens in the same location, at Deseret's option and Deseret's expense, subject to the requirements in Section 12 of the Lease. Deseret acknowledges and agrees that it shall be liable for any contamination on the Site that is caused by Deseret's acts or omissions after the Effective Date.

17. Wetlands Protections and Banking. At its option, the County may: (a) record one or more conservation easements to protect some or all of the wetlands on the Site; (b) create one or more of the wetland creation areas that are proposed in the County's ERP applications and the Construction Permit for the Southern Area; or (c) undertake other measures in the Southern Area to provide mitigation for the wetland impacts associated with the County's activities on the Site. The County believes these activities may provide more mitigation than the County needs to obtain the Final Construction Permit. If they do, the County may wish to "bank" any excess mitigation so that the excess mitigation may be used to offset wetland impacts associated with the County's future projects, either on the Site or in off-Site areas. Pursuant to Paragraph 19, below, Deseret and Deer Park agree that they will not oppose, challenge, or in any way contest (collectively, "Oppose") these activities by the County, but their acquiescence to these proposed activities shall not be cited as evidence of their approval of a future Class I landfill on the Site or their consent thereto. Parenthetically, if the County records a conservation easement for any of the wetlands in the Northern Area, the conservation easement will note that cattle ranching and grazing will be allowed in the Northern Area during the term of the Lease.

18. Stormwater Management Systems.

(a) The County represents that the stormwater management systems shown on the Site Plan for the Class III landfill and Related Facilities (i.e., Stormwater Ponds 1, 1-A, 2 and 4) have been designed to comply with the applicable standards of the FDEP and the St. Johns River Water Management District ("SJRWMD"). In addition, these stormwater ponds have been designed to control and treat the run-off from a 100-year storm event. If the County wishes to build any stormwater management systems in addition to the ones shown on the Site Plan for the Class III landfill and Related Facilities, those future systems must be designed in compliance with the applicable FDEP and SJRWMD standards in effect at the time the County seeks the permits for such systems.

(b) Deseret shall use any stormwater control structure or conveyance on the Site in a manner consistent with the applicable permits and laws, and not in a manner that hinders the County's ability to maintain the County's stormwater management systems and wetland areas in compliance with the applicable permits and laws.

(c) Nothing contained in this Agreement is intended, and nothing herein shall be construed, to change any rights or remedies of any Party with regard to any water flowing onto, across, or off of the lands owned by Deer Park.

19. No Challenges to Permits for Class III Landfill. In exchange for the County's commitments herein, Deseret and Deer Park each agree that they will not Oppose the issuance of any permit or approval for the County's Class III landfill and Related Facilities on the Site, except for their reservation of rights in Paragraph 22, below. Among other things, Deseret and Deer Park will not Oppose the issuance, renewal, extension, amendment, or modification of: (a) any solid waste permit concerning the proposed Class III landfill and Related Facilities; (b) any ERP concerning the proposed Class III landfill and Related Facilities; (c) any permit from the U.S. Army Corps of Engineers for the Class III landfill and Related Facilities, (d) the Biological Opinion and similar determinations of the U.S. Fish and Wildlife Service for the Class III landfill and Related Facilities, (e) any other permit or approval required for the Class III landfill and Related Facilities; or (f) any permit or approval for the temporary storage, processing, and management in the Southern Area of vegetative waste and non-putrescible waste from storm events. For the purposes of Paragraphs 19, 20, and 21 herein, the commitments by Deseret and Deer Park to not Oppose the County's activities include but are not limited to a commitment that they will not individually, collectively, or through an agent or surrogate, file or provide assistance or funding for the filing of any case in state court, federal court, DOAH, or any other civil or administrative tribunal concerning the County's Class III landfill and Related Facilities. Deseret acknowledges and agrees that its commitments in Paragraphs 19, 20, and 21 herein supersede and replace the provisions in Section 26 of the Lease.

20. No Challenges to Innovative Waste Management Facilities. In exchange for the County's commitments herein, Deseret and Deer Park each agree that they will not Oppose the issuance of any permit or approval for waste-to-energy facilities (e.g., traditional energy-from-waste technology; plasma gasification; pyrolysis; other gasification; similar technologies) that will process garbage and putrescible waste on the Site to create ash, slag, or other inert material. Further, notwithstanding their reservation of rights in Paragraph 22, below, or anything else contained herein, Deseret and Deer Park each agree that they will not Oppose the issuance of any permit or approval for a Class I landfill on the Site if the Class I landfill is used solely for the disposal of the ash, slag, and other non-putrescible by-products from the operation of the County's waste-to-energy facilities.

21. No Challenges to Recycling Facilities. In exchange for the County's commitments herein, Deseret and Deer Park each agree that they will not Oppose the issuance of any permit or approval for recycling facilities or similar materials recovery facilities ("MRF") on the Site.

22. Reservation of Rights by Deseret and Deer Park. Except as provided in Paragraph 20, above, Deseret and Deer Park reserve all of their rights to Oppose any application filed by the County in the future for a solid waste permit, ERP, or other approval authorizing the construction or operation of a Class I landfill on the Site. Deseret and Deer Park also reserve their right to: (a) Oppose any permit or approval that constitutes a major deviation from the concepts presented in this Agreement or the previously issued FDEP Solid Waste Permits for the Class III landfill and Related Facilities; (b) review the County's applications and permits to ensure they comply with the requirements in this Agreement; and (c) lobby the County and its representatives, subject to applicable laws and County policies regarding lobbyists.

23. Scope of Agreement. This Agreement is being entered into for the sole purpose of settling the pending Lawsuits. This Agreement shall not be construed to mean that Deseret or Deer Park approve of the County's plan to develop the Site for solid waste management facilities.

24. Sale or Conveyance of the Site. If the County determines at any time to sell or convey any portion of the Site, it shall do so in compliance with applicable Florida laws, including but not limited to any applicable provisions in Chapter 2, Article VIII (Surplus Real Property and Modular Structures Transactions), of the Brevard County Code of Ordinances. For example, sales or conveyances to governmental entities, non-profit organizations, and anyone providing services on behalf of the County shall be conducted in compliance with the applicable laws and ordinances, such as Sections 125.37 and 125.38, Florida Statutes. Other sales or conveyances shall be conducted pursuant to a request for proposals ("RFP"), as contemplated by Section 2-245 of the Brevard County Code of Ordinances, and in compliance with any other applicable laws and ordinances. In addition to any applicable statutory notice requirements under Florida law, the County shall provide actual written notice to Deseret upon any determination to sell, lease, or convey any portion of, or any ownership interest in, the Site. In the event the County sells or conveys the Site or any portion thereof to a third party while the Lease is in effect, the Lease shall survive the sale, and Deseret shall maintain its rights and obligations under the Lease, for one (1) year after the date of sale.

25. Effective Date. This Agreement shall become effective on the date when the Agreement is signed and fully executed by all Parties. The County shall write the Effective Date in the space provided in Page 1 of this Agreement, after the Agreement has been executed by Deseret, Deer Park, and the County. The County will not sign the Agreement until it is executed by Deseret and Deer Park.

26. Term of the Agreement. The term of this Agreement shall commence on the Effective Date and shall expire when the County permanently closes all of its solid waste management facilities on the Site or October 1, 2076, whichever occurs first.

27. Authority of Signatories. Each of the undersigned individuals certifies that he or she is duly authorized to execute and enter into this Agreement as an agent for his or her respective Party.

28. Certification of Understanding and Voluntary Execution. The Parties and their authorized representatives each certify that (a) they have read and understand the terms and conditions of this Agreement, (b) they have received the advice of their own legal counsel, and (c) this Agreement is being voluntarily executed for the purposes of making a full and final settlement of the Lawsuits.

29. Enforceability. Deseret, Deer Park, and the County agree that this Agreement is legally binding and enforceable on each of them and has been executed by a duly authorized representative of each of them. This Agreement shall be binding and enforceable on each Party and their successors and assigns, including but not limited to each affiliate, subsidiary, parent corporation, general partner, and limited partner of the Party. This Agreement also shall be legally binding between Deseret, Deer Park, and the County, or any person or entity to whom the Site is sold or otherwise conveyed, and any such conveyance shall be subject to this Agreement.

30. Venue; Waiver of Jury Trial. This Agreement shall be governed by Florida law. Venue for any dispute that arises under this Agreement shall lie exclusively in the courts in and for Brevard County, Florida. The Parties agree that any claim filed in state or federal court concerning this Agreement shall be heard by a judge, sitting without a jury. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND PERMANENTLY WAIVE ANY RIGHT THEY MAY HAVE TO A JURY TRIAL CONCERNING ANY MATTER THAT ARISES FROM OR IS IN ANY WAY BASED ON THE INTERPRETATION, APPLICATION, OR ENFORCEMENT OF THE TERMS OF THIS AGREEMENT.

31. Remedies. If a court of competent jurisdiction determines that a Party is in material breach of this Agreement, the breaching Party shall be responsible for and shall pay the actual damages incurred by the non-breaching Party. The breaching Party also shall be subject to equitable remedies, including without limitation injunctive relief to enforce the remedy of specific performance. In the event any litigation is instituted for the purpose of interpreting or enforcing any of the provisions of this Agreement, the prevailing Party, as determined by the court having jurisdiction over the litigation, shall be entitled to recover from the non-prevailing Party reasonable costs and expenses incurred in connection with such litigation, including without limitation, reasonable fees for attorneys and experts, in addition to any other relief granted by the court. The remedies provided herein shall supplement, and not be in lieu of, any other remedies available at law or in equity. Notwithstanding anything else contained herein, the County does not waive or otherwise relinquish its sovereign immunity or the limitations on liability provided in Section 768.28, Florida Statutes.

32. Interpretation of the Agreement. All of the Parties are represented by legal counsel and they all participated in the preparation of this Agreement. Accordingly, the Parties waive any rule of law that would require any vague or ambiguous term to be construed against the Party that prepared this Agreement. This Agreement shall be construed neutrally; the terms and conditions herein shall not be construed more stringently against one Party than another.

33. Captions. The captions and headings used in this Agreement have been included for convenience and reference only. Captions shall not be considered when interpreting this Agreement.

34. Pronouns. In this Agreement, all pronouns and variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular, or plural, as the identity of the person or entity may require.

35. Use of the Word "Herein." The words "herein," "hereunder," and other similar words refer to this Agreement as a whole and not to any particular article, section, or paragraph of this Agreement, unless specifically noted otherwise in this Agreement.

36. Severability. Should any provision, paragraph, sentence, word, or phrase in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under state or federal law, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary to conform with such law, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect. This Agreement shall be construed thereafter as if such invalid, illegal, or unenforceable provision had never been contained herein.

37. Third Parties. This Agreement is not intended to confer and shall not be deemed to confer any rights on any third parties; there are no third-party beneficiaries to this Agreement. Nothing in this Agreement constitutes the County's consent to be sued by a third party with regard to any matter arising under this Agreement. Further, this Agreement is not intended and shall not be construed to give Deer Park any rights or remedies under the Lease or any other Contract between the County and Deseret.

38. Modification. This Agreement constitutes the entire agreement between the Parties with respect to the Lawsuits and it supersedes all prior understandings and agreements, written and oral, between the Parties as to the Lawsuits. No term or provision of this Agreement may be changed, waived, discharged, or terminated except by a written document that is signed by the Party granting such change, waiver, discharge or termination for the benefit of the person requesting same.

39. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which shall constitute one and the same Agreement. Facsimile signatures of this Agreement shall be deemed originals.

40. Regulations. References in this Agreement to the Florida Statutes and Florida Administrative Code shall be deemed to be references to the statutes and rules in effect on the Effective Date.

41. Other Agreements. Except as otherwise provided herein, this Agreement does not supersede, amend or terminate the other Contracts between the County and Deseret, including but not limited to: (a) the Lease dated December 2, 2003; (b) the Joint Stipulation and Agreement dated September 19, 1991, as amended on September 7, 1998; and (c) the Settlement Agreement dated May 24, 2011.

42. Exhibits. All of the exhibits attached to this Agreement are incorporated herein by reference. The exhibits are:

- Exhibit 1 – Legal description of the Site
- Exhibit 2 – The County’s Site Plan (Phase II Development Site Plan)
- Exhibit 3 – Definitions
- Exhibit 4 – Joint Motion to Abate
- Exhibit 5 – Settlement Stipulation
- Exhibit 6 – Aerial photograph depicting the location of the County’s fence

43. Fees in Lawsuits. Each Party shall be responsible for all of the costs and fees it incurred with regard to the Lawsuits. Each Party waives any right it may have against any other Party for costs and attorneys’ fees associated with the Lawsuits.

44. Notices to Parties. All notices, requests, authorizations, approvals, and similar communications provided for herein shall be in writing. Such documents shall be addressed as shown below and either: (a) hand delivered; (b) mailed by registered or certified mail (postage prepaid), return receipt requested; (c) delivered by a courier service that provides proof of delivery; or (d) sent by facsimile or electronic mail. A document shall be deemed to have been duly delivered when personally delivered, or when transmitted by facsimile or electronic mail and receipt is confirmed by telephone, or when delivered by U.S. Mail or a courier service, as shown by the return receipt. For the present, the Parties designate the following as the appropriate people and places for delivering notices and other documents:

As to the County: County Manager
2725 Judge Fran Jamieson Way, Building C
Viera, Florida 32940
(321) 633-2001
Stockton.Whitten@brevardfl.gov

With a copy to: Solid Waste Management Department Director
2725 Judge Fran Jamieson Way
Building A, Suite 118
Viera, Florida 32940
(321) 633-2042
Euripides.Rodriguez@brevardfl.gov

County Attorney
2725 Judge Fran Jamieson Way, Building C
Viera, Florida 32940
(321) 633-2090
Scott.Knox@brevardfl.gov

As to Deseret: Erik Jacobsen or General Manager
Deseret Ranches of Florida
13754 Deseret Lane

St. Cloud, Florida 34773
(407) 892-3672
ejacobsen@deseretranches.com

With a copy to: David Wright or Land & Governmental Affairs Manager
Deseret Ranches of Florida
13754 Deseret Lane
St. Cloud, Florida 34773
(407) 892-3672
dwright@deseretranches.com

Ralph A. DeMeo
Hopping Green & Sams, P.A.
P.O. Box 6526
Tallahassee, Florida 32314
(850) 222-7500
ralphd@hgslaw.com

As to Deer Park: Henry Kempfer
Deer Park Ranch, Ltd.
6254 Kempfer Road
St. Cloud, Florida 34773
(407) 892-1169
Henry@kempfercattle.com

With a copy to: Marty Smith
Bond, Arnett, Phelan, Smith & Carreras, P.A.
P.O. Box 2405
Ocala, Florida 34478
(352) 622-1188
cms@bap-law.com

Each Party may designate a different representative or representatives in the future, and each Party may change its address or addresses for receiving notice. Any such change shall be accomplished by providing written notice to the other Parties in compliance with the requirements in this Paragraph 44.

45. Redesign or Relocation of Class III Landfill and Related Facilities. In the event that (a) the County cannot obtain one or more of the permits or approvals needed to construct and operate the proposed Class III landfill and Related Facilities on the Site in compliance with the concepts set forth in this Agreement or (b) such permit or approval contains terms or conditions that are unreasonably difficult or expensive to satisfy, the County may redesign and relocate the Class III landfill and Related Facilities on the Site, provided that the 202-acre footprint of the Class III landfill shall not be increased in size and provided further that all of the conditions and limitations in this Agreement shall remain in effect, except for provisions in

Paragraphs 10, 11(b), and 12 that conflict with the County's revised plans. Notwithstanding the foregoing, if the Class III landfill is relocated to the northeast corner of the Site due to the conditions described in subparagraph 45(a) or (b), above, the footprint of the Class III landfill may be increased in size, but only up to the size of the footprint of the Future Cell (376 acres) that the County has proposed for the northeast corner of the Site, as depicted in the Site Plan (Exhibit 2). The County shall notify Deseret and Deer Park promptly if the County intends to redesign or relocate the Class III landfill and Related Facilities for reasons stated in this Paragraph 45. The County and Deseret shall work together in good faith to coordinate their activities and thus they shall attempt to minimize any disruptions resulting from the County's changed plans.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the Effective Date.

[SIGNATURES FOLLOW ON SUBSEQUENT PAGES]

Signed, sealed, and delivered
In the presence of:

BREVARD COUNTY, a political
subdivision of the State of Florida

ATTEST

Scott Ellis

Scott Ellis, Clerk

By:

Curt Smith

Curt Smith, Chair

Board of County Commissioners

Date:

2/8/17

STATE OF

Florida

COUNTY OF

Brevard

The foregoing instrument was acknowledged before me this 8th day of February, 2017, by Curt Smith, the Chair of the Board of County Commissioners of Brevard County. He is personally known to me or produced _____ as identification.

Karen Beaudoin

Typed or Printed Name

Notary Public, State of

Commission Number

My commission expires:



Signed, sealed and delivered
in the presence of:

FARMLAND RESERVE, INC.

A Florida non-profit corporation

David Wright
Signature
Print Name: DAVID WRIGHT

By: [Signature]
Print Name: K. Erik Jacobsen
Title: President
Date: 1/27/17

Paula W. Luce
Signature
Print Name: PAULA W. LUCE

STATE OF Florida
COUNTY OF Osceola

The foregoing instrument was acknowledged before me this 27th day of January, 2017, by K. Erik Jacobsen, on behalf of Farmland Reserve, Inc. He/she is personally known to me or produced _____ as identification.

 Debra Lynn Justesen
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF901844
Expires 9/3/2019

Debra Lynn Justesen
Typed or Printed Name Debra Lynn Justesen
Notary Public, State of Florida
Commission Number FF 901844
My commission expires: 09/03/2019

Signed, sealed and delivered
in the presence of:

DEER PARK RANCH, LTD.

A Florida limited partnership

[Signature]
Signature

Print Name: Henry Kempfer

[Signature]
Signature

Print Name: George Kempfer

By: [Signature]

Print Name: William C. Kempfer

Title: Partner

Date: 1/24/2016

STATE OF Florida
COUNTY OF Brevard

The foregoing instrument was acknowledged before me this 24 day of
January, 2016 2017, by William Kempfer, on behalf of Deer Park Ranch,
LTD. He/she is personally known to me or produced _____ as
identification.

[Signature]
Typed or Printed Name Patricia Rainwater
Notary Public, State of Florida
Commission Number FF 997207
My commission expires: 5/31/2020



EXHIBIT 1

LEGAL DESCRIPTION OF THE SITE

EXHIBIT "A"

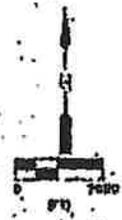
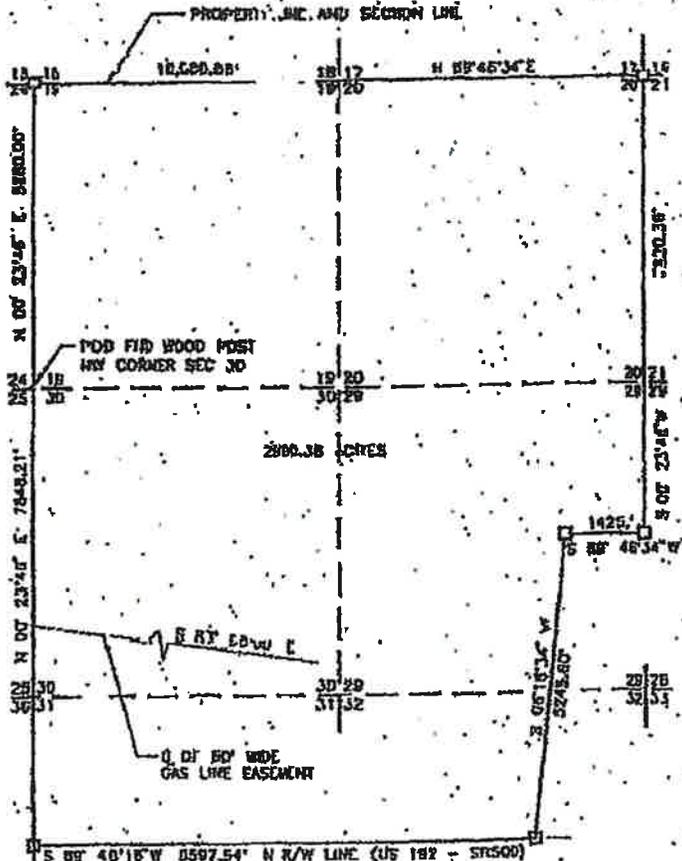
PROPERTY DESCRIPTION

Legal description (per official records book 3151, pages 4289 through 4309, civil case 90-5039-ca-j/c).

A part of lands described in deed book 392, page 168-169 and official records book 2379, pages 1249-1251 of public records of Brevard County, Florida, being a part of Sections 29, 31 and 32, and all of Sections 19, 20 and 30, Township 27 South, Range 35 East, according to map showing lands of Geo. W. Hopkins as recorded in plat book 2, page 102 of the public records of Brevard County, Florida, being more particularly described as follows:

Commence at a wood post marking the northwest corner of Section 30, also being the southwest corner of Section 19 for the point-of-beginning of the herein described parcel of land; thence north $00^{\circ}23'46''$ east along the west line of Section 19 a distance of 5280.00 feet; thence north $89^{\circ}46'34''$ east passing along the north line of Sections 19 and 20 a distance of 10560.00 feet to the northeast corner of Section 20; thence south $00^{\circ}23'46''$ west passing along the east line of Sections 20 and 29 a distance of 7920.36 feet to the southeast corner of the north one half of Section 29; thence south $89^{\circ}46'34''$ west passing along the south line of the north one half of Section 29 a distance of 1425.00 feet; thence south $06^{\circ}16'34''$ west a distance of 5245.60 feet to the north right-of-way line of State Road 500 (U.S. 192) 200 foot right-of-way being described in official records book 708, pages 328-330 and official records book 717, pages 327-328 of the public records of Brevard County, Florida; thence south $89^{\circ}48'18''$ west along the said north right-of-way line a distance of 8597.54 feet to the west line of Section 31; thence north $00^{\circ}23'46''$ east passing along the west line of Sections 30 and 31 a distance of 7848.21 feet to the point-of-beginning.

Containing 2980.38 acres more or less; subject to restrictions, limitations, easements, and rights-of-way of record.



BK 3151 P 4293

NOTES:

1. This boundary survey description prepared from maps and other legal descriptions is approximate, and is subject to field survey and verification.
2. subject property contains 60-foot wide gas easement as described in Official Records Book 167, page 879 of the public records of Escambia County, Florida. Anyways in recorded document is ambiguous and cannot be relied.

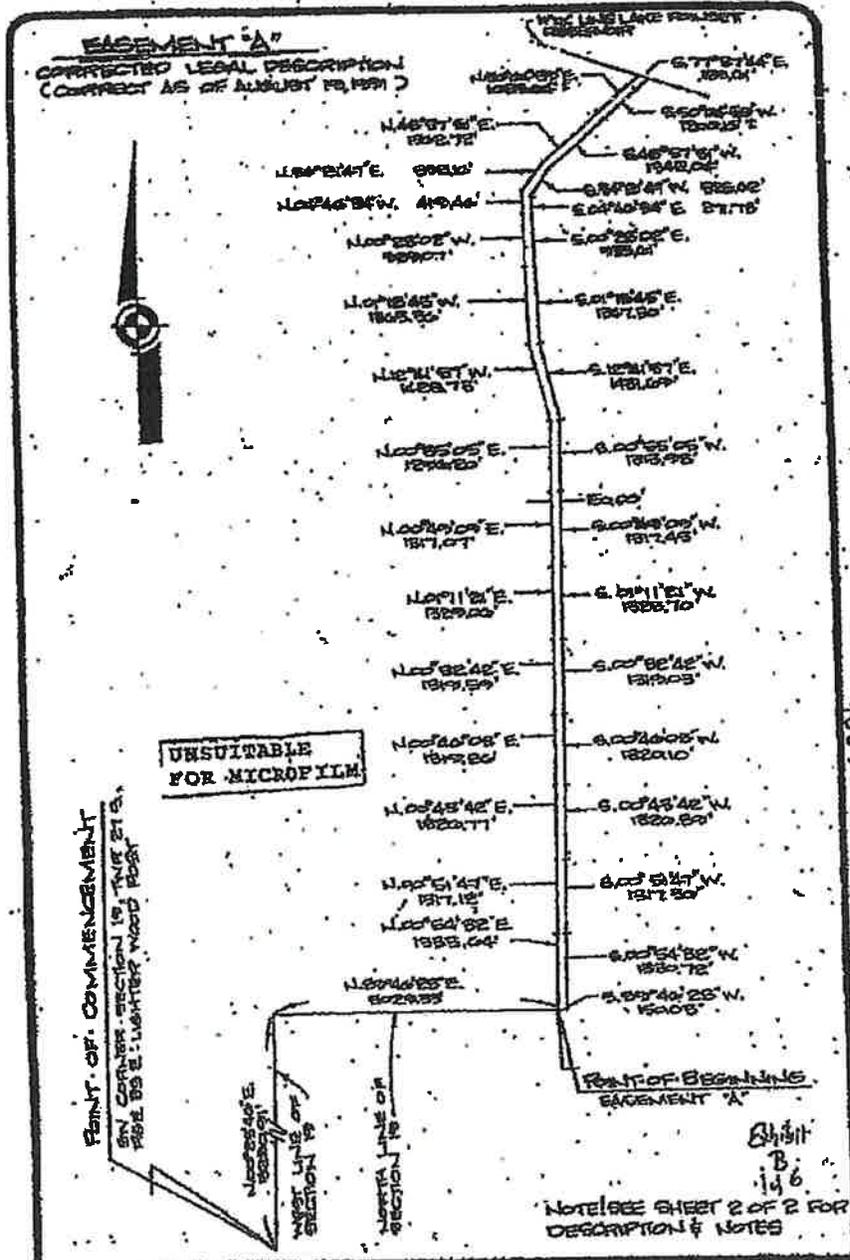
DESCRIPTION:

A part of lands described in Deed Book 107, page 189-189 and Official Records Book 2719, pages 1249-1251 of Public Records of Escambia County, Florida, being a part of Sections 29, 31 and 32, and all of Sections 19, 20 and 30, Township 27 South, Range 26 East, according to map showing lands of Geo. W. Hopkins as recorded in Plat Book 2, Page 102 of the Public Records of Escambia County, Florida, being more particularly described as follows: Commence at a wood post marking the northeast corner of Section 30, also being the southeast corner of Section 19 for the north-south line of the herein described parcel of land; thence south 09° 45' 31" East line of Section 19 a distance of 5290.00 feet thence south 09° 45' 31" East line of Section 19 a distance of 19560.00 feet to the southeast corner of Section 29; thence south 09° 23' 45" East passing along the east line of Sections 29 and 28 a distance of 7120.75 feet to the southeast corner of the north one half of Section 29; thence south 09° 45' 31" East passing along the north line of the north one half of Section 29; thence south 09° 45' 31" East passing along the north line of the north one half of Section 29 a distance of 1425.00 feet; thence south 09° 45' 31" West a distance of 1345.00 feet to the north right-of-way line of State Road 500 (U.S. 191) 200 foot right-of-way being described in Official Records Book 708, Pages 328-330 and Official Records Book 717, Pages 217-219 of the Public Records of Escambia County, Florida; thence south 09° 45' 31" East along the said north right-of-way line a distance of 6977.54 feet to the west line of Section 31; thence north 09° 23' 45" East passing along the west line of Sections 30 and 31 a distance of 7888.21 feet in the

POINT OF BEGINNING. Comprising 2900.38 acres more or less subject to restrictions, limitations, encumbrances, and rights-of-way as recorded.

UNSUITABLE FOR MICROFILM

Exhibit A



Scale: 1/2" = 10'	A SKETCH & DESCRIPTION PREPARED FOR: BREVARD COUNTY BREVARD COUNTY, FLORIDA	Date: 8-19-91
Drawn by: JNA		Scale of: 1/2" = 10'
App. by: MC	Bussen-Mayer Engineering Group 106 PARRELL STREET • INDIAN ISLAND, FLORIDA 32903 TEL: 304 (407) 485-0045	P. L. SECTION
Chk. by: UP		Sheet No. 1 of 2

Description of Easement "A"

A 150.00 foot wide drainage easement lying in Section 19, Township 26 South, Range 35 East and Eastlines 5, 6, 7 and 18, Township 27 South, Range 35 East, Brevard County, Florida, being more fully described as follows:

Commence at a lighter wood post marking the southwest corner of Section 19, Township 27 South, Range 35 East; thence N.00°23'46"E., along the west line of said Section 19, a distance of 5,280.91 feet to the northwest corner of said Section 19; thence N.89°46'28"E., along the north line of said Section 19, a distance of 5,029.33 feet to the Point-of-Beginning of the land herein described; thence parsing said north line, N.00°54'32"E., a distance of 1,333.64 feet; thence N.00°51'41"E., a distance of 1,317.21 feet; thence N.00°43'42"E., a distance of 1,325.77 feet; thence N.00°40'08"E., a distance of 1,319.26 feet; thence N.00°52'42"E., of 1,319.59 feet; thence N.01°11'21"E., a distance of 1,329.06 feet; thence N.00°49'09"E., a distance of 1,317.07 feet; thence N.00°55'05"E., a distance of 1,296.20 feet; thence N.12°41'37"W., a distance of 1,426.73 feet; thence N.01°12'48"W., a distance of 1,263.35 feet; thence N.00°29'02"W., a distance of 529.07 feet; thence N.04°46'34"W., a distance of 439.48 feet; thence N.34°21'47"E., a distance of 598.18 feet; thence N.48°57'51"E., a distance of 1,262.72 feet; thence N.50°04'59"E., a distance of 1,085.64 feet, more or less, to the easterly toe of the existing levee and the westerly boundary of the St. Johns River Water Management District property par Lake Pointsett Reservoir Right-of-Way Map prepared by the Central and Southern Florida Flood Control District Engineering Division, sheet 1 of 13; thence S.77°37'44"E., along said easterly toe of the levee, a distance of 189.61 feet to a point 150.00 feet southeasterly, by right angle distance, of the easterly course of the land herein described; thence S.59°06'59"W., a distance of 1,209.18 feet, more or less; thence S.48°57'51"W., a distance of 1,347.04 feet; thence S.34°21'47"W., a distance of 525.62 feet; thence S.04°46'34"E., a distance of 371.78 feet; thence S.00°28'03"E., a distance of 933.61 feet; thence S.01°18'45"E., a distance of 1,347.20 feet; thence S.12°41'52"E., a distance of 1,431.69 feet; thence S.02°55'05"W., a distance of 1,313.98 feet; thence S.00°45'09"W., a distance of 1,317.43 feet; thence S.01°11'21"W., a distance of 1,329.70 feet; thence S.00°32'42"W., a distance of 1,319.01 feet; thence S.00°46'08"W., a distance of 1,330.10 feet; thence S.00°45'42"W., a distance of 1,326.89 feet; thence S.00°51'47"W., a distance of 1,317.36 feet; thence S.00°54'32"W., a distance of 1,330.72 feet to a point on the aforesaid north line of Section 19; thence S.89°46'28"W., along said north line, a distance of 150.00 feet to the Point-of-Beginning.

Containing 61.08 acres, more or less, and being subject to any easements and/or rights-of-way of record and the findings of a valid field survey.

Notes:

1. Bearings shown herein are based on the west line of Section 19, T.27S., R.35E., being N.00°23'46"E., an assumed bearing.
2. This is not a boundary survey.
3. See sheet 1 of 2 for sketch of description.
4. The description shown herein is a correction of a previously prepared description by others prepared without benefit of field measurements; the purpose of this corrected description is to align said easement with the physical location of the existing canal or drainage ditch.

UNSUITABLE FOR MICROFILM

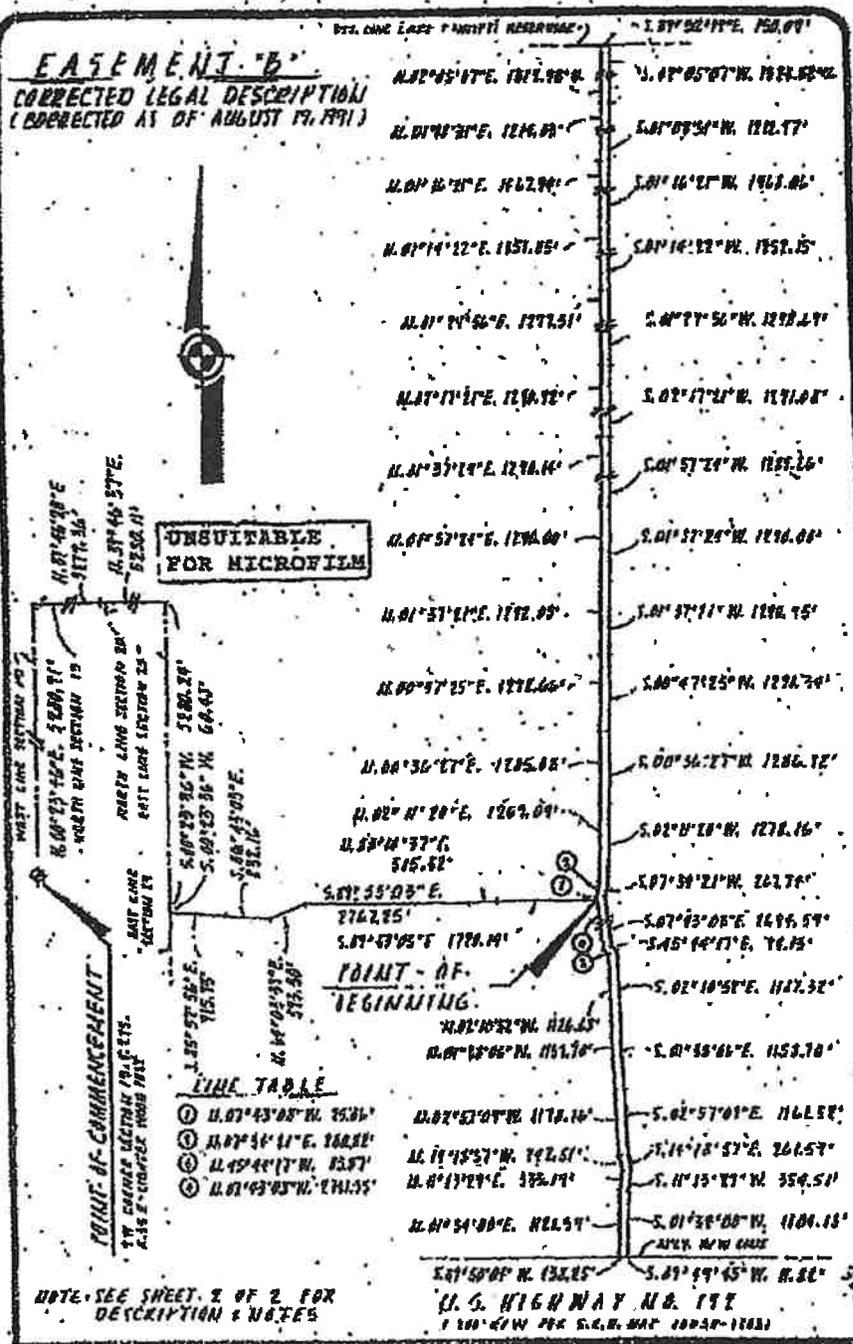
EASEMENT "A"
CORRECTED LEGAL DESCRIPTION
(CORRECTED AS OF AUGUST 17, 1991)

Scale: 1"=40.00'	A SKETCH & DESCRIPTION PREPARED FOR: BREVARD COUNTY BREVARD COUNTY, FLORIDA	Date: 12-12-91
Drawn by: JJA		Scale: 1"=40.00'
Drawn by: JJA	Bussen-Mayer Engineering Group 100 PARKWAY STREET, SUITE 201, SEASIDE, FLORIDA 32963 TEL. (407) 462-0010	P. R. CONTROL
Check by: J		Sheet No. 2 of 2

EASEMENT "B"
CORRECTED LEGAL DESCRIPTION
 (CORRECTED AS OF AUGUST 17, 1991)



**UNSUITABLE
 FOR MICROFILM**



LINE TABLE

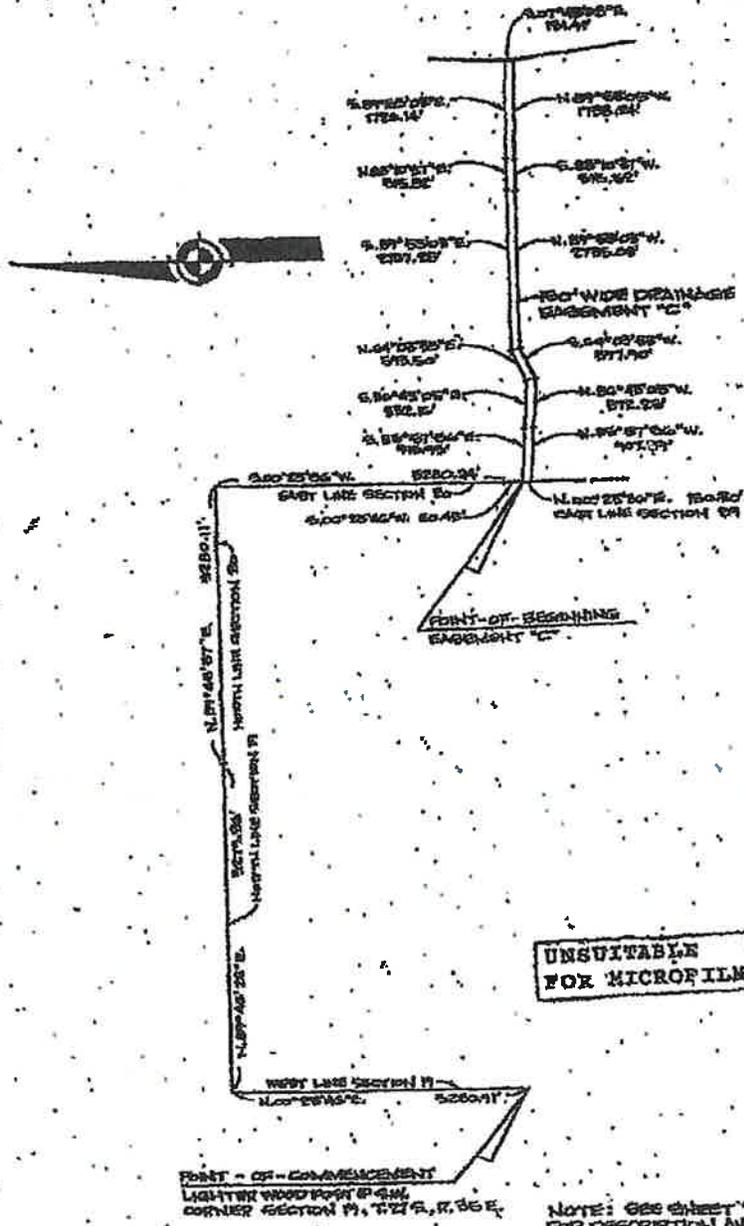
①	N. 07° 43' 08" W. 253.31'	N. 07° 51' 01" W. 1178.16'	S. 02° 57' 01" E. 1168.88'
②	N. 07° 45' 11" E. 168.28'	N. 11° 18' 57" W. 262.57'	S. 11° 18' 57" E. 262.57'
③	N. 15° 41' 17" W. 12.87'	N. 8° 17' 27" E. 378.17'	S. 11° 15' 47" W. 358.51'
④	N. 01° 43' 03" W. 271.35'	N. 01° 34' 00" E. 822.57'	S. 01° 34' 00" W. 1104.18'

NOTE: SEE SHEET 2 OF 2 FOR DESCRIPTION & NOTES

Date: 11-17-91 Title: EASEMENT Sheet: 39 E.	A SKETCH AND DESCRIPTION PREPARED FOR: BREVARD COUNTY BREVARD COUNTY FLORIDA	Date: 11-17-91 Book: 11-2163 P. 1677101
Drawn by: LCM Date: 11-17-91 Check by: JMM	Bussen-Mayer Engineering Group 100 PARADEL BLVD SEASIDE, FLORIDA 32083 TEL: (407) 483-0830	Sheet No. 1 of 2

EASEMENT 'C'

CORRECTED LEGAL DESCRIPTION
(CORRECT AS OF AUGUST 19, 1991)



BK3151PE4298

UNSUITABLE FOR MICROFILM

Exhibit 8
546

PREPARED BY: DATE: BY: FOR:	A SKETCH & DESCRIPTION PREPARED FOR: BREVARD COUNTY BREVARD COUNTY, FLORIDA Bussen-Mayer Engineering Group 100 PARKER STREET • MCLENNAN ISLAND, FLORIDA 32903 TEL. NO. (407) 643-0010	Date: 8/19/91 Scale: 1"=200' P. N. 1657101 Sheet No. 1 of 2
--------------------------------------	--	---

EASEMENT "C"

CORRECTED LEGAL DESCRIPTION
(CORRECT AS OF AUGUST 19, 1993)

Description of Easement "C"

A 150.00' foot wide drainage easement lying in Sections 21, 22, 27 and 28, Township 27 South, Range 35 East, Brevard County, Florida, being more fully described as follows:

Commence at a lighter wood post marking the southwest corner of Section 19, Township 27 South, Range 35 East; thence N.00°23'46"E.; along the west line of said Section 19, a distance of 5,280.91 feet to the northwest corner of said Section 19; thence N.89°45'128"E., along the north line of said Section 19, a distance of 5,279.36 feet to the northwest corner of Section 20, Township 27 South, Range 35 East; thence N.89°45'17"E., along the north line of said Section 20, a distance of 5,280.11 feet to the northeast corner of said Section 20; thence N.00°23'36"W., along the east line of said Section 20, a distance of 5,280.24 feet to the northeast corner of Section 29, Township 27 South, Range 35 East; thence continue S.00°23'36"W., along the east line of said Section 29, a distance of 59.48 feet to the Point-of-Beginning of the lands herein described; thence S.85°57'56"E., departing said east line, a distance of 915.95 feet; thence S.85°43'05"E., a distance of 832.16 feet; thence N.64°03'33"E., a distance of 593.50 feet; thence S.89°53'03"E., a distance of 2,767.25 feet; thence N.88°10'37"E., a distance of 515.52 feet; thence S.89°53'05"E., a distance of 1,720.14 feet; thence S.07°43'08"E., a distance of 151.41 feet to a point of 150.00 feet south, by the right angle measure, of the sixth course of the lands herein described; thence N.89°53'05"W., a distance of 1,738.24 feet; thence S.88°10'37"W., a distance of 515.52 feet; thence N.89°53'05"W., a distance of 2,735.08 feet; thence S.64°03'33"W., a distance of 597.90 feet; thence N.86°43'05"W., a distance of 872.25 feet; thence N.85°57'56"W., a distance of 907.39 feet to the aforesaid east line of Section 29; thence N.00°23'36"E., along said east line of Section 29, a distance of 150.50 feet to the Point-of-Beginning.

Containing 25.35 acres, more or less, and being subject to easements and/or rights-of-way of record and the findings of a valid survey.

Notes

1. Bearings shown herein are based on the west line of Section 19, T.27S., R.35E., being "N.00°23'46"E.", an assumed bearing.
2. This is not a boundary survey.
3. See sheet 1 of 2 for sketch of description.
4. The description shown hereon is a correction of a previously prepared description by others prepared without benefit of field measurements; the purpose of this corrected description is to align said easement with the physical location of the existing canal or drainage ditch.

Exhibit
606

BKS 15-164299

UNSUITABLE
FOR MICROFILM

Section	A SECTION & DESCRIPTION PREPARED FOR	Date	8/17/93
Type	BREVARD COUNTY	Scale	N/A
Range	BREVARD COUNTY, FLORIDA	P. N. (107) 452-0001	
Drawn by	Bussen-Moyer Engineering Group	Sheet No.	2 of 2
Drawn by	100 PARKWAY STREET - MOORETOWN ISLAND, FLORIDA 32960		
Check by	TEL. No. (107) 452-0001		

EXHIBIT 2
SITE PLAN (PHASE II DEVELOPMENT SITE PLAN)

EXHIBIT 3

DEFINITIONS

1. "Agreement" means this Settlement Agreement by and between Farmland Reserve, Inc. (d/b/a Deseret Ranches of Florida) and Deer Park Ranch, Ltd., and Brevard County, Florida, to resolve DOAH Case Nos. 16-3549 and 16-3550.
2. "ALJ" means the DOAH Administrative Law Judge.
3. "Biological Opinion" means any opinion or other determination issued or made by the U.S. Fish and Wildlife Service concerning the potential impacts on fish or wildlife that may occur as a result of the County's activities on the Site.
4. "Board" means the Board of County Commissioners of Brevard County.
5. "Class I landfill" means a landfill that receives Class I waste. See Rule 62-701.340(2)(a), F.A.C.
6. "Class I waste" means solid waste that is not hazardous waste, and that is not prohibited from disposal in a lined landfill under Rule 62-701.300, F.A.C. See Rule 62-701.200(13), F.A.C.
7. "Class III landfill" means a landfill that receives only Class III waste. See Rule 62-701.340(2)(b), F.A.C.
8. "Class III waste" means yard trash, construction and demolition debris, processed tires, asbestos, carpet, cardboard, paper, glass, plastic, furniture other than appliances, or other materials approved by the Department, that are not expected to produce leachate that poses a threat to public health or the environment. See Rule 62-701.200(14), F.A.C.
9. "Commencement of Construction" means the date when the County expects to begin construction of the County's proposed facilities on the Site.
10. "Conceptual Permit" means FDEP Environmental Resource Permit No. 05-301799-003-EC.
11. "Construction Permit" means FDEP Environmental Resource Permit No. 05-301799-004-EI.
12. "Contract" means a written agreement between the County and Deseret, including but not limited to: (a) the Lease dated December 2, 2003; (b) the Joint Stipulation and

Agreement dated September 19, 1991, as amended on September 7, 1998; and (c) the Settlement Agreement dated May 24, 2011.

13. "County" means, depending on the context, either (a) the geographic area contained within the unincorporated portions of Brevard County, Florida, a political subdivision of the State of Florida, or (b) the government of Brevard County, acting through its Board of County Commissioners, employees, agents, or designees.

14. "Deer Park" means Deer Park Ranch, Ltd., a Florida limited partnership, including but not limited to its general and limited partners.

15. "Department" or "FDEP" means the Florida Department of Environmental Protection.

16. "Deseret" means Farmland Reserve, Inc. d/b/a Deseret Ranches of Florida, including but not limited to its subsidiaries, affiliates, and parent corporation.

17. "DOAH" means the Florida Division of Administrative Hearings.

18. "Effective Date" means the date when this Agreement takes effect, which is the date when the Agreement is signed and fully executed by all Parties.

19. "ERP" means Environmental Resource Permit.

20. "Final Construction Permit" means the ERP authorizing construction of the County's Class III landfill and Related Facilities, as described in Paragraph 6 of this Agreement.

21. "Improvement" means any fence, building, structure, berm, ditch, culvert, drainage conveyance, or water control structure on the Site, whether built before or after the Effective Date.

22. "Joint Motion to Abate" means the motion to be filed by the Parties to the Lawsuits, as described in Paragraph 5 of this Agreement.

23. "Lawsuits" means Deer Park Ranch, Ltd. v. Brevard County Solid Waste Management Department and Department of Environmental Protection, DOAH Case No. 16-3549, and Farmland Reserve, Inc. d/b/a Deseret Ranches of Florida v. Brevard County Solid Waste Management Department and Department of Environmental Protection, DOAH Case No. 16-3550.

24. "Lease" means the Lease Agreement dated December 2, 2003, between the County and Deseret.

25. "Northern Area" means the portion of the Site located north of the County's proposed fence, as depicted on Exhibit 6.

26. "MRF" means a materials recovery facility.
27. "Oppose" means to oppose, challenge, or in any way contest the issuance of a permit or approval.
28. "Party" means either Deseret, Deer Park, or the County.
29. "Parties" means Deseret, Deer Park, and the County.
30. "Related Facilities" means the entrance road, scale house, leachate storage tanks, administrative offices, Multi-Use Area, and other facilities related to the construction or operation of the Class III landfill that are authorized in the Solid Waste Permits.
31. "Settlement Stipulation" means the stipulation and joint motion for relinquishment of jurisdiction that is described in Paragraph 6 of this Agreement.
32. "Site" means the real property (approximately 2,980 acres) located adjacent to U.S. 192 that the County plans to use for its future solid waste management facilities.
33. "Site Plan" means the County's plan for the development of the Site, as depicted in the "Phase II Development Site Plan" that is attached to this Agreement as Exhibit 2.
34. "SJRWMD" means the St. Johns River Water Management District.
35. "Solid Waste Permits" means the construction permit (Permit No. SC05-0296030-001) and operation permit (Permit No. SC05-0296030-002) issued on December 15, 2011, authorizing the construction and operation of the first cell of the County's proposed Class III landfill pursuant to Chapter 62-701, Florida Administrative Code.
36. "Southern Area" means the portion of the Site located south of the County's proposed fence, as depicted on Exhibit 6.
37. "Waste Tire" means a tire that has been removed from a motor vehicle and has not been retreaded or regrooved. The term includes used tires and processed tires, but does not include solid rubber tires and tires that are inseparable from the rim. See Rule 62-701.200(126), F.A.C.
38. "White Goods" means inoperative and discarded refrigerators, ranges, washers, water heaters, freezers, and other similar domestic and commercial large appliances. See Rule 62-701.200(134), F.A.C.
39. "Yard Trash" means vegetative matter resulting from landscaping maintenance or land clearing operations and includes materials such as tree and shrub trimmings, grass clippings, palm fronds, trees and tree stumps, and associated rocks and soils. See Rule 62-701.200(135), F.A.C.

EXHIBIT 4
JOINT MOTION TO ABATE

1. On January 15, 2016, the Department gave notice of its intent to issue two environmental resource permits (DEP File Nos. 05-0301799-003-EC and 05-0301799-004-EI) (collectively, the "Draft Permit") to the County for the construction and operation of stormwater management systems and for certain wetland activities on the County's Site for the proposed US 192 Solid Waste Management Facility, which will be located in Brevard County, Florida.

2. The Department received petitions for a formal administrative hearing ("Petitions") from Deseret and Deer Park concerning the Department's issuance of the Draft Permit. The Petitions were forwarded to the Division of Administrative Hearings ("DOAH") and are the subject of the above captioned proceedings.

3. Deseret, Deer Park, and the County have entered into a Settlement Agreement to resolve the disputed issues in these proceedings. The Parties plan to ensure that the revisions to the Draft Permit agreed upon in the Settlement Agreement are incorporated into a final permit ("Final Permit") to be issued by the Department. If the Department prepares a proposed Final Permit that is consistent with the terms of the Settlement Agreement, the Parties will request the Administrative Law Judge ("ALJ") to relinquish jurisdiction and refer this case to the Department for the issuance of the Final Permit.

WHEREFORE, the Parties respectfully request the ALJ to issue an order canceling the scheduled administrative hearing in this matter and abating all activities in this proceeding, including but not limited to the filing of any further responses to the initial order, pleadings, motions, or discovery, for a period of 180 days, to give the Parties an opportunity to satisfy the terms of the Settlement Agreement. If requested by the ALJ, the Parties will file status reports with the ALJ on a regular basis (e.g., every sixty (60) days) after the issuance of the ALJ's order abating this case.

RESPECTFULLY SUBMITTED this ____ day of _____, 2017.

FARMLAND RESERVE, INC. d/b/a
DESERET RANCHES OF FLORIDA

BREVARD COUNTY

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EXHIBIT 5
SETTLEMENT STIPULATION

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

DEER PARK RANCH, LTD.,)	
)	
Petitioner,)	
)	
vs.	)	DOAH Case No. 16-3549
	)	OGC Case No. 16-0067
BREVARD COUNTY SOLID WASTE)	
MANAGEMENT DEPARTMENT and)	
DEPARTMENT OF ENVIRONMENTAL)	
PROTECTION,)	
)	
Respondents.)	
<hr/>		
FARMLAND RESERVE, INC. d/b/a)	
DESERET RANCHES OF FLORIDA,)	
)	
Petitioner,)	
)	
v.	)	DOAH Case No. 16-3550
	)	OGC Case No. 16-0038
BREVARD COUNTY SOLID WASTE)	
MANAGEMENT DEPARTMENT and)	
DEPARTMENT OF ENVIRONMENTAL)	
PROTECTION,)	
)	
Respondents.)	
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**SETTLEMENT STIPULATION AND
JOINT MOTION TO RELINQUISH JURISDICTION**

Petitioners, Farmland Reserve, Inc. d/b/a Deseret Ranches of Florida ("Deseret"), and Deer Park Ranch, Ltd. ("Deer Park"), and Respondents, Brevard County ("County) and the Department of Environmental Protection ("Department" or "DEP"), stipulate to the settlement of this case, and move the Administrative Law Judge ("ALJ") to issue an order relinquishing jurisdiction over

this matter to the Department. In support of this Settlement Stipulation and Joint Motion to Relinquish Jurisdiction, the Parties state:

1. On January 15, 2016, the Department gave notice of its intent to issue two environmental resource permits (DEP File Nos. 05-0301799-003-EC and 05-0301799-004-EI) (collectively, the "Draft Permit") to the County for the construction and operation of stormwater management systems and for certain wetland activities on the County's Site for the proposed US 192 Solid Waste Management Facility, which will be located in Brevard County, Florida.

2. The Department received petitions for a formal administrative hearing ("Petitions") from Deseret and Deer Park concerning the Department's issuance of the Draft Permit. The Petitions were forwarded to the Division of Administrative Hearings ("DOAH") and are the subject of the above captioned proceedings ("Lawsuits"). The formal administrative hearing in these Lawsuits was scheduled to begin on January 24, 2017.

3. The Parties have agreed on revisions to the Draft Permit that resolve the disputed issues in the Lawsuits. The proposed revisions to the Draft Permit are described in the Settlement Agreement between Deseret, Deer Park, and the County, which is attached hereto and incorporated herein as Attachment A. The Parties agree that the revisions identified in Paragraph

4 of the Agreement will be embodied in the Final Permit, a copy of which is attached hereto and incorporated herein as Attachment B. The Parties agree that entering into and complying with the terms of this Settlement Stipulation and Joint Motion shall not be deemed an admission of law or fact by any Party, and shall not be deemed a concession concerning the merits of any allegation or argument asserted by any Party in the Lawsuits.

4. In light of the Parties' agreement concerning the relevant issues in the Lawsuits, the Parties jointly request the ALJ to enter an order relinquishing jurisdiction of this matter to the Department. If the ALJ grants this Joint Motion, the Department will withdraw the Draft Permit, and then issue a final permit that is substantially identical to the Final Permit in Attachment B, within seven days of the ALJ's order relinquishing jurisdiction.

5. The Parties agree that the Department's issuance of the Final Permit will be considered final agency action and not subject to further administrative review. If the Department does not issue a final permit that is substantially identical to the attached Final Permit in Attachment B, Deseret, Deer Park, and the County will have the opportunity to file a challenge in circuit court, or to pursue any other available remedies, to

compel the Department to comply with this Settlement Stipulation.

6. Each Party shall be responsible for its own costs and attorney's fees and waives any right that it may have against any other Party for costs and attorney's fees associated with the Lawsuits.

7. Each Party acknowledges that it may have the right to seek judicial review concerning the issuance of the Final Permit under Section 120.68, Florida Statutes, by filing a notice of appeal under Rules 9.110 and 9.190, Florida Rules of Appellate Procedure. However, by executing this Settlement Stipulation and Joint Motion, each Party waives its right to such appeal and to any further notice of that right.

THEREFORE, the disputed issues having been resolved, the Parties move the Administrative Law Judge for an order relinquishing jurisdiction of these cases to the Department for the purpose of issuing the Final Permit to the County.

RESPECTFULLY SUBMITTED on this ____ day of _____,
2017.

FARMLAND RESERVE, INC. d/b/a
DESERET RANCHES OF FLORIDA

BREVARD COUNTY

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Settlement Stipulation and Joint Motion to Relinquish Jurisdiction was furnished by electronic mail only on this ____ day of _____, 2017, to:

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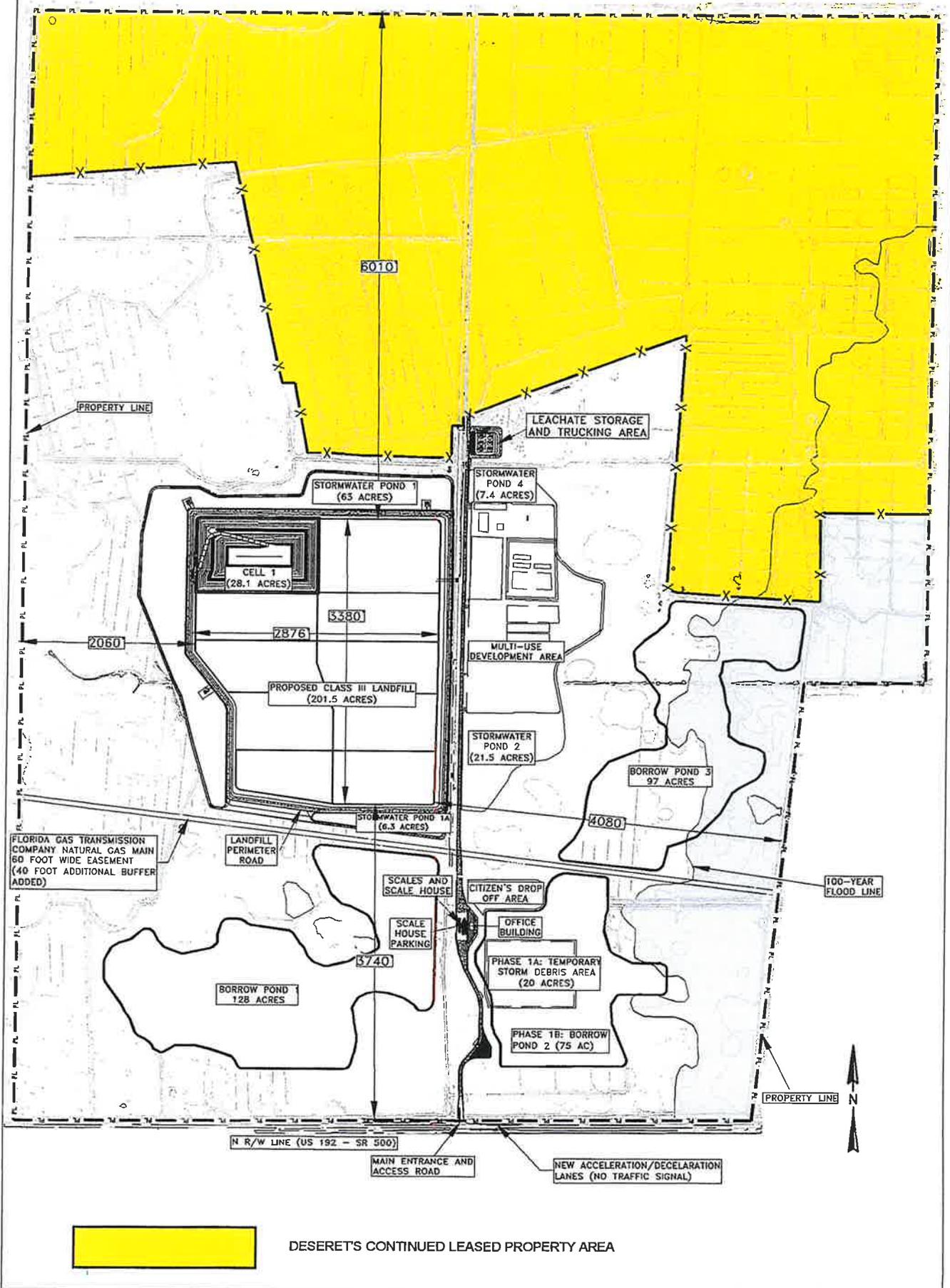
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January 23, 2017

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Re: Proposed Settlement Agreement between Farmland
Reserve, Deer Park Ranch, and Brevard County

Dear Mr. Knox:

The Board of County Commissioners ("the Board") of Brevard County ("the County") hired this law firm to assist the County with its efforts to obtain the environmental permits for the solid waste management facilities the County wishes to develop on a site ("the Site") located adjacent to U.S. 192. The issuance of those permits has been challenged by Farmland Reserve, Inc. (d/b/a Deseret Ranches of Florida or "Deseret"), and Deer Park Ranch, Ltd. ("Deer Park"), in formal administrative proceedings. As outside counsel for the County, we have tried to identify acceptable terms and conditions for settling these challenges. Our negotiations with Deseret and Deer Park have resulted in the preparation of the Settlement Agreement ("the Proposed Agreement") that is attached to this letter as Exhibit 1.

Subject to the qualifications contained herein, we believe the Proposed Agreement:

(a) provides a reasonable basis for resolving the challenges filed by Deseret and Deer Park;

(b) will allow the County to obtain the permits and approvals the County needs for its proposed "Class III" landfill¹ sooner, and at less cost and less risk, than continuing to engage in the pending and threatened litigation with Deseret and Deer Park;

(c) addresses the County's need to construct a Class III landfill on the Site within the next six years;

(d) preserves the County's right to construct "Class I" landfills² on the Site in the future;

(e) postpones the County's decision to proceed with the development of the County's proposed Class I landfills on the Site and, in effect, postpones litigation with Deseret and Deer Park concerning those Class I landfills, because those landfills are not expected to be needed for 30 years; and

(f) should be approved by the Board.

This letter provides an overview of the Proposed Agreement and it discusses some of the factors that should be considered by the Board when deciding whether to approve the Proposed Agreement. However, this letter does not provide a comprehensive or detailed analysis of every issue that may be of interest to the Board. Accordingly, the Board should review the Proposed Agreement very carefully to ensure that it is acceptable to the County.

¹A Class III landfill may be used only for the disposal of "Class III waste." See FDEP Rule 62-701.340(2)(b), F.A.C. Class III waste is defined in FDEP Rule 62-701.200(14), F.A.C., to mean "yard trash, construction and demolition debris, processed tires, asbestos, carpet, cardboard, paper, glass, plastic, furniture other than appliances, or other materials approved by the Department, that are not expected to produce leachate that poses a threat to public health or the environment." Class III landfills are not authorized to accept garbage.

²Pursuant to FDEP Rule 62-701.340(2)(a), F.A.C., "Class I landfills are those which receive Class I waste." Class I waste is defined in FDEP Rule 62-701.200(13), F.A.C., to mean "solid waste that is not hazardous waste" and not otherwise prohibited from disposal in a lined landfill. Class I landfills are authorized to receive garbage, in addition to the materials that may be received in a Class III landfill.

I. Background Information

A. A Chronology of Key Events

1. The Acquisition and Use of the Site. In 1990 the County filed an eminent domain lawsuit against Deseret because the County wanted to acquire Deseret's land and use it for the County's future solid waste management facilities. The County's lawsuit was settled in 1991, when the County and Deseret entered into a "Joint Stipulation and Agreement" ("the 1991 Stipulation") for the purchase and sale of the Site. Under the 1991 Stipulation, the County purchased approximately 2,980 acres of undeveloped land located adjacent to U.S. 192 and the western boundary of Brevard County.

The 1991 Stipulation allowed Deseret to use the Site temporarily for cattle ranching while the County pursued the environmental permits and approvals needed to construct the County's proposed solid waste management facilities. In 2003 Deseret's right to use the Site for cattle ranching was extended pursuant to a Lease Agreement ("the 2003 Lease") between the County and Deseret. The 2003 Lease provides that the term of the 2003 Lease may be extended by Deseret until 2033.

2. The FDEP Solid Waste Permits. In 2009 the County filed applications with the Florida Department of Environmental Protection ("the Department" or "FDEP") for solid waste permits ("the FDEP Solid Waste Permits") that would authorize the construction and operation of the first "cell" (i.e., disposal area) of the County's proposed Class III landfill, pursuant to the FDEP rules in Chapter 62-701, Florida Administrative Code ("F.A.C."). In 2010 the Department gave notice of its intent to issue the FDEP Solid Waste Permits to the County. In response, Deseret filed a petition challenging the Department's proposed action and requesting a formal administrative hearing. Deseret and the County then conducted extensive discovery and other work in preparation for the administrative hearing. In 2011 Deseret and the County signed a Settlement Agreement ("the 2011 Settlement Agreement") that resolved their dispute and resulted in the issuance of the FDEP Solid Waste Permits.³

³ Parenthetically, in 2016 the FDEP Solid Waste Permits were renewed and extended by the County, without objection by Deseret, Deer Park, or anyone else.

3. The FDEP Environmental Resource Permits. In 2010 the County filed applications with the Department for environmental resource permits ("ERPs") that would allow the County to fill certain wetland areas, and construct and operate stormwater management systems, on the Site pursuant to state law.⁴ In 2016 the Department gave notice of its intent to issue those ERPs. Deseret and Deer Park then filed petitions challenging the Department's proposed action, alleging that the County's applications do not satisfy the applicable FDEP requirements.⁵ Those allegations will be evaluated by an Administrative Law Judge ("the Judge") in a formal administrative hearing, which will be similar to a civil trial conducted in a state court with a judge, but no jury.⁶ The formal hearing is scheduled to begin on May 2, 2017 and it is expected to take two weeks to complete. Following the completion of the hearing, the Judge will issue a recommended order to the Department and then the Department will issue a final order. The ERPs cannot be issued by the Department until the claims filed by Deseret and Deer Park are resolved and the Department's final order is issued.⁷

4. The USACOE Permit. In 2010 the County filed an application with the U.S. Army Corps of Engineers ("the USACOE") for an individual permit to dredge and fill certain wetlands on the Site pursuant to federal law.⁸ After publishing notice of the County's application in 2012, the USACOE received comments concerning the County's application from various entities, including the U.S. Environmental Protection Agency ("the EPA") and the U.S. Fish and Wildlife Service ("the FWS"). In 2012 the

⁴ See Section 373, Part IV, Florida Statutes ("F.S."), and Chapter 62-330, F.A.C.

⁵ Deseret's petition for a formal administrative hearing is attached to this letter as Exhibit 2. The factual and legal issues in Deer Park's petition are substantially the same as the ones raised in Deseret's petition.

⁶ The petitions filed by Deseret and Deer Park are pending at the Division of Administrative Hearings ("DOAH") in Tallahassee. The petitions have been assigned DOAH Case Nos. 16-3550 and 16-3549, respectively. These cases were consolidated and will be considered together during the formal hearing.

⁷ See Section 120.569(2)(a), F.S.

⁸ See Section 404 of the Clean Water Act (33 U.S.C. § 1344).

USACOE also received comments and objections from Deseret, which claimed that the USACOE should not issue a permit to the County.⁹

Pursuant to Section 7 of the Endangered Species Act, the USACOE consulted with the FWS concerning the potential impacts the County's project may have on threatened and endangered species. In 2014 the USACOE received the FWS's "Biological Opinion," which evaluates those impacts and describes certain "reasonable and prudent measures" and "conservation recommendations" that should be implemented to minimize such impacts.

The USACOE has not provided any written determination as to whether the USACOE intends to issue or deny the County's application for an individual permit. Under federal law, the USACOE cannot issue an individual permit to the County until the USACOE receives the Department's certification that the County's project will comply with state water quality standards.¹⁰ However, the Department cannot provide its certification to the USACOE until the pending administrative cases filed by Deseret and Deer Park are resolved in the County's favor.¹¹

B. Objections to the County's ERPs

Deseret owns the land that is adjacent to the northern and eastern boundaries of the County's Site. Deer Park owns the land that is adjacent to the western boundary of the County's Site. Deer Park also owns the land that is immediately south of U.S. 192 and the Site.

As the adjacent property owners, Deseret and Deer Park have raised many different factual and legal objections to the issuance of the ERPs for the County's proposed solid waste management facilities on the Site.¹² In their petitions for

⁹ Among other things, Deseret claimed that the County does not need to build its proposed landfills on the Site. Deseret contends the County should expand its existing landfills or take its solid waste to the privately owned J.E.D. Landfill in Osceola County.

¹⁰ See Section 401 of the Clean Water Act (33 U.S.C. § 1341).

¹¹ See Section 120.569(2)(a), F.S.

¹² Deseret's specific objections are set forth in Deseret's "Petition for Formal Administrative Hearing," which is attached hereto as Exhibit 2.

administrative hearings, Deseret and Deer Park allege that the County's Site is unsuitable because the County's proposed facilities will cause significant adverse impacts to wetlands, threatened and endangered species, and water quality, all in violation of state law. Although Deseret and Deer Park do not want any solid waste management facilities to be built adjacent to their respective properties, Deseret and Deer Park are most concerned about the possibility that a Class I landfill will be built on the Site and used for the disposal of garbage.

On two separate occasions in 2016, the Florida Audubon Society ("Audubon") appeared before the Board and presented its objections to the County's plans for the development of the Site. Audubon was concerned about the Site's proximity to the St. Johns River and its floodplain, and the potential impacts on wetlands and protected wildlife species, among other things. Given these concerns, Audubon urged the Board to reconsider its plan to build a Class I landfill on the Site for the disposal of garbage. Audubon suggested it would be more appropriate for the County to use a waste-to-energy facility¹³ or other innovative technology, perhaps as part of a regional effort with other local governments. Similar objections and suggestions were published by the Editorial Board of the Orlando Sentinel on February 6, 2016 and April 9, 2016, and by a columnist for the Florida Times-Union on June 14, 2016.

C. The County's Need for New Solid Waste Management Facilities

The Class III waste generated in the southern part of the County is taken to the County's Sarno Road Landfill in Melbourne. The County's consultants (S2Li) estimate that the Sarno Road Landfill will be filled to its maximum design capacity by 2023.

¹³ Section 403.7061(4), F.S., defines "waste-to-energy facility" to mean "a facility that uses an enclosed device using controlled combustion to thermally break down solid, liquid, or gaseous combustible solid waste to an ash residue that contains little or no combustible material and that produces electricity, steam, or other energy as a result." Approximately 11 waste-to-energy facilities are currently being used to process solid waste in Florida, including facilities in Dade County, Broward County, Palm Beach County, Lee County, Pinellas County, Pasco County, and the City of Tampa.

The garbage and other Class I waste generated in the County is taken to the County's Central Disposal Facility, which is located west of Cocoa. The County's consultants estimate that the Class I landfills at the County's Central Disposal Facility will be filled to their maximum design capacity by 2047.

Any estimate concerning the remaining life of the County's landfills is subject to limitations and uncertainties because the estimate must be based on assumptions about future events and conditions, including but not limited to: (1) the amount of solid waste that will be generated by the County's residents and businesses in the future; (2) the amount of waste that will be diverted from the County's landfills as a result of recycling and other solid waste management programs; and (3) the amount of solid waste that will be placed in the County's landfills as a result of hurricanes, major storms, and other unusual events. The actual life span of the County's landfills may be longer or shorter than estimated. Indeed, the estimates prepared by the County's consultants over the last decade have been conservative - i.e., the life span of the County's landfills has been longer than was originally estimated.

Subject to these limitations and uncertainties, it appears that the County will only be able to use the Class III landfill at Sarno Road for approximately six years. On the other hand, it appears that the County will be able to use the Class I landfills at the Central Disposal Facility for approximately 30 years.

II. The Proposed Agreement

D. Change the County's Pending Applications for ERPs

As noted above, the Department has given notice that it is willing to issue the ERPs sought by the County. The ERPs would allow the County to fill the wetlands where the County's Class III landfill will be built. The ERPs also would allow the County to construct the stormwater management system for the Class III landfill. In addition, the ERPs would allow the County to (1) fill the wetlands where the County's Class I landfills will be built and (2) build substantial parts of the stormwater management system for the Class I landfills.

Deseret and Deer Park strenuously object to the proposed Class I landfills, but they are willing to waive their objections to the proposed Class III landfill and related facilities. Accordingly, the Proposed Agreement is based on the concept that Deseret and Deer Park will not oppose the issuance of the ERPs and other approvals needed for the construction and operation of the Class III landfill on the Site,¹⁴ if the County will revise its ERP applications to eliminate those portions of the applications that involve the development of Class I landfills. Subject to the same conditions, Deseret and Deer Park also stipulate in the Proposed Agreement that they will not object if the County uses the Site for recycling facilities, waste-to-energy facilities, or a Class I landfill that is used to dispose of the ash, slag, and other non-putrescible by-products from the operation of the waste-to-energy facilities.¹⁵

In exchange for these commitments by Deseret and Deer Park, the Proposed Agreement provides that the County will withdraw its application for a "conceptual" ERP and the County will revise its application for a "construction" ERP.¹⁶ The final administrative hearing will be cancelled and the administrative proceeding will be held in abeyance while the County revises and FDEP reviews the County's modified application for a "construction" ERP.¹⁷ By taking these actions, the County will temporarily give up its efforts to obtain the ERPs for the proposed Class I landfills on the Site.¹⁸ Nonetheless, the Proposed Agreement expressly states that the County reserves its right to seek the ERPs and other permits for Class I landfills in the future.¹⁹

¹⁴ Paragraph 19 of the Proposed Agreement.

¹⁵ Paragraphs 20 and 21 of the Proposed Agreement.

¹⁶ Paragraphs 3 and 4 of the Proposed Agreement.

¹⁷ Paragraph 5 of the Proposed Agreement. If FDEP does not prepare and issue the final "construction" ERP in a timeframe that is acceptable to the County, the County retains the right to have the final administrative hearing rescheduled.

¹⁸ Paragraph 3 of the Proposed Agreement.

¹⁹ Paragraphs 3 and 7 of the Proposed Agreement.

E. Delay the Permits for Class I Landfills

The Proposed Agreement provides that the County will not file an application for a FDEP solid waste permit or environmental resource permit to build a Class I landfill on the Site before October 1, 2036. This date is approximately 10 years before the date when it is estimated that the County will need a new Class I landfill (i.e., 2047). Subject to certain conditions, the 2036 milestone may be moved forward (i.e., the applications may be filed sooner) if the County determines that the Central Disposal Facility is filling up quicker than the County anticipated. However, in no event shall the County file these applications before October 2031 (i.e., approximately 16 years before the County's existing Class I landfills are expected to be filled to their maximum design capacity).²⁰

F. Evaluate Alternatives to Class I Landfills

As noted above, Deseret and Deer Park contend that the development of a Class I landfill on the Site is not the best or most cost effective method of managing the County's solid waste.²¹ Audubon contends the Board should work with Orange County and the City of Orlando on the development of a regional waste-to-energy facility, instead of a Class I landfill.

To address these contentions, the Proposed Agreement requires the County to conduct an evaluation of reasonable alternatives to the development of a Class I landfill on the Site.²² The evaluation must consider the use of existing solid waste management facilities (e.g., the J.E.D. Landfill in Osceola County), waste-to-energy technology, and other reasonable alternatives. The evaluation must be conducted by a qualified engineering or consulting firm. The evaluation must be conducted at least one year before the County files an application for a solid waste permit or environmental resource permit to construct a Class I landfill on the Site.²³

²⁰ Paragraph 8 of the Proposed Agreement.

²¹ See footnote 9, above.

²² Paragraph 9 of Proposed Agreement.

²³ Parenthetically, if the County enters into the Proposed Agreement with Deseret and Deer Park, the County should plan ahead to ensure that the County

We assume the Board will carefully consider the results of this evaluation before the Board decides how it wishes to proceed in the future. However, the Proposed Agreement does not require the Board to take any specific action after receiving the results of the evaluation. The Proposed Agreement does not require the Board to adopt an approach or technology simply because it is identified in the evaluation as the "best" or most cost efficient. The Proposed Agreement implicitly recognizes that the Board will retain its exclusive authority to exercise its discretion to determine the best course of action for the County.

G. Deseret's Use of the Site and the County's Proposed Fence

Deseret currently uses the Site for cattle ranching pursuant to the 2003 Lease. Under the Proposed Agreement, Deseret will continue to use the Site, subject to the terms and conditions in the 2003 Lease.²⁴ However, the Proposed Agreement modifies and clarifies some of the provisions in the 2003 Lease.

For example, the Proposed Agreement provides that the County will build a fence ("the Fence") across the Site when the County is ready to begin to develop the Site.²⁵ The Fence will extend east to west across the Site, thus dividing the Site into a northern area ("the Northern Area") and a southern area ("the Southern Area").²⁶ The Northern Area will be approximately 1,083 acres and the Southern Area will be approximately 1,897 acres.²⁷

provides ample time for (a) the engineering/consulting firm to complete the evaluation, (b) the Board to consider its alternatives and select a desired course of action, and (c) the County's staff and consultants to implement the course of action selected by the Board. Given the options that are available to the County and the potential for delays in implementing those options, we believe the County's engineering/consulting firm should begin its evaluation of alternatives at least five years before the Central Disposal Facility is expected to be filled to its maximum design capacity.

²⁴ Paragraph 11 of the Proposed Agreement.

²⁵ Paragraph 10 of the Proposed Agreement.

²⁶ The approximate location of the County's Fence is depicted on Figure 6, which is attached to the Proposed Agreement.

²⁷ The actual size of the Northern Area and Southern Area, respectively, may vary when the exact location of the Fence is determined.

When the Fence is built, Deseret's activities will be limited to the Northern Area only, thus enabling the County to conduct its activities in the Southern Area without interference from Deseret's employees, cattle, or invitees.²⁸ The County's Fence will reduce the risk that Deseret's cattle will eat, trample, or otherwise adversely affect the wetlands in the Southern Area. This is important because the County may need to preserve or enhance existing wetlands, or create new wetlands, in the Southern Area to satisfy the requirements in state and federal wetland laws. The Fence also will reduce the risk that Deseret's cattle ranching activities will adversely affect the operation and performance of the County's stormwater management systems for the Class III landfill and related facilities.

H. Remediation of Existing Contamination

In 2012 the County's consultant (Ardaman & Associates, Inc.) prepared a "Limited Site Assessment Report" concerning certain contamination that is present at the "cattle pen" area on the Site.²⁹ The Department has requested the County to remediate this contamination in compliance with the Department's rules, even though it appears that the contamination was caused largely or entirely by Deseret's historic activities in the cattle pen area. The Department contends that the County is responsible for investigating and remediating the contamination because the County owns the Site. To eliminate any future disputes between the County and Deseret regarding their respective obligations concerning the contamination, the Proposed Agreement provides that the County will perform and pay for the investigation and remediation of the contamination.³⁰ These activities will not begin until the County commences construction on the Site.

²⁸ Paragraph 11(b) of the Proposed Agreement.

²⁹ The location of the cattle pen area is shown in the aerial photographs that are identified as Figures 2 and 3 in Ardaman's Limited Site Assessment Report.

³⁰ Paragraph 16 of the Proposed Agreement.

I. Extension of 2003 Lease with Deseret

The County's 2003 Lease with Deseret provides that the Lease may be extended by Deseret in five year increments from 2023 until 2033. Under the Proposed Agreement, the 2003 Lease may be extended in 2033 and every five years thereafter.³¹ The Proposed Agreement implicitly allows the County to approve extensions of the 2003 Lease until the Proposed Agreement expires.³²

Under the Proposed Agreement, each extension of the 2003 Lease is "subject to the mutual consent of Deseret and the County, which may be granted or withheld in their sole discretion."³³ Accordingly, the County will have the ability to terminate the 2003 Lease in 2033 and every five years thereafter, if the County no longer wishes to allow Deseret to use the County's Site.

J. Term of the Proposed Agreement

The Proposed Agreement will remain in effect until "the County permanently closes all of its solid waste management facilities on the Site or October 1, 2076, whichever occurs first."³⁴ Hence, the Proposed Agreement will bind the County, Deseret, and Deer Park for up to 60 years.

The term of the Proposed Agreement is lengthy because it is anticipated that the County will develop the Site over an extended period of time -- 60 years and perhaps more. It is anticipated that the Proposed Agreement will remain in effect and be binding on Deseret and Deer Park during most or all of the time when the County is developing the Site.

³¹ Paragraph 15 of the Proposed Agreement.

³² As noted in Paragraph J, below, the Proposed Agreement may not expire until October 1, 2076.

³³ Paragraph 15 of the Proposed Agreement.

³⁴ Paragraph 26 of the Proposed Agreement.

K. Sale or Conveyance of the Site

The Proposed Agreement expressly notes that the County must comply with applicable state laws and County ordinances if the County sells or conveys any portion of the Site to a third party.³⁵ The Proposed Agreement also provides that, in certain circumstances, the County will issue a "request for proposals" ("RFP") before selling or conveying the property. In such circumstances, the Proposed Agreement implicitly precludes the County from using a bidding process or public auction (i.e., a process where the County's sale or conveyance of the Site will be based solely on the price offered to the County). In those cases where a RFP process is required by the Proposed Agreement, the RFP process is expected to provide a fair, transparent, and competitive method of soliciting and evaluating any proposals concerning the sale or conveyance of the Site. The RFP process also allows the County to consider factors other than price when the County decides whether to sell or convey its property to a proposer. The Proposed Agreement does not restrict the County's ability to reject any or all proposals in the event that the price offered for the County's property is deemed insufficient.

If the County elects to sell or convey part or all of the Site to a third party while the 2003 Lease is in effect, the 2003 Lease will remain in effect for one year following such sale or conveyance.³⁶

L. Future Challenges to Permits for Class I Landfills

In the Proposed Agreement, Deseret and Deer Park reserve their right to challenge and otherwise oppose the issuance of any permits the County may seek for a Class I landfill on the Site that will receive garbage.³⁷ With regard to Class I landfills that will receive garbage, the Proposed Agreement expressly recognizes that (a) the County may pursue permits and approvals needed for the development of such facilities and (b) Deseret and Deer Park may oppose the County's efforts to obtain those permits and approvals.³⁸

³⁵ Paragraph 24 of the Proposed Agreement.

³⁶ Paragraph 24 of the Proposed Agreement.

³⁷ Paragraph 22 of the Proposed Agreement.

³⁸ Paragraphs 7 and 22 of the Proposed Agreement.

III. Primary Benefits of the Proposed Agreement

M. Reduced Risks, Costs, and Delays concerning the Permits for the Class III Landfill

The Proposed Agreement offers several potential benefits to the County. First, the Proposed Agreement eliminates the risk that the County will not receive the ERPs for the Class III landfill because of the pending and threatened litigation with Deseret and Deer Park. The Proposed Agreement also will eliminate significant expenditures of time, energy, and money that the County will spend on litigation with Deseret and Deer Park if there is no settlement agreement regarding the ERPs for the Class III landfill. Further, in the short term, the Proposed Agreement will result in fewer potential adverse impacts to wetlands, wildlife, and other environmental resources. Some or all of these environmental benefits may become permanent, if the County decides in the future to revise its plans for developing the Site. These issues are discussed in more detail in the following paragraphs.

In 2010 Deseret challenged the issuance of the FDEP solid waste permit for the County's Class III landfill. Although the County and Deseret settled their dispute before the formal administrative hearing was conducted, the County was forced to spend almost two years and approximately \$550,000 in engineering, consulting, and legal fees to resolve that case. This total does not include the value of the time, energy, and resources the County staff expended on this litigation.

Unless Deseret, Deer Park, and the County agree to settle their dispute, the pending and threatened litigation with Deseret and Deer Park is likely to take much more time, money, and effort to resolve than the 2010 case involving the solid waste permits for the Class III landfill. As noted above, Deseret and Deer Park already have commenced formal administrative proceedings under state law to oppose FDEP's issuance of the ERPs requested by the County. If Deseret and Deer Park are not successful in the administrative proceedings, they have the right under state law to file an appeal in a Florida district court of appeal.³⁹ Deseret also has threatened

³⁹ See Section 120.68, F.S.

to pursue its legal options under federal law. Deseret previously provided written objections to the USACOE, the EPA, and the FWS in opposition to the County's application for a wetlands permit from the USACOE. Deseret already has met with the USACOE, and presumably will have the opportunity to meet with the USACOE, EPA, FWS, and other federal agencies in the future, to express Deseret's objections to the issuance of the USACOE permit for the County's project. Deseret also has the right under federal law to file suit in federal district court if the USACOE issues a permit to the County for the construction of the proposed facilities on the Site.⁴⁰ Finally, Deseret has the right to appeal the decision of the federal district court.

The County, as the permit applicant, carries a heavy burden in the permitting process. Initially, the County must demonstrate to the satisfaction of each state and federal regulatory agency that the County's project complies with all of the agency's applicable standards. If the agency agrees to issue the requested permit to the County, the agency's decision may be challenged. In the pending administrative hearings, the County will need to present a prima facie case demonstrating the County's entitlement to the FDEP ERPs.⁴¹ In any federal court proceedings concerning the permits for the County's proposed facilities, the County will have the burden of proving it complies with each regulatory requirement. As a practical matter, in each permitting case with each agency, the County must present sufficient evidence to demonstrate that the County "wins" each factual and legal dispute with Deseret and Deer Park concerning dispositive issues.⁴²

The County must obtain all of the necessary local, state, and federal permits before it can lawfully commence construction of its proposed facilities on the Site. Consequently, the

⁴⁰ See 5 U.S.C. § 702.

⁴¹ See Section 120.569(2)(p), F.S.

⁴² In the pending administrative cases with Deseret and Deer Park, Section 120.569(2)(p), F.S., places the "burden of ultimate persuasion" on them. This statute shifts the burden of ultimate persuasion in certain cases and will benefit the County, as long as the Department agrees that the ERPs should be issued to the County. However, as a general proposition (that is subject to various qualifications), an applicant carries the burden of "winning" the argument concerning each dispositive issue that is raised by the opponents to the applicant's project.

County must prevail in each case, including each appeal, involving a challenge to the issuance of the permits needed for the development of its Site.

For these reasons, the pending and threatened litigation with Deseret and Deer Park is expected to create considerable risk, delay, and expense for the County.

Based on our experience, we believe the County could easily spend three to five more years fighting Deseret and Deer Park in the pending and threatened litigation. The County already has spent approximately \$250,000 on engineering, consulting, and legal services in the pending administrative cases. If the litigation and appeals are pursued to their logical conclusion, the County's litigation expenses for engineering, consulting, and legal services could reasonably exceed \$1,000,000.⁴³

Until all of the litigation is completed successfully and all of the deadlines for filing appeals have passed, there will be no certainty about the County's ability to construct the Class III landfill on the Site. If the County is not successful in one or more of these proceedings, the County may need to revise its permit applications and start the regulatory review process again. In such circumstances, Deseret and Deer Park would have the right to challenge the County's revised plans and applications, thereby delaying the County's project even further.

N. Reduced Environmental Impacts and Costs

Under the Proposed Agreement, the County will postpone its plans to build the proposed Class I landfills on the Site. Delaying the construction of the Class I landfills will delay

⁴³ Our estimates about the time and expense of resolving the pending and threatened litigation with Deseret and Deer Park are imprecise, at best, because they are based on assumptions about future events. Among other things, we have assumed for present purposes that: (a) Deseret and Deer Park will vigorously oppose the issuance of the Department's ERPs in a formal administrative hearing that will take approximately two weeks to complete; (b) Deseret and Deer Park will appeal to a Florida district court of appeal if the Department's final order approves the issuance of the ERPs; (c) Deseret and Deer Park will aggressively lobby the USACOE, EPA, and FWS in opposition to the issuance of the USACOE individual permit, which will delay the issuance of the permit and increase the cost of completing the permitting process; and (d) Deseret and Deer Park will challenge the issuance of the USACOE permit in federal court.

the need to fill the wetlands located within the "footprint" of the proposed Class I landfills (i.e., beneath the base of the landfills) and the associated stormwater management systems. In this manner, the Proposed Agreement will result in a reduction of the impacts to wetlands and wildlife that currently are scheduled to occur upon the commencement of construction. These impacts will be delayed for 20 years or more, if the applications for the Class I landfills are not filed until 2036 or later, as contemplated under the Proposed Agreement. Moreover, it is conceivable that the use of new technologies or solid waste management techniques may enable the County to change its plans for the Site in the future. If such changes occur, the County may be able to permanently reduce the wetland and wildlife impacts that are proposed under the County's current plan of development.

Reducing the amount of dredging, filling, and construction activities on the Site should reduce the initial construction costs for the County's facilities. These savings in construction costs may become permanent, just as the reductions in wetland and wildlife impacts may become permanent, depending on the County's long term plans for developing the Site.

O. Improved Wetland Mitigation Plans

Under the applicable state and federal wetland laws, the County must provide mitigation for the wetland impacts associated with the County's activities on the Site. Given the County's current plans for developing Class I and Class III landfills on the Site, the County intends to provide wetland mitigation by: (a) using mitigation credits that the County has already purchased from a wetlands mitigation bank; (b) enhancing some of the existing wetlands on the Site; and (c) creating new wetlands on the Site.

The Proposed Agreement helps ensure that the mitigation provided for the future Class I landfills (if any) will be sufficient to offset the impacts associated with the construction of those landfills. The County's current mitigation plan is based on the assumption that the wetlands enhancement and creation areas will achieve a certain level of success. Deseret and Deer Park contend that the proposed mitigation is insufficient because, among other things, the wetlands enhancement and creation areas will not function as successfully as the County has assumed.

Under the Proposed Settlement, the immediate impacts on wetlands will be reduced and the need for wetlands mitigation will be reduced. In addition, the Proposed Agreement recognizes that the County may wish to go ahead now and provide all of the mitigation on Site that the County currently proposes (i.e., enough mitigation to offset the impacts associated with the construction of both the proposed Class I and Class III landfills). If the County provides all of the mitigation that it currently proposes, the on-Site wetlands mitigation areas will have at least 20 years to mature before the County files an application to construct a Class I landfill on the Site. Consequently, the wetland enhancement and creation areas on the Site will be well-established before the County files any application for an ERP for a Class I landfill on the Site. This approach will help eliminate any uncertainty about the success and environmental value of the mitigation areas.

IV. Primary Disadvantages of the Proposed Agreement

P. New Costs and Delays for Class III Landfill

As noted above, the Proposed Agreement will require the County to revise its pending ERP applications and thereby eliminate the activities associated with the development of the Class I landfills on the Site. Revising the applications will take time and money that would not be required without the Proposed Agreement.

We assume that the ERP application for the Class III landfill, and the application for an individual permit from the USACOE, can be revised relatively quickly by the County's consultants and reviewed relatively quickly by the regulatory agencies, because the County will be eliminating the potential environmental impacts associated with the Class I landfills and the stormwater management systems for the Class I landfills. Based on this assumption, and subject to the qualifications herein,⁴⁴ we estimate that the County should be able to receive

⁴⁴ Our estimate is subject to the limitations and qualifications contained herein. Among other things, our estimate assumes that: (a) the County's staff and consultants, and the agency staff, will move forward diligently and expeditiously with their respective duties concerning the County's permits; (b) the County will not encounter any unexpected problems in its effort to obtain the County's permits; and (c) the issuance of the permits will not be

the ERP and the USACOE permit for the Class III landfill within 12 to 24 months after the Proposed Agreement is signed by Deseret, Deer Park, and the County.

Q. New Costs and Delays for Class I Landfills

The Proposed Agreement will cause the County to incur additional costs and delays with regard to the issuance of the ERPs and USACOE permit for the proposed Class I landfills on the Site. As noted above, the Proposed Agreement requires the County to temporarily withdraw its plans to dredge and fill certain wetlands, and construct certain stormwater systems, that are needed to build the proposed Class I landfills on the Site.⁴⁵ The Proposed Agreement also requires the County to conduct an analysis of its options before the County renews its efforts to build Class I landfills.⁴⁶ These activities will take time and money, which would not be required but for the Proposed Agreement.

The County has spent years, and we assume considerable amounts of money, trying to satisfy the applicable FDEP and USACOE requirements concerning the wetland impacts associated with the County's plan to build Class I landfills on the Site. Under the Proposed Agreement, the County is forfeiting part of that investment and effort. If the County wishes to pursue the issuance of the wetland permits for Class I landfills in the future, the County will need to prepare new applications and submit updated reports and information to the Department and the USACOE. The preparation of those materials in the future presumably would not be necessary if the County litigated, instead of settling, its dispute with Deseret and Deer Park.

V. Potential Risks for the County

R. Risk of New Challengers

The Proposed Agreement is designed to eliminate the risk that the FDEP's ERPs and USACOE's individual permit for the

challenged by any third party. See also Section VI (Conclusions and Recommendations), below.

⁴⁵ See Paragraph D, above.

⁴⁶ See Paragraph F, above.

County's Class III landfill will be challenged by Deseret, Deer Park, or their affiliates or subsidiaries. However, the Proposed Agreement does not eliminate the risk that one or more of the County's permits will be challenged by a third party (i.e., someone that is not related to or affiliated with Deseret or Deer Park). Hypothetically, the County could sign the Proposed Agreement and then have a citizen or environmental group oppose the issuance of the ERP needed for the construction of the County's Class III landfill, and this event would reduce or eliminate some of the benefits offered by the Proposed Agreement.

S. Risk of Permit Denial, Revision, or Delay

The Proposed Agreement does not eliminate the risk that the Department, the USACOE, or another agency may object to the issuance of the permits sought by the County for the Class III landfill and related facilities. The FDEP could deny the County's permit application for an ERP for the Class III landfill or the USACOE could deny the County's application for an individual permit. The FDEP could impose permit conditions in addition to, or more onerous than, the conditions that already have been proposed for the ERPs.

Since the Proposed Agreement establishes certain limitations on the County's ability to file an application for the permits for a Class I landfill,⁴⁷ there is a risk that the necessary permits for the Class I landfill will not be issued in a timely manner and, in turn, the County will be unable to commence commercial operations of a Class I landfill on the Site before the date when the Central Disposal Facility is filled to its maximum design capacity. Under the Proposed Agreement, the County should have approximately ten years to obtain the necessary permits, complete construction of the necessary facilities, and commence commercial operations of the Class I landfill on the Site. We assume that ten years will be a sufficient amount of time to complete these tasks, if the County proceeds expeditiously. Nonetheless, we recognize that unexpected events may preclude the County from completing its tasks and commencing commercial operations on the Site before

⁴⁷ As noted in Paragraph E, above, the County must delay its submittal of certain permit applications for the Class I landfill. As discussed in Paragraph F, above, the County must evaluate its alternatives before it files those permit applications.

the County needs to replace its use of the Class I landfills at the Central Disposal Facility.⁴⁸

T. Risk of Changes in Law or Fact

Delaying the County's efforts to obtain the permits for the Class I landfills on the Site will pose certain risks for the County related to changes in law and changes in the relevant facts. For example, in the future an applicable law may change in a way that hinders or precludes the County from using the Site in the manner it currently proposes for the Class I landfills. Hypothetically, new regulations may: (1) increase the size of the areas on the Site that are classified as wetlands; (2) increase the amount of mitigation required for the wetland impacts associated with the construction of the County's Class I landfills; (3) prohibit construction in the wetlands that would be filled under the County's current plan for the Class I landfill; or (4) increase the protection provided for the listed wildlife species on the Site. Similarly, the facts concerning the conditions on the Site may change in the future. Among other things, more threatened or endangered species (e.g., crested caracara) may move onto the Site in the future, or they may establish nests in new areas on the Site, and thus restrict the County's ability to use its property in the manner that is currently proposed.

VI. Conclusions and Recommendations

Subject to the qualifications contained herein, we believe the Proposed Agreement provides a reasonable way to settle the pending administrative cases filed by Deseret and Deer Park in opposition to the issuance of the FDEP ERPs to the County.⁴⁹ The Proposed Agreement also provides a reasonable way to settle the

⁴⁸ If the County is unable to commence operations of a new Class I landfill at the Site before the Central Disposal Facility reaches its maximum design capacity, the County presumably would need to transport its Class I waste to an out-of-county disposal facility, such as the J.E.D. Landfill in Osceola County.

⁴⁹ We have provided copies of the Proposed Agreement to the County's staff and consultants for their review. Our conclusions and recommendations in this letter are based in part on our understanding that the Proposed Agreement is acceptable to the County's staff and consultants.

litigation that Deseret has threatened to pursue to prevent the issuance of the USACOE individual permit to the County.

Under any circumstances, it would be a long, difficult, and expensive process to obtain the FDEP ERPs and the USACOE individual permit for development of the County's Class III landfill, Class I landfills, and related facilities on the Site. In this instance, it will be especially slow, difficult, and expensive to obtain the necessary permits for the County's proposed facilities if Deseret and Deer Park are actively opposing the County's efforts every step of the way. Further, there can be no guarantee that the County will be successful in every case and every appeal brought against the County by Deseret and Deer Park. For these and other reasons, we believe the pending and threatened litigation with Deseret and Deer Park pose a material risk for the County and its current plans for the development of the Site.

As described above, the Proposed Agreement requires the County to make certain concessions to Deseret and Deer Park. In exchange for these concessions, the County will receive commitments from Deseret and Deer Park that they will not challenge the issuance of the permits and approvals for:

- (a) the County's proposed Class III landfill and related facilities;
- (b) future waste-to-energy facilities;
- (c) future ash disposal facilities to serve the waste-to-energy facilities; or
- (d) future recycling facilities.

We believe these are significant commitments by Deseret and Deer Park. It is anticipated that these commitments will be binding for the term of the Proposed Agreement, which could be up to 60 years.

We cannot accurately estimate the amount of time or money the County will expend in the future if the County elects to continue on its present course in the face of the pending and threatened litigation involving Deseret and Deer Park. We also cannot accurately estimate the amount of time or money that will be spent, or saved, if the County elects to enter into the

Scott Knox
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Proposed Agreement with Deseret and Deer Park. Any estimate concerning these matters will necessarily be based on predictions and speculation about the possible outcome of events that may occur far into the future. Any estimate will be fraught with uncertainty, given the long planning horizon in this case and the many variables that may affect the outcome of the projections.

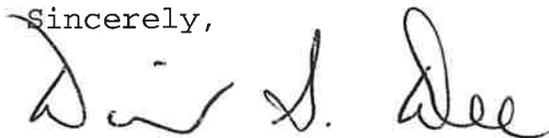
Nonetheless, subject to these qualifications and limitations, we estimate that the Proposed Agreement will help the County obtain the permits and approvals the County needs for its proposed Class III landfill sooner, and at less cost and less risk, than continuing to engage in the pending and threatened litigation with Deseret and Deer Park. By eliminating litigation and expediting the permitting process, the Proposed Agreement helps address the County's need to replace the Class III Sarno Road landfill in approximately six years.

The Proposed Agreement preserves the County's right to construct Class I landfills on the Site in the future. As a practical matter, however, the Board does not need to make a final decision to pursue the development of Class I landfills on the Site until a date closer to the time when the County needs a new disposal facility for garbage. By postponing the Board's final decision about Class I landfills, the Proposed Agreement should postpone for many years any potential litigation between Deseret, Deer Park, and the County concerning the development of Class I landfills on the Site.

After considering and balancing the legal and factual issues in the present matter, and subject to the qualifications herein, we recommend that the Board approve the Proposed Agreement.

Thank you for giving us this opportunity to assist the County. Feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "David S. Dee". The signature is written in dark ink and is positioned above the printed name and title.

David S. Dee
For the Firm

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Cc: Christine Lepore, Assistant County Attorney
Euri Rodriguez, Solid Waste Management Department
Omar Smith, S2Li

Exhibit 1 to
Letter dated January 23, 2017
to Scott Knox, Esq.

SETTLEMENT AGREEMENT

This Settlement Agreement (“the Agreement”) is entered into as of this ____ day of _____, 2017 (“the Effective Date”) by and between Farmland Reserve, Inc. (d/b/a Deseret Ranches of Florida or “Deseret”), a non-profit corporation authorized to conduct business in Florida, and Deer Park Ranch, Ltd. (“Deer Park”), a Florida limited partnership, and Brevard County (“County”), a political subdivision of the State of Florida.

BACKGROUND FACTS

A. The County owns certain real property (“the Site”) located adjacent to U.S. 192 in the western part of Brevard County, Florida. The Site contains approximately 2,980 acres and is more particularly described in Exhibit 1, which is attached to this Agreement. The County plans to use the Site for the development of the County’s future solid waste management facilities, including a “Class III” landfill, two “Class I” landfills, and other ancillary facilities. The County’s plans for the development of the Site are depicted in the “Phase II Development Site Plan” (“Site Plan”) that is attached to this Agreement as Exhibit 2.

B. On December 15, 2011, the Florida Department of Environmental Protection (“the Department” or “FDEP”) issued a construction permit (Permit No. SC05-0296030-001) and an operation permit (Permit No. SO05-0296030-002) that authorized the construction and operation of the first cell (i.e., disposal area) of the County’s proposed Class III landfill. These permits were issued pursuant to the FDEP solid waste rules in Chapter 62-701, Florida Administrative Code (“F.A.C.”). These two solid waste permits (“the Solid Waste Permits”) also authorized the construction and operation of other related facilities (“Related Facilities”), including but not limited to an entrance road, a scale house, leachate storage tanks, administrative offices, and a Multi-Use Area, which will be used for collecting, storing, and processing Yard Trash, White Goods, Waste Tires, and scrap metal. The approximate locations of the Class III landfill and the Multi-Use Area are depicted on the Site Plan that is attached hereto as Exhibit 2.

C. The County filed applications with the Department pursuant to Chapter 62-330, F.A.C., for two Environmental Resource Permits (“ERPs”)—i.e., a construction ERP and a conceptual ERP. If the ERPs are issued, the ERPs would authorize the County to (1) conduct dredging, filling, and other activities that will affect certain wetlands on the Site and (2) construct and operate certain stormwater management systems on the Site. The County’s ERP application for a construction permit (“the Construction Permit”) seeks FDEP’s approval of the development of the wetland areas and stormwater management systems to be used for the proposed Class III landfill and Related Facilities. In addition, the County’s ERP application for the Construction Permit seeks FDEP’s approval of the development of the wetland areas and stormwater management ponds to be used for the two proposed Class I landfills. The County’s ERP application for a conceptual permit (“Conceptual Permit”) seeks approval of the County’s

long range plans for the development of the County's Site, including but not limited to the build-out of the stormwater management systems for the proposed Class I landfills. On January 15, 2016, the Department gave notice of its intent to issue the Construction Permit (Permit No. 05-301799-004-EI) and the Conceptual Permit (Permit No. 05-301799-003-EC) sought by the County.

D. Deseret and Deer Park each filed a petition for a formal administrative hearing and thereby challenged the Department's decision to issue the Construction Permit and Conceptual Permit to the County. Deseret, Deer Park, the County, and the Department are now parties in two administrative proceedings that have been consolidated and are pending before the Florida Division of Administrative Hearings ("DOAH"). These DOAH cases (collectively, "the Lawsuits") are styled as follows: Deer Park Ranch, Ltd. v. Brevard County Solid Waste Management Department and Department of Environmental Protection, DOAH Case No. 16-3549, and Farmland Reserve, Inc. d/b/a Deseret Ranches of Florida v. Brevard County Solid Waste Management Department and Department of Environmental Protection, DOAH Case No. 16-3550.

E. Deseret, Deer Park, and the County have negotiated the terms of this Agreement to completely and permanently resolve the Lawsuits. Each of them agree that entering into and complying with the terms of this Agreement shall not be deemed to constitute an admission of law or fact by any Party and shall not be deemed to constitute a concession concerning the merits of any allegation or argument asserted by any Party in the Lawsuits.

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the Parties promises and agrees to comply with the following provisions of this Agreement:

1. Background Facts. The background facts set forth above in Paragraphs A, B, C, D, and E are true, correct and incorporated herein by this reference.
2. Definitions. The capitalized words and phrases in this Agreement are defined in Exhibit 3, which is attached hereto. The definitions in Chapter 403, Florida Statutes, and Title 62, Florida Administrative Code, shall supplement the definitions contained herein. If there is a conflict between the definitions contained in this Agreement and the definitions contained in any statute or rule, the definitions herein shall prevail when interpreting this Agreement.
3. Withdrawal of Conceptual Permit. After the Effective Date, the County will withdraw and no longer pursue its pending application for the Conceptual Permit. However, the withdrawal of the pending application does not waive the County's right to pursue the issuance of a conceptual ERP in the future, subject to the limitations contained herein.
4. Modification of Construction Permit. After the Effective Date, the County will modify its application for the Construction Permit. More specifically, the County shall withdraw the County's request to fill the wetlands that are located in the areas the County plans to develop for the proposed Class I landfills and the associated stormwater management ponds. The County

also shall withdraw its request to build the proposed stormwater management ponds that are located adjacent to the proposed Class I landfills. The two proposed Class I landfills are labeled as "Future Cell (376 acres)" and "Future Cell (122 acres)" in Exhibit 2. The stormwater management ponds associated with the Class I landfills are labeled as Stormwater Ponds 3, 5, and 6 in Exhibit 2. Since these modifications to the County's application will affect other parts of the County's plan for managing the stormwater on the Site, the County may modify its application further, as the County deems appropriate. Any such modifications will be designed to maintain or enhance the hydrology of the existing or proposed wetlands on the Site, or maintain or enhance the flows and stages of the stormwater moving across the Site, or comply with the requirements of a regulatory agency, or comply with the County's obligations to Deseret under this Agreement or other Contracts.

5. Joint Motion To Abate. Within fifteen (15) days after the Effective Date, the Parties shall jointly file a motion ("the Joint Motion to Abate") that requests the DOAH Administrative Law Judge ("ALJ") to cancel the final administrative hearing in the Lawsuits and hold the Lawsuits in abeyance while the County revises and the Department reviews the County's modified application for the Construction Permit. The Joint Motion to Abate shall be substantially the same as the form that is attached hereto as Exhibit 4. The Parties recognize, however, that the ALJ may transfer the Lawsuits back to the Department. In any event, at all times after the Effective Date, the Parties shall work diligently, promptly, and in good faith to ensure the timely issuance of the Final Construction Permit (as described below), subject to the requirements in this Agreement. Notwithstanding the Parties' best efforts, if for any reason the Department does not prepare and issue the Final Construction Permit within a timeframe that is acceptable to the County, the County may file a motion requesting the ALJ to reschedule the final administrative hearing for the Lawsuits or, if the Lawsuits have been transferred to the Department, the County may file a motion requesting the Department to transfer the Lawsuits back to DOAH for the rescheduling of the final administrative hearing. Deseret and Deer Park shall support the County's request, if the County deems it necessary to file such a motion. This Agreement shall terminate at 12:01 a.m. on the first day of the final administrative hearing for the Lawsuits.

6. Issuance of the Final Construction Permit. The County shall request the Department to prepare and issue a revised Construction Permit ("the Final Construction Permit") that is consistent with the plans in the County's modified application and the provisions of Paragraph 4, above. If the Department agrees to issue a Final Construction Permit that is consistent with Paragraph 4, above, when the Lawsuits are pending before DOAH, the Parties shall attach the proposed Final Construction Permit to a settlement stipulation and joint motion for relinquishment of jurisdiction ("the Settlement Stipulation"), which the Parties shall file with the ALJ. In the Settlement Stipulation, the Parties shall request the ALJ to issue an order relinquishing jurisdiction of the Lawsuits, closing the relevant files at DOAH, and transferring the Lawsuits to the Department for the issuance of the Final Construction Permit. The Settlement Stipulation shall be substantially the same as the form that is attached hereto as Exhibit 5. If the Lawsuits are transferred from DOAH to the Department before the Department prepares the draft Final Construction Permit, the Parties shall request the Department to prepare and promptly issue a Final Construction Permit that is consistent with the provisions in Paragraph 4, above.

7. County's Right to Construct Class I Landfills on the Site. Notwithstanding anything else contained herein, the County reserves its right to construct and operate Class I landfills on the Site in the future. The County acknowledges and agrees that that it must comply with all applicable laws and obtain all applicable permits and approvals if the County elects to construct a Class I landfill on the Site in the future. Among other things, the County would need to obtain an ERP pursuant to Chapter 62-330, F.A.C., and a solid waste permit pursuant to Chapter 62-701, F.A.C., or equivalent permits under the then applicable laws. The County also acknowledges and agrees that Deseret and Deer Park reserve their rights to challenge the issuance of the permits for a Class I landfill, except as otherwise provided in Paragraph 20, below.

8. No Class I Landfill before 2036.

(a) The County stipulates it will not file an application for the construction of a Class I landfill on the Site pursuant to Chapter 62-701, F.A.C., before October 1, 2036. The County also stipulates that it will not file an application for the construction of a stormwater management system for a Class I landfill on the Site pursuant to Chapter 62-330, F.A.C., before October 1, 2036.

(b) The stipulations in Paragraph 8(a), above, are based on the County's current estimate that the Class I landfills at the County's Central Disposal Facility will not be filled to their maximum design capacity before January 1, 2047. If the County determines in the future that the Central Disposal Facility will be filled to its maximum design capacity before January 1, 2047, the County may adjust the October 1, 2036 milestones in Paragraph 8(a) to account for the reduction in the active life of the Central Disposal Facility. Any such determination shall be based on the information provided to the Department in the County's annual report, which is required by Rule 62-701.500(13)(c), F.A.C., and which must contain "an annual estimate of the remaining life and capacity in cubic yards of the existing, constructed landfill and an annual estimate of the life and capacity in cubic yards of other permitted areas not yet constructed." Any adjustment to the milestones in Paragraph 8(a) shall be equal to (i.e., the same duration as) the reduction in the projected active life of the Central Disposal Facility. However, notwithstanding anything else contained in this Paragraph 8(b), the County shall not adjust the milestones in Paragraph 8(a), above, to any date earlier than October 1, 2031. For example, if the County determines that population growth, a hurricane, new regulatory requirements, or other factors will cause the Central Disposal Facility to be filled to its maximum design capacity by January 1, 2046 (i.e., one year earlier than currently projected), the County shall have the right to file its applications pursuant to Chapters 62-701 and 62-330, F.A.C., on or after October 1, 2035 (i.e., one year earlier than the milestones in Paragraph 8(a), above). The County shall notify Deseret and Deer Park promptly if the County concludes that it needs to adjust the milestones pursuant to this Paragraph 8(b).

9. Evaluation of Solid Waste Alternatives. No less than one year prior to filing an application for a solid waste permit or an ERP authorizing the construction of a Class I landfill on the Site, the County shall obtain an independent analysis of the alternatives to the construction and operation of a Class I landfill on the Site. The analysis shall consider the use of solid waste

management facilities that are in operation in Florida, as well as solid waste management technologies (e.g., waste-to-energy) that have been used successfully on a commercial scale in the United States. The analysis shall also consider the financial and environmental impacts associated with the proposed Class I landfill and the alternatives to the Class I landfill that are reasonably available. A technology or facility does not need to be considered unless it is a reasonable alternative – i.e., at a minimum, the technology or facility must be well demonstrated during commercial scale operations, commercially available, cost-effective, and otherwise practicable. The analysis of the County’s alternatives shall be performed by a qualified engineering or consulting firm. The analysis shall be in addition to the analyses and evaluations that were performed by the County before the Effective Date.

10. The County’s Fence. Upon or shortly after the date designated for the commencement of construction (“the Commencement of Construction”) pursuant to Paragraph 11, below, the County will build a fence, at its expense, extending from east to west across the Site. The fence will divide the Site into a northern area (“the Northern Area”) and a southern area (“the Southern Area”). The fence will be located approximately where it is shown in Exhibit 6, unless the Department or another regulatory agency requires the County to relocate it, or the County deems it necessary to move the fence slightly to provide a larger buffer around a wetland. The Northern Area is estimated to be approximately 1,083 acres, but this number may fluctuate, depending on the actual placement of the fence. The County will be responsible for the normal repair and maintenance of the fence. Deseret shall be responsible for the repair or replacement of the fence in areas where Deseret or Deseret’s cattle have caused damage in excess of normal wear and tear.

11. Deseret’s Use of the Site.

(a) Deseret currently uses the Site for cattle ranching pursuant to a Lease Agreement (“Lease”) dated December 2, 2003. The Lease shall remain in effect and shall continue to govern Deseret’s activities on the Site, except as otherwise provided herein. Accordingly, Deseret will be allowed to continue to use the entire Site, except those areas where Deseret’s activities interfere with the County’s efforts to develop the Site, until the County is ready to commence construction of the County’s proposed facilities. The County will provide periodic written updates to Deseret concerning the status of the County’s efforts to complete the steps necessary for the County to commence construction of the County’s proposed facilities on the Site. The County also will give Deseret written notice at least one hundred twenty (120) days before the date when the County anticipates that the Commencement of Construction will occur.

(b) After receiving the County’s notice designating the date for the Commencement of Construction, Deseret shall take all steps necessary to ensure that its cattle, equipment, and personal property are moved to the Northern Area before the date designated by the County in its notice. No later than the date designated by the County for the Commencement of Construction, Deseret shall cease all of its activities in the Southern Area. On and after the date designated for the Commencement of Construction, Deseret’s activities under the Lease shall be restricted to the Northern Area (e.g., Deseret shall have no right of access to the Southern Area).

(c) The notice requirements in this Paragraph 11 supersede and replace the notice provisions in Section 6 of the Lease.

12. Artesian Wells. Subject to the terms and conditions in the Lease and this Agreement, Deseret will be allowed to continue to operate the existing artesian wells located in the areas being used by Deseret. Notwithstanding the foregoing, the County intends to grout and abandon most or all of the artesian wells located in the Southern Area upon or after the Commencement of Construction. The County may continue to operate one or more of the existing wells in the Southern Area for the County's own purposes, including but not limited to fire protection or the irrigation of the proposed wetland creation areas. The County will not grout and abandon the wells in the Northern Area during the term of the Lease, unless Deseret's use of the wells interferes with the County's efforts to develop the Site.

13. New Structures. Consistent with Section 12 of the Lease, Deseret must request and receive the County's written consent before Deseret constructs or significantly alters any fence, building, structure, berm, ditch, culvert, drainage conveyance, or water control structure (collectively, "Improvements") on the Site. The County's consent will not be unreasonably delayed or withheld. The County's prior approval is not required for routine maintenance on an Improvement. Additionally, in the event of an emergency, Deseret may take necessary precautions and make necessary repairs or alterations to any Improvement. Promptly after the emergency conditions have passed, Deseret shall notify the County in writing if Deseret constructed or significantly altered any Improvements. Any new Improvement or significant alteration to an Improvement shall be subject to the County's after-the-fact review and written consent. If such consent is not granted, the Improvement shall be restored to its condition before the emergency.

14. Rent for Leased Area. Deseret must continue to pay rent for the areas that it leases from the County. Pursuant to Section 6 of the Lease, the rent paid by Deseret to the County will be reduced proportionately as development commences and the area utilized by Deseret is reduced. Since the area leased by Deseret will be reduced upon the Commencement of Construction, the rent paid by Deseret will be reduced proportionately upon the Commencement of Construction.

15. Extension of Lease. The Lease is scheduled to expire on December 2, 2023, but the Lease may be extended under certain conditions for two successive renewal terms. Each renewal term will be five years and, therefore, the Lease may be extended until December 2, 2033. The County and Deseret agree to extend the Lease beyond these two renewal terms by adding successive, renewable, five (5) year terms. Any renewal term shall be subject to the conditions and limitations in the Lease, as amended by this Agreement or otherwise. An extension of the Lease will authorize Deseret to continue to use part or all of the Site, but only to the extent that Deseret is authorized to use such land pursuant to the Lease at the time of renewal. For example, after the County's fence is constructed pursuant to Paragraph 10, above, an extension of the Lease will only authorize Deseret to use the land located in the Northern Area, and only to the extent that Deseret's activities do not interfere with the County's efforts to develop the Site. Notwithstanding anything else contained in this Agreement or the Lease, each extension of the Lease on or after December 2, 2033 shall be subject to the mutual consent of

Deseret and the County, which may be granted or withheld in their sole discretion. If either Party intends to withhold its consent to a renewal of the Lease, that Party must provide written notice of its intent to the other Party at least 365 days prior to the expiration of the then current term of the Lease.

16. Contamination at Cattle Pen. The County will remediate the arsenic and other contamination at the existing cattle pen area on the Site in accordance with applicable Department rules. The contamination is described in the "Limited Site Assessment Report" (dated March 9, 2012) prepared by Ardaman & Associates, Inc. The remediation activities shall be performed at the County's expense and shall begin upon or after the Commencement of Construction. The County anticipates that the remediation activities will require the removal of the structures that are currently located in the cattle pen area. After the County completes the remediation of the cattle pen area, Deseret may construct new cattle pens in the same location, at Deseret's option and Deseret's expense, subject to the requirements in Section 12 of the Lease. Deseret acknowledges and agrees that it shall be liable for any contamination on the Site that is caused by Deseret's acts or omissions after the Effective Date.

17. Wetlands Protections and Banking. At its option, the County may: (a) record one or more conservation easements to protect some or all of the wetlands on the Site; (b) create one or more of the wetland creation areas that are proposed in the County's ERP applications and the Construction Permit for the Southern Area; or (c) undertake other measures in the Southern Area to provide mitigation for the wetland impacts associated with the County's activities on the Site. The County believes these activities may provide more mitigation than the County needs to obtain the Final Construction Permit. If they do, the County may wish to "bank" any excess mitigation so that the excess mitigation may be used to offset wetland impacts associated with the County's future projects, either on the Site or in off-Site areas. Pursuant to Paragraph 19, below, Deseret and Deer Park agree that they will not oppose, challenge, or in any way contest (collectively, "Oppose") these activities by the County, but their acquiescence to these proposed activities shall not be cited as evidence of their approval of a future Class I landfill on the Site or their consent thereto. Parenthetically, if the County records a conservation easement for any of the wetlands in the Northern Area, the conservation easement will note that cattle ranching and grazing will be allowed in the Northern Area during the term of the Lease.

18. Stormwater Management Systems.

(a) The County represents that the stormwater management systems shown on the Site Plan for the Class III landfill and Related Facilities (i.e., Stormwater Ponds 1, 1-A, 2 and 4) have been designed to comply with the applicable standards of the FDEP and the St. Johns River Water Management District ("SJRWMD"). In addition, these stormwater ponds have been designed to control and treat the run-off from a 100-year storm event. If the County wishes to build any stormwater management systems in addition to the ones shown on the Site Plan for the Class III landfill and Related Facilities, those future systems must be designed in compliance with the applicable FDEP and SJRWMD standards in effect at the time the County seeks the permits for such systems.

(b) Deseret shall use any stormwater control structure or conveyance on the Site in a manner consistent with the applicable permits and laws, and not in a manner that hinders the County's ability to maintain the County's stormwater management systems and wetland areas in compliance with the applicable permits and laws.

(c) Nothing contained in this Agreement is intended, and nothing herein shall be construed, to change any rights or remedies of any Party with regard to any water flowing onto, across, or off of the lands owned by Deer Park.

19. No Challenges to Permits for Class III Landfill. In exchange for the County's commitments herein, Deseret and Deer Park each agree that they will not Oppose the issuance of any permit or approval for the County's Class III landfill and Related Facilities on the Site, except for their reservation of rights in Paragraph 22, below. Among other things, Deseret and Deer Park will not Oppose the issuance, renewal, extension, amendment, or modification of: (a) any solid waste permit concerning the proposed Class III landfill and Related Facilities; (b) any ERP concerning the proposed Class III landfill and Related Facilities; (c) any permit from the U.S. Army Corps of Engineers for the Class III landfill and Related Facilities, (d) the Biological Opinion and similar determinations of the U.S. Fish and Wildlife Service for the Class III landfill and Related Facilities, (e) any other permit or approval required for the Class III landfill and Related Facilities; or (f) any permit or approval for the temporary storage, processing, and management in the Southern Area of vegetative waste and non-putrescible waste from storm events. For the purposes of Paragraphs 19, 20, and 21 herein, the commitments by Deseret and Deer Park to not Oppose the County's activities include but are not limited to a commitment that they will not individually, collectively, or through an agent or surrogate, file or provide assistance or funding for the filing of any case in state court, federal court, DOAH, or any other civil or administrative tribunal concerning the County's Class III landfill and Related Facilities. Deseret acknowledges and agrees that its commitments in Paragraphs 19, 20, and 21 herein supersede and replace the provisions in Section 26 of the Lease.

20. No Challenges to Innovative Waste Management Facilities. In exchange for the County's commitments herein, Deseret and Deer Park each agree that they will not Oppose the issuance of any permit or approval for waste-to-energy facilities (e.g., traditional energy-from-waste technology; plasma gasification; pyrolysis; other gasification; similar technologies) that will process garbage and putrescible waste on the Site to create ash, slag, or other inert material. Further, notwithstanding their reservation of rights in Paragraph 22, below, or anything else contained herein, Deseret and Deer Park each agree that they will not Oppose the issuance of any permit or approval for a Class I landfill on the Site if the Class I landfill is used solely for the disposal of the ash, slag, and other non-putrescible by-products from the operation of the County's waste-to-energy facilities.

21. No Challenges to Recycling Facilities. In exchange for the County's commitments herein, Deseret and Deer Park each agree that they will not Oppose the issuance of any permit or approval for recycling facilities or similar materials recovery facilities ("MRF") on the Site.

22. Reservation of Rights by Deseret and Deer Park. Except as provided in Paragraph 20, above, Deseret and Deer Park reserve all of their rights to Oppose any application filed by the County in the future for a solid waste permit, ERP, or other approval authorizing the construction or operation of a Class I landfill on the Site. Deseret and Deer Park also reserve their right to: (a) Oppose any permit or approval that constitutes a major deviation from the concepts presented in this Agreement or the previously issued FDEP Solid Waste Permits for the Class III landfill and Related Facilities; (b) review the County's applications and permits to ensure they comply with the requirements in this Agreement; and (c) lobby the County and its representatives, subject to applicable laws and County policies regarding lobbyists.

23. Scope of Agreement. This Agreement is being entered into for the sole purpose of settling the pending Lawsuits. This Agreement shall not be construed to mean that Deseret or Deer Park approve of the County's plan to develop the Site for solid waste management facilities.

24. Sale or Conveyance of the Site. If the County determines at any time to sell or convey any portion of the Site, it shall do so in compliance with applicable Florida laws, including but not limited to any applicable provisions in Chapter 2, Article VIII (Surplus Real Property and Modular Structures Transactions), of the Brevard County Code of Ordinances. For example, sales or conveyances to governmental entities, non-profit organizations, and anyone providing services on behalf of the County shall be conducted in compliance with the applicable laws and ordinances, such as Sections 125.37 and 125.38, Florida Statutes. Other sales or conveyances shall be conducted pursuant to a request for proposals ("RFP"), as contemplated by Section 2-245 of the Brevard County Code of Ordinances, and in compliance with any other applicable laws and ordinances. In addition to any applicable statutory notice requirements under Florida law, the County shall provide actual written notice to Deseret upon any determination to sell, lease, or convey any portion of, or any ownership interest in, the Site. In the event the County sells or conveys the Site or any portion thereof to a third party while the Lease is in effect, the Lease shall survive the sale, and Deseret shall maintain its rights and obligations under the Lease, for one (1) year after the date of sale.

25. Effective Date. This Agreement shall become effective on the date when the Agreement is signed and fully executed by all Parties. The County shall write the Effective Date in the space provided in Page 1 of this Agreement, after the Agreement has been executed by Deseret, Deer Park, and the County. The County will not sign the Agreement until it is executed by Deseret and Deer Park.

26. Term of the Agreement. The term of this Agreement shall commence on the Effective Date and shall expire when the County permanently closes all of its solid waste management facilities on the Site or October 1, 2076, whichever occurs first.

27. Authority of Signatories. Each of the undersigned individuals certifies that he or she is duly authorized to execute and enter into this Agreement as an agent for his or her respective Party.

28. Certification of Understanding and Voluntary Execution. The Parties and their authorized representatives each certify that (a) they have read and understand the terms and conditions of this Agreement, (b) they have received the advice of their own legal counsel, and (c) this Agreement is being voluntarily executed for the purposes of making a full and final settlement of the Lawsuits.

29. Enforceability. Deseret, Deer Park, and the County agree that this Agreement is legally binding and enforceable on each of them and has been executed by a duly authorized representative of each of them. This Agreement shall be binding and enforceable on each Party and their successors and assigns, including but not limited to each affiliate, subsidiary, parent corporation, general partner, and limited partner of the Party. This Agreement also shall be legally binding between Deseret, Deer Park, and the County, or any person or entity to whom the Site is sold or otherwise conveyed, and any such conveyance shall be subject to this Agreement.

30. Venue: Waiver of Jury Trial. This Agreement shall be governed by Florida law. Venue for any dispute that arises under this Agreement shall lie exclusively in the courts in and for Brevard County, Florida. The Parties agree that any claim filed in state or federal court concerning this Agreement shall be heard by a judge, sitting without a jury. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND PERMANENTLY WAIVE ANY RIGHT THEY MAY HAVE TO A JURY TRIAL CONCERNING ANY MATTER THAT ARISES FROM OR IS IN ANY WAY BASED ON THE INTERPRETATION, APPLICATION, OR ENFORCEMENT OF THE TERMS OF THIS AGREEMENT.

31. Remedies. If a court of competent jurisdiction determines that a Party is in material breach of this Agreement, the breaching Party shall be responsible for and shall pay the actual damages incurred by the non-breaching Party. The breaching Party also shall be subject to equitable remedies, including without limitation injunctive relief to enforce the remedy of specific performance. In the event any litigation is instituted for the purpose of interpreting or enforcing any of the provisions of this Agreement, the prevailing Party, as determined by the court having jurisdiction over the litigation, shall be entitled to recover from the non-prevailing Party reasonable costs and expenses incurred in connection with such litigation, including without limitation, reasonable fees for attorneys and experts, in addition to any other relief granted by the court. The remedies provided herein shall supplement, and not be in lieu of, any other remedies available at law or in equity. Notwithstanding anything else contained herein, the County does not waive or otherwise relinquish its sovereign immunity or the limitations on liability provided in Section 768.28, Florida Statutes.

32. Interpretation of the Agreement. All of the Parties are represented by legal counsel and they all participated in the preparation of this Agreement. Accordingly, the Parties waive any rule of law that would require any vague or ambiguous term to be construed against the Party that prepared this Agreement. This Agreement shall be construed neutrally; the terms and conditions herein shall not be construed more stringently against one Party than another.

33. Captions. The captions and headings used in this Agreement have been included for convenience and reference only. Captions shall not be considered when interpreting this Agreement.

34. Pronouns. In this Agreement, all pronouns and variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular, or plural, as the identity of the person or entity may require.

35. Use of the Word "Herein." The words "herein," "hereunder," and other similar words refer to this Agreement as a whole and not to any particular article, section, or paragraph of this Agreement, unless specifically noted otherwise in this Agreement.

36. Severability. Should any provision, paragraph, sentence, word, or phrase in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under state or federal law, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary to conform with such law, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect. This Agreement shall be construed thereafter as if such invalid, illegal, or unenforceable provision had never been contained herein.

37. Third Parties. This Agreement is not intended to confer and shall not be deemed to confer any rights on any third parties; there are no third-party beneficiaries to this Agreement. Nothing in this Agreement constitutes the County's consent to be sued by a third party with regard to any matter arising under this Agreement. Further, this Agreement is not intended and shall not be construed to give Deer Park any rights or remedies under the Lease or any other Contract between the County and Deseret.

38. Modification. This Agreement constitutes the entire agreement between the Parties with respect to the Lawsuits and it supersedes all prior understandings and agreements, written and oral, between the Parties as to the Lawsuits. No term or provision of this Agreement may be changed, waived, discharged, or terminated except by a written document that is signed by the Party granting such change, waiver, discharge or termination for the benefit of the person requesting same.

39. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which shall constitute one and the same Agreement. Facsimile signatures of this Agreement shall be deemed originals.

40. Regulations. References in this Agreement to the Florida Statutes and Florida Administrative Code shall be deemed to be references to the statutes and rules in effect on the Effective Date.

41. Other Agreements. Except as otherwise provided herein, this Agreement does not supersede, amend or terminate the other Contracts between the County and Deseret, including but not limited to: (a) the Lease dated December 2, 2003; (b) the Joint Stipulation and Agreement dated September 19, 1991, as amended on September 7, 1998; and (c) the Settlement Agreement dated May 24, 2011.

42. Exhibits. All of the exhibits attached to this Agreement are incorporated herein by reference. The exhibits are:

- Exhibit 1 – Legal description of the Site
- Exhibit 2 – The County’s Site Plan (Phase II Development Site Plan)
- Exhibit 3 – Definitions
- Exhibit 4 – Joint Motion to Abate
- Exhibit 5 – Settlement Stipulation
- Exhibit 6 – Aerial photograph depicting the location of the County’s fence

43. Fees in Lawsuits. Each Party shall be responsible for all of the costs and fees it incurred with regard to the Lawsuits. Each Party waives any right it may have against any other Party for costs and attorneys’ fees associated with the Lawsuits.

44. Notices to Parties. All notices, requests, authorizations, approvals, and similar communications provided for herein shall be in writing. Such documents shall be addressed as shown below and either: (a) hand delivered; (b) mailed by registered or certified mail (postage prepaid), return receipt requested; (c) delivered by a courier service that provides proof of delivery; or (d) sent by facsimile or electronic mail. A document shall be deemed to have been duly delivered when personally delivered, or when transmitted by facsimile or electronic mail and receipt is confirmed by telephone, or when delivered by U.S. Mail or a courier service, as shown by the return receipt. For the present, the Parties designate the following as the appropriate people and places for delivering notices and other documents:

As to the County: County Manager
2725 Judge Fran Jamieson Way, Building C
Viera, Florida 32940
(321) 633-2001
Stockton.Whitten@brevardfl.gov

With a copy to: Solid Waste Management Department Director
2725 Judge Fran Jamieson Way
Building A, Suite 118
Viera, Florida 32940
(321) 633-2042
Euripides.Rodriguez@brevardfl.gov

County Attorney
2725 Judge Fran Jamieson Way, Building C
Viera, Florida 32940
(321) 633-2090
Scott.Knox@brevardfl.gov

As to Deseret: Erik Jacobsen or General Manager
Deseret Ranches of Florida
13754 Deseret Lane

St. Cloud, Florida 34773
(407) 892-3672
ejacobsen@deseretranches.com

With a copy to: David Wright or Land & Governmental Affairs Manager
Deseret Ranches of Florida
13754 Deseret Lane
St. Cloud, Florida 34773
(407) 892-3672
dwright@deseretranches.com

Ralph A. DeMeo
Hopping Green & Sams, P.A.
P.O. Box 6526
Tallahassee, Florida 32314
(850) 222-7500
ralphd@hgslaw.com

As to Deer Park: Henry Kempfer
Deer Park Ranch, Ltd.
6254 Kempfer Road
St. Cloud, Florida 34773
(407) 892-1169
Henry@kempfercattle.com

With a copy to: Marty Smith
Bond, Arnett, Phelan, Smith & Carreras, P.A.
P.O. Box 2405
Ocala, Florida 34478
(352) 622-1188
cms@bap-law.com

Each Party may designate a different representative or representatives in the future, and each Party may change its address or addresses for receiving notice. Any such change shall be accomplished by providing written notice to the other Parties in compliance with the requirements in this Paragraph 44.

45. Redesign or Relocation of Class III Landfill and Related Facilities. In the event that (a) the County cannot obtain one or more of the permits or approvals needed to construct and operate the proposed Class III landfill and Related Facilities on the Site in compliance with the concepts set forth in this Agreement or (b) such permit or approval contains terms or conditions that are unreasonably difficult or expensive to satisfy, the County may redesign and relocate the Class III landfill and Related Facilities on the Site, provided that the 202-acre footprint of the Class III landfill shall not be increased in size and provided further that all of the conditions and limitations in this Agreement shall remain in effect, except for provisions in

Paragraphs 10, 11(b), and 12 that conflict with the County's revised plans. Notwithstanding the foregoing, if the Class III landfill is relocated to the northeast corner of the Site due to the conditions described in subparagraph 45(a) or (b), above, the footprint of the Class III landfill may be increased in size, but only up to the size of the footprint of the Future Cell (376 acres) that the County has proposed for the northeast corner of the Site, as depicted in the Site Plan (Exhibit 2). The County shall notify Deseret and Deer Park promptly if the County intends to redesign or relocate the Class III landfill and Related Facilities for reasons stated in this Paragraph 45. The County and Deseret shall work together in good faith to coordinate their activities and thus they shall attempt to minimize any disruptions resulting from the County's changed plans.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the Effective Date.

[SIGNATURES FOLLOW ON SUBSEQUENT PAGES]

VH

Signed, sealed, and delivered
In the presence of:

BREVARD COUNTY, a political
subdivision of the State of Florida

ATTEST

Scott Ellis, Clerk

By: _____
Curt Smith, Chair
Board of County Commissioners

Date: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by Curt Smith, the Chair of the Board of County Commissioners of Brevard County. He is personally known to me or produced _____ as identification.

Typed or Printed Name _____
Notary Public, State of _____
Commission Number _____
My commission expires:

Signed, sealed and delivered
in the presence of:

FARMLAND RESERVE, INC.

A Florida non-profit corporation

Signature

Print Name: _____

Signature

Print Name: _____

By: _____

Print Name: _____

Title: _____

Date: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____, on behalf of Farmland Reserve, Inc. He/she is personally known to me or produced _____ as identification.

Typed or Printed Name _____
Notary Public, State of _____
Commission Number _____
My commission expires: _____

Signed, sealed and delivered
in the presence of:

DEER PARK RANCH, LTD.

A Florida limited partnership

Signature

Print Name: _____

Signature

Print Name: _____

By: _____

Print Name: _____

Title: _____

Date: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____, on behalf of Deer Park Ranch, LTD. He/she is personally known to me or produced _____ as identification.

Typed or Printed Name _____
Notary Public, State of _____
Commission Number _____
My commission expires:

EXHIBIT 1

LEGAL DESCRIPTION OF THE SITE

EXHIBIT "A"

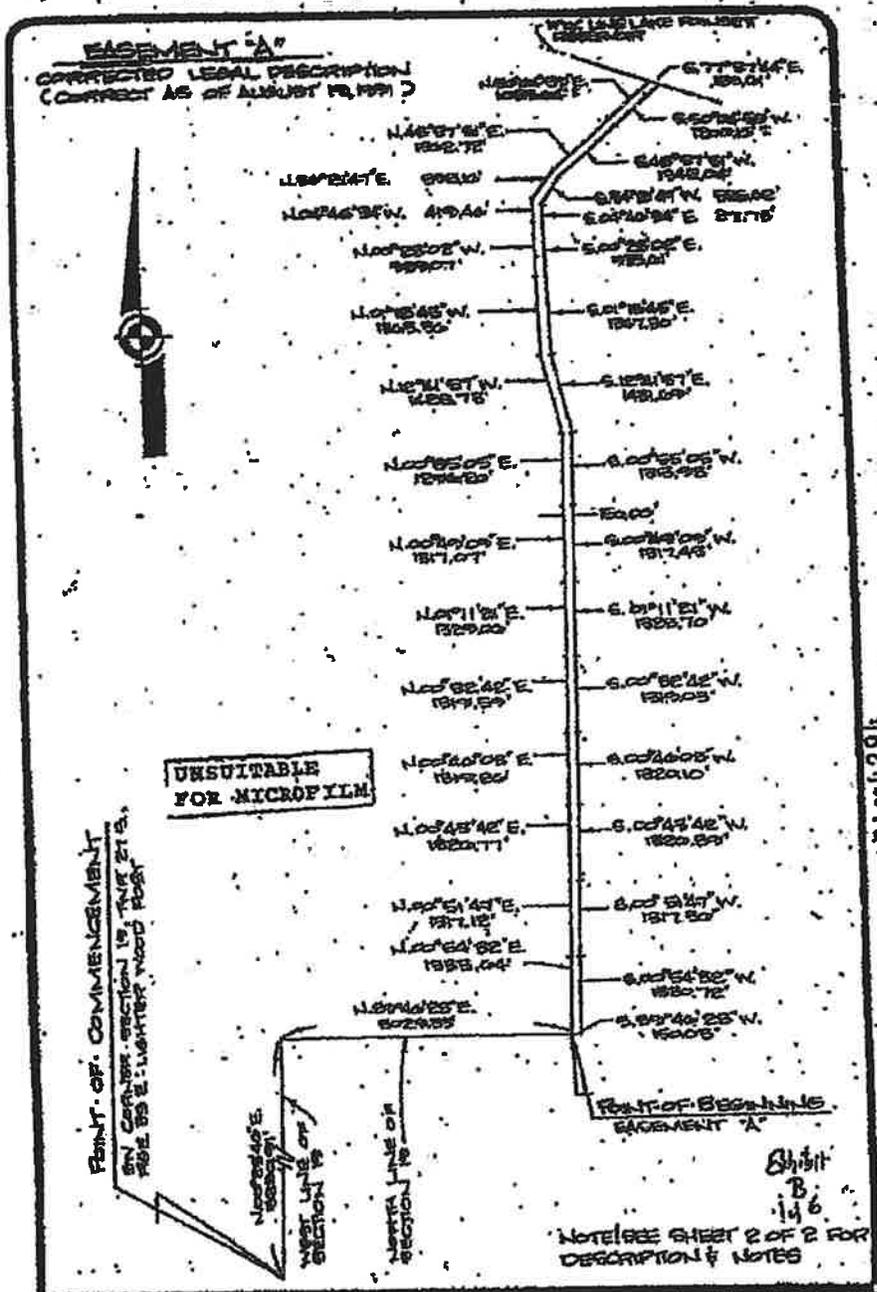
PROPERTY DESCRIPTION

Legal description (per official records book 3151, pages 4289 through 4309, civil case 90-5039-ca-j/c).

A part of lands described in deed book 392, page 168-169 and official records book 2379, pages 1249-1251 of public records of Brevard County, Florida, being a part of Sections 29, 31 and 32, and all of Sections 19, 20 and 30, Township 27 South, Range 35 East, according to map showing lands of Geo. W. Hopkins as recorded in plat book 2, page 102 of the public records of Brevard County, Florida, being more particularly described as follows:

Commence at a wood post marking the northwest corner of Section 30, also being the southwest corner of Section 19 for the point-of-beginning of the herein described parcel of land; thence north $00^{\circ}23'46''$ east along the west line of Section 19 a distance of 5280.00 feet; thence north $89^{\circ}46'34''$ east passing along the north line of Sections 19 and 20 a distance of 10560.00 feet to the northeast corner of Section 20; thence south $00^{\circ}23'46''$ west passing along the east line of Sections 20 and 29 a distance of 7920.36 feet to the southeast corner of the north one half of Section 29; thence south $89^{\circ}46'34''$ west passing along the south line of the north one half of Section 29 a distance of 1425.00 feet; thence south $06^{\circ}16'34''$ west a distance of 5245.60 feet to the north right-of-way line of State Road 500 (U.S. 192) 200 foot right-of-way being described in official records book 708, pages 328-330 and official records book 717, pages 327-328 of the public records of Brevard County, Florida; thence south $89^{\circ}48'18''$ west along the said north right-of-way line a distance of 8597.54 feet to the west line of Section 31; thence north $00^{\circ}23'46''$ east passing along the west line of Sections 30 and 31 a distance of 7848.21 feet to the point-of-beginning.

Containing 2980.38 acres more or less; subject to restrictions, limitations, easements, and rights-of-way of record.



BK 315164294

Scale: 1" = 40'	A SKETCH & DESCRIPTION PREPARED FOR: BREVARD COUNTY BREVARD COUNTY, FLORIDA	Date: 8-19-91
Drawn by: NA		Scale of: 1" = 2000'
Checked by: MC		P. I. SECTION
Drawn by: UP	Bussen-Moyer Engineering Group 100 PARSONS STREET • SECURITY ISLAND, FLORIDA 32903 TEL: 904 (497) 480-0016	Sheet No. 1 of 2

Description of Easement "A"

A 150.00 foot wide easement lying in Section 19, Township 26 North, Range 25 East and Sections 5, 6, 7 and 18, Township 27 North, Range 25 East, Brevard County, Florida, being more fully described as follows:

Commence at a lighter wood post marking the southwest corner of Section 19, Township 27 North, Range 25 East; thence N. 89° 23' 46" E., along the west line of said Section 19, a distance of 5,280.91 feet to the northwest corner of said Section 19; thence N. 89° 45' 28" E., along the north line of said Section 19, a distance of 9,829.23 feet to the Point-of-Beginning of the lands herein described; thence purring said north line, N. 69° 54' 32" E., a distance of 1,333.64 feet; thence N. 00° 51' 47" E., a distance of 1,317.21 feet; thence N. 00° 49' 48" E., a distance of 1,325.77 feet; thence N. 80° 44' 03" E., a distance of 1,319.35 feet; thence N. 80° 32' 42" E., of 1,319.59 feet; thence N. 01° 11' 21" E., a distance of 1,329.85 feet; thence N. 00° 49' 09" E., a distance of 1,317.07 feet; thence N. 00° 55' 05" E., a distance of 1,296.20 feet; thence N. 12° 41' 57" W., a distance of 1,428.73 feet; thence N. 01° 12' 45" W., a distance of 1,363.36 feet; thence N. 00° 29' 02" W., a distance of 929.87 feet; thence N. 04° 46' 34" W., a distance of 439.48 feet; thence N. 34° 21' 47" E., a distance of 908.18 feet; thence N. 48° 57' 51" E., a distance of 1,363.72 feet; thence N. 50° 04' 59" E., a distance of 1,055.64 feet, more or less, to the easterly toe of the existing levee and the westerly boundary of the St. Johns River Water Management District property per Lake Pointeclair Reservoir Right-of-Way Map prepared by the Central and Southern Florida Flood Control District Engineering Division, sheet 2 of 13; thence S. 77° 37' 44" E., along said easterly toe of the levee, a distance of 189.61 feet to a point 150.00 feet southeasterly, by right angle distance, of the fifteenth course of the lead herein described; thence S. 50° 00' 59" W., a distance of 1,208.16 feet, more or less; thence S. 48° 57' 51" W., a distance of 1,342.04 feet; thence S. 34° 21' 47" W., a distance of 525.67 feet; thence S. 04° 46' 34" E., a distance of 371.70 feet; thence S. 80° 28' 03" E., a distance of 923.61 feet; thence S. 01° 12' 45" E., a distance of 1,347.30 feet; thence S. 12° 41' 57" E., a distance of 1,431.69 feet; thence S. 80° 59' 09" W., a distance of 1,313.98 feet; thence S. 00° 49' 09" W., a distance of 1,317.03 feet; thence S. 01° 11' 21" W., a distance of 1,328.70 feet; thence S. 00° 32' 42" W., a distance of 1,319.93 feet; thence S. 00° 46' 08" W., a distance of 1,320.10 feet; thence S. 00° 45' 42" W., a distance of 1,226.89 feet; thence S. 00° 51' 47" W., a distance of 1,317.36 feet; thence S. 00° 54' 32" W., a distance of 1,330.72 feet to a point on the aforesaid north line of Section 19; thence S. 89° 46' 28" W., along said north line, a distance of 150.00 feet to the Point-of-Beginning.

Containing 11.61 acres, more or less, and being subject to any easements and/or rights-of-way of record and the findings of a valid field survey.

Notes

1. Bearings shown herein are based on the west line of Section 19, T. 27S., R. 25E., being N. 60° 23' 46" E., an assumed bearing.
2. This is not a boundary survey.
3. See sheet 1 of 2 for sketch of description.
4. The description shown herein is a correction of a previously prepared description by others prepared without benefit of field measurements; the purpose of this corrected description is to align said easement with the physical location of the existing canal or drainage ditch.

UNSUITABLE FOR MICROFILM

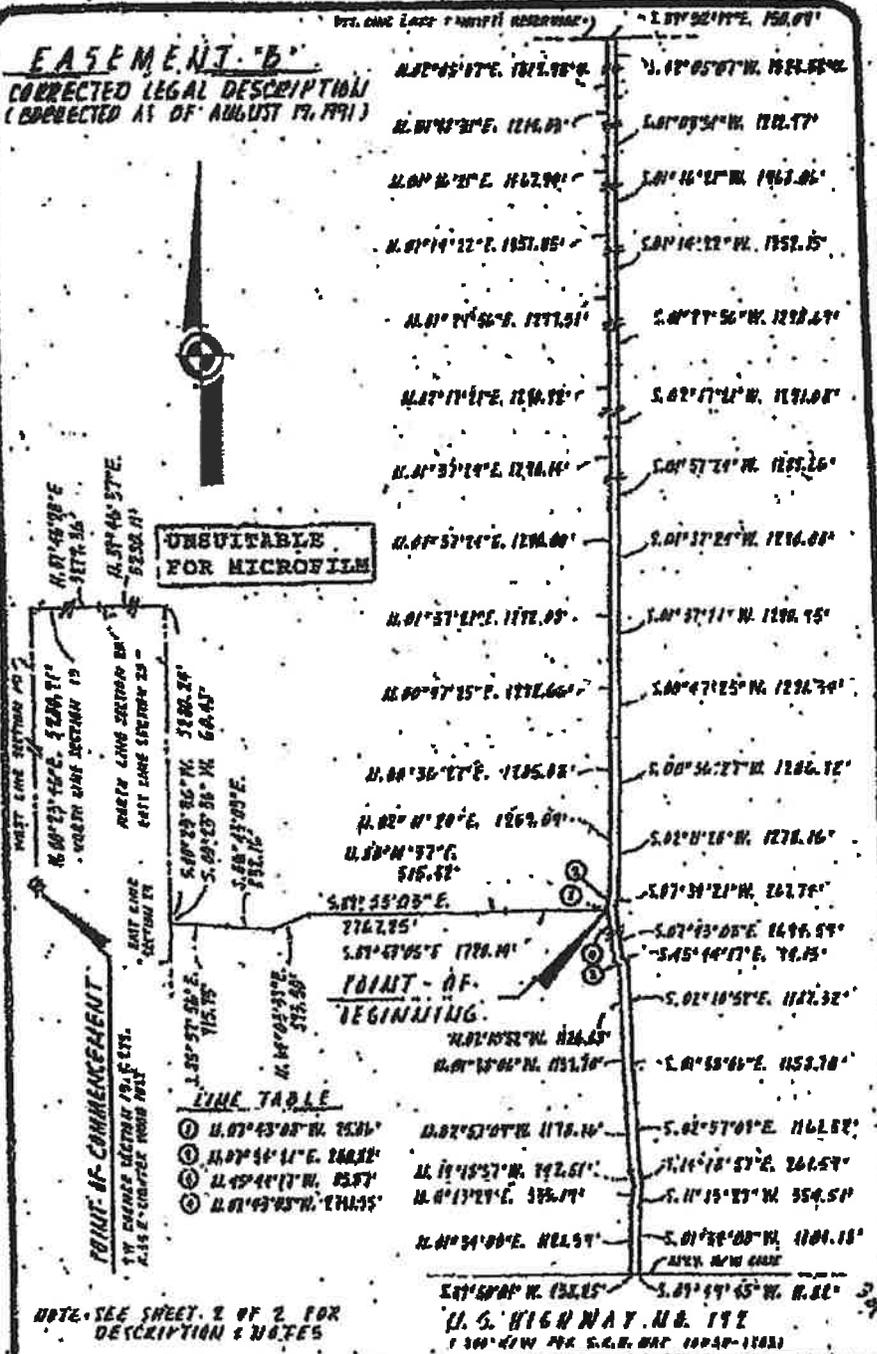
EASEMENT "A"
CORRECTED LEGAL DESCRIPTION
(CORRECTED AS OF AUGUST 17, 1971)

Scale: None	A SKETCH & DESCRIPTION PREPARED FOR: BREVARD COUNTY BREVARD COUNTY, FLORIDA	Rule: None
Drawn by: JNA		P. R. 22701
Drawn by: JNA	Bussen-Mayer Engineering Group 180 PARKWAY STREET JANUARY ISLAND, FLORIDA 32835 TEL. (407) 468-0010	Sheet: 2 of 2
Checked by:		

EASEMENT 'B'
CORRECTED LEGAL DESCRIPTION
 (CORRECTED AS OF AUGUST 17, 1991)



UNSUITABLE FOR MICROFILM



LINE TABLE

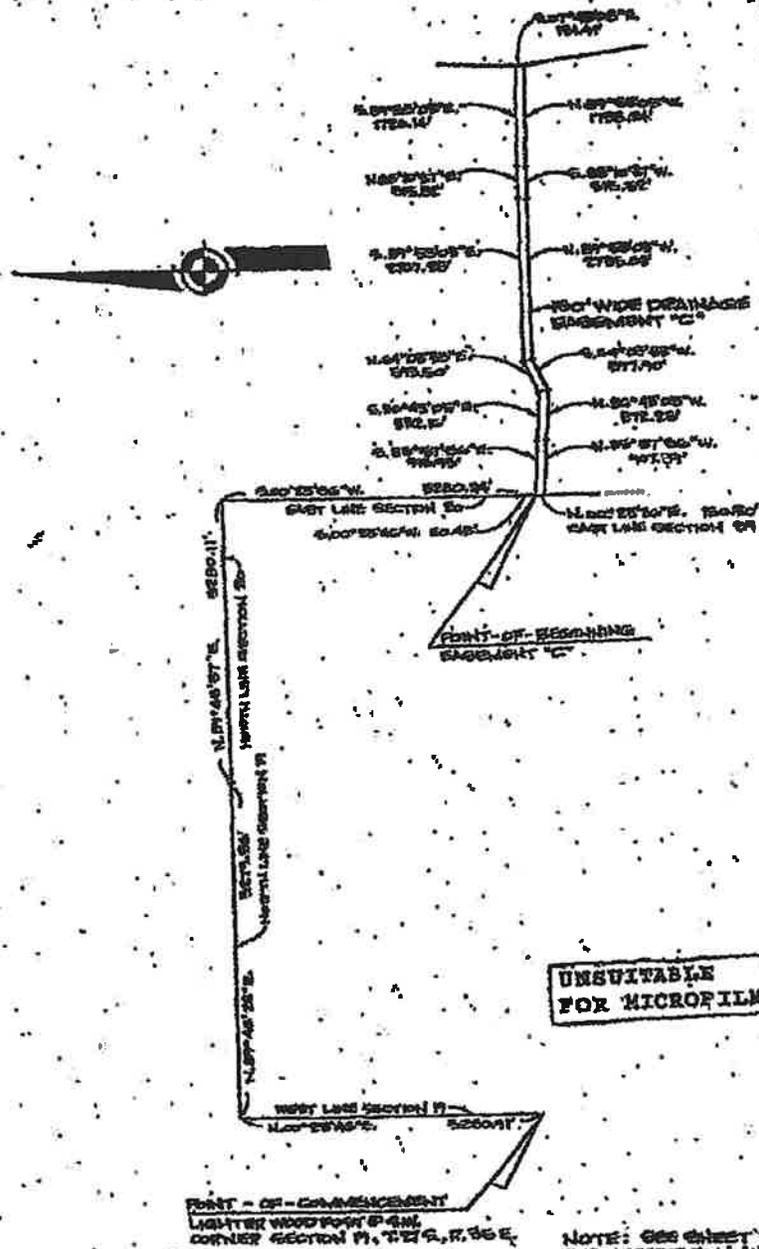
① N. 07° 43' 00" W. 258.1'	N. 02° 57' 01" E. 166.82'
② N. 07° 44' 11" E. 240.82'	N. 16° 18' 57" E. 261.57'
③ N. 15° 41' 17" W. 253.7'	S. 11° 15' 23" W. 354.50'
④ N. 01° 03' 03" W. 274.55'	S. 01° 28' 00" W. 1104.15'
	S. 01° 19' 45" W. 8.82'

NOTE: SEE SHEET 2 OF 2 FOR DESCRIPTION & NOTES

DATE: 1991	A SKETCH AND DESCRIPTION PREPARED FOR:	DATE: 08-17-91
TITLE: EASEMENT	BREVARD COUNTY	BOOK: 11-2165
BY: J. S. MOYER	FLORIDA	P. N. 1677101
DATE: 10/19/91	Bussen-Moyer Engineering Group	SHEET NO. 1 of 2
CHK. BY: J. S. MOYER	100 PARADE STREET • SEASIDE ISLAND, FLORIDA, 32965	
	TEL. NO.: (407) 482-0818	

EASEMENT 'C'

CORRECTED LEGAL DESCRIPTION
(CORRECT AS OF AUGUST 19, 1990)



BN 3151 PG 4298

UNSUITABLE FOR MICROFILM

Sheet 8 of 56

POINT - OF - COMMENCEMENT
LIGHTER WOOD POINT 4th
CORNER SECTION 19, T27S, R. 26E.

NOTE: SEE SHEET 2 OF 2
FOR DESCRIPTION AND NOTES.

Drawn by: JNA	A SKETCH & DESCRIPTION PREPARED FOR: BREVARD COUNTY BREVARD COUNTY, FLORIDA	Date: 8/19/91
Top. by: JNA		Scale: 1" = 200'
Eng. by: JNA	Bussen-Mayer Engineering Group 100 PARKWAY STREET - MERRITT ISLAND, FLORIDA 32953 TEL. NO. (407) 662-0010	P. R. 1497101
Proj. by: JNA		Sheet No.
Chk. by: JNA		1 of 2

EASEMENT "C"

CORRECTED LEGAL DESCRIPTION
(CORRECT AS OF AUGUST 19, 1991)

Description of Easement "C"

A 150.00' foot wide drainage easement lying in Sections 21, 22, 27 and 29, Township 27 South, Range 35 East, Brevard County, Florida, being more fully described as follows:

Commence at a lighter wood post marking the southwest corner of Section 19, Township 27 South, Range 35 East; thence N.00°23'46"E.; along the west line of said Section 19, a distance of 5,280.91 feet to the northwest corner of said Section 19; thence N.89°46'28"E., along the north line of said Section 19, a distance of 5,279.36 feet to the northwest corner of Section 20, Township 27 South, Range 35 East; thence N.89°46'37"E., along the north line of said Section 20, a distance of 5,280.11 feet to the northeast corner of said Section 20; thence N.00°23'36"W., along the east line of said Section 20, a distance of 5,280.24 feet to the northeast corner of Section 29, Township 27 South, Range 35 East; thence continue S.00°23'36"W., along the east line of said Section 29, a distance of 60.48 feet to the Point-of-Beginning of the lands herein described; thence S.85°57'56"E., departing said east line, a distance of 915.95 feet; thence S.86°43'05"E., a distance of 832.16 feet; thence N.64°03'33"E., a distance of 593.50 feet; thence S.89°53'03"E., a distance of 2,767.25 feet; thence N.88°10'37"E., a distance of 515.52 feet; thence S.89°53'05"E., a distance of 1,720.14 feet; thence S.07°43'08"E., a distance of 151.41 feet to a point of 150.00 feet south, by the right angle measure, of the sixth course of the lands herein described; thence N.89°53'05"W., a distance of 1,738.24 feet; thence S.88°10'37"W., a distance of 515.52 feet; thence N.89°53'03"W., a distance of 2,735.08 feet; thence S.64°03'33"W., a distance of 597.90 feet; thence N.86°43'05"W., a distance of 872.25 feet; thence N.85°57'56"W., a distance of 907.39 feet to the aforesaid east line of Section 29; thence N.00°23'36"E., along said east line of Section 29, a distance of 150.00 feet to the Point-of-Beginning.

Containing 25.35 acres, more or less, and being subject to easements and/or rights-of-way of record and the findings of a valid survey.

Notes:

1. Bearings shown herein are based on the west line of Section 19, T.27S.; R.35E., being "N.00°23'46"E.", an assumed bearing.
2. This is not a boundary survey.
3. See sheet 1 of 2 for sketch of description.
4. The description shown herein is a correction of a previously prepared description by others prepared without benefit of field measurements; the purpose of this corrected description is to align said easement with the physical location of the existing canal or drainage ditch.

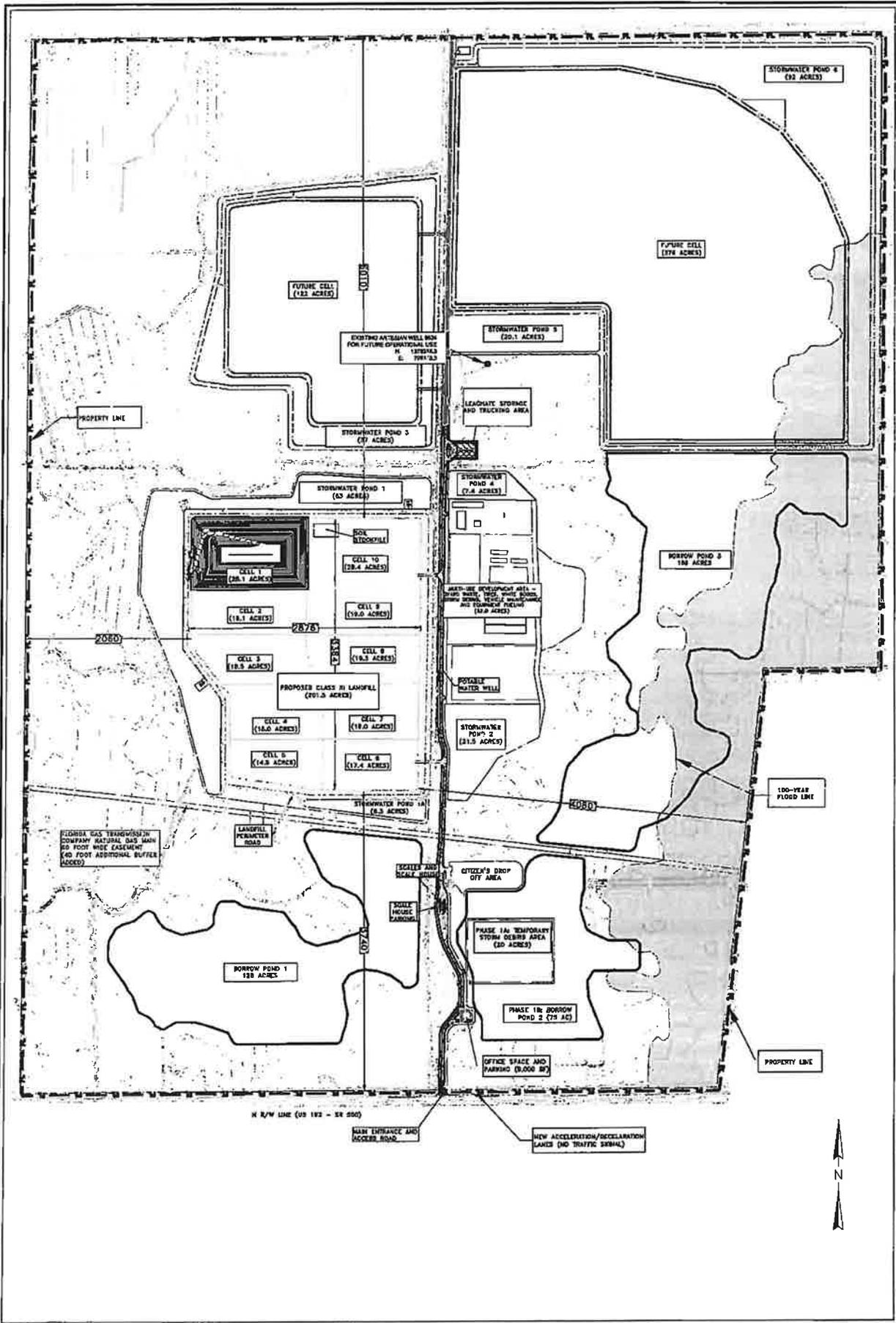
883151P64299

UNSUITABLE FOR MICROFILM

Scale: 1"=40'	A SKETCH & DESCRIPTION PREPARED FOR:	Date: 10/17/91
TYPE: E.C.	BREVARD COUNTY	Scale: 1"=40'
PLANS: E.	BREVARD COUNTY, FLORIDA	R. 35 E. T. 27 S.
Drawn by: N/A	Bussen-Moyer Engineering Group	Sheet No. 2 of 2
Drawn by: N/A	100 PANGLOSS STREET • MCNUTT ISLAND, FLORIDA • 32950	
Check by: 1	TEL. NO.: (407) 463-9000	

EXHIBIT 2

SITE PLAN (PHASE II DEVELOPMENT SITE PLAN)

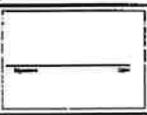


S2Li
 451 Marshall Drive, Suite 202
 Maitland, Florida 32751
 407-475-9145 FAX 407-475-9150
 Certificate of Accreditation # 7501

PHASE II DEVELOPMENT SITE PLAN
 US 192 SOLID WASTE MANAGEMENT FACILITY
 Page 28 of 44



NO.	DATE	BY	REVISION



10 - by Enclosure (Compendium) 1 - 2/2/2000 US 192 - SR 250 - 1/28/00

EXHIBIT 3
DEFINITIONS

1. "Agreement" means this Settlement Agreement by and between Farmland Reserve, Inc. (d/b/a Deseret Ranches of Florida) and Deer Park Ranch, Ltd., and Brevard County, Florida, to resolve DOAH Case Nos. 16-3549 and 16-3550.
2. "ALJ" means the DOAH Administrative Law Judge.
3. "Biological Opinion" means any opinion or other determination issued or made by the U.S. Fish and Wildlife Service concerning the potential impacts on fish or wildlife that may occur as a result of the County's activities on the Site.
4. "Board" means the Board of County Commissioners of Brevard County.
5. "Class I landfill" means a landfill that receives Class I waste. See Rule 62-701.340(2)(a), F.A.C.
6. "Class I waste" means solid waste that is not hazardous waste, and that is not prohibited from disposal in a lined landfill under Rule 62-701.300, F.A.C. See Rule 62-701.200(13), F.A.C.
7. "Class III landfill" means a landfill that receives only Class III waste. See Rule 62-701.340(2)(b), F.A.C.
8. "Class III waste" means yard trash, construction and demolition debris, processed tires, asbestos, carpet, cardboard, paper, glass, plastic, furniture other than appliances, or other materials approved by the Department, that are not expected to produce leachate that poses a threat to public health or the environment. See Rule 62-701.200(14), F.A.C.
9. "Commencement of Construction" means the date when the County expects to begin construction of the County's proposed facilities on the Site.
10. "Conceptual Permit" means FDEP Environmental Resource Permit No. 05-301799-003-EC.
11. "Construction Permit" means FDEP Environmental Resource Permit No. 05-301799-004-EI.
12. "Contract" means a written agreement between the County and Deseret, including but not limited to: (a) the Lease dated December 2, 2003; (b) the Joint Stipulation and

Agreement dated September 19, 1991, as amended on September 7, 1998; and (c) the Settlement Agreement dated May 24, 2011.

13. "County" means, depending on the context, either (a) the geographic area contained within the unincorporated portions of Brevard County, Florida, a political subdivision of the State of Florida, or (b) the government of Brevard County, acting through its Board of County Commissioners, employees, agents, or designees.

14. "Deer Park" means Deer Park Ranch, Ltd., a Florida limited partnership, including but not limited to its general and limited partners.

15. "Department" or "FDEP" means the Florida Department of Environmental Protection.

16. "Deseret" means Farmland Reserve, Inc. d/b/a Deseret Ranches of Florida, including but not limited to its subsidiaries, affiliates, and parent corporation.

17. "DOAH" means the Florida Division of Administrative Hearings.

18. "Effective Date" means the date when this Agreement takes effect, which is the date when the Agreement is signed and fully executed by all Parties.

19. "ERP" means Environmental Resource Permit.

20. "Final Construction Permit" means the ERP authorizing construction of the County's Class III landfill and Related Facilities, as described in Paragraph 6 of this Agreement.

21. "Improvement" means any fence, building, structure, berm, ditch, culvert, drainage conveyance, or water control structure on the Site, whether built before or after the Effective Date.

22. "Joint Motion to Abate" means the motion to be filed by the Parties to the Lawsuits, as described in Paragraph 5 of this Agreement.

23. "Lawsuits" means Deer Park Ranch, Ltd. v. Brevard County Solid Waste Management Department and Department of Environmental Protection, DOAH Case No. 16-3549, and Farmland Reserve, Inc. d/b/a Deseret Ranches of Florida v. Brevard County Solid Waste Management Department and Department of Environmental Protection, DOAH Case No. 16-3550.

24. "Lease" means the Lease Agreement dated December 2, 2003, between the County and Deseret.

25. "Northern Area" means the portion of the Site located north of the County's proposed fence, as depicted on Exhibit 6.

26. "MRF" means a materials recovery facility.
27. "Oppose" means to oppose, challenge, or in any way contest the issuance of a permit or approval.
28. "Party" means either Deseret, Deer Park, or the County.
29. "Parties" means Deseret, Deer Park, and the County.
30. "Related Facilities" means the entrance road, scale house, leachate storage tanks, administrative offices, Multi-Use Area, and other facilities related to the construction or operation of the Class III landfill that are authorized in the Solid Waste Permits.
31. "Settlement Stipulation" means the stipulation and joint motion for relinquishment of jurisdiction that is described in Paragraph 6 of this Agreement.
32. "Site" means the real property (approximately 2,980 acres) located adjacent to U.S. 192 that the County plans to use for its future solid waste management facilities.
33. "Site Plan" means the County's plan for the development of the Site, as depicted in the "Phase II Development Site Plan" that is attached to this Agreement as Exhibit 2.
34. "SJRWMD" means the St. Johns River Water Management District.
35. "Solid Waste Permits" means the construction permit (Permit No. SC05-0296030-001) and operation permit (Permit No. SC05-0296030-002) issued on December 15, 2011, authorizing the construction and operation of the first cell of the County's proposed Class III landfill pursuant to Chapter 62-701, Florida Administrative Code.
36. "Southern Area" means the portion of the Site located south of the County's proposed fence, as depicted on Exhibit 6.
37. "Waste Tire" means a tire that has been removed from a motor vehicle and has not been retreaded or regrooved. The term includes used tires and processed tires, but does not include solid rubber tires and tires that are inseparable from the rim. See Rule 62-701.200(126), F.A.C.
38. "White Goods" means inoperative and discarded refrigerators, ranges, washers, water heaters, freezers, and other similar domestic and commercial large appliances. See Rule 62-701.200(134), F.A.C.
39. "Yard Trash" means vegetative matter resulting from landscaping maintenance or land clearing operations and includes materials such as tree and shrub trimmings, grass clippings, palm fronds, trees and tree stumps, and associated rocks and soils. See Rule 62-701.200(135), F.A.C.

EXHIBIT 4
JOINT MOTION TO ABATE

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

DEER PARK RANCH, LTD.,)	
)	
Petitioner,)	
)	
vs.	)	DOAH Case No. 16-3549
	)	OGC Case No. 16-0067
BREVARD COUNTY SOLID WASTE)	
MANAGEMENT DEPARTMENT and)	
DEPARTMENT OF ENVIRONMENTAL)	
PROTECTION,)	
)	
Respondents.)	
<hr style="border: 0.5px solid black;"/>		
FARMLAND RESERVE, INC. d/b/a)	
DESERET RANCHES OF FLORIDA,)	
)	
Petitioner,)	
)	
v.	)	DOAH Case No. 16-3550
	)	OGC Case No. 16-0038
BREVARD COUNTY SOLID WASTE)	
MANAGEMENT DEPARTMENT and)	
DEPARTMENT OF ENVIRONMENTAL)	
PROTECTION,)	
)	
Respondents.)	
<hr style="border: 0.5px solid black;"/>		

**JOINT MOTION TO CANCEL FINAL ADMINISTRATIVE HEARING
AND ABATE PROCEEDING**

Petitioners, Farmland Reserve, Inc. d/b/a Deseret Ranches of Florida ("Deseret"), and Deer Park Ranch, Ltd. ("Deer Park"), and Respondents, Brevard County ("County) and the Department of Environmental Protection ("Department" or "DEP"), move to cancel the administrative hearing scheduled to begin on January 24, 2017, and abate the proceedings for one hundred eighty (180) days. In support of this request, the Parties state as follows:

1. On January 15, 2016, the Department gave notice of its intent to issue two environmental resource permits (DEP File Nos. 05-0301799-003-EC and 05-0301799-004-EI) (collectively, the "Draft Permit") to the County for the construction and operation of stormwater management systems and for certain wetland activities on the County's Site for the proposed US 192 Solid Waste Management Facility, which will be located in Brevard County, Florida.

2. The Department received petitions for a formal administrative hearing ("Petitions") from Deseret and Deer Park concerning the Department's issuance of the Draft Permit. The Petitions were forwarded to the Division of Administrative Hearings ("DOAH") and are the subject of the above captioned proceedings.

3. Deseret, Deer Park, and the County have entered into a Settlement Agreement to resolve the disputed issues in these proceedings. The Parties plan to ensure that the revisions to the Draft Permit agreed upon in the Settlement Agreement are incorporated into a final permit ("Final Permit") to be issued by the Department. If the Department prepares a proposed Final Permit that is consistent with the terms of the Settlement Agreement, the Parties will request the Administrative Law Judge ("ALJ") to relinquish jurisdiction and refer this case to the Department for the issuance of the Final Permit.

WHEREFORE, the Parties respectfully request the ALJ to issue an order canceling the scheduled administrative hearing in this matter and abating all activities in this proceeding, including but not limited to the filing of any further responses to the initial order, pleadings, motions, or discovery, for a period of 180 days, to give the Parties an opportunity to satisfy the terms of the Settlement Agreement. If requested by the ALJ, the Parties will file status reports with the ALJ on a regular basis (e.g., every sixty (60) days) after the issuance of the ALJ's order abating this case.

RESPECTFULLY SUBMITTED this ____ day of _____, 2017.

FARMLAND RESERVE, INC. d/b/a
DESERET RANCHES OF FLORIDA

BREVARD COUNTY

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DEER PARK RANCH, LTD.

DEPARTMENT OF ENVIRONMENTAL
PROTECTION

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EXHIBIT 5
SETTLEMENT STIPULATION

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

DEER PARK RANCH, LTD.,)	
)	
Petitioner,)	
)	
vs.	)	DOAH Case No. 16-3549
	)	OGC Case No. 16-0067
BREVARD COUNTY SOLID WASTE)	
MANAGEMENT DEPARTMENT and)	
DEPARTMENT OF ENVIRONMENTAL)	
PROTECTION,)	
)	
Respondents.)	
<hr/>		
FARMLAND RESERVE, INC. d/b/a)	
DESERET RANCHES OF FLORIDA,)	
)	
Petitioner,)	
)	
v.	)	DOAH Case No. 16-3550
	)	OGC Case No. 16-0038
BREVARD COUNTY SOLID WASTE)	
MANAGEMENT DEPARTMENT and)	
DEPARTMENT OF ENVIRONMENTAL)	
PROTECTION,)	
)	
Respondents.)	
<hr/>		

**SETTLEMENT STIPULATION AND
JOINT MOTION TO RELINQUISH JURISDICTION**

Petitioners, Farmland Reserve, Inc. d/b/a Deseret Ranches of Florida ("Deseret"), and Deer Park Ranch, Ltd. ("Deer Park"), and Respondents, Brevard County ("County) and the Department of Environmental Protection ("Department" or "DEP"), stipulate to the settlement of this case, and move the Administrative Law Judge ("ALJ") to issue an order relinquishing jurisdiction over

this matter to the Department. In support of this Settlement Stipulation and Joint Motion to Relinquish Jurisdiction, the Parties state:

1. On January 15, 2016, the Department gave notice of its intent to issue two environmental resource permits (DEP File Nos. 05-0301799-003-EC and 05-0301799-004-EI) (collectively, the "Draft Permit") to the County for the construction and operation of stormwater management systems and for certain wetland activities on the County's Site for the proposed US 192 Solid Waste Management Facility, which will be located in Brevard County, Florida.

2. The Department received petitions for a formal administrative hearing ("Petitions") from Deseret and Deer Park concerning the Department's issuance of the Draft Permit. The Petitions were forwarded to the Division of Administrative Hearings ("DOAH") and are the subject of the above captioned proceedings ("Lawsuits"). The formal administrative hearing in these Lawsuits was scheduled to begin on January 24, 2017.

3. The Parties have agreed on revisions to the Draft Permit that resolve the disputed issues in the Lawsuits. The proposed revisions to the Draft Permit are described in the Settlement Agreement between Deseret, Deer Park, and the County, which is attached hereto and incorporated herein as Attachment A. The Parties agree that the revisions identified in Paragraph

4 of the Agreement will be embodied in the Final Permit, a copy of which is attached hereto and incorporated herein as Attachment B. The Parties agree that entering into and complying with the terms of this Settlement Stipulation and Joint Motion shall not be deemed an admission of law or fact by any Party, and shall not be deemed a concession concerning the merits of any allegation or argument asserted by any Party in the Lawsuits.

4. In light of the Parties' agreement concerning the relevant issues in the Lawsuits, the Parties jointly request the ALJ to enter an order relinquishing jurisdiction of this matter to the Department. If the ALJ grants this Joint Motion, the Department will withdraw the Draft Permit, and then issue a final permit that is substantially identical to the Final Permit in Attachment B, within seven days of the ALJ's order relinquishing jurisdiction.

5. The Parties agree that the Department's issuance of the Final Permit will be considered final agency action and not subject to further administrative review. If the Department does not issue a final permit that is substantially identical to the attached Final Permit in Attachment B, Deseret, Deer Park, and the County will have the opportunity to file a challenge in circuit court, or to pursue any other available remedies, to

compel the Department to comply with this Settlement Stipulation.

6. Each Party shall be responsible for its own costs and attorney's fees and waives any right that it may have against any other Party for costs and attorney's fees associated with the Lawsuits.

7. Each Party acknowledges that it may have the right to seek judicial review concerning the issuance of the Final Permit under Section 120.68, Florida Statutes, by filing a notice of appeal under Rules 9.110 and 9.190, Florida Rules of Appellate Procedure. However, by executing this Settlement Stipulation and Joint Motion, each Party waives its right to such appeal and to any further notice of that right.

THEREFORE, the disputed issues having been resolved, the Parties move the Administrative Law Judge for an order relinquishing jurisdiction of these cases to the Department for the purpose of issuing the Final Permit to the County.

RESPECTFULLY SUBMITTED on this _____ day of _____,
2017.

FARMLAND RESERVE, INC. d/b/a
DESERET RANCHES OF FLORIDA

BREVARD COUNTY

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Settlement Stipulation and Joint Motion to Relinquish Jurisdiction was furnished by electronic mail only on this ____ day of _____, 2017, to:

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Attorneys for Brevard County

KIRK WHITE
General Counsel

EXHIBIT 6
FENCE LOCATION

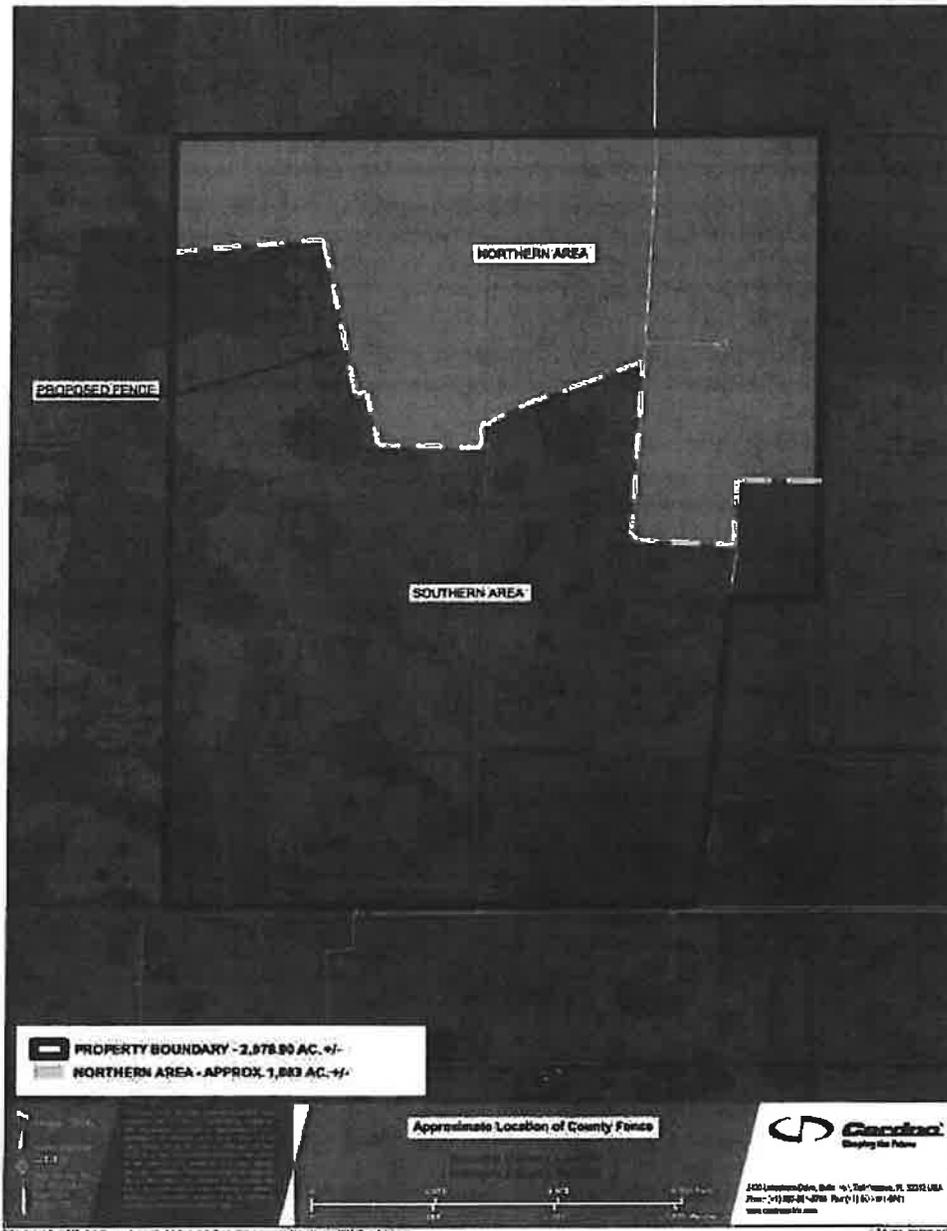


Exhibit 2 to
Letter dated January 23, 2017
to Scott Knox, Esq.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

RECEIVED

June 2, 2016

**FARMLAND RESERVE, INC. d/b/a,
DESERET RANCHES OF FLORIDA,
a foreign not-for-profit corporation,**

**Dept. of Environmental Protection
Office of General Counsel**

Petitioner,

**OGC Case Nos.: 16-0067
16-0068**

**DEP Permit Nos.: ERP 050301799-003-EC
ERP 050301799-004-EC**

v.

**BREVARD COUNTY SOLID WASTE
MANAGEMENT DEPARTMENT; and
STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,**

Respondents.

_____ /

PETITION FOR FORMAL ADMINISTRATIVE HEARING

Pursuant to Sections 120.569 and 120.57, Fla. Stat., and Rule 28-106.201, F.A.C., the Petitioners, Farmland Reserve, Inc., d/b/a/ Deseret Ranches of Florida (“Deseret”), hereby submits this petition for formal administrative hearing regarding agency action taken by the Respondent, the Florida Department of Environmental Protection (“DEP”), in issuing its notice of Intent to Issue to Brevard County (the “County”), two Environmental Resource Permits (“ERP”) for the development of a Class I and Class III landfill. In support of this Petition, Deseret states the following:

The Parties

1. Petitioner, Deseret, is a foreign not-for-profit corporation, which is duly registered with the Florida Secretary of State and is authorized to transact business in Florida. Deseret’s

contact information for purposes of this proceeding is through its counsel, Frank Matthews, Hopping Green & Sams, P.A., 119 S. Monroe Street, Tallahassee, Florida 32301. Mr. Matthews' telephone number is (850) 222-7500.

2. Respondent, the DEP, is the agency affected. DEP's address is 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-2400. DEP's telephone number is (850) 245-2242.

3. Respondent, the County, is the applicant for Permit Numbers 05-0301799-003-EC and 05-0301799-004-EI which are the DEP's file numbers at issue in this case. If issued, these permits would authorize the County to construct and operate both a Class I and Class III solid waste landfill. The County's address is 2725 Judge Fran Jamieson Way, Viera, Florida 32940. The County's telephone number is (321) 633-2000.

Notice of Proposed Agency Action

4. On January 15, 2016, Deseret received from DEP via electronic mail Notice of Intent to issue Individual Environmental Resource Permit No. 05-0301799-003-EC and Conceptual ERP 05-0301799-004-EI (collectively "Permits"), to Brevard County, for a proposed landfill. On March 1, 2016, the DEP issued a "second draft" permit, but did not subsequently publish any additional Notice of Intent.

5. On May 26, 2016, DEP issued its most recent Order Granting Request for Extension of Time to File Petition for Hearing. As a result, petitions for formal administrative hearing must be filed on or before June 2, 2016. Accordingly, this Petition is timely filed.

Substantial Interests

6. If issued, the Permits will enable the County to develop, construct and operate a Class I landfill, a Class III landfill, as well as other solid waste management activities and supporting facilities located east of the Osceola-Brevard County line, on the north side of US 192 in Melbourne, Florida (“Landfill”). The Landfill will cause direct, secondary, and cumulative environmental impacts including adverse impacts to jurisdictional wetlands and other surface waters.

7. Deseret is the current tenant on the proposed Landfill site (“Site”) and owns almost 250,000 acres adjacent to the Site. The Landfill will adversely impact the water quality, wetlands, surface and groundwater, fish and wildlife, and other natural resources on Deseret’s property and other properties in the immediate vicinity.

8. The St. Johns River, Lake Washington, Sawgrass Lake, and surrounding water bodies in the Upper St. Johns River Hydrological Basin will be adversely impacted by the permitted activities. Deseret shares use, enjoyment and recreation of the water resources in the Upper St. Johns River Hydrological Basin, and will be adversely affected by the Landfill and the degradation caused thereby.

9. Deseret has responsibly utilized the Landfill site and surrounding areas for more than 65 years for cattle ranching, citrus and other agricultural operations. Currently Deseret maintains 20 artesian flow wells on the property. The proposed Landfill will adversely impact the ground and surface water quality and directly affect Deseret’s agricultural and cattle operations.

10. DEP’s environmental resource permitting process set forth in DEP regulations are designed to protect water resources and the landowners, such as Deseret who use and enjoy these resources from these types of injuries.

11. Accordingly, Deseret is a party whose substantial interests are being determined, as described in Section 120.569, Florida Statutes.

Factual Background

12. The proposed siting of a dump at this sensitive location with its multitude of water resources is difficult to fathom. Brevard County has expressed chagrin and dismay at the plight of the Indian River Lagoon and other water resources, yet proposes to bring garbage to the shores of the St. Johns River, the 100 year floodplain, caracara habitat, and wood stork rookeries while destroying almost 200 acres of wetlands. The site contains almost two dozen wells and is proximate to the water supply intake of Lake Marion and possesses questionable geologic stability. Notwithstanding a decade-long permitting exercise, the site could not be less suitable for solid waste from a water resource standpoint and ERP criteria.

13. The Landfill Permits propose a two-phase development. The conceptual landfill permit, No. 05-301799-003-EC, is for development of the entire landfill facility. Phase I, Permit No. 05-301799-004-EI, will effectively develop the property so that the County can construct and operate a Class III landfill, a Class I landfill, and other solid waste management activities. All proposed storm water management systems and wetland mitigation activities are included in Phase I. The Phase I permit purports to cover all future impacts from both the Class III and Class I landfill, and any other solid waste management activities at the facility.

14. The speculative design and adequacy of the storm water management system and the suitability and adequacy of alleged mitigation activities, including massive unproven wetland creation, are of particular concern due to the sensitive location of the Landfill and the surrounding environment.

15. The Landfill site consists of 2,980 acres, and includes approximately 580 acres of DEP-delineated jurisdictional wetlands. The delineated wetland areas consist of connected and isolated wetlands with cover types that include forested wetlands comprised of cypress and mixed hardwoods, herbaceous marshes, seasonally wet prairies, canals, and agricultural drainage ditches and swales. Virtually all of the small isolated wetlands onsite will be destroyed and their functions eliminated.

16. It is estimated that approximately 187.4 acres of wetlands deemed jurisdictional by DEP will be directly and permanently impacted by the proposed Landfill, and another approximately 16.3 acres will suffer secondary impacts. This estimate does not include other potential secondary or cumulative impacts to wetlands and water resources that may result from the proposed Landfill project, such as the reduction of the functional value of surrounding wetlands for wildlife and other wetland functions. The entire surface and subsurface drainage in the basin will be disrupted by almost 3,000 acres of perturbation.

17. The Landfill site is in the Upper St. Johns River Hydrological Basin which includes several water bodies listed on the State of Florida impaired water bodies list including the St. Johns River, Lake Washington, and Sawgrass Lake. All are in close proximity to the subject site and will be adversely impacted by the permitted activities. Run off from the construction and operation of these facilities will cause and contribute to water quality violations and further exacerbate the impaired conditions of these waters.

18. In addition to wetland impacts, and impacts to water bodies in the Upper St. Johns River Hydrological Basin, there are wetland dependent and listed wildlife species on the Site that will be severely and adversely affected by the proposed permits.

19. Based on investigations conducted over the last twenty-five years, a total of 13 state and/or federally listed wildlife species have been observed utilizing the 2,980-acre site with a potential for additional listed wildlife to use the Site. The following listed species were observed on the Site: crested caracara (*Caracara cheriway*), wood stork (*Mycteria americana*), Florida sandhill crane (*Grus canadensis pratensis*), southeastern American kestrel (*Falco sparverius paulus*), tricolored heron (*Egretta tricolor*), little blue heron (*Egretta caerulea*), snowy egret (*Egretta thula*), white ibis (*Eudocimus albus*), eastern indigo snake (*Drymarchon corais couperi*), American alligator (*Alligator mississippiensis*), gopher tortoise (*Gopherus polyphemus*), burrowing owl (*Athene cunicularia*) and Sherman's fox squirrel (*Sciurus niger shermani*). The abundance and diversity of these and other wildlife on and around the site will be adversely affected by the proposed activities.

20. The Audubon crested caracara has been observed on the site on multiple occasions. Furthermore, caracara pairs were observed nesting on the site during several nesting seasons between 2009 and 2013. At a minimum, the U.S. Fish and Wildlife has already opined that a nesting pair of caracara will be killed by the proposed construction and the adverse impacts to this species is reasonably likely to be far worse due to the loss of habitat, the constant truck traffic and the influx of predators drawn by the solid waste.

21. The Site is also located within the core foraging area for wood storks with four wood stork rookeries located within four miles of the Site. The siting of a dump within this proximity to these wood stork refuges is incongruent with the maintenance of healthy populations of this dwindling species.

22. A Class I landfill can receive general, non-hazardous household, commercial, industrial, and agricultural wastes. A Class III landfill can receive yard trash, construction and

demolition debris, waste tires, asbestos, carpet, cardboard, paper, glass, plastic, furniture other than appliances, or other materials approved by the Department. Both types of landfill garbage will cause adverse environmental effects.

23. Secondary harms associated with landfill construction and operation include increased truck traffic, which will increase road strikes with wildlife, as well as fugitive emissions, increased noise, and invasive animal species, which render this activity contrary to the public interest. Any one of these factors could cause unpermittable adverse impacts to wetlands and surface waters or fish and wildlife species.

24. The permit application and the proposed permits ignore crucial site specific conditions and underestimate adverse impacts associated with the proposed Landfill and must be denied.

Disputed Issues of Material Fact and Law

25. Deseret disputes the following material facts:

a. Whether the County has provided DEP with reasonable assurance that the activities authorized by the Landfill Permits will not cause adverse water quantity impacts to receiving waters and adjacent lands.

b. Whether the County has provided DEP with reasonable assurance that the activities authorized by the Landfill Permits will not cause adverse flooding to on-site or off-site property. Portions of the site are located within the 100 year floodplain. Construction of the Landfill and borrow pits will cause adverse flooding on-site and off-site. The application and Permits underestimate the adverse flooding that will be caused by the authorized activity.

c. Whether the County has provided DEP with reasonable assurance that the activities authorized by the Landfill Permits will not cause adverse impacts to the existing surface water storage and conveyance capabilities.

d. Whether the County has provided DEP with reasonable assurance that the activities authorized by the Landfill Permits will not adversely impact the value of functions provided to fish and wildlife and listed species by wetlands and other surface waters and other water related resources within the SJRWMD. Known incidences of caracara nesting on the Site is an example of a wetland dependent species that will be harmed by the proposed Landfill. The Biological Opinion conducted for the County does not contain sufficient detail to categorize impacts to the caracara and other wetland dependent species found on the site. Additionally, the application materials and the assessment provided underestimate the wetland impacts and thus underestimates the impacted habitats used by wetland dependent species.

e. Whether the County has provided DEP with reasonable assurance that the activities authorized by the Landfill Permits will not adversely affect the quality of receiving waters such that the state water quality standards set forth in Chapters 62-4, 62-302, 62-520, and 62-550, F.A.C., and any special standards for Outstanding Florida Waters and Outstanding Natural Resource Waters set forth in subsections 62-4.242(2) and (3), F.A.C., will be violated. A majority of the Site has poorly drained soils and a shallow water table. Constructing a landfill in these conditions has a potential to adversely affect water quality, violate water quality standards, and is not adequately considered in the Permits.

f. Whether the County has provided DEP with reasonable assurance that the activities authorized by the Landfill Permits will not cause adverse secondary impacts to water resources. The County failed to consider other harms from the development of a landfill including increased truck traffic, fugitive emissions and run-off. These will cause adverse secondary impacts to water resources not considered in the proposed permits.

g. Whether the County has provided DEP with reasonable assurance that the activities authorized by the Landfill Permits will not adversely impact the maintenance of surface or ground water levels or surface water flows established pursuant to Section 373.042, Florida Statutes.

h. Whether the County has provided DEP with reasonable assurance that the activities authorized by the Landfill Permits are capable, based on generally accepted engineering and scientific principles, of being effectively performed and of functioning as proposed. The geologic and hydrogeologic conditions reflect an unstable and variable substrate that will lead to fractures, fissures, leachate, and water resource degradation.

i. Whether the County has provided DEP with reasonable assurance that the activities authorized by the Landfill Permits will be conducted by an entity with financial, legal and administrative capability of ensuring that the activities will be undertaken in accordance with the terms and conditions of the Permits.

j. Whether the County has provided DEP with reasonable assurance that the activities authorized by the Landfill Permits are not contrary to the public interest, as determined by balancing the following criteria:

i. Whether the activities will adversely affect the public health, safety or welfare or the property of others.

- ii. Whether the activities will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats.
 - iii. Whether the activities will adversely affect navigation or the flow of water or cause harmful erosion or shoaling.
 - iv. Whether the activities will adversely affect the fishing or recreational values or marine productivity in the vicinity of the Landfill.
 - v. Whether the activities will be of a temporary or permanent nature.
 - vi. Whether the activities will adversely affect or will enhance significant historical and archaeological resources under the provisions of Section 276.06(1), Florida Statutes.
 - vii. The current condition and relative value of functions being performed by areas affected by the proposed activities.
- k. Whether the County has provided DEP with reasonable assurance that the activities authorized by the Landfill Permits will not cause adverse cumulative impacts upon wetlands and other surface waters.
- 1. Whether the general and specific conditions in the Permits provide reasonable assurance that the applicable permitting standards will be complied with by the County during the life of the Landfill.
- m. Whether the County has provided DEP with reasonable assurance that the activities authorized by the Landfill Permits will not be harmful to the water resources of the SJRWMD.

n. Whether the County has provided DEP with reasonable assurance that the activities authorized by the Landfill Permits are consistent with the objectives of the SJRWMD.

o. Whether the County has provided reasonable assurances that the activities authorized by the Landfill Permits will comply with the surface water management standards for the Upper St. Johns River Hydrological Basin as required by Section 40C-41.063 F.A.C.

p. Whether the County adequately assessed the functions provided by wetlands and other surface waters and the amount those functions would be reduced by the impact of the proposed Landfill. The County's application and the Permits underestimate the wetland impacts from Landfill development.

q. Whether the County provided reasonable assurance that the proposed mitigation in the Landfill Permits offset adverse impacts due to the permitted Landfill activities.

r. Whether the County provided reasonable assurance that the proposed mitigation in the Landfill Permits will achieve mitigation success by providing viable and sustainable ecological and hydrological functions.

s. Whether the County properly assessed the suitability of mitigation credits and the properly calculated UMAM analysis for the proposed Landfill mitigation activity.

t. Whether the County adequately explored design modifications to eliminate or reduce impacts to wetlands or surface waters. Phase I of the permitted activity will last an estimated 20 years before construction of the Class I landfill. Technological advances in waste management and recycling may render a Class I facility unnecessary in 20 years

or sooner. Therefore, other design modifications that would eliminate or reduce adverse impacts should be explored. For example, a waste to energy facility, that combusts municipal solid waste to create energy, would reduce or eliminate the adverse impacts caused by a Class I landfill and was not considered in the application or proposed permits.

26. Phase II of the permitted activity, included in the conceptual permit, does not include any wetlands mitigation. Deseret disputes whether the County provided reasonable assurance that proposed mitigation in Phase I will offset adverse impacts from Phase II, and “any additional solid waste activities” that may be allowed at the facility.

27. Specific Condition No. 9 of Permit No. 05-0301799-004-EI requires that “[a]ll wetland areas or waterbodies, which are outside of the specific limits of the constructions authorized by this permit must be protect from erosion, sedimentation, scouring or excess turbidity and dewatering.” Deseret disputes whether the County provided reasonable assurance that the proposed activity in this permit will protect wetlands and water bodies from erosion, sedimentation, scouring or excess turbidity and dewatering.

28. Phase II of the permitted activity, included in the conceptual permit, begins “when the County is ready to construct and operate a Class I landfill and any additional solid waste management activities at the facility.” Deseret disputes whether the DEP has the authority to issue conceptual permits for “any additional solid waste management activities at the facility” without reasonable assurances that the storm water management and wetlands mitigation will adequately account for the direct, secondary, and cumulative adverse impacts caused by the unknown future solid waste management activities.

29. Deseret reserves the right to raise additional disputed issues of material fact and law that may be identified in the future as a result of its further review of DEP's file or through discovery in this case.

Statement of Ultimate Facts

30. The following facts warrant reversal or modification of DEP's proposed issuance of the Permits to the County:

a. The County has not provided reasonable assurance that the activities authorized by the Landfill will not cause adverse water quantity impacts to receiving waters and adjacent lands.

b. The County has not provided reasonable assurance that the activities authorized by the Landfill Permits will not cause adverse flooding to on-site or off-site property.

c. The County has not provided reasonable assurance that the activities authorized by the Landfill Permits will not cause adverse impacts to the existing surface water storage and conveyance capabilities.

d. The County has not provided reasonable assurance that the activities authorized by the Landfill Permits will not adversely impact the value of functions provided to fish and wildlife and listed species by wetlands and other surface waters and other water related resources of SJRWMD.

e. The County has not provided reasonable assurance that the activities authorized by the Landfill Permits will not adversely affect the quality of receiving waters such that the state water quality standards set forth in Chapters 62-4, 62-302, 62-520, and 62-550, F.A.C., and any special standards for Outstanding Florida Waters and

Outstanding Natural Resource Wasters set forth in subsections 62-4.242(2) and (3m), F.A.C., will be violated.

f. The County has not provided reasonable assurance that the activities authorized by the Landfill Permits will not cause adverse secondary impacts to water resources.

g. The County has not provided reasonable assurance that the activities authorized by the Landfill Permits will not adversely impact the maintenance of surface or ground water levels or surface water flows established pursuant to Section 373.042, Florida Statutes.

h. The County has not provided reasonable assurance that the activities authorized by the Landfill Permits are capable, based on generally accepted engineering and scientific principles, of being effectively performed and of functioning as proposed.

i. The County has not provided reasonable assurance that the activities authorized by the Landfill Permits will be conducted by an entity with financial, legal and administrative capability of ensuring that the activities will be undertaken in accordance with the terms and conditions of the Permits.

j. The County has not provided reasonable assurance that the activities authorized by the Landfill Permits will comply with all applicable basin or geographic criteria.

k. The County has not provided reasonable assurance that the activities authorized by the Landfill Permits are not contrary to the public interest.

l. The County has not provided reasonable assurance that the activities authorized by the Landfill Permits will not cause adverse cumulative impacts upon wetlands and other surface waters.

m. The general and specific conditions in the Permits do not provide reasonable assurance that the applicable permitting standards will be complied with by the County during the life of the Landfill.

n. The County has not provided reasonable assurance that the activities authorized by the Landfill Permits will not be harmful to the water resources of the SJRWMD.

o. The County has not provided reasonable assurance that the activities authorized by the Landfill Permits are consistent with the objectives of the SJRWMD.

p. The County has not adequately offset the functional losses to wetlands and other surface waters.

q. The County has not provided reasonable assurances that the activities authorized by the Landfill Permits will comply with the surface water management standards for the Upper St. Johns River Hydrological Basin as required by Section 40C-41.063 F.A.C.

r. The County failed to adequately explore design modifications that could eliminate or reduce impacts to wetlands and other surface waters.

s. The County failed to comply with the appropriate stormwater management system design criteria by proposing wet detention pond depths greater than the maximum 12 feet mandated by the applicable Environmental Resource Permitting rules.

t. The County did not adequately evaluate potential changes in hydrology for the on-site mitigation areas.

u. The Uniform Mitigation Assessment Method (UMAM) analysis submitted by the County fails to comply with the requirements of chapter 62-345, F.A.C., because, among other things, the County's UMAM analysis does not appropriately account for risk nor appropriately apply the preservation adjustment factor.

v. The County's proposed mitigation fails to adequately offset the wetland impacts because the proposed conservation easement allows the County to develop a park or other recreational area over the mitigation site based upon future undetermined plans.

Statutes and Rules Entitling Deseret to Relief

31. The following statutes and rules require reversal or modification of DEP's proposed issuance of the Permits to the County: Part IV of Chapter 373 and Part V of Chapter 403, Florida Statutes; Chapters 62-4, 62-302, 62-330, 62-343, 62-345, 62-520, 62-522, 62-701, 40C-4, and 40C-41 of the Florida Administrative Code; and the Environmental Resource Permit Applicant's Handbook Volume I and Volume II, St. Johns River Water Management District.

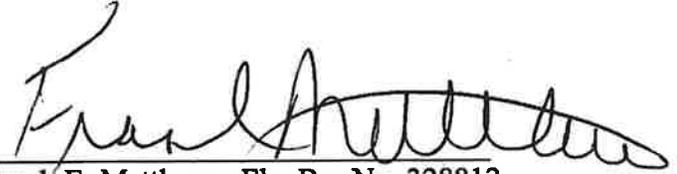
Relief Requested

BASED ON THE FOREGOING, Deseret requests that:

- a. this proceeding be referred to the Division of Administrative Hearings for the assignment of an Administrative Law Judge;
- b. a formal administrative hearing be conducted, that it be awarded costs, fees, and other relief they may be entitled; and

- c. ultimately, a Recommended and Final Order be entered denying the County's permit application.

Respectfully submitted this 2nd day of June, 2016.



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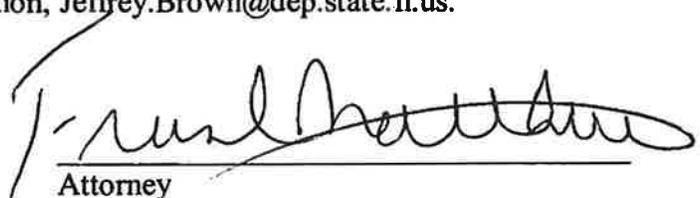
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(850) 222-7500; Fax (850) 224-8551

Attorneys for Farmland Reserve, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail on this 2nd day of June, 2016, to David S. Dee, Gardner, Bist, Bowden, Bush, Dee, LaVia, & Wright, P.A. ddee@gbwlegal.com; and Jeffrey Brown, Deputy General Counsel, Florida Department of Environmental Protection, Jeffrey.Brown@dep.state.fl.us.



Attorney