



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Consent

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F.9.

12/20/2022

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### Subject:

Approval, Re: Site Access Agreement with the State of Florida, Department of Environmental Protection for the Purposes of Conducting a Field Mapping, Surveying, and Sample Collection - Districts 4 and 5.

### Fiscal Impact:

None

### Dept/Office:

Public Works Department / Land Acquisition / Parks and Recreation Department/ Solid Waste Management Department

### Requested Action:

It is requested that the Board of County Commissioners approve and authorize the Chair to execute the attached Site Access Agreement.

### Summary Explanation and Background:

The subject properties are located in Section 04, 19 and 30, Township 35 and 36 South, Range 35 and 36 East, at Viera Regional Park and the Solid Waste US192 site.

The Florida Geological Survey, a section of the Department of Environmental Protection (Department), is creating a surficial geologic map of the Cape Canaveral quadrangle. Most of the data from this area comes from core drilled for various purposes by private drilling companies and surface collection when outcrops are present. Some areas within the quadrangle lack sufficient data to accurately map geologic contacts, therefore the Department looks for areas that lack data or are crucial for creating the most accurate map as possible. The Department is requesting access to Viera Regional Park and the Solid Waste US192 site to obtain needed data for a more accurate geologic map.

The User Departments have been coordinated with and they both approve this request.

This agreement follows the policies and procedures as set forth in Administrative Order 37.

### Clerk to the Board Instructions:

Upon execution by the Chair, Public Works Department will contact the Clerk's office to make arrangements to pick up the original executed Site Access Agreement.

## BOARD OF COUNTY COMMISSIONERS



### AGENDA REVIEW SHEET

AGENDA: Site Access Agreement with the State of Florida, Department of Environmental Protection for the Purposes of Conducting a Field Mapping, Surveying, and Sample Collection – District 4 and 5.

AGENCY: Public Works Department / Land Acquisition

AGENCY CONTACT: Lucy Hamelers, Land Acquisition Supervisor

CONTACT PHONE: 321-350-8336

	APPROVE	DISAPPROVE	DATE
LAND ACQUISITION Lucy Hamelers, Supervisor	 _____	_____	<u>12-6-2022</u>
COUNTY ATTORNEY Justin Caron Assistant County Attorney	 _____	_____	<u>12/6/2022</u>



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

Telephone: (321) 637-2001  
Fax: (321) 264-6972  
Kimberly.Powell@brevardclerk.us

December 21, 2022

**M E M O R A N D U M**

**TO:** Marc Bernath, Public Works Director      Attn: Lucy Hamelers, Land Acquisition

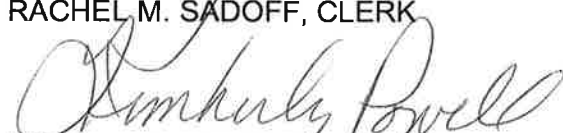
**RE:** Item F.9., Approval for Site Access Agreement with the State of Florida, Department of Environmental Protection, for the Purposes of Conducting a Field Mapping, Surveying, and Sample Collection

The Board of County Commissioners, in regular session on December 20, 2022, approved and executed the Site Access Agreement with the State of Florida, Department of Environmental Protection, for the Purposes of Conducting a Field Mapping, Surveying, and Sample Collection. Enclosed is the fully-executed Agreement.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
RACHEL M. SADOFF, CLERK

  
Kimberly Powell, Clerk to the Board

/sm

Encl. (1)

cc: County Attorney  
Parks and Recreation  
Solid Waste Management

## **SITE ACCESS AGREEMENT**

1. **The Parties.** The undersigned real property owner, **Brevard County Board of County Commissioners ("Owner")** hereby give(s) permission through a revocable license to the State of Florida, Department of Environmental Protection, Florida Geological Survey ("**Department**") to enter the Owner's properties located at **Viera Regional Park, Parcel ID: 26-36-04-01-A and 109 Clayton Rd Unit Landfill, Melbourne, FL 32935, Parcel ID: 27-35-20-00-1**
2. **The Property.** Owner owns the Properties located as depicted on the attached legal descriptions as Exhibit "A."
3. **Permissible Activities.** This Agreement is limited to activities which may be performed by the Department, without cost to the Owner to conduct geologic field mapping, surveying, and sample collection which may be performed by the Department. The following permissible activities are:
  - conduct surface, subsurface, and groundwater investigations
  - entry by a drill rig vehicle and/or support vehicle(s);
  - collect soil, sediment, and rock samples via various collection methods;
  - install and remove groundwater monitoring wells and restore site to previous condition as documented by the Department;
  - use geophysical equipment;
  - locate existing wells;
  - conduct survey measurements, prepare site sketches, and take photographs; and
  - Any other activities agreed to in writing by both parties or their designees.
4. **Duration and Termination of Access.** This Agreement is granted, without any fee or charge to the Department upon the execution of this Agreement and shall continue until all activities are complete for the duration of the project which shall be no later than (March 31, 2023.)
5. **Work Performed during Business Hours.** The Department may enter the Properties during normal business hours and may make arrangements to enter the Properties at other times after approval from the Owner. The Department shall notify the Owner of the expected start date and time prior to commencing such activities.
6. **Activities Comply with Applicable Laws.** The Department agrees that any and all work performed on the Properties and in association with this Agreement shall be done in a good, safe, workmanlike manner, and in accordance with applicable federal, state, and local statutes, rules, and regulations. The Department shall provide the Owner with any contract between the Department and any third parties conducting activities on the properties.
7. **Proper Disposal of Contaminated Media.** Should the Department encounter contamination, it shall ensure that drill cuttings, any work materials, and water generated

shall be disposed of in accordance with environmental laws. All contaminated drill cuttings, waste materials, and development water generated shall be promptly removed from the Property(ies).

8. Property Restoration. The Department will rake any left-over cuttings into the disturbed area in addition to returning some organic debris (such as fallen leaves or twigs) back over the disturbed area. The disturbed area shall be restored to its previous condition upon completion of the work as documented by the Department.

9. Owner's Non-Interference. The Owner shall not interfere with the Department when performing the Permissible Activities. Owner shall not damage or alter any Department owned equipment that may be located on the Property.

10. Owner's Use of Property. The Owner retains the right to use the Property, and the Department will work with the Owner regarding minimizing activities that may interfere with the Owner's management and use of the Property. However, the Department is not responsible for any inconvenience, economic injury, or business damage that Owner may suffer due to the performance of any Permissible Activity.

11. Injury to Department. The Owner shall not be liable for any injury, damage, or loss on the Property suffered by the Department or Department employees not caused by the negligence or intentional acts of the Owner's agents or employees.

12. Conditions of Properties. The Department acknowledges and accepts that the conditions of the Properties may contain hazardous conditions including but not limited to wet and muddy areas. The Department further acknowledges that some areas of each property may not support vehicular traffic and may cause a vehicle to become stuck or damaged. The Department acknowledges that cattle may be present on the 2<sup>nd</sup> parcel of interest located at approximately 109 Clayton Road, Unit Landfill, Melbourne, FL 32935. The Department shall notify the Brevard County Solid Waste Director by email at [Thomas.Mulligan@brevardfl.gov](mailto:Thomas.Mulligan@brevardfl.gov) at least seven days prior to entering the northern most sample site at this location. The Department agrees to close and secure any gates or openings on the entire parcel when entering or existing the property to ensure that any livestock on the property will not escape.

13. Indemnification. To the extent allowed by law and subject to the provisions of Section 768.28, Florida Statutes, each party is responsible for the negligent or wrongful acts or omissions of its own employees, agents, or other representatives while acting within the scope of their employment or otherwise within their authorized capacity, arising from the activities encompassed by the Agreement. Nothing in this Agreement requires either party to indemnify the other party for any losses, damages, or injuries caused by or otherwise arising from the negligent or wrongful act or omission of its employees, agents, or representatives. Neither party, by execution of this Agreement, will be deemed to have waived any statutory right or defense of sovereign immunity, or to have increased its limits of liability under Section 768.28, Florida Statutes, as may be amended from time to time. Each party shall retain all rights, defenses, and remedies under Florida law in the event of any claims, suits, or other disputes arising from its

performance of the obligations under this Agreement. Nothing in this Agreement shall be interpreted to create any causes of action for any third parties not a party to this Agreement.

14. Non-waiver of Sovereign Immunity. The Department acknowledges and accepts its responsibility under applicable law (Section 768.28, Florida Statutes) for damages caused by the acts or omissions of its employees or agents while on the Property.

15. Florida Public Records Law. Pursuant to Section 119.0701, Florida Statutes, a request to inspect or copy public records relating to this Contract must be made directly to the County. If the County does not possess the requested records, the County shall immediately notify the Department of the request and the Department shall provide the records to the County or allow the records to be inspected or copied within twenty-four hours (not including weekends or legal holidays) of the request so the County can comply with the requirements of Chapter 119, Florida Statutes, Florida Public Records Law. If the Department fails to provide the requested public records to the County within a reasonable time, the Department may face civil liability for the reasonable cost of enforcement incurred by the party requesting the records and may be subject to criminal penalties pursuant to Section 119.10, Florida Statutes. The Department's failure to comply with public records request is considered a material breach of the Contract and grounds for termination. If the Department claims certain information is exempt and/or confidential, it must cite to specific statutory provisions or case law in order to justify removal or redaction of said information. If the Department has questions regarding the application of Chapter 119, Florida Statutes, to the Department's duty to provide Public Records relating to the contract, contact the custodian of Public Records: Director of Parks and Recreation, Mary Ellen Donner, 2725 Fran Jamieson Way, Building B, Suite 203, Viera, Florida 32940; Email the Records Custodian to [MaryEllen.Donner@brevardfl.gov](mailto:MaryEllen.Donner@brevardfl.gov) or Phone: ( 321)633-2046.

16. Entire Agreement. This Agreement shall constitute the entire agreement between the Department and the Owner regarding this grant of access to Department for the purposes herein. No modification, amendment, or waiver of the terms and conditions of this Agreement shall be binding upon Department unless approved in writing by an authorized representative of Owner and Department.

17. Governing Law and Venue Waiver of Jury Trial. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any action or proceeding arising from or relating to this Agreement shall be in the appropriate Florida court having jurisdiction located in Brevard County, Florida. Both Parties agree to waive any right to trial by jury.

18. Severability. Any provision of this Agreement that is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

19. No Third-Party Beneficiaries. This Agreement is solely for the benefit of the parties hereto and their respective successors and assigns and shall not be deemed to confer upon third parties any remedy, claim, liability, reimbursement, claim of action or other right.

Brevard County, Florida, a Political  
Subdivision of the State of Florida

BY: [Signature]  
Rita Pritchett, Chair of Brevard  
County Board of County Commissioners

ATTEST:

[Signature]  
Rachel Sadoff, Clerk of the Court

As Approved by the Board on 12-20-2022

Accepted by the State of Florida Department of Environmental Protection:

[Signature]

Name: Guy H. Means  
Title: Director and State Geologist  
Florida Geologic Survey

[Signature]

Signature of Witness

11-18-2022

Date

Kathryn C. Armstrong 11-18-2022  
Print Name of Witness Date

Attachments: Exhibit A- Legal description of the Property: 1st Parcel of interest: VIERA REGIONAL PARK BEING A PORTION OF PARCEL 2, VIERA CENTRAL P.U.D., PDP (KNOWN AS TRACT OS-5) TRACT A (PARK)

2nd parcel of interest: 109 CLAYTON RD UNIT LANDFL MELBOURNE FL 32935; ALL OF SECTS 19,20,30 & PART OF SECTS 29,31 & 32 AS DESC IN ORB 3151 PG 4289 ALL LYING N OF US HWY 192 & BEING WITHIN HOPKINS PLAT AS RECORDED IN PB 2 PG 102 PARS 19-00-1,29-00-1,30-00-1, 31-00-250,31-01-1-\*,32-01-2-\*



Exhibit "B"

# STATEMAP

## Florida Geological Survey Study Area

### Potential Sample Sites- Viera Regional Park

#### 1ST PARCEL OF INTEREST

#### Explanation

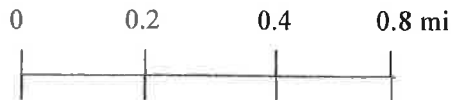


Potential Sample Site - Viera  
Regional Park

**Note:**

Site IDs are generated based on collection and are provided here for communication and correlation to adjacent parcels.

County sites identified in ROW include all potential sites identified as of July, 2022.



Northern Option: 720,283.25E 476,532.14N m

Southern Option: 720,158.93E 476,273.68N m

Modified by:

Scale: 1:3,880

J. Greene,  
Env. Specialist III  
July 14 2022





**STATEMAP**  
**Florida Geological Survey Study Area**  
**Potential Sample Sites- 109 Clayton Rd Unit**  
**Landfill, Melbourne, FL 32935**  
**2nd PARCEL OF INTEREST**

Exhibit "B"

**Explanation**

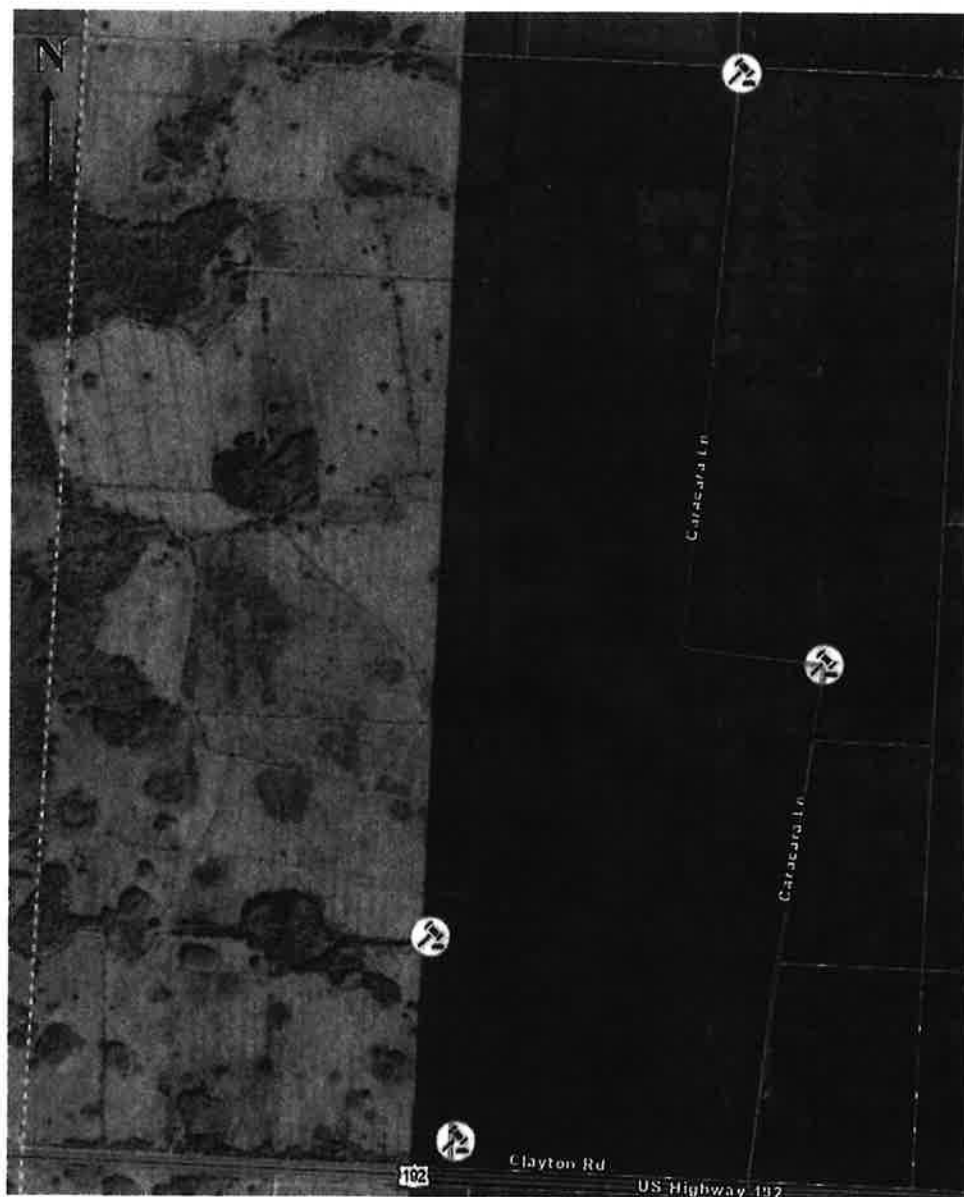
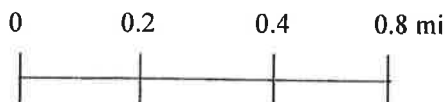


Potential Sample Sites-  
109 Clayton Rd Unit Landfill  
Melbourne FL 32935

**Note:**

*Site IDs are generated based on collection and are provided here for communication and correlation to adjacent parcels.*

*County sites identified in ROW include all potential sites identified as of July, 2022.*



Site options from North to South

1st Option: 709,791.78E 460,056.49N m

2nd Option: 709,791.78E 460,056.49N m

3rd Option: 709,043.54E 458,823.10N m

4th Option: 709,791.78E 460,056.49N m

Modified by:

Scale: 1:22,000

J. Greene,  
Env. Specialist III  
July 14 2022