

THE STATE OF TEXAS	§
	§
	§
COUNTY OF FORT BEND	§

**DEVELOPMENT AGREEMENT**  
(Red Gully Detention Pond)

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into by and between Fort Bend County, Texas (hereinafter referred to as "the County"), a body politic acting herein by and through its Commissioners' Court on behalf of the Fort Bend County Drainage District, and Sprint Fort Bend County Landfill, L.P., a Texas Limited Partnership, (hereinafter referred to as "Sprint"), a company authorized to conduct business in the State of Texas. The County and the Sprint may be individually referred to as a "Party" or collectively as the "Parties."

WHEREAS, the County finds that it is important to protect floodplains from landfill development in order to protect ground water and surface water resources from contamination; and

WHEREAS, the County has accepted a donation of real estate from Sprint Fort Bend County Landfill, L.P., for the West Belfort Boulevard right of way and storm water detention, and for the Four Corners Park and for use as flood water storage areas; and

WHEREAS, Sprint agrees to build, or have built, at its sole cost and expense, the detention ponds No. 3, 4, 5, and 6 ("Ponds") as shown in the attached Exhibits A & B, incorporated by reference, upon the following conditions being met: (a) approval by the County of the Amended Order Prohibiting Solid Waste Disposal in Fort Bend County, Texas, to increase and reconfigure Area Seven regarding Red Gully, (b) all other required regulatory approvals (e.g. Corp of Engineers, etc.), and (c) upon Texas Commission on Environmental Quality ("TCEQ") issuance of the Sprint Fort Bend County Landfill permit amendment authorizing said design modifications; and

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Agreement, the County and Sprint agree as follows:

1. Sprint's Responsibilities:

(a) Sprint agrees that the construction of the ponds will be in accordance with plans provided by a mutually agreeable engineering firm and in accordance with that final approved permit designs of the aforementioned regulatory agencies.

(b) Sprint agrees that the construction plans will include weirs, outfall pipes, pipes connecting ponds and any other appurtenances necessary for the detention ponds to function as per the permitted design.

(c) Sprint agrees that, subject to final regulatory approval (i.e. permits obtained by Sprint), the ponds shall be constructed to the approximate depths and capacities documented in the table on the attached Exhibit A and include, at a minimum, the following items:

- i. The side slopes of the detention ponds shall be no steeper than 4 units horizontal to 1 unit vertical and the banks of detention ponds 3, 4, 5 and 6 shall be constructed to 2' above the design 100-year water surface elevation except for designed spillways.
- ii. Pond 4 will have an outfall pipe draining into Red Gully capable of conveying the design required flows. The outfall pipe will be installed to the maximum allowable depth as it relates to the depth of Red Gully at the point of outfall. Once Pond 5 is completed the bottom elevation of Pond 4 will be lowered by 5' and also have a pipe installed to allow Pond 4 to drain to Pond 5.
- iii. Pond 5 will have a surface area of approximately 30-acres as shown on Exhibits A & B and a 100-year designed water surface elevation, subject to changes based upon hydraulic modeling results and regulatory approval, of 80.0' MSL (1988 datum).
- iv. Pond 6 will be connected to Pond 4 via pipe with back flow prevention.

(d) Subject to obtaining all required approvals and permits as set forth in this Agreement, and the Easement Release per Section 2(b) below, Sprint agrees to make a one-time donation to Fort Bend County that will fund the purchase and construction of a permanent pumping system to pump water from Pond 5 into Red Gully at a minimum rate of 18,000 gpm using no less than 2 pumps. Each pump shall be capable of pumping a minimum of 9,000 gpm at a depth of 40' (40' MSL 1988 datum). A back-up power supply, which will be adequate to support the operation of the pumps, shall also be installed as part of the system. The pumping station, the pumps and power supply are collectively called the "Pumping System". Fort Bend County will be responsible for the final design, specification (as outlined above) and approval of the requirements of the Pumping System.

(e) Upon completion of the entire project to be constructed by Sprint, pursuant to this Section 1 (the "Project") and the Easement Release, including regulatory approvals and acceptance by the Fort Bend County Drainage District, Sprint agrees to make a one-time donation to Fort Bend County in the amount of Five Hundred Thousand and 00/100 Dollars (\$500,000.00) which will provide funding of a special purpose account that is solely

designated to cover the cost of maintenance, operation and repair/replacement of the Pumping Project.

(f) Sprint agrees to begin construction of portions, or all, of ponds 3, 4 and 6 within six (6) months of obtaining all required approvals and permits as set forth in this agreement, and construction of these ponds (including overflow swales and outfall pipes) will be completed within 2 ½ years. These ponds will serve as interim detention for the County along Red Gully until the entire designed detention plan is completed. The full detention capacity and Pumping System, including pond 5 and the pumps shall be completed within five (5) years of obtaining required approvals and permits as set forth in this agreement. Sprint agrees to complete the tasks described herein within this time or within such additional time as may be requested by Sprint and extended by the Fort Bend County Drainage District, which agreement shall not be unreasonably withheld.

(g) Upon completion of the Project and the Easement Release, Sprint agrees to donate to Fort Bend County, the real estate and improvements covered by the Project, but said donation shall be subject to Sprint retaining appropriate access easements to Sprint's retained real estate. Sprint will obtain an appraisal of the property being donated for IRS purposes.

## 2. County's Responsibilities:

(a) The County agrees to sign any required/associated documentation to support the donations pledged by Sprint herein.

(b) The County agrees that once Red Gully is relocated and operational, the County will provide to Sprint a partial release ("the Easement Release"), from the upstream end to the downstream end of New Red Gully, of the existing 70' drainage easement for the current location of Red Gully (in Volume 357, Page 81 of the deed records of Fort Bend County, Texas.

(c) The County agrees that once the Project is completed and accepted by the Fort Bend County Drainage District, which acceptance shall not be unreasonably withheld, (i) Sprint will have no future obligation to maintain, repair, operate or provide any support to detention ponds No. 3, 4, 5 and 6 and the detention pond pumping system for ponds 4 and 5, and (ii) such activities shall thereafter be the obligations of the County.

## 3. Disclaimer/Waiver of Damages/Liability

(a) Sprint acknowledges and agrees that County is not providing any guarantee, representation and/or warranty, and County hereby disclaims any guarantee, representation and/or warranty, of any work performed by County, or their agents, employees, representatives, contractors, subcontractors and/or designees, in connection with the Red Gully Detention pond, in whole or in part.

(b) Sprint acknowledges and agrees that County shall in no way be liable for any damages, if any, which may be sustained by the Sprint and/or Sprint Property, resulting, in whole or in part, directly or indirectly, from County's failure to complete its responsibilities stated herein by any certain date and/or as set forth in this Agreement.

**4. PARTIES' ACKNOWLEDGEMENT OF COUNTY'S COMPLIANCE WITH FEDERAL AND STATE CONSTITUTIONS, STATUTES AND CASE LAW AND FEDERAL, STATE AND LOCAL ORDINANCES, RULES AND REGULATIONS/SPRINT'S WAIVER AND RELEASE OF CLAIMS FOR OBLIGATIONS IMPOSED BY THIS AGREEMENT.**

**(a) SPRINT ACKNOWLEDGES AND AGREES THAT THE CONTRIBUTION MADE BY SPRINT TO COUNTY, IN WHOLE OR IN PART, DOES NOT CONSTITUTE A:**

- i. TAKING UNDER THE TEXAS OR UNITED STATES CONSTITUTION;**
- ii. VIOLATION OF THE TEXAS TRANSPORTATION CODE, AS IT EXISTS OR MAY BE AMENDED;**
- iii. NUISANCE; AND/OR**
- iv. CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST COUNTY FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW AND/OR FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE AND/OR REGULATION.**

**(b) SPRINT RELEASES COUNTY FROM ANY AND ALL CLAIMS OR CAUSES OF ACTION BASED ON EXCESSIVE OR ILLEGAL EXACTIONS ARISING OUT OF OR RELATED TO THIS AGREEMENT.**

**(c) SPRINT WAIVES ANY CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST COUNTY FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW AND/OR FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE AND/OR REGULATION ARISING OUT OF OR RELATED TO THIS AGREEMENT.**

**(d) THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

5. Limitations of Agreement. The parties hereto acknowledge this Agreement is limited to the development of Sprint Fort Bend County Landfill property only. Further, this Agreement does not waive or limit any of the obligations of Sprint to County under any other order whether now existing or in the future arising.

6. Default. In the event Sprint fails to comply with any of the provisions of this Agreement within sixty (60) business days after Sprint's receipt of written notice thereof from County, County shall have the following remedies in addition to County's other rights and remedies, at law or in equity:

- (a) to refuse to accept any portion of any public improvements on the Sprint Property and/or associated with the development of the Sprint Property; and/or
- (b) to refuse to finally accept the Sprint Property and/or any portion thereof; and/or
- (c) to seek specific enforcement of this Agreement.

In the event of County's default under this Agreement, Sprint will be entitled to seek any remedy available to it at law or in equity.

7. Miscellaneous.

(a) Notice. Any notice required to be sent under this Agreement must be in writing and may be served by depositing same in the United States Mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the parties shall be as follows:

If to County, to:

Fort Bend County Drainage District  
Attention: General Manager/Chief Engineer  
1124 Blume Road  
Rosenberg, Texas 77471

With a copy to:

Fort Bend County  
Attention: County Judge  
401 Jackson Street, 1<sup>st</sup> Floor  
Richmond, Texas 77469

If to Sprint, to:

Sprint Fort Bend County Landfill, L.P.  
Attention: President  
P.O. Box 940339  
Houston, TX 77094

(b) Assignment. This Agreement is not assignable by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

(c) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, as allowed.

(d) Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties hereto.

(e) Venue. This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Fort Bend County, Texas.

(f) Consideration. This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

(g) Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original if properly executed.

(h) Authority to Execute. The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

(i) Savings/Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

(j) Representations. Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.

(k) Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

(l) Sovereign Immunity. The parties agree that County has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

(m) No Third Party Beneficiaries. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.

(n) Attorneys' Fees. In any legal proceeding brought to enforce the terms of this Agreement, the prevailing party may recover its reasonable and necessary attorneys' fees from the non-prevailing party as permitted by Section 271.159 of the Texas Local Government Code, as it exists or may be amended.

(o) Incorporation of Recitals. The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement and adopted as findings of County and the Sprint and/or its authorized representatives.

(p) Sprint's Warranties/Representations. All warranties, representations and covenants made by Sprint in this Agreement or in any certificate or other instrument delivered by Sprint to County under this Agreement shall be considered to have been relied upon by County and will survive the satisfaction of any fees and/or payments made under this Agreement, regardless of any investigation made by County or on County's behalf.

(q) Indemnification. The parties agree that the Indemnity provisions set forth in Paragraphs 3 and 4 herein are conspicuous, and the parties have read and understood the same.

(r) Waiver. Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the date executed by County.

FORT BEND COUNTY:

*Robert E. Hebert*

Robert E. Hebert, County Judge

12-11-2018

Date

Attest:

*Laura Richard*

Laura Richard, County Clerk



Approved:

*Mark A. Vogler*

Mark A. Vogler  
General Manager/Chief Engineer, Drainage District

Approved as to legal form:

*LaNetra S. Lary*

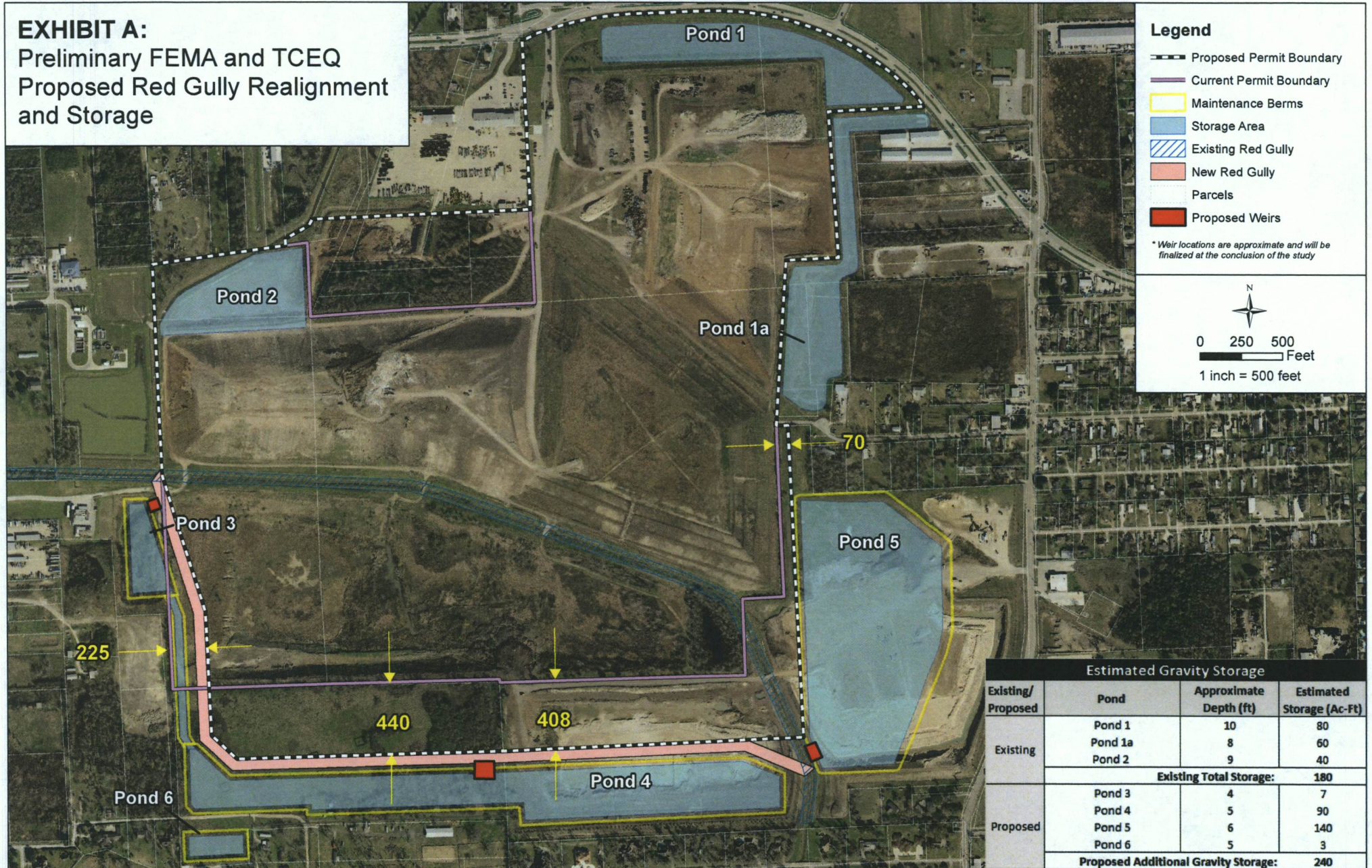
LaNetra S. Lary  
Assistant County Attorney

SPRINT FORT BEND COUNTY LANDFILL, L.P.:

By: *Joseph B. Swinbank*  
Joseph B. Swinbank, President

Date: 12/10/2018

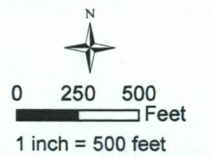
**EXHIBIT A:**  
 Preliminary FEMA and TCEQ  
 Proposed Red Gully Realignment  
 and Storage



**Legend**

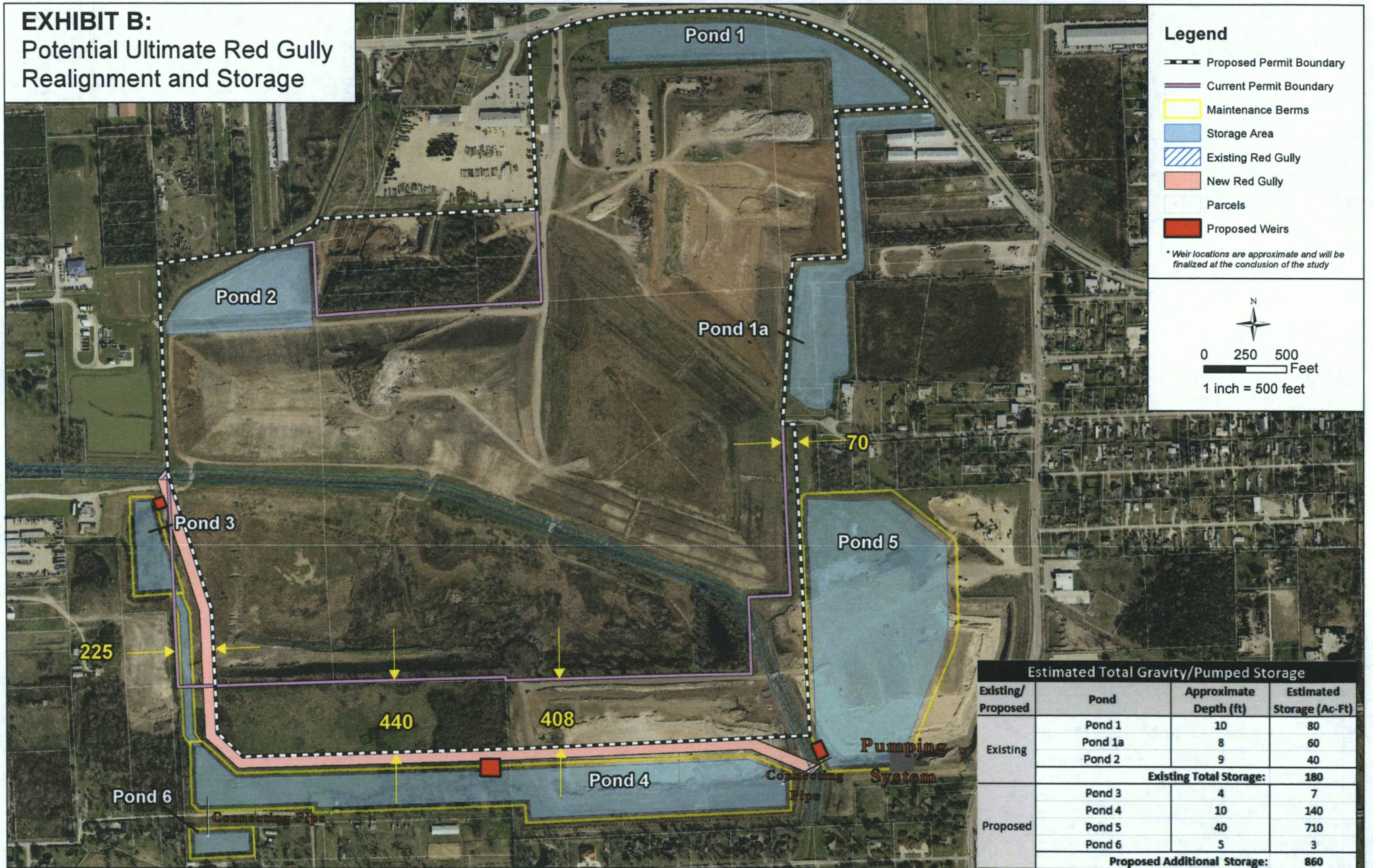
- Proposed Permit Boundary
- Current Permit Boundary
- Maintenance Berms
- Storage Area
- Existing Red Gully
- New Red Gully
- Parcels
- Proposed Weirs

*\*Weir locations are approximate and will be finalized at the conclusion of the study*



Estimated Gravity Storage			
Existing/ Proposed	Pond	Approximate Depth (ft)	Estimated Storage (Ac-Ft)
Existing	Pond 1	10	80
	Pond 1a	8	60
	Pond 2	9	40
<b>Existing Total Storage:</b>			<b>180</b>
Proposed	Pond 3	4	7
	Pond 4	5	90
	Pond 5	6	140
	Pond 6	5	3
<b>Proposed Additional Gravity Storage:</b>			<b>240</b>

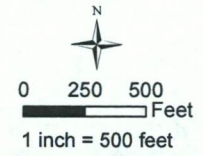
**EXHIBIT B:**  
Potential Ultimate Red Gully  
Realignment and Storage



**Legend**

- Proposed Permit Boundary
- Current Permit Boundary
- Maintenance Berms
- Storage Area
- Existing Red Gully
- New Red Gully
- Parcels
- Proposed Weirs

\* Weir locations are approximate and will be finalized at the conclusion of the study



Estimated Total Gravity/Pumped Storage			
Existing/ Proposed	Pond	Approximate Depth (ft)	Estimated Storage (Ac-Ft)
Existing	Pond 1	10	80
	Pond 1a	8	60
	Pond 2	9	40
<b>Existing Total Storage:</b>			<b>180</b>
Proposed	Pond 3	4	7
	Pond 4	10	140
	Pond 5	40	710
<b>Proposed Additional Storage:</b>			<b>860</b>

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
 Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

## OFFICE USE ONLY CERTIFICATION OF FILING

**1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**  
 Sprint Fort Bend County Landfill LP  
 Sugar Land, TX United States

**Certificate Number:**  
 2018-432458

**2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.**  
 Fort Bend County

**Date Filed:**  
 12/10/2018

**Date Acknowledged:**  
 12/11/2018

**3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.**  
 To Be Determined  
 Red Gully Realignment and Water Detention

4 Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
		Controlling	Intermediary
Swinbank, Reagan	Houston, TX United States		X
Swinbank, William	Houston, TX United States		X
Swinbank, Joseph	Houston, TX United States		X
Joe Swinbank Family Limited Partnership	Houston, TX United States		X
Medio Landfill LP	Houston, TX United States		X
Medio Management LLC	Houston, TX United States	X	

**5 Check only if there is NO Interested Party.**

**6 UNSWORN DECLARATION**

My name is \_\_\_\_\_, and my date of birth is \_\_\_\_\_.

My address is \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.  
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in \_\_\_\_\_ County, State of \_\_\_\_\_, on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
(month) (year)

\_\_\_\_\_  
 Signature of authorized agent of contracting business entity  
 (Declarant)