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October 26, 2021

VIA HAND DELIVERY

Robert Bender, District 4 Commissioner, Chairman
Jeff Bergosh, District 1 Commissioner, Vice Chairman
Doug Underhill, District 2 Commissioner
Lumon May, District 3 Commissioner
Steven Barry, District 5 Commissioner
Escambia County, Florida
221 Palafox Place
Pensacola, Florida 32502

Wes Moreno, Interim County Administrator
Escambia County, Florida
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Alison Rogers, County Attorney
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RE: NOTICE OF INTENT TO FILE BERT J. HARRIS ACT CLAIM;
Longleaf C&D Disposal Facility, Inc.

YOU ARE HEREBY NOTIFIED that Longleaf C&D Disposal Facility, Inc., will, not less than 150 days from the date of this notice, file a claim for compensation in the Circuit Court in and for Escambia County, Florida. The basis of the claim is the action of Escambia County to inordinately burden, restrict, and limit the vested right of Longleaf C&D Disposal Facility, Inc. ("Claimant") to operate the Longleaf C&D Disposal Facility on 38.9 acres, Parcel No. 41-1S-30-1000-000-002. The deed containing the legal description of the said property is attached as **Exhibit "A"**.¹

A Permit to Construct and/or Operate a Construction & Demolition Debris ("C&DD") Disposal Facility, an In-fill facility, as reclamation activity for borrow pits existing prior to September 16, 2004 (the "Permit") was first issued by the Escambia County Board of County Commissioners ("BCC") on April 26, 2006 and last renewed on June 10, 2013. A copy of the permit as last-issued is attached as **Exhibit "B"**.

¹ Also attached with the deed are documents evidencing the name change from that appearing on the deed as grantee (Terra Resources of Pensacola, Inc.) to the current owner/operator, Longleaf C&D Disposal Facility, Inc.

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On March 17, 2014, Claimant submitted its application for renewal of its C&DD Permit. The renewal application is attached as **Exhibit "C"**.

On June 3, 2014, Escambia County held a duly noticed public hearing to consider approving the renewal application. At the hearing, the **County staff recommended approval of the renewal application and noted that Claimant was in compliance with its C&DD Permit and other applicable County and state regulations.** However, the BCC delayed a vote on the renewal application so that County staff could conduct soil, air and groundwater testing associated with other C&DD facilities within the County.

The renewal application was next before the County for consideration on August 21, 2014. A copy of the permit renewal recommendation by the Director of Escambia County Solid Waste, Pat Johnson, determining that the facility "satisfies the permitting criteria for an infill facility" as of August 21, 2014 is attached as **Exhibit "D"**. This item is a copy of the Agenda package provided by County Staff to each County Commissioner for the public hearing held on August 21, 2014 and includes the reports from the soil, air and groundwater testing directed on June 3, 2014.

Claimant has a vested legal right to operate its C&DD disposal facility, based on its ability to maintain the required state permit from the Florida Department of Environmental Protection ("FDEP")(a copy of the valid State permit is attached as **Exhibit "E"**) and having met all of the objective renewal criteria for its County operating permit. A timely application for renewal of the State permit was submitted on August 7, 2021 and per state law, the state permit is administratively continued until FDEP acts on the renewal application. A copy of the timely submitted state permit renewal is also included in Exhibit "E".

Longleaf met the objective performance standards of the Escambia County Code as of June 3, 2014 when its renewal permit was approved by County staff and presented to the BCC for issuance. The only reason Claimant's permit was not renewed is because the BCC tolled the issuance of the permit while they amended the ordinance to add more stringent criteria to the operating requirements.

On August 13, 2015, while the above-described state and county permits were in full force and effect, the BCC adopted Ordinance No. 2015-31, which established more stringent requirements for operating and obtaining a permit for C&DD Facilities.

Following the enactment of Ordinance No. 2015-31, the County did not provide the notice of enactment as stated in Chapter 70.001(11)(a)1, therefore Ordinance

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2015-31 was first applied to Claimant's property when there was a formal denial of a written request for development or variance.²

On September 17, 2021, Claimant brought forth a plan to assist the County's emergency response to hurricane debris disposal by providing its C&DD facility as a centrally located staging and disposal site. As part of that plan, Claimant requested that the County finally act upon the 2014 Permit Renewal Application that had been pending without County action since it was tolled by the BCC in August 2014. Despite a great deal of effort and expense, Claimant's plan was rejected by the County Administrator and her Solid Waste Director. They determined that an emergency did not exist in the area of C&DD disposal and the County's municipal solid waste landfill had sufficient capacity for hurricane-related C&DD disposal.

By letter dated October 9, 2020, attached as **Exhibit "F"** (without enclosures), undersigned counsel requested the County Administrator place Claimant's tolled 2014 Permit Application on the BCC Agenda for action. On October 27, 2020, the County Attorney replied to the October 9, 2020 letter by stating that "absent an emergency authorization for LCD and C&DD disposal, [my] client's next step would be to engage in the site plan review process with DRC." The letter further states that Claimant "will need to comply with the requirements of Sec. 82-226 of the Escambia County Code of Ordinances." The site plan review process and Sec. 82-226 were both part of the changes enacted with Ordinance 2015-31.

By letter dated October 29, 2020, undersigned counsel sought clarification from the County Attorney that her letter of October 27, 2020 was an official denial of Claimant's tolled 2014 Permit Renewal Application since the letter clearly stated that the provisions of the new code (enacted in 2015 as Ordinance 2015-31) were now for the first time being applied to the tolled 2014 permit application. In a letter dated October 30, 2020, the County Attorney clarified that her October 27, 2020 letter was not a denial of Claimant's request for its renewal permit, but she confirmed that "it is the County's position that your client needs to request formal consideration with the Development Services Department" and have them process the permit under the requirements of the 2015 ordinance. A copy of this letter is attached as **Exhibit "G"**.

By letter dated December 7, 2020, Claimant, through undersigned counsel, requested formal consideration with the County's Development Services Department to have the County take action on Claimant's permit so that Claimant could either

² This is an accurate statement of the Bert Harris Act as it applies to this matter. The statute was amended this year and the new provisions apply to claims arising after July 31, 2021. The new provisions address the very scenario faced by this Claimant trying to get the County to act on its tolled application so as to trigger the Bert Harris Act.

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operate its C&DD disposal facility or file its Bert Harris Act Claim. A copy of this letter is attached as **Exhibit "H"** (with enclosures).

By letter dated December 17, 2020, the County Attorney stated that the requirements of Ordinance 2015-31 were being applied so that Claimant's request for action was deficient because it did not address the new items contained in the 2015 change to the code. By any objective standard, the provisions of Ordinance 2015-31 were "first applied by the government entity to the property at issue" on either October 27, 2020 or December 17, 2020. A copy of the December 17, 2020 letter is attached as **Exhibit "I"**.

Claimant has a 2014 Permit Application that was tolled by the BCC and has never been granted or denied. County staff confirmed that the Permit Application met all of the objective criteria of the 2014 ordinance by approving the permit and forwarding it to BCC for issuance. The BCC tolled the issuance of the Permit while it worked to enact an amended ordinance with more stringent operating requirements. The County first applied the requirements of its new ordinance to Claimant's tolled 2014 Permit Application either on October 27, 2020 or December 17, 2020.

As verified by County staff, Claimant's facility is an infill facility permitted prior to August 21, 2014 and therefore, is subject to the vesting provisions of Ordinance 2015-31, which became part of Escambia County Ordinance Section 82-226(2c)(1-5) as follows:

1. The facility is less than 50 acres;
2. The setback footprint will be a minimum 100' from the property boundary; Vegetative debris may be used to fill from the existing excavation limits;
3. The facility shall not be brought higher than ground level; the facility has no active permitted disposal areas that have exceeded ground level height;
4. The facility's active permitted disposal areas are not within 1,000 feet of a public water well nor are they located in areas designated as environmental sensitive;
5. The C&DD permitted site will have a liner and leachate collection system; a liner and leachate collection is not required for the LCD disposal area.

Although, the facility meets the vested rights section of the new Ordinance, the tolled 2014 Permit Application does not address the new and more stringent general operating requirements for C&DD facilities as designed in 82-227(1) as follows:

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- a. A hydrogen sulfite and gas monitoring plan designed to monitor and eliminate odors together with increased cover requirements;
- b. A stormwater management plan to accommodate upland surface water runoff through the C&DD facility to treat and attenuate the onsite surface water runoff and manage the upland acreage surface water runoff without negative impacts to the adjoining properties and right of ways;
- c. A groundwater monitoring plan utilizing the guidelines set forth by the Florida Department of Environmental Protection (FDEP);
- d. A gas management system designed in accordance with FDEP Chapter 62-701.530, F.A.C.; and
- e. Boundary probes for gas migration installed and maintained per FDEP guidelines.

The clarification in the County Attorney's letters of October 27, 2020 and December 17, 2020 together with the failure of the County to process Claimant's tolled 2014 permit application constitutes "action of a governmental entity" as defined in Florida Statutes § 70.001.

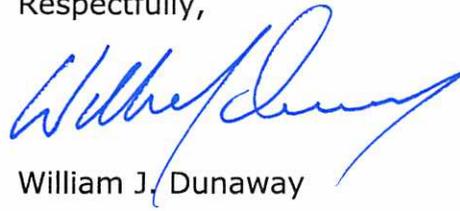
The actions of Escambia County set forth above have directly restricted or limited the use of the real property owned by Longleaf C&D Disposal Facility, Inc. such that Longleaf C&D Disposal Facility, Inc. is permanently unable to attain the reasonable investment backed expectations for the vested rights of the specific use of the real property set forth in the tolled 2014 permit application which was in full force and effect on the date of the enactment of Ordinance 2015-31.

Attached hereto as **Exhibit "J"**, is a bona fide, valid appraisal of the subject property that demonstrates the loss of fair market value to the property due to the enactment of Ordinance 2015-31 when it was first applied to the Claimant's property in 2020. The report and its models indicate an enterprise value for the facility under the pre-2015 ordinance of \$14,822,000.00 versus the enterprise value for the facility operated under the 2015 ordinance of \$10,333,000.00, a loss in value of \$4,489,000.00 to the Claimant. This difference is the result of applying Ordinance 2015-31 to the operation of the facility including the resulting loss of airspace due to increased stormwater requirement, the importation and distribution of additional cover material, installation and operation of more air monitoring, and a dramatically shorter facility life due to the loss of airspace.

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Please be governed accordingly, and take all action required pursuant to Florida Statute §70.001.

Respectfully,



William J. Dunaway

WJD/bfs
Enclosures
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