



NATURAL RESOURCES MANAGEMENT OFFICE

2725 Judge Fran Jamieson Way, Building A-219, Viera, FL 32940

TO: Local Planning Agency (LPA)

FROM: Ernest N. Brown - Director, Natural Resources Management Office

DATE: February 5, 2010

RE: Amendments to Chapter 62, Article X, Division 2 entitled Aquifer Protection – February 22, 2010 LPA Meeting

On January 26, 2010, the BOCC approved legislative intent to proceed with amendments to Chapter 62, Article X, Division 2 entitled Aquifer Protection, Attachment A.

The City of Titusville has requested the Board consider modification of the County's existing Aquifer Protection Ordinance to appropriately protect the City's water supply expansion area in northwest unincorporated Brevard County. The City has been granted a Conditional Use Permit from St. Johns River Water Management District for a series of wells along the old F.E.C. Rail Road easement in northwest Brevard. The wells will draw water directly from the Floridan Aquifer. This portion of the aquifer is open to the surficial aquifer which places the wells at risk from contamination. To obtain final approval from Department of Environmental Protection (DEP) for the use of these wells, the city of Titusville must demonstrate that there is a 100-foot radius around each well for protection from sanitary hazards as defined in the statute (62-555.312). Also in Florida Statutes is a 500-foot radius requirement that protects wells that use ground water source for a potable water well.

In that these wells are outside the city limits and under the jurisdiction of the County, the existing County ordinance is the only protective mechanism for the water supply. Upon review of the existing County Aquifer Protection ordinance, it became evident that the current ordinance does not provide sufficient protection to municipal wells as required by the DEP, Wellhead Protection rule, Chapter 62-521, F.A.C.

The County's Aquifer Protection Ordinance is proposed to be amended to protect these areas in accordance with DEP Rule, thereby facilitating the permitting of these and future municipal well systems. Currently, the ordinance primarily protects areas with highly permeable soils that recharge the surficial aquifer, like the geology found in the city of Titusville's wellfields or the Mims wellfields known as the "Area of Critical Concern" in the current ordinance. The addition of proposed wellhead protection measures would specifically address the proposed Titusville well field expansion area to meet the State requirements. The changes will not apply County-wide, as they will narrowly focus on Titusville's current need. Property owners will be notified of the proposed ordinance modifications.

The ordinance modification is of an urgent nature to the City as the project has been bid and permits for the raw water main have been issued. If ordinance revisions are not made, the City may have to acquire property for the appropriate DEP setbacks through eminent domain, resulting in significant project delay. NRMRO respectfully requests LPA consideration of the ordinance.

Att A - Proposed Aquifer Protection Ordinance; **Att B** – City of Titusville Letter

ORDINANCE 2010- ____

AN ORDINANCE OF BREVARD COUNTY, FLORIDA AMENDING CHAPTER 62, ARTICLE X, DIVISION 2, CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA RELATING TO AQUIFER PROTECTION; SPECIFICALLY AMENDING SEC. 62-3631 DEFINITIONS; AMENDING SEC. 62-3632 PURPOSE AND INTENT; AMENDING SEC. 62-3634 PRIME AQUIFER RECHARGE AREAS; AMENDING SEC. 62-3635 CLASS 1 AQUIFER RECHARGE AREAS; AMENDING SEC. 62-3636 SECONDARY AQUIFER RECHARGE AREAS; CREATING SEC. 62-3637 TYPE 3 AQUIFER RECHARGE AREAS; CREATING SEC. 62-3638 APPEALS; PROVIDING FOR RESOLUTION OF CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AREA ENCOMPASSED; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 163, Florida Statutes requires that local governments adopt or and enforce land development regulations that are consistent with and implement their comprehensive plans; and

WHEREAS, regulations for aquifer protection and potable water well fields are specifically listed as part of the comprehensive plan's required land development regulations; and

WHEREAS, the County adopted aquifer protection regulations on April 3, 1989, as an interim measure prior to adopting an aquifer management plan; and

WHEREAS, the City of Titusville is expanding their Water Resources Utility well field in North Brevard; and

WHEREAS, the City of Titusville will be constructing a well field that withdraws water from the Floridan Aquifer; and

WHEREAS, provisions to protect the aquifer are necessary to protect the public, safety, health and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA that:

SECTION 1. Sec. 62-3631 Definitions, Code of Ordinances of Brevard County, Florida is hereby amended to read as follows:

Sec. 62-3631. Definitions.

For the purpose of this division, certain terms and words pertain and are defined as follows:

Aquifer means a saturated geologic formation, group of formations or part of a formation that transmits groundwater.

Area IV Well Field means the geographic area associated with the installation of wells by the City of Titusville as generally depicted in Appendix A.

Best management practices means those practices as developed by the U.S. Department of Agriculture, the state department of agriculture or other appropriate agencies.

Borrow pit means a site, tract or parcel of land of less than 50 acres in size from or upon which earth, sand, rock or shell is excavated, and where such excavated earth, sand, rock or shell remains on the site.

~~*Class I aquifer recharge areas* means those areas which are not prime or secondary aquifer recharge areas and which have the following geophysical characteristics:~~

- ~~—— (1) — Have high permeable soils.~~
- ~~—— (2) — Are above 30 feet mean sea level~~
- ~~—— (3) — Have a potentiometric surface below the high-water table.~~

Commercial borrow pit means a site, tract or parcel of land of less than 50 acres in size from or upon which earth, sand, rock or shell is excavated, and where such excavated earth, sand, rock or shell is removed from the site.

Development activity means the construction, installation, demolition or removal of a structure, impervious surface or drainage facility; or clearing, scraping, grubbing, killing or otherwise removing the vegetation from a site; or adding, removing, exposing, excavating, leveling, grading, digging, burrowing, dumping, piling, dredging or otherwise significantly disturbing the soil, mud, sand or rock of a site.

Development order means any order granting, denying, granting with conditions or deferring an application for a development permit.

Facility means any nonresidential location or part thereof, including any structure, building, installation or equipment located thereon.

Hazardous materials means any material defined, listed, classified or

characterized as a hazardous substance, hazardous waste or toxic substance according to any of the following state or federal codes or regulations:

- (1) F.A.C. ch. 38F-41 (the Florida Substance List).
- (2) Title 40 of the Code of Federal Regulations part 261 (Identification and Listing of Hazardous Wastes).
- (3) Title 40 of the Code of Federal Regulations part 302.4 (Designation of Hazardous Substances).
- (4) Title 40 of the Code of Federal Regulations part 355, appendix A and B (Lists of Extremely Hazardous Substances).

A hazardous material includes any solution, mixture or formulation containing such materials, and also includes any material which, due to its chemical or physical characteristics, is determined by the county administrator or his designee to pose a substantial threat to the life, health or safety of persons or property or to the environment.

Highly permeable soils means soils which have a permeability rate greater than 20 inches per hour as identified by the Brevard County Soil Survey, 1974, and which exist to a depth of 60 inches through tests as determined by a certified soil scientist. A proposed testing plan shall be presented to the Soil Conservation Service for approval prior to the reevaluation of the soils.

Impervious surface means a surface which has been compacted or covered with a layer of material so that it is highly resistant to infiltration by water. It includes semipervious surfaces such as compacted clay, as well as most conventionally surfaced streets, roofs, sidewalks, parking lots and other similar surfaces.

Mining operations means the excavation of solid minerals, including but not limited to clay, gravel, phosphate, lime, shell and shells (excluding live shellfish), stone and sand from any mine, quarry, pit or other real property that is greater than 50 acres in size.

Prime aquifer recharge wellhead protection areas means those areas which have one of the following land use characteristics:

- ~~(1) Prime aquifer recharge areas means those areas which are not class I or secondary aquifer recharge areas and which have the following geophysical characteristics:~~

- ~~_____ a. Have highly permeable soils.~~
- ~~_____ b. Are above 30 feet mean sea level.~~

- ~~_____ c. _____ Have a potentiometric surface below the high water table~~
- ~~_____ (2) _____ These areas must also have at least one of the following land use characteristics:~~
 - ~~a(1):- Within the city of Titusville's Area of Critical Concern.~~
 - ~~b(2):- Within 500 feet of a public water supply well.~~
 - ~~c(3):- Within the boundaries of a development plan that proposes a public water supply well.~~
- _____ (4) _____ Within the Area IV Well Field.

Public means pertinent to or serving the people.

Public water supply well means a well constructed or identified for construction under a consumptive use permit for the purpose of providing potable water for general use which serves at least 250 people on a daily basis or has a minimum of 100 service connections. Public water supplies may be either publicly or privately owned.

Recharge characteristics means the capability of a property, prior to any alterations, to transmit groundwater based upon the elevation, slope, compaction and type of soils.

Release means any sudden or gradual spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of hazardous materials, including the abandonment or discarding of barrels, containers and other receptacles containing any hazardous materials, into the environment, in such a manner as to endanger the public health, safety or welfare or the environment, or in violation of any federal, state or local law, rule or regulation.

Remedy means those actions consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release, to prevent or minimize the release of hazardous materials so that they do not migrate to cause substantial danger to present or future public health, safety or welfare or the environment. The term includes but is not limited to such action at the location of the release as storage, confinement, perimeter protection using dikes, trenches or ditches, clay cover, neutralization, cleanup of released hazardous materials or contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, and any monitoring reasonably required to ensure that such actions protect the public health, safety and welfare and the environment.

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Remove means the cleanup or removal of released hazardous materials from the environment, including such actions as it may be necessary to take in the event of the threat of a release, such actions as may be necessary to monitor, assess and evaluate the release or threat of a release, the transportation, storage and disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize or mitigate damage to the public health, safety or welfare or to the environment which may otherwise result from a release or threat of release. The term includes, in addition, but is not limited to the following: security fencing or other measures to limit access, provision of alternative water supplies, and temporary evacuation and housing of threatened individuals not otherwise provided for.

~~*Secondary recharge areas* means those areas which are not class I or prime aquifer recharge areas and which have highly permeable soils.~~

Solid wastes means sludge from a waste treatment works, water supply treatment plant or air pollution control facility, or garbage, rubbish, refuse or other discarded material, including solid, liquid, semisolid or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural or governmental operations.

Storage system means a storage tank and all associated integral piping.

Storage tank means an enclosed stationary device which is constructed primarily of nonearthen materials (e.g., metal, concrete, plastic or glass) and which is designed for the primary purpose of storing pollutants.

Threshold amount. The following threshold amounts refer to aggregate totals of liquid and solid hazardous materials and include any combination of liquids and solids. For purposes of this division, one gallon of liquid hazardous materials shall be considered equivalent to ten pounds of solid hazardous material.

- (1) ~~Prime Type 1 and class I Type 2~~ recharge areas: Five gallons of liquid or 50 pounds of solid.
- (2) ~~Secondary Type 3~~ recharge areas: Any hazardous material listed in title 40 of the Code of Federal Regulations part 355, appendix A and B (Lists of Extremely Hazardous Substances) which exists at the facility in quantities greater than the threshold planning quantity.

Threshold planning quantity means those amounts of hazardous materials defined in title 40 of the Code of Federal Regulations part 355, appendix A and B (Lists of Extremely Hazardous Substances).

Type 1 Aquifer Recharge Areas means those areas that have highly permeable soils and are within the City of Titusville's Area of Critical Concern, or are within five hundred (500) feet of a public water supply well or within the

boundaries of a development that proposes a public water supply well provided that this area serves to recharge the aquifer from which the well draws.

Type 2 Aquifer Recharge Areas means those areas that have highly permeable soils, are not classified as Type 1 aquifer recharge areas and are above 30 feet mean sea level (NGVD 1929).

Type 3 Aquifer Recharge Areas means those areas that have highly permeable soils, are below 30 feet mean sea level (NGVD 1929) and have highly permeable soils.

SECTION 2. Sec. 62-3632, Purpose and intent, Code of Ordinances of Brevard County, Florida is hereby amended to read as follows:

Sec. 62-3632. Purpose and intent.

It is the purpose and intent of this division to maintain the surficial aquifer system by protecting the function of designated aquifer recharge areas. Current and future water supply demands upon the surficial aquifer system can be protected by maintaining predevelopment groundwater levels, topographic elevations and high recharge rates, as well as restricting or prohibiting the presence of hazardous materials within recharge areas. It is also the intent of this division to designate prime wellhead protection, Type 1 aquifer recharge areas and ~~class I~~ Type 2 aquifer recharge areas as environmentally sensitive areas, and the regulations set out in this division shall apply for the protection of these areas. In addition, these regulations shall also apply to ~~secondary~~ Type 3 aquifer recharge areas. Standards found within this division shall apply to any person, firm, organization or agency constructing septic tanks, undertaking agriculture or forestry operations not utilizing best management practices, undertaking mining operations or construction of private lakes, or undertaking any development project, as well as facilities which receive, store or use solid wastes or hazardous materials.

SECTION 3. Sec. 62-3634. Prime aquifer recharge areas, Code of Ordinances of Brevard County, Florida is hereby amended to read as follows:

Sec. 62-3634. Prime wellhead protection aquifer recharge areas.

The following regulations shall apply to prime wellhead protection aquifer recharge areas:

- (1) There shall be no abandonment, land-spreading or other release of a hazardous material, or soil, sand or debris containing hazardous materials, on or into the land, surface water or groundwater, or into any drain or conveyance leading to the land, surface water or groundwater.
- (2) New facilities which store, handle or use hazardous materials shall be prohibited after April 3, 1989.
- (3) Underground storage tanks shall be prohibited.

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- (4) Solid waste disposal activities shall be prohibited.
- (5) The maximum septic tank density shall be one black water tank and one gray water tank, or one combined tank, per acre.
- ~~(6) The maximum impervious surface shall be 25 percent of the recharge area on the site.~~
- (76) Commercial borrow pits, borrow pits, mining operations and private lakes as described in Article XIII, Division 5, of this chapter shall be prohibited.
- (87) Land alteration in conjunction with development shall not significantly alter the recharge or storage characteristics of the area, including the removal of high-permeability soils or replacement with lower permeability soils.
- (98) No person may cut, fill, grade or in any other manner alter the natural topography of a piece of property without an approved development order.
- ~~(409)~~ Any person desiring to cut, fill, grade or in any other manner alter the natural topography of a piece of property, which alteration is incidental to and necessary for the development of an otherwise approved project, development or subdivision, shall have an approved development plan which is consistent with the requirements of this section.
- (10) Wellhead installation in the Area IV Well Field shall meet the protective measures identified in Chapter 62-521.400 F.A.C.

SECTION 4. Sec. 62-3635. Class I recharge areas, Code of Ordinances of Brevard County, Florida is hereby amended to read as follows:

Sec. 62-3635. Class I Type 1 aquifer recharge areas.

The following regulations shall apply to the ~~class I~~ Type 1 aquifer recharge areas:

- (1) There shall be no abandonment, land-spreading or other release of a hazardous material, or soil, sand or debris containing hazardous materials, on or into the land, surface water or groundwater, or into any drain or conveyance leading to the land, surface water or groundwater. The regulations found in section 62-3634(1) and (2) shall apply in class I recharge areas.
- ~~(2)~~ New facilities which store, handle or use hazardous materials shall be prohibited after April 3, 1989.
- (23) Underground storage tanks shall be prohibited. Solid waste disposal activities shall be prohibited.
- ~~(4)~~ Solid waste disposal activities shall be prohibited.

- (5) The maximum septic tank density shall be one black water tank and one gray water tank, or one combined tank, per acre.
- (36) The maximum impervious surface shall be ~~35~~25 percent of the ~~class 1~~Type 1 recharge area on the site.
- (47) Commercial borrow pits, borrow pits, mining operations and private lakes as described in article XIII, division 5, of this chapter shall be prohibited.
- (58) Land alteration in conjunction with development, including site preparation, shall not significantly alter the recharge or storage characteristics of the area. ~~This, including~~es the removal of high-permeability soils or replacement with lower-permeability soils.
- (69) No person may cut, fill, grade or in any other manner alter the natural topography of a piece of property without an approved development order.
- (710) Any person desiring to cut, fill, grade or in any other manner alter the natural topography of a piece of property, which alteration is incidental to and necessary for the development of an otherwise approved project, development or subdivision, shall have an approved development plan which is consistent with the requirements of this section.

SECTION 5. Sec. 62-3636. Secondary recharge areas, Code of Ordinances of Brevard County, Florida is hereby amended to read as follows

Sec. 62-3636. Type 2 secondary aquifer recharge areas.

The following regulations shall apply to the ~~secondary~~Type 2 aquifer recharge areas:

- (1) The regulations found in section 62-3635(1) and (2) shall apply in type 2 recharge areas.
~~There shall be no abandonment, land-spreading or other release of a hazardous material, or soil, sand or debris containing hazardous materials, on or into the land, surface water or groundwater, or into any drain or conveyance leading to the land, surface water or groundwater.~~

(2) Solid waste disposal activities shall be prohibited.

(3) The maximum impervious surface shall be 35 percent of the Type 2 aquifer recharge area on the site.

(4) Commercial borrow pits, borrow pits, mining operations and private

lakes shall be prohibited.

- ~~(5) Land alteration in conjunction with development, including site preparation, shall not significantly alter the recharge or storage characteristics of the area. This includes the removal of high-permeability soils or replacement with lower-permeability soils.~~
- ~~(6) No person may cut, fill, grade or in any other manner alter the natural topography of a piece of property without an approved development order.~~
- ~~(7) Any person desiring to cut, fill, grade or in any other manner alter the natural topography of a piece of property, which alteration is incidental to and necessary for the development of an otherwise approved project, development or subdivision, shall have an approved development plan which is consistent with the requirements of this section.~~
- ~~(2) New facilities which store, handle or use hazardous materials in excess of the threshold amount shall be prohibited after April 3, 1989.~~
- ~~(3) If there is local use from private wells, including irrigation wells, the maximum impervious surface shall be 45 percent of the secondary recharge area on the site, unless the developer can document that the proposed development will not decrease the recharge potential of the site. The use of porous concrete, reuse water and other methods that a certified engineer can use to demonstrate that the proposed development will not decrease the recharge potential of the site will be acceptable to meet the intent of this requirement. Any area which is within a designated wastewater reuse area as outlined in chapter 110, article IV, or utilizing 100 percent reuse water for irrigation as agreed to by the applicant and the county, shall be exempt from this maximum impervious surface requirement. This shall include agreements entered into with the county prior to April 3, 1989. The natural resources management division shall accept the use of porous concrete in secondary aquifer recharge areas if the following criteria are met:
 - ~~a. Certification that the ground was properly prepared prior to installation of the porous concrete and that the surface permeability of the soil was not reduced below 20 inches per hour shall be provided.~~
 - ~~b. Certification that the porous concrete was properly mixed and installed and that the permeability rate meets or exceeds manufacturer's specifications shall be provided.~~~~

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- ~~c. A binding agreement shall be provided that required maintenance (vacuuming or other appropriate maintenance activity) shall be done at intervals recommended by the manufacturer. Such agreement must be in recordable form and in the public records, identifying all provisions of the criteria set out in subsections (3)c and (3)d of this section.~~
- ~~d. Six-month permeability test results shall be submitted to the natural resources management division for review. The test results must specify the type of test performed, demonstrate that permeability has been maintained, and be certified by a registered Florida engineer.~~
- ~~e. A one-year performance bond shall be required relating to the proper construction of the porous concrete area.~~
- ~~f. Written approval from the natural resources management division shall be required prior to the undertaking of any modification, such as but not limited to repaving, resurfacing, enlargement or reduction, of the porous concrete area.~~
- ~~g. Additional requirements may be placed upon the developer with regard to porous concrete depending upon specific site and local area conditions. The natural resources management division shall consider properly installed and maintained porous concrete to be 55 percent pervious for the purposes of site plan review.~~
- ~~(4) If there is not local use from private wells, the natural resources management division shall review the proposed project during the site plan or development approval process, and may waive the 45 percent impervious surface requirement.~~
- ~~(5) No person may cut, fill, grade or in any other manner alter the natural topography of a piece of property without an approved development order.~~
- ~~(6) Any person desiring to cut, fill, grade or in any other manner alter the natural topography of a piece of property, which alteration is incidental to and necessary for the development of an otherwise approved project, development or subdivision, shall have an approved development plan which is consistent with the requirements of this section.~~
- (7) An applicant can show that the area does not function as a secondary aquifer recharge area by providing additional information about the hydrogeologic conditions on the site.

SECTION 6. Sec. 62-3637. Type 3 aquifer recharge areas, Code of Ordinances of Brevard County, Florida is hereby created as follows:

Sec. 62-3637. Type 3 aquifer recharge areas.

The following regulations shall apply to Type 3 recharge areas:

- (1) There shall be no abandonment, land-spreading or other release of a hazardous material, or soil, sand or debris containing hazardous materials, on or into the land, surface water or groundwater, or into any drain or conveyance leading to the land, surface water or groundwater.
- (2) New facilities which store, handle or use hazardous materials in excess of the threshold amount shall be prohibited after April 3, 1989.
- (3) If there is local use from private wells, including irrigation wells, the maximum impervious surface shall be 45 percent of the type 3 aquifer recharge area on the site, unless the developer can document that the proposed development will not decrease the recharge potential of the site. The use of porous concrete, reuse water and other methods that a certified engineer can use to demonstrate that the proposed development will not decrease the recharge potential of the site will be acceptable to meet the intent of this requirement. Any area which is within a designated wastewater reuse area as outlined in chapter 110, article IV, or utilizing 100 percent reuse water for irrigation as agreed to by the applicant and the county, shall be exempt from this maximum impervious surface requirement. This shall include agreements entered into with the county prior to April 3, 1989. The natural resources management office shall accept the use of porous concrete in secondary type 3 aquifer recharge areas if the following criteria are met:
 - a. Certification that the ground was properly prepared prior to installation of the porous concrete and that the surface permeability of the soil was not reduced below 20 inches per hour shall be provided.
 - b. Certification that the porous concrete was properly mixed and installed and that the permeability rate meets or exceeds manufacturer's specifications shall be provided.
 - c. A binding agreement shall be provided that required maintenance (vacuuming or other appropriate maintenance activity) shall be done at intervals recommended by the

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manufacturer. Such agreement must be in recordable form and in the public records, identifying all provisions of the criteria set out in subsections (3)c and (3)d of this section.

- d. Six-month permeability test results shall be submitted to the natural resources management office for review. The test results must specify the type of test performed, demonstrate that permeability has been maintained, and be certified by a registered Florida engineer.
 - e. A one-year performance bond shall be required relating to the proper construction of the porous concrete area.
 - f. Written approval from the natural resources management office shall be required prior to the undertaking of any modification, such as but not limited to repaving, resurfacing, enlargement or reduction, of the porous concrete area.
 - g. Additional requirements may be placed upon the developer with regard to porous concrete depending upon specific site and local area conditions. The natural resources management office shall consider properly installed and maintained porous concrete to be 55 percent pervious for the purposes of site plan review.
- (4) If there is not local use from private wells, the natural resources management office shall review the proposed project during the site plan or development approval process, and may waive the 45 percent impervious surface requirement.
 - (5) No person may cut, fill, grade or in any other manner alter the natural topography of a piece of property without an approved development order.
 - (6) Any person desiring to cut, fill, grade or in any other manner alter the natural topography of a piece of property, which alteration is incidental to and necessary for the development of an otherwise approved project, development or subdivision, shall have an approved development plan which is consistent with the requirements of this section.
 - (7) An applicant can show that the area does not function as a type 3 aquifer recharge area by providing additional information about the hydrogeologic conditions on the site.

SECTION 7. Sec. 62-3638. Appeals, Code of Ordinances of Brevard County, Florida is hereby created as follows:

Sec. 62-3638. Appeals.

Appeal procedures shall be the same procedures as specified in section 62-507.

SECTION 8. CONFLICTING PROVISIONS. In the case of a direct conflict between any provision of this ordinance and a portion or provision of any other appropriate federal, state or county law, rule, code or regulations, the more restrictive shall apply.

SECTION 9. SEVERABILITY. If any section, subsection, clause, phrase, word or provision of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such invalid unconstitutional portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance, provided the remaining portions effectuate purpose and intent of this ordinance.

SECTION 10. AREA ENCOMPASSED. This ordinance shall take effect within the unincorporated area of Brevard County, Florida.

SECTION 11. EFFECTIVE DATE. This ordinance shall become effective upon filing as provided by law. A certified copy of the ordinance shall be filed with the Office of the Secretary of State, State of Florida, within ten days of enactment.

DONE, ORDERED AND ADOPTED in Regular Session, this ____ day of _____, 2010

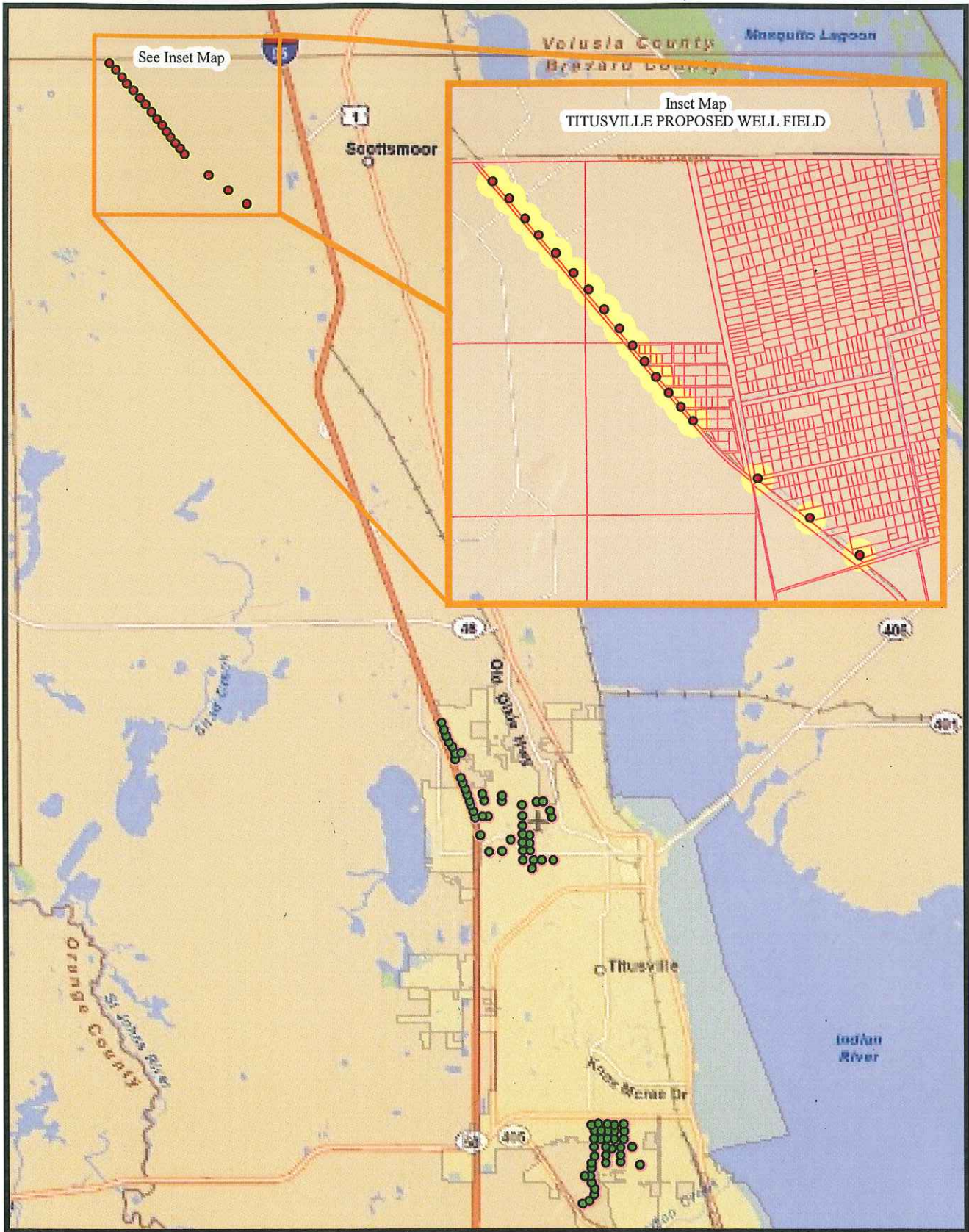
ATTEST
COMMISSIONERS

BOARD OF COUNTY
OF BREVARD COUNTY, FLORIDA

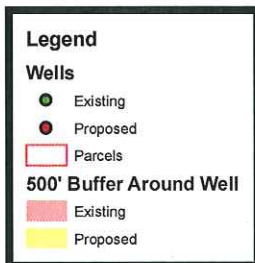
Scott Ellis, Clerk of the Court

Mary Bolin, Chairman
As approved by the Board of County Commissioners
on _____, 2010.

APPENDIX A: AREA IV WELL FIELD



January 21, 2010



City of Titusville

WATER RESOURCES DEPARTMENT
2836 GARDEN STREET
TITUSVILLE, FL 32796



TEL: (321) 383-5650
FAX: (321) 383-5653

December 29, 2009

Ernest N. Brown, Director
Brevard County
Natural Resources Management Office
2725 Judge Fran Jamieson Way
Viera, FL 32940

Re: Brevard County Aquifer Protection Ordinance—Area IV Well Field

Dear Mr. Brown,

The City of Titusville has been working toward implementation of the Area IV Well Field in northwest Brevard County for a number of years. The project encompasses a well field and raw water transmission main installed within the former FEC Railway corridor; this corridor is now owned by the Florida Department of Environmental Protection (FDEP) as part of its rails-to-trails program.

The raw water main portion of the project is currently out to bid and bids are to be opened on December 30, with bid award anticipated on January 12, 2010. FDEP construction permits for the raw water main have been issued and Brevard County permits have been approved. The well field portion of the project is currently in the permitting phase and adoption of the proposed revisions to the Brevard County aquifer protection ordinance will enable this permitting to proceed. If the ordinance revisions are not adopted the project will experience significant delays and the City will be left with little choice but to acquire private property, by eminent domain if necessary, to meet the FDEP setback requirements. Also, as discussed, this ordinance revision will result in enhanced protection throughout the county for all public water supply resources.

We look forward to working with you and your department on the aquifer protection ordinance so that the City can secure a public water supply resource for its current and future customers without delay.

Please let us know when the aquifer protection ordinance will be presented to the Board of County Commissioners so that we may participate as appropriate.

Sincerely,

Raynetta Curry Grant, P.E.
Water Resources Director

C: John Peterson, Water Resources Manager

"A City of Service"

RECEIVED

DEC 30 2009

BREVARD COUNTY
NATURAL RESOURCES MGMT