

Alachua County Office of Management and Budget

Suzanne L. Gable, CPA
John D. Johnson

Director
Grants/Contracts Administrator

March 16, 2011

City of Gainesville
Nicolle Shalley, Sr. Assistant City Attorney
P.O. Box 46
Gainesville, Florida 32602

RE: Settlement Agreement and Consent Order for the Application of Biosolids

Dear Ms. Shalley:

Enclosed is the fully-executed original document for the above referenced item approved by the Board of County Commissioners on February 22, 2011.

Thank you for your assistance. If you have any questions, please feel free to contact David Schwartz @ 374-5218.

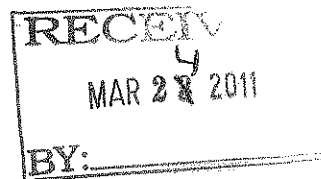
Sincerely,

John Johnson by Jana Powell

John Johnson, Grants/Contracts Administrator
Office of Management and Budget

Enclosures

JDJ/jcp



**SETTLEMENT AGREEMENT AND CONSENT ORDER
BETWEEN ALACHUA COUNTY AND THE CITY OF GAINESVILLE
FOR THE APPLICATION OF BIOSOLIDS**

This Settlement Agreement and Consent Order ("Agreement") is entered into this 22nd day of February, 2011 ("Effective Date"), by and between **ALACHUA COUNTY**, a charter county and political subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as "County," and the **CITY OF GAINESVILLE**, a municipal corporation of the State of Florida, by and through its City Commission, hereinafter referred to as "City," as a complete and final settlement and resolution of the matters set forth herein.

RECITALS

WHEREAS, the City operates a regional water and wastewater utility under the business name of Gainesville Regional Utilities (GRU) that serves the City, portions of the unincorporated area of the County, the University of Florida, the cities of Hawthorne, Waldo and High Springs as well as treating waste activated sludge from private wastewater operations. As part of its wastewater utility, GRU operates water reclamation facilities that create two products that are beneficially re-used (or recycled) in the community: reclaimed water used primarily for irrigation and industrial processes; and biosolids which are land applied as an organic fertilizer for the growing of agricultural crops and grasses; and

WHEREAS, since 1981, the City has been applying biosolids on a rotational basis on the Whistling Pines Ranch, an approximately 1300 acre farm in the westernmost portion of Alachua County consisting of tax parcels 05094-000-000, 05104-000-000, 02715-000-000, 04670-002-000, and 05093-002-000 ("Property"). An aerial of the Property is attached as Exhibit A. Since 1999, it has been the City's exclusive site for application of Class A and B biosolids (hereinafter "Biosolids"), as defined in state law (Rule 62-640, F.A.C.) and the County's Uniform Land Development Code (hereinafter the "ULDC") (Chapter 410, Article III. Defined Terms). This Biosolids land application use has been in continuous operation and legally permitted, monitored and inspected in accordance with all required federal and state regulations; and

WHEREAS, in 2007, the City entered into a contract to purchase the Property to ensure its continued availability for the land application of Biosolids. In conducting its due diligence as a purchaser, the City reviewed the County's Uniform Land Development Code ("ULDC") and found that a January 2006 amendment to the ULDC included a new Section 406.70(f) which provides in part "*All proposed sites for land application of biosolids shall require a special exception*". The City did not believe that the amendment applied to its use of the Property; the City believed the Property was not a "proposed site" but an existing site that has been in continuous use for approximately 25 years. It was and is the City's position that its use is a legal non-conforming use. The City further relies on Section 408.04 of the 2006 amendment which states "*any non-conformity that existed on January 30, 2006, may be continued in accordance with the provisions of this article;*" and

WHEREAS, the County Planning staff responded to the City with its opinion that a special exception is required for the Property because Section 408.14 of the 2006 amendment is applicable to the use. That section reads as follows: “[T]he following nonconforming uses of land, not contained within principal buildings, including but not limited to open storage; building supplies; vehicle, implement and machinery storage, either on the same lot or on another lot with a plant, factory or sales facility; junkyards; kennels; commercial dairies that did not exist prior to October 2, 1991; commercial animal raising and similar uses shall comply with this ULDC or be discontinued within 18 months following notice by the county unless determined to be vested under the provisions of chapter 402, article XXVII, Vested Rights, of this ULDC. Any open use of land that becomes nonconforming because of subsequent amendments to this ULDC shall also comply with this ULDC or be discontinued within 18 months of the effective date of the amendment that renders the use nonconforming following notice by the county;” and

WHEREAS, it is the City’s position that Section 408.14 does not apply because the City’s use is not one of the uses listed in Section 408.14, and the City believes the use of the Property is not similar to the uses listed in Section 408.14. Further, even if the City’s use was one of the listed uses or a similar use, the ULDC exempts those uses if they were “vested,” which the City believes its Biosolids use to be, having been legally permitted by the state and in continuous operation with the knowledge of the County for over 25 years; and

WHEREAS, to further intergovernmental cooperation, the City filed for a special exception, even though it continued to be of the opinion that it was not required to do so by the ULDC; and

WHEREAS, the County’s Comprehensive Plan and land development regulations recognize that Biosolids may be disposed of through land application. Biosolids are land applied to the Property under permits issued by the Florida Department of Environmental Protection (FDEP) under state and federal regulations and the Property is inspected by the FDEP; and

WHEREAS, each party recognizes that the City has withdrawn its application for special exception for land application of Biosolids on the Property and unless the parties are able to reach agreement on the applicability of the special exception requirements at this time, code enforcement action and litigation will result. The parties wish to avoid the expense, delay and uncertainty of lengthy litigation and to resolve their dispute under the terms set forth in this Agreement, and agree it is in their respective mutual best interests to do so; and

WHEREAS, Section 409.04, ULDC, provides for the County to enter into consent orders to settle code violations, either before or after initiating formal enforcement action.

NOW THEREFORE, in consideration of the mutual covenants and promises contained in this Agreement, and in consideration of the benefits to accrue to each of the parties, the receipt and sufficiency of which are hereby acknowledged, the parties represent and agree as follows:

1. The above stated Recitals comprise a material part of this Agreement and are incorporated herein by reference.

2. The City, in the course of its operation of Gainesville Regional Utilities, shall be allowed to continue to land apply Biosolids on the Property during the amortization period that concludes five years from the Effective Date. After such date, the City's land application of Biosolids on the Property shall cease.

3. In the course of operations during the amortization period, the City shall comply with the following terms:

a. There shall be a 75 foot wide setback along the perimeter of the Property, and a 75 foot wide setback around any onsite jurisdictional wetland on the Property, within which the land application of Biosolids shall be prohibited.

b. The City shall perform groundwater monitoring in accordance with the Groundwater Monitoring Plan attached hereto as Exhibit B.

c. The City shall not apply or disk Biosolids during rain events that cause ponding or sheet flow, when ponding exists, or when surface soils are saturated, and will comply with the Best Management Practice for Windy Days attached hereto as Exhibit C.

d. A copy of any required annual reports to the USEPA or FDEP shall be provided to the Alachua County Environmental Protection Department.

4. The City and County each agree not to file any lawsuit or claim of any kind against the other, or their respective elected or appointed officers, agents, or employees arising out of facts or circumstances regarding existing or past disputes between the City and County as to land application of Biosolids on the Property.

5. The parties enter into this Agreement in a spirit of cooperation for the purpose of avoiding costly, lengthy and unnecessary litigation to the detriment of their respective taxpayers and ratepayers and in the recognition of the desire for the speedy and reasonable resolution of disputes arising out of or related to the issues described herein. It is in the intent of the parties that this Agreement resolve fully and finally all issues between the parties that were, or could have been, litigated concerning the requirement for the City to obtain a special exception for the land application of Biosolids on the Property.

6. The parties' acceptance of this Agreement is part of a negotiated settlement involving many factual and legal issues that are specific to this use and this site and this Settlement Agreement and Consent Order is not an endorsement of, and does not establish a precedent for, the use of such agreement in any other circumstances or by any other party.

7. This Agreement has been approved by the governing body of each party at a duly noticed public meeting.

8. Nothing in this Agreement shall be deemed to affect the rights of any person not a party to this Agreement. This Agreement is not intended to benefit any third party.

9. Each party to this Agreement is deemed to have participated in its drafting. In the event of any ambiguity in the terms of this Agreement, the parties agree that such ambiguity shall be construed without regard to which of the parties drafted the provision in question. Each party shall bear its own costs, including attorneys' fees, incurred in connection with the preparation and review of this Agreement.

10. In the event legal action becomes necessary to enforce this Agreement, the laws of Florida will control. Venue is in Alachua County, Florida.

11. This Agreement embodies the entire understanding of the parties in this regard and there are no other agreements or understandings, written or oral, in effect between the parties, relating to the same subject matter. This instrument may be amended or modified only by an instrument of equal formality signed by both parties.

12. This Agreement shall become effective upon approval and execution of this Agreement by both parties.

13. Failure by either party at any time to require performance by the other party of any provision of this Agreement shall not be deemed a continuing waiver of that provision, or a waiver of any other provision of this Agreement.

14. If any Section, subsection, paragraph, sentence, clause or phrase of this Agreement shall be or become illegal, null or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null, void; the remaining Sections, subsections, paragraphs, sentences, clauses or phrases will continue to remain in full force and effect irrespective of the fact that any one or more of the Sections, subsections, paragraphs, sentences, clauses or phrases shall become illegal, null or void.

15. Except as otherwise provided herein, any notice, acceptance, request, or approval from either party to the other party shall be in writing and sent by certified mail, return receipt requested, and shall be deemed to have been received when either deposited in a United States Postal Service mailbox or personally delivered with signed proof of delivery.

The parties' representatives are:

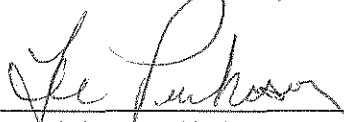
County: Randall Reid
 County Manager
 Post Office Drawer 2877
 Gainesville, FL 32602

City: Robert Hunzinger
 General Manager for Utilities
 Gainesville Regional Utilities
 P.O. Box 147051, Station A134
 Gainesville, FL 32601-7051

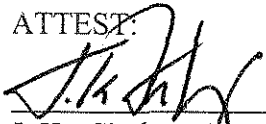
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officials.

ALACHUA COUNTY:

ALACHUA COUNTY, FLORIDA

By: 
Lee Pinkoson, Chair
Board of County Commissioners

ATTEST:

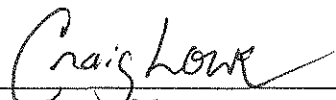

J. K., Clerk
(SEAL)

APPROVED AS TO FORM



Alachua County Attorney

CITY OF GAINESVILLE:

CITY OF GAINESVILLE

By: 
Craig Lowe, Mayor

ATTEST:


Kurt Lannon, Clerk
(SEAL)

APPROVED AS TO FORM


Gainesville City Attorney

FEB 17 2011

EXHIBIT A to Settlement Agreement and Consent Order

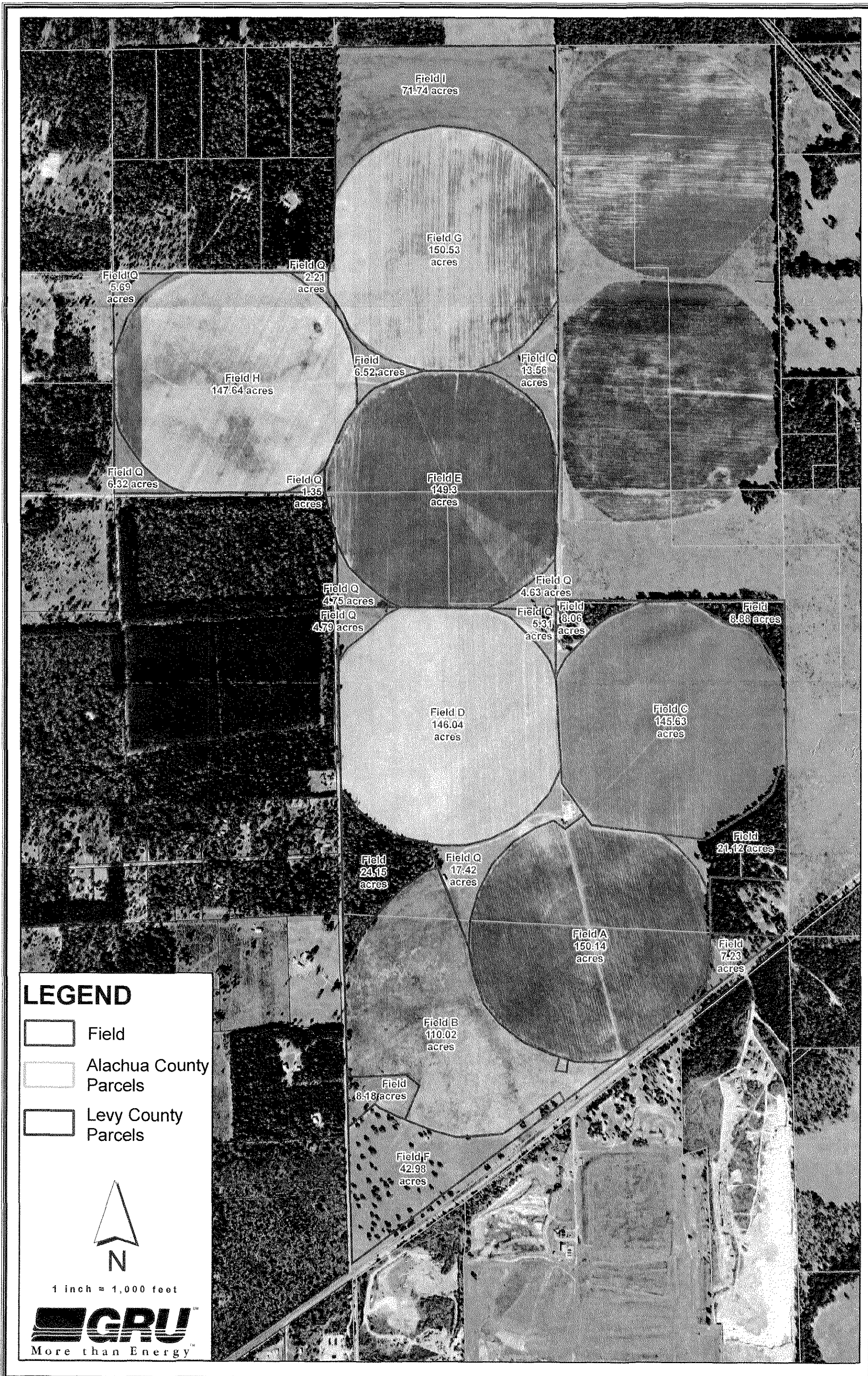


EXHIBIT B Whistling Pines Groundwater Monitoring Plan

On-Site Well Sampling Parameters and Wells to be Sampled by GRU

Sampling for the following water quality parameters shall be performed on an annual basis in the second quarter of the year while the wells are being used on a regular basis for irrigation purposes:

Groundwater elevation ⁽¹⁾	TKN	Lead ⁽²⁾
pH ⁽¹⁾	Fecal Coliform	Mercury ⁽²⁾
Conductivity ⁽¹⁾	Total Phosphorus	Molybdenum ⁽²⁾
Temperature ⁽¹⁾	Potassium	Nickel ⁽²⁾
Turbidity ⁽¹⁾	Arsenic ⁽²⁾	Selenium ⁽²⁾
Dissolved Oxygen ⁽¹⁾	Cadmium ⁽²⁾	Zinc ⁽²⁾
Nitrates	Copper ⁽²⁾	

⁽¹⁾ Field parameter

⁽²⁾ EPA Rule 40 CFR, Part 503 -- Standards for the Use or Disposal of Sewage Sludge, §503.13 -- Pollutant Limits

On-site Wells to be Sampled

<u>Well I.D.</u>	<u>Location⁽³⁾</u>
Well #1	N 29° 31' 36.03726" / W 82° 32' 53.56938"
Well #5	N 29° 32' 29.66020" / W 82° 33' 11.36526"
Well #6 ⁽⁴⁾	N 29° 32' 28.74795" / W 82° 33' 15.55636"
Silo Well	N 29° 31' 59.05308" / W 82° 32' 54.78257"

⁽³⁾ Location Map of On-site Wells

⁽⁴⁾ Well will be sampled as field conditions allow

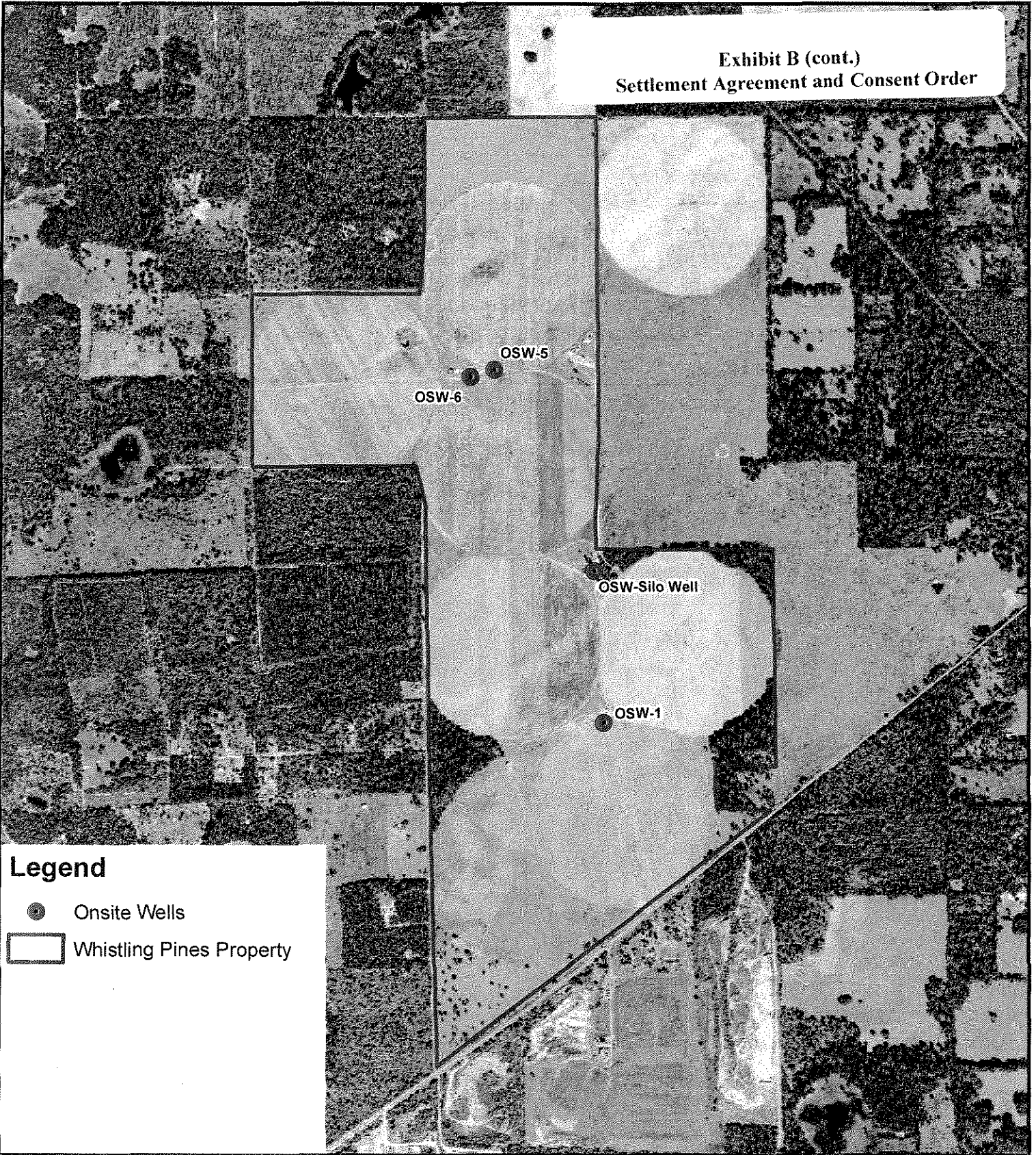
Off-site Well Sampling Parameters and Wells to be Sampled by the Alachua County Health Department⁽⁵⁾

GRU will provide funding for sampling of the following off-site private wells that are considered to be located potentiometrically downstream of Whistling Pines Ranch:

Wells to be sampled annually basis for fecal coliform, and nitrates	Wells to be sampled in years 2014 and 2016 for primary metals
AAE 6051	AAE 9753
AAE 6052	AAE 9756
AAE 9752	AAJ 3863
AAE 9753	
AAE 9756	
AAE 9757	
AAJ 3803	
AAJ 3863	

⁽⁵⁾ GRU will reimburse the Health Department for the sampling as specified herein.

Exhibit B (cont.)
Settlement Agreement and Consent Order



Legend

- Onsite Wells
- Whistling Pines Property



Gainesville Regional Utilities has prepared the information depicted on this map for its own use. It is not intended to be, nor should it be relied upon by others for any other purpose. Gainesville Regional Utilities assumes no responsibility for errors or omissions in the information on this map. Further information may

Whistling Pines Ranch
Groundwater Monitoring Plan
February 22, 2011



1 inch = 2,000 feet

EXHIBIT C
to Settlement Agreement and Consent Order

Best Management Practice for Windy Days

In order to minimize the production of nuisance fugitive dust emissions PM₁₀, farm operator shall consider wind direction and speed when applying biosolids, or performing disking operations. Biosolids application and disking operations shall be avoided when wind speeds are greater than twenty-five (25) miles per hour and in a direction of near-by residential properties.

Wind speed shall be determined by either:

1. On-site anemometer registers either a continuous wind, or at least two (2) wind gusts within a consecutive thirty (30) minute period, in excess of twenty-five (25) miles per hour. Wind speeds shall be deemed to be below twenty-five (25) miles per hour if there is no continuous wind, or recurring wind gusts within two (2) consecutive (30) minute periods, in excess of twenty-five (25) miles per hour; or
2. If an on-site anemometer is not available, when the National Weather Service has determined that meteorological conditions are such that wind speeds in excess of twenty (25) miles per hour are forecast to occur in the general area of the farm for that day. This condition shall apply to that portion of the day for which the forecast is valid.

Wind direction shall be determined by either a wind vane(s) or sock(s) displayed in such a fashion that the farm operator can easily determine prevailing wind direction.