

ORDINANCE NO. 272

AN ORDINANCE PROVIDING FOR THE REGULATION AND RESTRICTION OF WELLS IN CERTAIN AREAS OF THE CITY, BY ADDING ARTICLE V, REGULATION AND RESTRICTIONS OF WELLS TO CHAPTER 16 OF THE KINGSFORD CITY CODE.

The City of Kingsford Ordains:

Section 16-131: PURPOSES. The purposes of this Ordinance are i) to provide for the protection of the public health, safety, and welfare in connection with the use of groundwater within the Restricted Zone in the City of Kingsford, ii) to prevent exposure of Persons to groundwater Contamination in the Restricted Zone which exceeds applicable state or federal criteria; iii) to prevent exposure of Persons to methane or methane accumulations in the Restricted Zone above applicable state or federal criteria, and iv) to prevent the capture, exacerbation, spreading or migration of hazardous substances (which exceed applicable state or federal criteria) in groundwater in the Restricted Zone by the installation and use of Wells, as defined below.

Section 16-132: DEFINITIONS. When used in this Ordinance, the following terms shall have the meanings set forth below:

(a) "Contaminated" or "Contamination" means hazardous substances in concentrations in groundwater within the Restricted Zone that exceed any residential drinking water criteria established by the Michigan Department of Environment Quality (MDEQ) in rules pursuant to Part 201, Environmental Remediation, or Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.

(b) "MDEQ" means the Michigan Department of Environment Quality or its successor agency.

(c) "Included Premises" shall mean a parcel of property any part of which is located within the Restricted Zone.

(d) "Person" means any individual, partnership, corporation, association, club, joint venture, estate, trust, and any other group or combination acting as a unit.

(e) "Restricted Zone" shall mean an area described as follows:

All that area lying in Sections One (1), Two (2), Eleven (11) and Twelve (12), Town 39 North, Range 31 West, City of Kingsford, County of Dickinson, Michigan, described as the following:

Beginning at a point approximately 353 feet west of the centerline intersection of North Pyle Drive with Woodward Avenue; thence south to the intersection with the Menominee River; thence southeasterly, south, southeasterly, and east meandering along the northerly shoreline of the Menominee

River until an intersection of the north bank of the Menominee River with the east side of Balsam Street projected to the Menominee River; thence north along the east of Balsam Street to the southeast corner of the intersection of Balsam Street with Hoadley Avenue; thence east along the southern side of Hoadley Avenue to the southeast corner of the intersection of Hoadley Avenue with Fox Drive; thence northeast along the east side of Fox Drive to the intersection of Fox Drive with Hooper Street; thence north along the centerline of Hooper Street to the intersection of Hooper Street with East Boulevard; thence west along the centerline of East Boulevard to the intersection of East Boulevard with North Boulevard; thence north along the centerline of North Boulevard to the intersection of North Boulevard with Pyle Drive; thence west along the centerline of Pyle Drive to the intersection of Pyle Drive with Balsam Street; thence north along the centerline of Balsam Street to the intersection of Balsam Street with Woodward Avenue, thence west along the centerline of Woodward Avenue to a point approximately 500 feet east from the intersection of the centerline of Westwood Avenue with Woodward Avenue; thence north approximately 350 feet; thence west approximately 1,000 feet along a line parallel with Woodward Avenue; thence south approximately 350 feet to the centerline of Woodward Avenue; thence west along the centerline of Woodward Avenue to the beginning point.

A map of the "Restricted Zone" is attached as Figure 1.

(f) "Well" means an opening in the surface of the earth for the purpose of removing water from the ground through non-mechanical or mechanical means for any purpose other than i) obtaining groundwater as part of a response action consistent with the Michigan Natural Resources and Environmental Protection Act of 1994, as amended, ("NREPA"), or ii) removal of wastewater from a septic tank.

Section 16-133: PROHIBITION OF INSTALLATION AND USE OF WELLS WITHIN RESTRICTED ZONE. Unless an exception is issued to a Person under Section 16-134 of this Ordinance, no Person shall allow, permit, maintain, install, use, or have available for use a Well on any Included Premises.

Section 16-134: EXCEPTIONS. The City Manager may, upon written application to the City Manager by a Person, issue a written exception which authorizes a Person to allow, permit, maintain, install or use a well in the Restricted Zone which would otherwise qualify as a Well but for the exception issued by the City Manager. No exception shall be issued unless the exception is consistent with:

- (a) the protection of the public health, safety and welfare in connection with the use of groundwater within the Restricted Zone,
- (b) the prevention of exposure of Persons to Contamination in the Restricted Zone or to hazardous substances in groundwater which exceed criteria established, specified or provided for in or pursuant to any final order, judgment or consent decree to which the MDEQ is a party, whichever applies in the Restricted Zone.
- (c) the prevention of exposure of Persons to methane or methane accumulations in the Restricted Zone above statewide criteria, or criteria established, specified or provided for in or pursuant to any final order, judgment or consent decree to which the MDEQ is a party, whichever applies in the Restricted Zone.
- (d) the prevention of exacerbation of Contamination, spreading Contamination, and cross Contamination between saturated zones.
- (e) the prevention of any interference with any environmental response action with respect to Contamination.

The Person applying for an exception shall submit a written due care analysis consistent with due care requirements in Part 201 of NREPA to the City Manager as part of that Person's application. The City Manager shall include compliance with due care conditions in any exception issued.

Prior to making a decision on a Person's application for an exception, the City Manager shall consult with the MDEQ and with any Persons performing environmental response actions with respect to the Contamination. The City Manager may request that any Person performing environmental response actions with respect to Contamination provide technical and other assistance to the City Manager in connection with the City Manager's review of and determinations made regarding the application for an exception. If the City Manager issues an exception, such exception may be issued subject to conditions imposed by the City Manager to assure that such exception is consistent with this Ordinance. If a Person is aggrieved by any decision by the City Manager regarding an application for an exception or any conditions in an issued exception, then such Person may submit a written request to the City Council for review of such decision. The aggrieved Person may submit written or oral information and statements to the City Council and the City Council shall affirm, modify or overturn such decision by the City Manager.

Section 16-135: VIOLATION OF EXCEPTION CONDITIONS. No Person shall violate any condition specified in a written exception issued by the City Manager to such Person under Section 16-134 of this Ordinance.

Section 16-136: WELL ABANDONMENT. A survey of existing wells within the Restricted Zone has been conducted prior to the effective date of this ordinance by Ford Motor Company and The Kingsford Products Company. All Wells within the Restricted Zone have been properly abandoned as of the effective date of this Ordinance in accordance with either the American Standards for Testing and Materials (ASTM) Standard #D5299-99 (non-drinking water wells) or the Groundwater Quality Control Act Part 127, 1978 PA 368 (drinking water wells).

Section 16-137: CITY INSPECTIONS; ENFORCEMENT. When the City determines that a violation of this Ordinance exists, the City Manager shall notify by appropriate means the Persons who are the owners or occupants of the Included Premises where such violation has been so determined to exist of the existence of the violation and that the Person or Persons must terminate such violation. A copy of the notice of violation shall also be provided to the County Health Department.

Section 16-138: NOTICE TO COUNTY HEALTH DEPARTMENT. Within seven (7) days after the effective date of this Ordinance, the City shall provide to the County Health Department a copy of this Ordinance.

Section 16-139: MODIFICATION OR REPEAL OF THIS ORDINANCE; NOTICE TO MDEQ. In the event this Ordinance is considered for modification or repeal by the City, where said modification or repeal will allow the installation or use of Wells in the Restricted Zone, this Ordinance shall not be modified or repealed except upon 30 days' prior written notice to MDEQ.

Section 16-140: PENALTY, REMEDIES.

Section 16-140.1: CIVIL INFRACTION. Any Person violating this Ordinance shall be liable for a civil infraction and each day that the violation continues to occur shall be a separate offense.


Section 16-140.2: INJUNCTIVE RELIEF. The City may further enforce this Ordinance by action seeking injunctive relief in a court of competent jurisdiction against a Person in violation of this Ordinance. In such an action the City shall be awarded its costs, damages, and actual attorney fees if the City establishes that such Person was in violation of this Ordinance.

Section 16-140.3: PUBLIC NUISANCE. A violation of this Ordinance is hereby declared to be a public nuisance and shall be abated by immediately taking the Well out of service and properly abandoning and closing it. The City may seek abatement of such public nuisance in a court of competent jurisdiction and, in such action, recover its costs, damages, and actual attorney fees.

Section 16-141: REPEAL; SEVERABILITY. All provisions/sections of any City of Kingsford Ordinances heretofore adopted, inconsistent with the provisions of this Ordinance are hereby repealed. In the event any part of this Ordinance is finally determined to be invalid or unenforceable by a court of competent jurisdiction, then said determination shall not affect the validity of the remaining provisions. The City shall promptly notify MDEQ upon the occurrence of any event described in the preceding sentence.

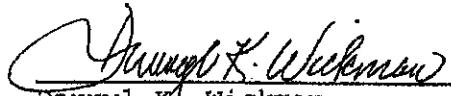
Section 16-142: EFFECTIVE DATE. This Ordinance shall become effective twenty-one (21) days after its adoption.

ADOPTED: 8/15/11



Paul Novara
Mayor

EFFECTIVE: 9/5/11



Darryl W. Wickman
City Clerk/Manager

070511h.pso

DRAFTER: LMB

APPROVED:

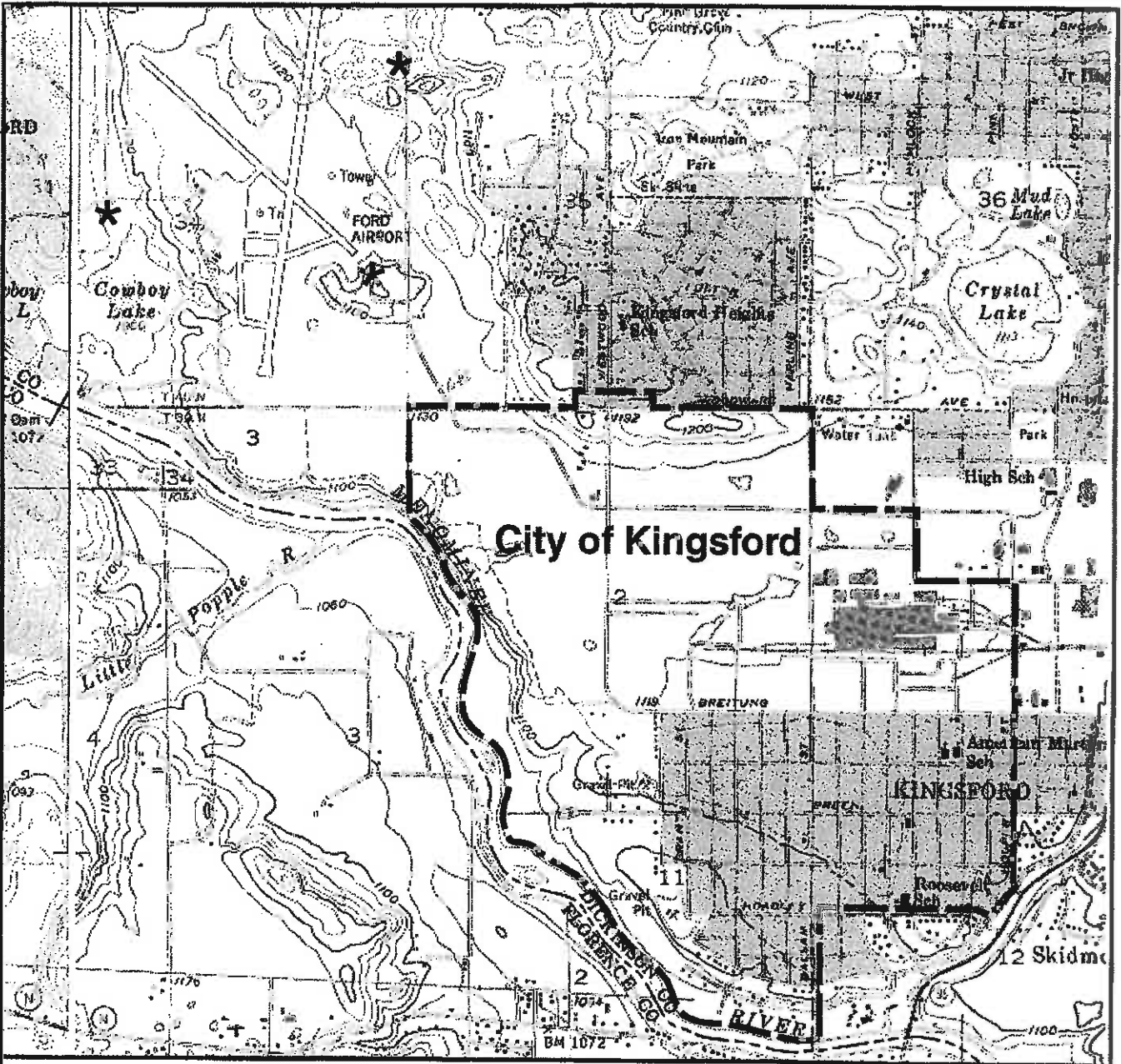
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DRAWING: SITELOC CITY OF KINGSFORD, MI

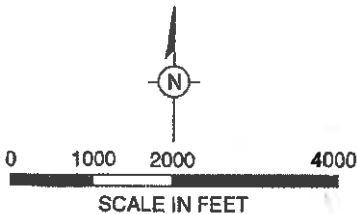
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PN: FORDW0637CJ2011

DWG DATE: 11 JULY 11



SOURCE: USGS 7.5 Minute Topographic Map, IRON MOUNTAIN, MICHIGAN Quadrangle, 1955 Photorevised 1982



— Restricted Zone
 * Kingsford City Supply Well



RESTRICTED ZONE

FORD-KINGSFORD PRODUCTS
KINGSFORD, MICHIGAN

FIGURE

1

**ORDINANCE NO. 1 of 2011
AN ORDINANCE OF BREITUNG TOWNSHIP
RESTRICTING WELLS**

AN ORDINANCE PROVIDING FOR THE REGULATION AND RESTRICTION OF WELLS IN CERTAIN AREAS OF THE TOWNSHIP, BY ADDING REGULATION AND RESTRICTIONS OF WELLS TO SECTION 52 OF THE CHARTER TOWNSHIP OF BREITUNG CODE OF ORDINANCES.

Breitung Township Ordains:

Section 1: **APPLICABILITY.** This Ordinance applies only to the "Restricted Zone," the area depicted in Figure 1 and described as follows:

All that area lying in Section Twelve (12), Town 39 North, Range 31 West, Breitung Township, County of Dickinson, Michigan, described as the following:

Beginning at a point at the southwest corner of the intersection of Hooper Street and Fox Drive; thence approximately 600 feet southwest along the east side of Fox Drive until it intersects with the southeast corner of the intersection of Fox Drive and Hoadley Avenue; thence approximately 2,200 feet northwest and west along the south side of Hoadley Avenue until it intersects with the southeast corner of the intersection of Hoadley Avenue and Balsam Street; thence approximately 1,660 feet south on the east side of Balsam Street to the end of Balsam Street, and continuing on a similar azimuth until the intersection with the Menominee River; thence approximately 1,200 feet east along the north shoreline of the Menominee River to the intersection with Highway M-95 (Carpenter Road); thence approximately 2,200 feet northeast along the west side of Highway M-95 to a point directly south of the beginning point; thence approximately 230 feet north to the beginning point at the southwest corner of the intersection of Hooper Street and Fox Drive.

The Restricted Zone was the subject of environmental response activities by Arcadis U.S., Inc., on behalf of Ford Motor Company and The Kingsford Products Company.

Section 2: **PURPOSES.** The purposes of this Ordinance are: i) to provide for the protection of the public health, safety, and welfare in connection with the use of groundwater within the Restricted Zone in Breitung Township, ii) to prevent exposure of Persons to groundwater Contamination in the Restricted Zone which exceeds applicable state or federal criteria, iii) to prevent exposure of Persons to methane or methane accumulations in the Restricted Zone above applicable state or federal criteria, and iv) to prevent the capture, exacerbation, spreading or migration of hazardous substances (which exceed applicable state or federal criteria) in groundwater in the Restricted Zone by the installation and use of Wells, as defined below.

Section 3: **DEFINITIONS.** When used in this Ordinance, the following terms shall have the meanings set forth below:

- (a) "Contaminated" or "Contamination" means hazardous substances in concentrations in groundwater within the Restricted Zone that exceed any residential drinking water criteria established by the Michigan Department of Environment Quality (MDEQ) in

rules pursuant to Part 201, Environmental Remediation, or Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.

- (b) "MDEQ" means the Michigan Department of Environment Quality or its successor agency.
- (c) "Included Premises" shall mean a parcel of property any part of which is located within the Restricted Zone.
- (d) "Person" means any individual, partnership, corporation, association, club, joint venture, estate, trust, and any other group or combination acting as a unit.
- (e) "Saturated Zone" means soil or rock below the ground surface which is below the water table and which has water filling the pore spaces.
- (f) "Well" means an opening in the surface of the earth for the purpose of removing water from the ground through non-mechanical or mechanical means for any purpose other than i) obtaining groundwater as part of a response action consistent with the Michigan Natural Resources and Environmental Protection Act of 1994, as amended, ("NREPA"), or ii) removal of wastewater from a septic tank.

Section 4: PROHIBITION OF INSTALLATION AND USE OF WELLS WITHIN RESTRICTED ZONE. In addition to the prohibition of private wells pursuant to Breitung Township Ordinance 52.004, no person in the Restricted Zone, whether in a platted or unplatted area, shall allow, permit, maintain, install, use, or have available for use a Well on any Included Premises.

Section 5: WELL ABANDONMENT. A survey of existing wells within the Restricted Zone has been conducted prior to the effective date of this ordinance by Ford Motor Company and The Kingsford Products Company. According to the best knowledge of Arcadis U.S., Inc., on behalf of Ford Motor Company and The Kingsford Products Company, all Wells within the Restricted Zone have been properly abandoned as of the effective date of this Ordinance in accordance with the American Standards for Testing and Materials (ASTM) Standard #D5299-99 (non-drinking water wells) or the Groundwater Quality Control Act Part 127, 1978 PA 368 (drinking water wells).

Section 6: TOWNSHIP INSPECTIONS; ENFORCEMENT. When the Township determines that a violation of this Ordinance exists, the Township Superintendent shall notify by appropriate means the Persons who are the owners or occupants of the Included Premises where such violation has been so determined to exist of the existence of the violation and that the Person or Persons must terminate such violation.

Section 7: NOTICE TO COUNTY HEALTH DEPARTMENT. Within seven (7) days after the effective date of this Ordinance, the Township shall provide to the County Health Department a copy of this Ordinance.

Section 8: MODIFICATION OR REPEAL OF THIS ORDINANCE; NOTICE TO THE MDEQ. In the event this Ordinance is considered for modification or repeal by the Township, where said modification or repeal will allow the installation or use of Wells in the Restricted Zone, this Ordinance shall not be modified or repealed except upon 30 days' prior written notice to the MDEQ.

Section 9: PENALTY. Any person violating this Ordinance shall be liable for a civil infraction and each day that the violation continues to occur shall be a separate offense. The Township may enforce

this Ordinance by any means available pursuant to Section 32.01(E)(2) of the Code of Ordinances, including through an action seeking injunctive relief in a court of competent jurisdiction against a Person in violation of this Ordinance. In such an action the Township shall be awarded its costs, damages, and actual attorney fees if the Township establishes that such a Person was in violation of this Ordinance. A violation of this Ordinance is hereby declared to be a public nuisance and shall be abated by immediately taking the Well out of service and properly abandoning and closing it. The Township may seek abatement of such public nuisance in a court of competent jurisdiction and, in such action, recover its costs, damages, and actual attorney fees.

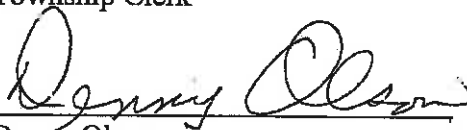
Section 10: SEVERABILITY. In the event any part of this Ordinance is finally determined to be invalid or unenforceable by a court of competent jurisdiction, then said determination shall not affect the validity of the remaining provisions. The Township shall promptly notify the MDEQ upon the occurrence of any event described in the preceding sentence.

Section 11: EFFECTIVE DATE. This Ordinance shall become effective twenty-one (21) days after its adoption.

I, Samantha Coron, hereby certify that the above Ordinance NO. 1 Of 2011 is an ordinance providing for the regulation and restriction of wells in certain areas of the township, by adding regulation and restrictions of wells to Section 52 of The Charter Township of Breitung code of ordinances. THIS ORDINANCE SHALL BE CALLED ORDINANCE OF BREITUNG TOWNSHIP RESTRICTING WELLS for the Charter Township of Breitung, Dickinson County, Michigan, and is a true and complete copy of the Ordinance adopted by the Charter Township of Breitung Board on December 28, 2011 at a meeting held in the Breitung Township Hall at 7:00 p.m.



Samantha Coron
Township Clerk



Denny Olson
Breitung Township Supervisor

Date of Publication before adoption: October 7, 2011

Name of Newspaper: The Daily News

Date of Passage: December 28, 2011

Date of Publication after adoption: January 2, 2012

Name of Newspaper: The Daily News

| | |
|-------------------|--------|
| Trustee Garrett: | Aye |
| Trustee Erickson: | Absent |
| Trustee Gaudette: | Aye |
| Trustee Dixon: | Aye |
| Treasurer Cahee: | Aye |
| Clerk Coron: | Aye |
| Supervisor Olson: | Aye |

DRAFTER: LMB

APPROVED:

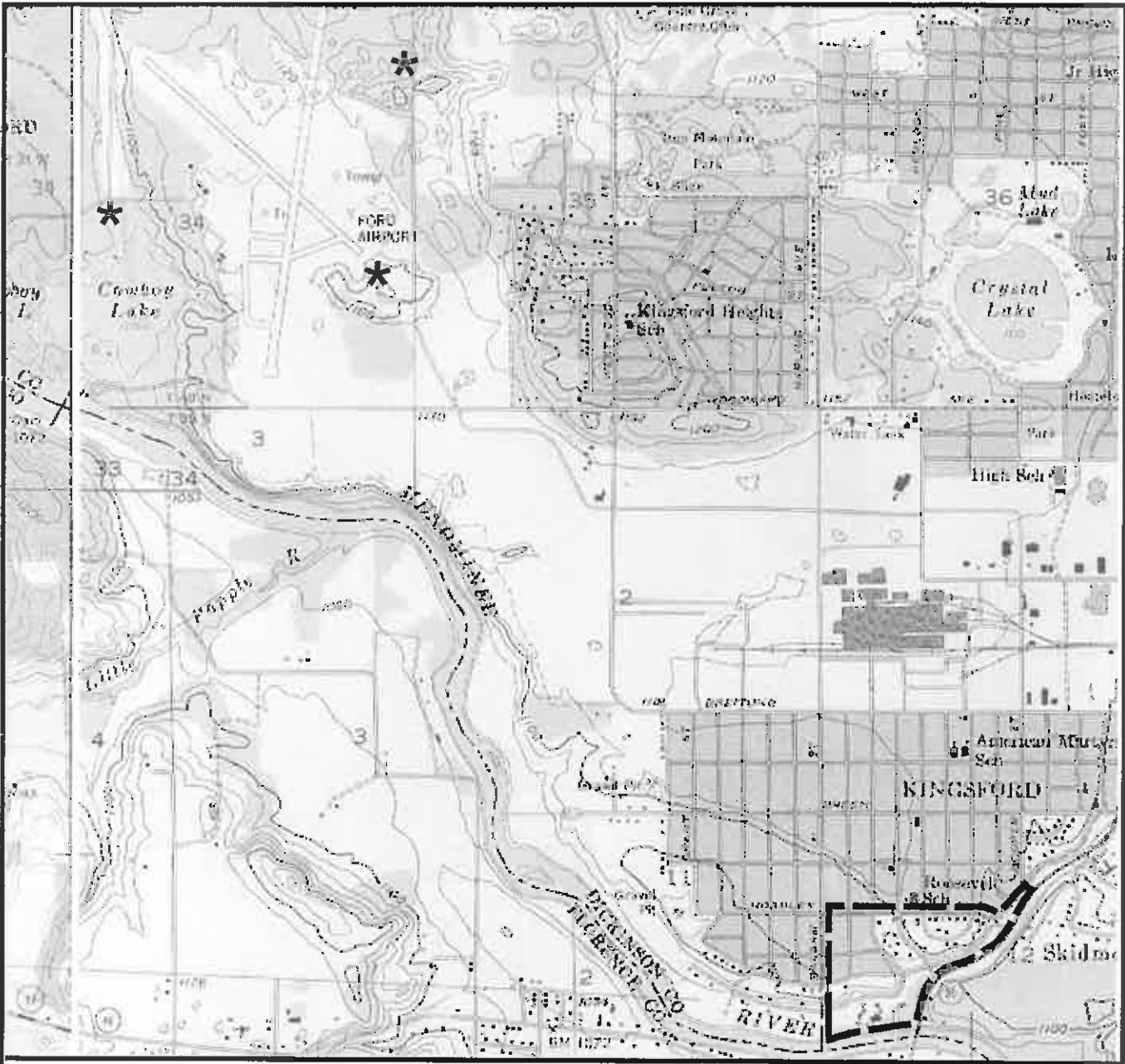
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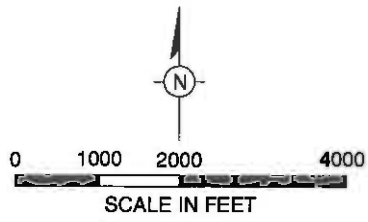
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DWG DATE: 19AUG11



SOURCE: USGS 7.5 Minute Topographic Map, IRON MOUNTAIN, MICHIGAN Quadrangle, 1955 Photorevised 1982



- — — Breitung Township Restricted Zone**
- * Kingsford City Supply Well**



RESTRICTED ZONE

FORD-KINGSFORD PRODUCTS
KINGSFORD, MICHIGAN

FIGURE

1