

2 **AN ORDINANCE SUPPORTING SUSTAINABLE GROUNDWATER MANAGEMENT**

3 THE BOARD OF DIRECTORS OF ZONE 7 OF THE ALAMEDA COUNTY FLOOD
4 CONTROL AND WATER CONSERVATION DISTRICT HEREBY ORDAINS AS
5 FOLLOWS:

6 **Section 1. Short Title**

7 This ordinance may be cited as the Zone 7 Sustainable Groundwater Management Ordinance.

8 **Section 2. Purpose and Intent**

9 The Zone 7 Board of Directors hereby finds:

- 10 A. The protection of the public health, welfare, and safety of the residents of the
11 County require that the groundwater resources of Eastern Alameda County be protected
12 from adverse impacts resulting from specific activities that constitute unsustainable
13 groundwater extraction within the Zone 7's service area and from the export of water
14 outside of the Zone 7's service area; and
- 15 B. Groundwater is an essential resource for municipal, industrial and domestic uses
16 within the area; and
- 17 C. Groundwater is also an essential resource for continued agricultural production
18 within the County, which production includes, but is not limited, to vineyards and which
19 significantly contribute to the total agricultural production of the area as well as
20 establishing the Tri-Valley area as an agricultural tourism destination, with the associated
21 economic benefits; and
- 22 D. The unsustainable extraction of groundwater resources within the service area and
23 the export of water outside of the service area each could have significant adverse
24 environmental impacts on Eastern Alameda County, including but not limited to
25 increased groundwater overdraft, uncontrolled movement of inferior quality groundwater,
26 the lowering of groundwater levels, and increased groundwater degradation; and
- 27 E. The unsustainable extraction of groundwater resources within Eastern Alameda
28 County and the export of water outside of the area each could have adverse economic
29 impacts on the County, including but not limited to, loss of arable land, a decline in
30 property values, increased pumping costs due to the lowering of groundwater levels,
31 increased groundwater quality treatment costs, and replacement of wells due to declining
32 groundwater levels, replacement of damaged wells, conveyance infrastructure, roads,
33 bridges and other appurtenances, structures, or facilities due to land subsidence; and
- 34 F. California Constitution, Article X, Section 2, as well as Water Code Section 100,
35 requires that the water resources of the State of California be put to the greatest beneficial
36 use of which they are capable and also prohibit the waste, unreasonable use, unreasonable

37 method of use, and unreasonable method of diversion of water. The Zone 7 Board of
38 Directors finds that the unsustainable extraction of groundwater and the export of water
39 outside of the service area are presumptively inconsistent with the California Constitution
40 and the California Water Code.

41 G. The Zone 7 Board of Directors further finds that, as noted in section 6.88.040 (D)
42 of the Alameda County Code, the “indiscriminate pumping and discharge of groundwater
43 in a wasteful manner” is prohibited by the County. Under the Sustainable Groundwater
44 Management Act, Zone 7 is obliged to ensure that groundwater within Zone 7’s
45 boundaries is managed in a sustainable manner, which in the determination of the Board
46 of Directors, prohibits the wasteful use of water, the unsustainable use of groundwater
47 within a specific groundwater basin, or in light of the history of the aquifers within the
48 boundaries of Zone 7, the export of groundwater to areas outside Alameda County
49 without an equal replenishment of such groundwater.

50 H. The Zone 7 Board of Directors further finds that, as noted in section 6.80.030 (A)
51 of the Alameda County Code, the “prevention of [the] impedance of groundwater
52 movement and water quality degradation” is an undesirable result that is also prohibited
53 by the Sustainable Groundwater Management Act. The Board of Directors finds and
54 determines that preventing such adverse effects on the environment serves the public
55 interest and enhances the water supply reliability for Zone 7’s service area.

56 I. Nothing in this Ordinance determines or alters surface water rights or
57 groundwater rights under common law or any provision of law that determines or grants
58 surface water rights. The Board of Directors finds and determines that implementing
59 provisions to prohibit the waste of water, the unsustainable use of groundwater, and the
60 export of groundwater are actions that implement the mandates of the California
61 Constitution, California statutes and the Alameda County Code.

62 J. Zone 7 is authorized by the Alameda County Flood Control and Water
63 Conservation District Act to take such actions as may be necessary to store water for use
64 within the service area, to import water for use within the service area, and to prevent the
65 wasteful use or export of water from the service area. The Zone 7 Board of Directors
66 finds and determines that such prevention of waste and unreasonable use, such
67 preservation of the water imported into the service area at great cost to the public, and the
68 prevention of the export of water from the service area are all essential to assuring a
69 reliable water supply to the residents and farms within the service area.

70 K. Zone 7 is also authorized by the Alameda County Flood Control and Water
71 Conservation Act to carry on investigations of all kinds, make measurements, collect data
72 and make analyses and inspection pertaining to water supplies and water rights. The
73 Zone 7 Board of Directors finds and determines that Zone 7 staff are authorized to
74 request such information as may be necessary to determine whether a proposed use of
75 water is consistent with this Ordinance.

76 L. Zone 7 has elected to become a groundwater sustainability agency under the
77 auspices of the Sustainable Groundwater Management Act and, under that act, is the

78 exclusive groundwater sustainability agency for the service area. Moreover, Zone 7 has
79 submitted to the California Department of Water Resources an alternative plan for the
80 management of groundwater within the service area. The Zone 7 Board of Directors
81 finds and determines that exercising the full range of authority granted by the Sustainable
82 Groundwater Management Act to groundwater sustainability agencies is necessary in
83 order to achieve the purposes of this Ordinance, which are to assure that the groundwater
84 resources of the service area are used in a manner that is sustainable for the long term and
85 that the surface water resources that Zone 7 imports into the service area at great cost are
86 not subject to unauthorized use.

87 **Section 3. Definitions**

88 The following words and phrases shall have the following meanings when used in this
89 Ordinance:

- 90 A. Board: The Board of Directors of Zone 7.
- 91 B. *De minimis* extractor: A Person who extracts two (2) acre-feet or less per year.
- 92 C. Eastern Alameda County: That portion of Alameda County that lies within
93 Zone 7's service area.
- 94 D. Export of water: The act of conveying groundwater, or surface water for
95 which groundwater has been substituted, out of the Zone 7 service area.
- 96 E. General Manager: The General Manager of Zone 7 or his/her designee.
- 97 F. Groundwater: Water that occurs beneath the surface of the earth within the zone
98 below the water table in which the soil is completely saturated with water, but does not
99 include water that flows in known and definite channels.
- 100 G. Groundwater Sustainability Plan: a plan adopted pursuant to Water Code section
101 10727 *et seq.*
- 102 H. Person: Includes natural persons, corporations, firms, partnerships, joint stock
103 companies, associations and other organizations of persons, and public entities.
- 104 I. Public water agency: Any local public agency that has authority to undertake
105 water-related activities.
- 106 J. Reasonable use: The use of water in a manner that is consistent with the
107 requirements of Article X, section 2 of the California Constitution and/or Water Code
108 section 100.
- 109 K. Service Area: Zone 7's service area.

110 L. Sustainable groundwater management: The management and use of
111 groundwater in a manner that can be maintained during the planning and implementation
112 horizon as defined in subdivision (q) of Water Code section 10721 without causing or
113 substantially contributing to undesirable results.

114 M. Undesirable result: One or more of the following:

115 1. Chronic lowering of groundwater levels indicating a significant and
116 unreasonable depletion of supply if continued over the planning and
117 implementation horizon. Overdraft during a period of drought is not sufficient to
118 establish a chronic lowering of groundwater levels if extractions and recharge are
119 managed as necessary to ensure that reductions in groundwater levels or storage
120 during a period of drought are offset by increases in groundwater levels or storage
121 during other periods.

122 2. Significant and unreasonable reduction of groundwater storage.

123 3. Significant and unreasonable degraded water quality, including but not
124 limited to the migration of contaminant plumes that impair water supplies.

125 4. Significant and unreasonable land subsidence that substantially interferes
126 with surface land uses.

127 5. Surface water depletions that have significant and unreasonable adverse
128 impacts on beneficial uses of the surface water.

129 N. Unsustainable extraction of groundwater: The extraction of groundwater in a
130 manner that is not sustainable groundwater management as defined in the Sustainable
131 Groundwater Management Act, Water Code sections 10700 *et seq.*

132 O. Waste and unreasonable use: The use of water in a manner that is prohibited by
133 Article X, section 2 of the California Constitution and/or Water Code section 100.

134 P. Zone 7 or Zone 7 Water Agency: Alameda County Flood Control and Water
135 Conservation District, Zone 7.

136 Section 4. Prohibitions

137 Except as otherwise provided in this Ordinance, the following actions are prohibited:

138 A. The unsustainable extraction or wasteful use of groundwater within the service
139 area.

140 B. The export of water to areas or users outside the service area.

141 C. The waste or unreasonable use of surface water within the service area.

142 **Section 5. Application of Section 4A**

143 A. The prohibition set forth in Paragraph A of Section 4 is applicable to the
144 extraction from any groundwater well in the service area for which an application for a
145 new Well Construction Permit pursuant to the Alameda County Well Ordinance filed
146 after the effective date of this Ordinance.

147 1. Applications for a Well Construction Permit submitted after that date shall
148 contain sufficient information to demonstrate, based on substantial evidence in the
149 reasonable discretion of Zone 7, that either: (1) one or more of the exemptions set
150 forth in Section 7 apply, or (2) that extraction of groundwater from the proposed
151 well will not constitute unsustainable extraction of groundwater.

152 2. Zone 7 may, in its reasonable discretion, reject an application for a Well
153 Construction Permit on the ground that the application does not contain sufficient
154 information for Zone 7 to make the necessary determination. Zone 7 may also, in
155 its reasonable discretion, require the applicant for a Well Construction Permit to
156 provide additional information that Zone 7 deems necessary for it to make the
157 necessary determination. The failure of an applicant to provide such requested
158 information in a timely manner, as determined by Zone 7, shall be grounds for
159 Zone 7 to reject the application.

160 3. In the case of an application for a new Well Construction Permit that
161 requests permission to construct a new well that is designed to replace an existing
162 well that has been permitted prior to the effective date of this Ordinance, Zone 7
163 shall grant that permit within sixty days, *provided* that (i) the replacement well
164 has no greater capacity than the well it is replacing, (ii) Zone 7 determines that the
165 original well did not cause or contribute to localized overdraft or other
166 undesirable conditions, and (iii) the well being replaced is destroyed to the
167 reasonable satisfaction of Zone 7 personnel.

168 B. The prohibition set forth in Paragraph A of Section 4 shall apply to the extraction
169 from any groundwater well for which Zone 7 reasonably concludes that the extraction of
170 groundwater constitutes unsustainable extraction of groundwater. In the event of such
171 determination by Zone 7, the affected holder or holders of a Well Construction Permit
172 issued pursuant to the County Well Ordinance for such well shall be notified and shall be
173 required to demonstrate, based on substantial evidence, as determined by Zone 7, that
174 continued extraction of groundwater will not result in an unsustainable extraction of
175 groundwater.

176 **Section 6. Exempt Water Management Practices**

177 A. The following water management practices are exempt from the prohibitions in
178 Section 4:

179 1. Water resources management practices of public water agencies that have
180 jurisdictional authority within the service area and that are in compliance with and
181 included in Zone 7's Groundwater Management Plan and respective Contract for

182 a Municipal and Industrial Water Supply and/or the conditions of use established
183 by Zone 7.

184 2. *De minimis* extractions.

185 3. Groundwater extraction or the export of water in compliance with a permit
186 issued by Zone 7 Water Agency pursuant to this ordinance.

187 B. The following water management practices are exempt from the prohibition
188 against export of water in this ordinance when those practices are carried out in
189 compliance with a permit issued by Zone 7:

190 1. De-watering of shallow water tables where the net benefits of the removal
191 of subsurface water substantially outweighs the loss of water because of damage
192 the high water table reasonably may cause to agriculture, industry, commerce and
193 other property uses. The groundwater in some areas of the service area is very
194 near the surface and if not removed by interceptor ditches or subsurface tile
195 drains, the water can seriously impact crop root zones for agricultural production
196 or destroy foundations, equipment, materials, buildings and infrastructure used for
197 residences, industry, utilities or commerce. This groundwater may or may not be
198 reused for other purposes and at times may leave the service area and its
199 groundwater system.

200 2. Reasonable use of groundwater resources to supplement or replace surface
201 water released for other reasonable and beneficial purposes, including but not
202 limited to fisheries, ecosystem habitat or downstream water quality or quantity
203 needs, when required pursuant to federal and state law, regulations, licenses or
204 permit conditions.

205 3. Conservation of water in compliance with applicable state law that
206 authorizes public water agencies to transfer water outside its usual place of use.
207 Conservation programs may include, but are not limited to, irrigation practices in
208 agricultural areas where the crops grown use less water, or communities that
209 produce recycled water, fix leaks or promote other water saving devices and
210 methods to conserve water on a temporary or permanent basis.

211 4. Recharge of groundwater in locations in the service area that are capable
212 of improving groundwater conditions in order to meet total water demands of
213 beneficial uses in the hydrologic and groundwater basin area including but not
214 limited to the following sources: surface water, treated municipal drinking water,
215 recycled water and stormwater. The amount of recaptured groundwater
216 transferred out of the area should not exceed the amount of water used to recharge
217 the aquifer. The transfer can be accomplished by either direct or indirect transfer,
218 that is, a public water agency can leave the water in the ground and transfer other
219 supplies in lieu of pumping out the recharge water.

220 5. Remediation of contaminated groundwater that is pumped and treated to
221 remove contaminants that are in violation of standards for beneficial uses. The

222 extracted and treated water may be released out of the service area, resulting in a
223 net loss to the groundwater basin, if the release complies with discharge permits
224 issued by the federal, state or state resource agencies.

225 6. Export of water that reasonably supports agricultural operations on
226 property outside the service area that is contiguous with property within the
227 service area and is under common ownership.

228 The foregoing exemptions may be suspended by the Board of Directors pursuant to a
229 declaration of emergency.

230 C. The exemptions set forth in Paragraphs A and B above do not exempt the
231 activities described in those subsections from paragraph B of Section 5.

232 **Section 7. Implementation and Enforcement**

233 A. The General Manager shall have the primary responsibility for implementation
234 and enforcement of this ordinance and any related regulations adopted by the Board of
235 Directors. That responsibility shall include any preparation, approval and/or certification
236 of any environmental document required under the California Environmental Quality Act
237 (CEQA) for issuance of a permit for a groundwater well, as determined by the General
238 Manager.

239 B. The General Manager shall establish a system of permits to authorize water
240 management practices otherwise prohibited by this ordinance. Zone 7 may issue a permit
241 for a water management practice to the extent that such practice is consistent with the
242 statements of Zone 7 policy set forth in Section 2 of this ordinance, and provided that
243 such practice is for a reasonable and beneficial use of groundwater resources, supports
244 sustainable groundwater management, and promotes the public interest. As part of the
245 permitting system, the General Manager shall establish a schedule of fees that will defray
246 the costs incurred by Zone 7 in implementing this ordinance.

247 C. The General Manager shall have authority to investigate any activity subject to
248 this ordinance. Compliance with this ordinance will be determined based on the
249 submission of a technical report to the General Manager on a form provided by Zone 7.
250 The General Manager is authorized to enforce the prohibition of any activity that is
251 determined to be in violation of this ordinance or regulations adopted by the Board of
252 Directors.

253 D. Any interested person or entity may appeal an administrative determination made
254 by the General Manager under this ordinance, including:

- 255 1. finding that an application is complete or incomplete; or
- 256 2. establishing or modifying operating conditions; or
- 257 3. granting or denying a permit; or

258 4. suspending or revoking a permit.

259 Administrative appeals under this section must be made in writing, must clearly set forth the
260 reasons why the appeal ought to be granted, and must be received by the General Manager
261 within fifteen days of the postmark date on the envelope that transmits the administrative
262 determination. Any appeal that is not timely filed, or that is not accompanied by the required
263 fee, will be deemed ineffective and the administrative determination that is being appealed will
264 become final. The General Manager shall fix a reasonable time for the hearing of an appeal of
265 an administrative determination, and shall provide written notice of the appeal hearing to the
266 appellant and all interested parties, and to all landowners within one-quarter mile of the
267 (proposed) location of the well. An appeal review committee comprised of the Water Resources
268 Committee of the Board of Directors shall hear the appeal and issue a decision within thirty days
269 after the hearing. The appeal review committee may take any appropriate action upon the
270 original administrative action that was appealed, including granting or denying the appeal in
271 whole or in part, or imposing, deleting or modifying the permit conditions. The decision of the
272 appeal review committee shall be final.

273 **Section 8. Groundwater Monitoring.**

274 A. All persons, including Public Water Agencies that extract groundwater within the
275 service area shall cause to be prepared and submitted to the General Manager upon
276 periodic request reports of groundwater information that are reasonably necessary to
277 monitor the existing condition of groundwater resources within the service area, to
278 determine trends, or to develop effective sustainable groundwater management plans and
279 policies. A 'de minimis extractor' shall not be required to submit such information.

280 B. The General Manager shall develop and recommend regulations to be adopted by
281 the Board that establish the frequency and timing of required reports, and the required
282 information to be monitored, including without limitation water level and pumping data,
283 or other data necessary for any other method to determine groundwater production.

284 **Section 9. Effective Date**

285 This ordinance shall take effect thirty (30) days from and after the date of its passage and before
286 the expiration of fifteen (15) days after its passage it shall be published once, with the names of
287 the Directors voting for and against the same, in a newspaper of local circulation.

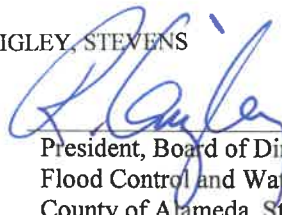
Adopted by the Board of Directors of the Alameda County Flood Control & Water Conservation District, Zone 7, on the 19th Day of July, 2017
by the following called vote:

AYES: DIRECTORS FIGUERS, GRECI, PALMER, QUIGLEY, STEVENS

NOES: DIRECTORS McGRAIL, RAMIREZ HOLMES

ABSENT: NONE

ABSTAIN: NONE



President, Board of Directors, Zone 7 of Alameda County
Flood Control and Water Conservation District,
County of Alameda, State of California

ATTEST: Linda VanBuskirk
Secretary, Board of Directors
Zone 7 of Alameda County Flood
Control and Water Conservation District,
County of Alameda, State of California

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