ZONE 7 ORDINANCE NO. 2017-01

AN ORDINANCE SUPPORTING SUSTAINABLE GROUNDWATER MANAGEMENT

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

Section 1. Short Title

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

Section 2. Purpose and Intent

The Zone 7 Board of Directors hereby finds:

A. The protection of the public health, welfare, and safety of the residents of the
County require that the groundwater resources of Eastern Alameda County be protected
from adverse impacts resulting from specific activities that constitute unsustainable
groundwater extraction within the Zone 7's service area and from the export of water
outside of the Zone 7's service area; and

B. Groundwater is an essential resource for municipal, industrial and domestic uses
within the area; and

C. Groundwater is also an essential resource for continued agricultural production
within the County, which production includes, but is not limited, to vineyards and which
significantly contribute to the total agricultural production of the area as well as
establishing the Tri-Valley area as an agricultural tourism destination, with the associated
economic benefits; and

D. The unsustainable extraction of groundwater resources within the service area and
the export of water outside of the service area each could have significant adverse
environmental impacts on Eastern Alameda County, including but not limited to
increased groundwater overdraft, uncontrolled movement of inferior quality groundwater,
the lowering of groundwater levels, and increased groundwater degradation; and

E. The unsustainable extraction of groundwater resources within Eastern Alameda
County and the export of water outside of the area each could have adverse economic
impacts on the County, including but not limited to, loss of arable land, a decline in
property values, increased pumping costs due to the lowering of groundwater levels,
increased groundwater quality treatment costs, and replacement of wells due to declining
groundwater levels, replacement of damaged wells, conveyance infrastructure, roads,
bridges and other appurtenances, structures, or facilities due to land subsidence; and

F. California Constitution, Article X, Section 2, as well as Water Code Section 100,
requires that the water resources of the State of California be put to the greatest beneficial
use of which they are capable and also prohibit the waste, unreasonable use, unreasonable
method of use, and unreasonable method of diversion of water. The Zone 7 Board of Directors finds that the unsustainable extraction of groundwater and the export of water outside of the service area are presumptively inconsistent with the California Constitution and the California Water Code.

G. The Zone 7 Board of Directors further finds that, as noted in section 688.040 (D) of the Alameda County Code, the “indiscriminate pumping and discharge of groundwater in a wasteful manner” is prohibited by the County. Under the Sustainable Groundwater Management Act, Zone 7 is obliged to ensure that groundwater within Zone 7's boundaries is managed in a sustainable manner, which in the determination of the Board of Directors, prohibits the wasteful use of water, the unsustainable use of groundwater within a specific groundwater basin, or in light of the history of the aquifers within the boundaries of Zone 7, the export of groundwater to areas outside Alameda County without an equal replenishment of such groundwater.

H. The Zone 7 Board of Directors further finds that, as noted in section 680.030 (A) of the Alameda County Code, the “prevention of [the] impedance of groundwater movement and water quality degradation” is an undesirable result that is also prohibited by the Sustainable Groundwater Management Act. The Board of Directors finds and determines that preventing such adverse effects on the environment serves the public interest and enhances the water supply reliability for Zone 7's service area.

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

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

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

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

Section 3. Definitions

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

A. Board: The Board of Directors of Zone 7.

B. De minimis extractor: A Person who extracts two (2) acre-feet or less per year.

C. Eastern Alameda County: That portion of Alameda County that lies within
Zone 7's service area.

D. Export of water: The act of conveying groundwater, or surface water for
which groundwater has been substituted, out of the Zone 7 service area.

E. General Manager: The General Manager of Zone 7 or his/her designee.

F. Groundwater: Water that occurs beneath the surface of the earth within the zone
below the water table in which the soil is completely saturated with water, but does not
include water that flows in known and definite channels.

G. Groundwater Sustainability Plan: a plan adopted pursuant to Water Code section
10727 et seq.

H. Person: Includes natural persons, corporations, firms, partnerships, joint stock
companies, associations and other organizations of persons, and public entities.

I. Public water agency: Any local public agency that has authority to undertake
water-related activities.

J. Reasonable use: The use of water in a manner that is consistent with the
requirements of Article X, section 2 of the California Constitution and/or Water Code
section 100.

K. Service Area: Zone 7's service area.
L. Sustainable groundwater management: The management and use of groundwater in a manner that can be maintained during the planning and implementation horizon as defined in subdivision (q) of Water Code section 10721 without causing or substantially contributing to undesirable results.

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

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

2. Significant and unreasonable reduction of groundwater storage.

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

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

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

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

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

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

Section 4. Prohibitions

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

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

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

C. The waste or unreasonable use of surface water within the service area.
Section 5. Application of Section 4A

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

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

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

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

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

Section 6. Exempt Water Management Practices

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

1. Water resources management practices of public water agencies that have jurisdictional authority within the service area and that are in compliance with and included in Zone 7's Groundwater Management Plan and respective Contract for
a Municipal and Industrial Water Supply and/or the conditions of use established by Zone 7.

2. De minimis extractions.

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

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

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

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

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

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

5. Remediation of contaminated groundwater that is pumped and treated to remove contaminants that are in violation of standards for beneficial uses. The
extracted and treated water may be released out of the service area, resulting in a net loss to the groundwater basin, if the release complies with discharge permits issued by the federal, state or state resource agencies.

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

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

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

Section 7. Implementation and Enforcement

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

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

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

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

1. finding that an application is complete or incomplete; or
2. establishing or modifying operating conditions; or
3. granting or denying a permit; or
4. suspending or revoking a permit.

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

Section 8. Groundwater Monitoring.

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

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

Section 9. Effective Date

This ordinance shall take effect thirty (30) days from and after the date of its passage and before the expiration of fifteen (15) days after its passage it shall be published once, with the names of 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