ORDINANCE NO. 1294

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NAPA, STATE OF CALIFORNIA, MAKING ADMINISTRATIVE AND PROCEDURAL AMENDMENTS TO CHAPTER 13.15 (GROUNDWATER CONSERVATION)

The Board of Supervisors of the County of Napa, State of California, ordains as follows:

SECTION 1. Chapter 13.15 (Groundwater Conservation) of the Napa County Code is amended to read in full as follows:

Chapter 13.15

GROUNDWATER CONSERVATION

Sections:

13.15.010 Title, purpose and definitions.
13.15.020 Groundwater permit required.
13.15.030 Classification of applications.
13.15.040 Agricultural activities exempt from groundwater permitting requirements.
13.15.050 Application for determination of exemption.
13.15.060 Application for groundwater permit.
13.15.070 Processing of groundwater permit applications.
13.15.080 Exceptions.
13.15.090 Appeals.
13.15.100 Enforcement--Violation.

13.15.010 Title, purpose and definitions.

A. Title. This chapter implements the Napa County Groundwater Conservation Ordinance.

B. Purpose. This chapter is intended to regulate, to the maximum extent possible, the extraction and use of groundwater resources in Napa County and to prohibit extraction for wasteful, unreasonable or non-beneficial purposes in order to promote groundwater conservation and the use of Best Management Practices and maximize the long-term beneficial use of the county's groundwater resources, thus serving to enhance environmental quality and protect the public health, safety and welfare of the citizens of Napa County.

C. Definitions. For the purpose of this chapter, the following definitions shall apply:

"Agricultural land development" means the development, new plantings, or other improvement of a property greater than one-quarter of an acre for the purposes of farming a crop, orchard, vineyard or other agricultural product.

"Agricultural land re-development" means the re-development or replanting of an existing crop, orchard, vineyard or other agricultural product of greater than one-quarter of an acre.

"Aquifer" means a geologic formation, underground layers of porous rock that are saturated from above or from structures sloping toward it, that stores, transmits and yields significant

quantities of water to wells and springs. Aquifer capacity is determined by the porosity of the subsurface material and its area.

"Best Management Practices (BMP)", as used in this chapter, means structural, nonstructural and managerial techniques generally recognized to be the most effective and practical means to reduce contamination and consumption of groundwater while still allowing productive use of the resource, including, but not limited to: low flow fixtures, drip in lieu of broadcast irrigation, irrigation during hours of least evaporation loss, timers on irrigation systems, use of pool and spa covers to reduce evaporation, use of xeriscape landscaping, use of recycled water for landscaping purposes, and monitoring of wells.

"Conservation" means the conscious effort to prevent waste and minimize the consumption of groundwater by utilizing reasonable and economically justifiable methods to improve its delivery and use, thus increasing water supplies for optimum long-term benefits. When referring to landscaping or agricultural uses of groundwater this term includes water reuse, processes to reduce the amount of water irretrievably lost to moisture deficient soils, water surface evaporation, or evapotranspiration.

"Contiguous parcel" means parcels which abut, adjoin or otherwise touch each other at more than one point along a common boundary or which would do so except for separation by a strip of land over which some person or entity, other than the owner of the parcels, has some property interest, including fee title or some lesser interest, such as a leasehold or easement. Examples of such strips of land include but are not limited to roads, streets, utility easements, railroad rights-of-way, canals and drainage channels.

"Convenience improvement" means an addition, change, upgrade, improvement or replacement of a site's existing well or water supply and distribution system (including the addition of plumbing fixtures) which is for purposes of rendering the system more efficient and is not intended to supply water or make plumbing fixtures available to additional users of said system and does not increase the total consumption of groundwater at that site. If a replacement well is permitted, the existing well must be destroyed under permit by the Department of Environmental Management and the new well must be drilled to the same or smaller diameter as the existing well.

"Department" means the Napa County Department of Environmental Management.

"Director" means the Napa County Director of Environmental Management or the designee of the Director.

"Director of Public Works" means the Napa County Director of Public Works or the designee of the Director.

"Efficient use" means those management measures that result in the most effective use of water so as to prevent its waste or unreasonable use or unreasonable method of use.

"Evapotranspiration" means the loss of water from the soil through both evaporation and transpiration from plants.

"Graywater" means domestic wastewater other than that containing human excrete such as sink drainage, washing machine discharge or bathwater.

"Groundwater" means all water beneath the surface of the earth within the zone below the water table in which the soil is completely saturated with water.

"Groundwater deficient area" means an area where the amount of groundwater is inadequate to meet particular demands at a particular time, as shown in Map 13-1 at the end of this chapter.

"Groundwater permit" means a permit issued pursuant to this chapter to use groundwater.

"Harvested water" means the collection and use of rainwater as a means to augment or replace other sources of water.

"Improvement" or "improve", as related to a well or water supply system means the construction, re-construction, replacement, or addition to, any portion of a water supply and

distribution system for the purposes of providing water for a new use or an additional use (unless specifically exempt under this chapter). This definition is not intended to include simple plumbing repairs to existing fixtures, pipes or equipment such as replacing or repairing existing faucets, hoses, drains, sinks, toilets, tubs, showers, washing machines, swimming pool and spa filter pumps, irrigation equipment, and the like, unless such repair or replacement will potentially increase the rate and/or amount of groundwater extraction.

"Minor improvement" means a modification to an existing water supply that involves simple repair or replacement of pipes, fittings, faucets, hoses, pumps, meters, components of irrigation systems, sinks, tubs, toilets, showers, washing machines, and all other elements of the water supply and delivery system that will not potentially increase the amount of groundwater extraction at that site. For the purposes of this definition, swimming pools (if filled with trucked in water from a supply source that does not include groundwater from a groundwater deficient area and is provided with a cover), replacement dwellings (when an existing legal dwelling unit had previously existed on the property) and additional potential bedrooms whether or not attached to the single family dwelling unit are considered minor improvements. Any modification or improvement that will increase the amount of groundwater extracted is not a minor improvement.

"Overdraft" means the withdrawal of water from an aquifer in excess of the amount of water that recharges the basin over a period of years during which water supply conditions approximate the average, and which, if continued over time, could eventually cause the underground supply to be exhausted, cause subsidence, cause the water table to drop below economically feasible pumping lifts, cause a detrimental change in water quality, or produce other adverse environmental impacts.

"Parcel" means a legal lot of record.

"Potential bedroom" means any room with a floor area equal to or greater than seventy square feet, including lofts, sewing rooms, offices, game rooms, etc. that meet building codes for a sleeping room. A closet or lack thereof is not used in determining whether a room is a potential bedroom.

"Public water supply" means a water supply provided by a local agency, publicly owned corporation, or approved utility company.

"Recharge" means replenishment of groundwater by flows to groundwater storage from precipitation, irrigation, infiltration from streams, a spreading basin or other sources of water.

"Recycled water" means the reclamation and reuse of wastewater or graywater for beneficial use.

"Single-family dwelling unit" means a dwelling unit containing not more than one kitchen, designed to be occupied by not more than one family, and includes a manufactured home as defined in Section 18.08.360 which is installed on a permanent foundation and certified under the National Manufactured Housing Construction and Safety Standards Act of 1974.

"Site" means the location of a system to extract and distribute groundwater, such as a well and connecting plumbing which supplies water to a residence or other structure or use.

"Subsidence" means lowering or sinking of the land surface as a result of the extraction of groundwater.

"Transpiration" means the process by which water absorbed by plants (usually through the roots) is evaporated into the atmosphere from the plant surface.

"Water supply system" means any system including the water source the purpose of which is to extract and distribute groundwater.

"Water table" means the surface or level where groundwater is encountered in an unconfined aquifer.

"Xeriscaping" means a form of landscaping that uses a variety of indigenous and drought-tolerant plants, shrubs and ground cover to provide environmental benefits.

13.15.020 Groundwater permit required.

A. No applications filed pursuant to Division I (Water) of Title 13 of this code for development of a new water system or improvement of an existing water system within Napa County that may use groundwater as a water source shall be approved by any employee, department or body of Napa County unless it is specifically exempted by this chapter or unless a groundwater permit is obtained as required by this chapter.

B. Prior to the issuance of a building permit pursuant to Section 15.08.040, or any other permit or administrative approval facilitating the development or use of any parcel that may utilize a groundwater supply, a groundwater permit must be obtained unless specifically exempted by this chapter.

C. Prior to the final approval of a subdivision, a groundwater permit must be obtained if required by this chapter and an existing, new or improved water system will provide groundwater to the subdivision.

D. No application filed pursuant to Chapter 18.108 (Conservation Regulations) shall be approved by any employee, department or body of Napa County until the applicant has obtained a groundwater permit if required by this chapter.

E. Agricultural land development or re-development that is located on parcels included within those groundwater deficient areas depicted on Map 13-1 which will utilize groundwater and which is not subject to the requirements of subsection (D) of Section 13.15.020 or Chapter 18.108 is subject to review and approval by Napa County in the form of a groundwater permit.

F. No application filed pursuant to Chapter 17.46 (Lot Line Adjustments) shall be approved by any employee, department or body of Napa County when the resultant parcel configuration increases the intensity of groundwater use of any parcel unless specifically exempted by this chapter.

G. A Groundwater Permit shall be waived if a new water using activity or use on a parcel will be supported by water from an outside source and will not utilize groundwater. The property owner shall, if and when requested by the County, provide evidence that such an outside source of water is actually available and being used.

13.15.030 Classification of applications.

Applications described in Section 13.15.020 shall be classified as follows for the purpose of determining whether a groundwater permit is required by this chapter:

A. Applications exempt from groundwater permit requirement.

1. In the case of uses permitted without a use permit under any provision of this code, the applications or development set forth in Section 13.15.020 are exempt from the requirement that a groundwater permit must be obtained unless the application or development:

a. Is for a project located on a parcel included within those groundwater deficient areas depicted on Map 13-1 and is not otherwise specifically exempted;

b. Is to develop or improve an on-site or off-site water supply serving more than a single contiguous parcel; or

c. Where the development or improvement, regardless of the number of parcels served, is able to connect to a public water supply.

2. Applications to develop or improve an on-site or off-site water source serving agriculture are also exempt from the requirement of a groundwater permit under this chapter to the extent provided in Section 13.15.040.

3. Applications to construct or develop rainwater harvesting or graywater recycling systems when that is the sole purpose of the project and the resulting harvested or recycled water

will be used to augment existing groundwater sources or as the sole source of water for use at that site.

4. Minor improvements to a water system.

5. Convenience improvements to a water system.

B. Applications requiring use permits.

In the case of a proposed development requiring the issuance of a use permit pursuant to any provision of this code, applications which propose to develop, improve or utilize an on or off-parcel groundwater source in conjunction with such development are not required to obtain a groundwater permit under this chapter. Groundwater review of such applications shall occur in accordance with the county's procedures to obtain a use permit.

C. Applications involving a ministerial approval.

1. Applications for a single-family dwelling unit and associated landscaping on parcels two acres in size or less, when such residence will be the only use on the parcel, shall be issued a groundwater permit providing they install a meter on the well serving the parcel, read the meter every six months, and report these meter readings to the public works department when requested by that department. If the parcel is greater than two acres, a ministerial permit shall be issued providing they meet the following requirements:

a. The permittee shall install a meter on the well serving the parcel to measure all groundwater used on the parcel. The configuration of the installation shall conform to a drawing prepared by the permittee and shall conform to the technical standards set forth by the director of public works.

b. On or near the first day of each month the permittee shall read the water meter and provide this data to the director of public works during the first week of April and October of each year. The permittee shall also grant to the director of public works the right to access and verify the operation and readings of the meters and well levels at any reasonable time during regular working hours.

c. The permittee shall be limited to 0.60 acre feet of water per year or such other amount as may be adopted by the board by resolution.

This groundwater permit shall not be available when other dwellings, accessory uses, agricultural development or other discretionary uses exist on the property or when water from an approved public water system is available to the property. In such cases, a groundwater permit must first be obtained pursuant to the procedures set forth in Section 13.15.060 et seq. Any permittee that qualifies for a groundwater permit issued pursuant to this section may instead apply for a groundwater permit pursuant to the procedures set forth in Section 13.15.060 et seq.

2. Applications for agricultural land redevelopment that will utilize groundwater on parcels included within those groundwater deficient areas depicted on Map 13-1 shall be issued a groundwater permit without any additional requirements providing the size of the replant is two acres in size or less. If the replant is greater than two acres, a ministerial permit will be issued providing that they meet the following requirements:

a. The permittee shall install a meter on all wells or water supply and distribution systems serving the parcel to measure all groundwater used on the parcel. The configuration of the installation shall conform to a drawing prepared by the permittee and shall conform to the technical standards set forth by the director of public works.

b. On or near the first day of each month the permittee shall read the water meter and provide this data to the director of public works during the first week of April and October of each year. The permittee shall also grant to the director of public works the right to access and verify the operation and readings of the meters and well levels at any reasonable time during regular working hours.

c. The permittee shall be limited to an average of 0.30 of acre feet of water per acre per year or such amount as may adopted by the board by resolution. This limitation shall be calculated as the average water used over a three-year period with no yearly use exceeding the acre foot of water per acre per year allotment by more than fifteen percent.

Any permittee that qualifies for a groundwater permit issued pursuant to this section may instead apply for a groundwater permit pursuant to the procedures set forth in Section 13.15.060 et seq.

D. Applications for a minor modification or cancellation of an existing groundwater permit.

1. Applications for a minor modification or a cancellation of an existing groundwater permit shall be made through a ministerial permit process.

2. Applications for a minor modification or cancellation of an existing groundwater permit shall be made to the department in writing on a form prescribed by the department. The application shall state the grounds for the application, the specific modification being requested and shall include any information or evidence needed to support the request. The application shall also demonstrate that the proposed use complies with the standards required for issuance of a groundwater permit as set forth in this chapter.

3. An application for an administrative permit for a minor modification or cancellation of an existing groundwater permit shall be accompanied by a fee in the amount established by resolution of the board of supervisors.

4. Issuance Prerequisites: An application for a minor modification or cancellation of an existing groundwater permit shall be considered only if the following standards are met:

a. Minor Modification: The proposed modification does not increase water use over the existing permitted use and the resultant water use request meets the fair share standard for the parcel as established in the Department of Public Works Water Availability Policy Report (even if the original permit allowed a higher water use) and the application does not request a modification to a ministerial permit that would have otherwise been processed through the groundwater permit process outlined in Section 13.15.060; or

b. Cancellation: The cancellation of a groundwater permit shall only be allowed if evidence is submitted that the project which triggered the groundwater permit has been cancelled and is no longer being pursued.

If the modification request is not able to meet the above standards, the applicant has the option of applying for a new groundwater permit pursuant to 13.15.060.

13.15.040 Agricultural activities exempt from groundwater permitting requirements.

A. Applications to develop or improve a water source serving agriculture, as defined in Section 18.08.040 of this code, shall be exempt from the requirement of a groundwater permit under this chapter where the water would only serve the property where the water source is located, or contiguous property. For purposes of this section only, "contiguous property" refers to property in common ownership that is joined at more than one common point to the property where the water source is located, or connected in a pattern of parcels, each joined to another, that includes the property where the water supply system is located. If the contiguous property consists of more than one parcel, all parcels must be in agricultural production, in order to qualify for an exemption pursuant to this section. To qualify for the exemption in this section, in the case of parcels designated Agricultural Resource ("AR") or Agriculture, Watershed and Open Space ("AWOS") at least eighty percent of the allowable, plantable land of each parcel must be in agricultural production.

B. Developments or improvements in water sources serving agriculture on any other properties, including adjacent property not qualifying as "contiguous" for purposes of this section, shall be subject to the same permitting criteria and standards identified in Sections 13.15.030 and 13.15.070.

C. Notwithstanding subsection (A), developments or improvements in water sources located on parcels included within those groundwater deficient areas depicted on Map 13-1 shall be subject to those permitting criteria and standards identified in Sections 13.15.030 and 13.15.070.

13.15.050 Application for determination of exemption.

A. Prior to any employee, department or body of Napa County issuing any permit or approval as set forth in Section 13.15.020, said employee, department or body must first make a preliminary determination if a groundwater permit is required (or must be provided with such preliminary determination from another employee, department or body). Said determination shall consider if the permit or approval:

1. Is for a specific exemption as set forth in this chapter; or
2. Falls within the definition of a minor improvement or convenience improvement; or
3. Is eligible for a groundwater permit issued pursuant to subsection (C) of Section 13.15.030.

B. If the proposed project is determined to be exempt from the requirement of a groundwater permit for reasons other than an agricultural exemption, no further groundwater review shall take place and a determination of exemption shall be issued by the director.

C. If the proposed project is claiming an agricultural exemption, the applicant must submit to the department an application for a groundwater permit agricultural exemption. The director shall respond, in writing, to the applicant on or before the end of fifteen days from the date of submittal. If the proposed project is determined by the director to be exempt from the requirement of a groundwater permit on the basis of the agricultural exemption authorized by Section 13.15.040 the holder of the exemption shall be required to file with the department a biennial report demonstrating that the parcel continues to be in at least eighty percent agricultural production of the allowable, plantable land. If the proposed project is determined not to be exempt from the groundwater review process, the determination of the director shall serve as notice to the applicant that a groundwater permit must be issued before the proposed project is begun.

D. If the proposed project is determined not to be exempt based on a preliminary determination, the employee, department or body of Napa making such determination shall provide written notice to the applicant that a groundwater permit must first be issued.

13.15.060 Application for groundwater permit.

Each applicant determined not to be exempt or eligible for a groundwater permit issued pursuant to subsection (C) of Section 13.15.030 shall be required to obtain a groundwater permit and shall submit a groundwater permit application to the director, using a form provided by the director. That application shall:

A. Identify any present and future uses of any existing water system, including whether and to what extent groundwater is or will be used as a water source on the affected property. For the purposes of this chapter, when an applicant identifies the existing water uses on a parcel to establish the existing water use level on that parcel, those existing uses which will be considered by the director are only those legitimate water using activities such as residential structures, other legal uses (wineries, etc.), vineyards, or other viable agricultural crop or animal operation which were not discontinued for more than two years prior to the date of the application for the groundwater permit. Random irrigation practices that serve no beneficial use (e.g., watering pasture when no animal or

crop is dependent on that water) will not be considered as an existing water use. For the purposes of the application, future uses are those for which permits will be secured or improvements completed within two years of the application;

B. Identify any water sources other than groundwater intended to be used;

C. If the proposed application is for the development of a new water system or improvement to an existing water system, state the number of parcels and service connections the new water system or improvement are intended to serve, identify the location of the structures and improvements to be served by that new or improved water system, and identify existing and future uses and users to be served by that new or improved water system;

D. Whether the intent is to transfer some or all of the groundwater extracted pursuant to the permit to a public agency for use by a public agency following issuance of the groundwater permit; and

E. In the form of a Water Availability Analysis-Phase I, as outlined in the Department of Public Works Water Availability Policy Report, as it may be amended from time to time, provide sufficient information and supporting documentation to enable the Director of Public Works to determine whether it is likely the new water system, improvement or addition might significantly affect the impacted groundwater basin within Napa County, whether or not the proposed improvement or new system may be reasonably expected to adversely affect reasonable and beneficial uses of groundwater, interfere with surface water flows, or cause other adverse changes to the physical environment adversely affecting the impacted groundwater basin.

13.15.070 Processing of groundwater permit applications.

The following procedures and standards shall govern the review and disposition of applications requiring groundwater permits other than groundwater permits issued pursuant to subsection (C) of Section 13.15.030:

A. The director shall review an applicant's groundwater declaration submitted under this chapter for compliance with the requirements of this chapter and any other applicable provisions of law.

B. Following the director's determination that the groundwater declaration complies with Section 13.15.060, the director shall furnish a copy of the applicant's declaration to the Director of the Department of Public Works to obtain the written comments of that department on the application. The Director of Public Works shall instruct the applicant to perform any required phase II or III water availability analysis required by the written procedures established by the Department of Public Works. The Department of Public Works, in assessing any required phase II or phase III analysis, shall take into consideration the potential changes in static water levels of neighboring wells prior to submitting its comments. The Director of Public Works shall submit its comments in the form of a written appraisal of the application to both the Director of the Conservation, Development and Planning Department and the Director. That appraisal shall assess the potential for significant negative impacts on the affected groundwater table, and assess potential adverse effects on reasonable and beneficial uses of groundwater, interference with surface water flows, or other adverse changes to the physical environment. The Director of the Conservation, Development and Planning Department shall review the application and the written comments and appraisal from the Director of Public Works for the purposes of conducting the required environmental review and shall submit their written comments to the director.

C. The director shall consider approving a groundwater permit only after reviewing the declaration, the environmental determination, and any written comments received regarding the application, including the written appraisal of the Department of Public Works. After that review, the director shall only approve a groundwater permit after making any necessary environmental

determination and concluding, based on substantial evidence in the record, that the new water system, improvement or addition would not significantly affect the impacted groundwater basin in Napa County. In making this determination, the director shall consider, but is not limited to, the following factors: impact on the affected groundwater table; adverse effects on the reasonable and beneficial uses of groundwater; implementation of Best Management Practices; or other adverse changes to the physical environment.

D. In approving a groundwater permit, the director may impose reasonable conditions on the permittee as needed to satisfy the requirements of this chapter, minimize groundwater use and to protect the public health, safety and welfare including but not limited to requiring implementation of Best Management Practices, plumbing retrofits, installation of meters, monitoring and reporting, limits on groundwater consumption, and requirements that groundwater consumption be reduced in the future if the basin develops an overdraft condition. Additionally, any groundwater permit granted to a public agency, or granted to a person or persons who, subsequent to the issuance of the groundwater permit, intends to transfer some or all of the groundwater extracted pursuant to the permit to a public agency for use by a public agency, shall be valid for a maximum of three years. The grant of a permit subject to this three year limitation shall include conditions relating to the termination and renewal of the permit; provided, however, that such conditions shall include, at a minimum, a condition that the permit may be renewed only upon the approving authority's finding that the renewal would not cause significant adverse effects on the affected groundwater basin or the surrounding agricultural operations.

E. If the director determines after review that the applicant's groundwater declaration satisfies the groundwater permitting requirements of this chapter, and any other applicable provisions of law, the director shall issue a tentative decision setting forth the conclusions reached in making the determination, and approving or conditionally approving a groundwater permit. If the director determines the application and groundwater declaration do not meet the permitting requirements of this chapter, or any other applicable provisions of law, the director shall issue a tentative decision denying the groundwater permit and setting forth the reasons therefore. Any tentative decision will be issued within thirty days of the date comments are received from the Directors of Public Works and Conservation, Development and Planning.

F. Within seven calendar days of the issuance of the tentative decision, the director shall give notice of its issuance, including the date on which a tentative decision will become final if a written request for a public hearing is not requested, which date shall be not less than ten calendar days following the date notice of the tentative decision is mailed. The notice shall be given by all of the following means:

1. Notice shall be personally delivered or placed in the mail to the applicant seeking approval of a groundwater permit under this chapter.

2. Notice shall be placed in the mail to each public entity with jurisdiction over any portion of the groundwater basin in which the proposed extraction would be expected to occur.

3. Notice shall be personally delivered or placed in the mail to the owners of all real property, including businesses, corporations, or other public or private entities, as shown on the latest equalized assessment roll, within three hundred feet of the outer perimeter of the properties that will utilize the extracted groundwater. In lieu of utilizing the assessment roll, the records of the county assessor or tax collector may be used if they contain information more recent than the assessment roll.

4. Notice shall be mailed to any person who has filed a written request therefor with the director. Such requests may be submitted at any time during the calendar year and shall apply for the balance of such calendar year.

G. The tentative decision shall become final once the period identified in the notice during which a public hearing may be requested has expired without such written request for a public hearing having been received.

H. If a public hearing is requested in a timely manner, the tentative decision shall be a nullity, in which case the director shall set the hearing date and personally deliver or mail a notice of the time, place and date of the hearing, in the same manner and to the same persons as the notice of the tentative decision was mailed or delivered. This notice shall be mailed not less than ten and not more than thirty calendar days prior to the date of the hearing. Any required hearing shall be de novo and shall commence within ninety days of receipt of a request for a hearing.

I. The director shall conduct the public hearing. Any member of the public may attend and present oral testimony, written or other evidence, or both. The proceedings shall be electronically recorded and the tapes thereof retained in the director's custody for three years after the hearing except during such time as they may be undergoing transcription for preparation of the record on appeal.

J. Within five calendar days following the conclusion of the public hearing, the director shall issue a final decision approving, conditionally approving, or denying the request to issue a groundwater permit. The director shall give notice of the final decision to all persons who appeared and presented testimony at the hearing.

K. Final determinations of the director (or on appeal, the Board of Supervisors) are discretionary for purposes of the California Environmental Quality Act (Pub. Res. Code, §21000, et seq.) except that determinations of exemption pursuant to subsection (A) of Section 13.15.030 or the issuance of a groundwater permit pursuant to subsection (C) of Section 13.15.030 are deemed ministerial acts and are exempt from the California Environmental Quality Act.

13.15.080 Exceptions.

Notwithstanding any other provisions of this chapter:

A. No groundwater permit shall be denied where the director (or on appeal, the Board of Supervisors) determines, after reviewing the entire record, that a denial would constitute an unconstitutional taking of property without just compensation, or would effect an unreasonable use or waste of water.

B. The groundwater review and permitting requirements of this chapter shall be waived when applying them would delay effective response to a general emergency declared by the Governor of the State of California or the Napa County Board of Supervisors. "General emergency," as used herein, refers to a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or other essential public services.

13.15.090 Appeals.

Any person may appeal a final decision of the director made, following a request for hearing pursuant to subsection (H) of Section 13.15.070, in accordance with the procedures set forth in Chapter 2.88 of this code. Appeals of tentative decisions that become final because no request for a hearing was received, are not permitted.

13.15.100 Enforcement--Violation.

A. Criminal Penalties. Any person, firm or corporation, whether acting as principal, agent, employer or otherwise, who violates any provision of this chapter, or the terms and/or conditions of any permit issued pursuant to this chapter, with intent to do so shall be guilty of an infraction with a fine not exceeding one hundred dollars for the first violation, two hundred dollars

for the second violation within one year, and five hundred dollars for the third violation within one year. Any subsequent violation shall be punishable as a misdemeanor, punishable by a fine not to exceed one thousand dollars per violation, or imprisonment not exceeding six months, or both such fine and imprisonment. Any person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any such violation is committed, continued, or permitted.

B. Civil Actions--Injunctive Relief. Napa County may elect to proceed with a civil action, including seeking injunctive relief, rather than proceed with criminal actions as described in subsection (A) of Section 13.15.100. Any person, firm or corporation, whether acting as principal, agent, employer or otherwise, who willfully violates any provision of this chapter, or the terms and/or conditions of any permit issued pursuant to this chapter, shall be liable for a civil penalty not to exceed one thousand dollars for each day or portion thereof, that the violation continues to exist. Any person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any such violation is committed, continued, or permitted. In determining the amount of the civil penalty to impose, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting the violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the violator, whether corporate or individual, and any corrective action taken by the violator.

SECTION 2. If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Supervisors of the County of Napa hereby declares it would have passed and adopted this Ordinance and each and all provisions hereof irrespective of the fact that any one or more of said provisions be declared invalid.

SECTION 3. This Ordinance shall be effective thirty (30) days from and after the date of its passage.

SECTION 4. A summary of this Ordinance shall be published at least once 5 days before adoption and at least once before the expiration of 15 days after its passage in the Napa Valley Register, a newspaper of general circulation published in the County of Napa, together with the names of members voting for and against the same.

The foregoing Ordinance was introduced and read at a regular meeting of the Board of Supervisors of the County of Napa, State of California, held on the ___ day of _____, 2007, and passed at a regular meeting of the Board of Supervisors of the County of Napa, State of

California, held on the 7th day of August_, 2007, by the following vote:

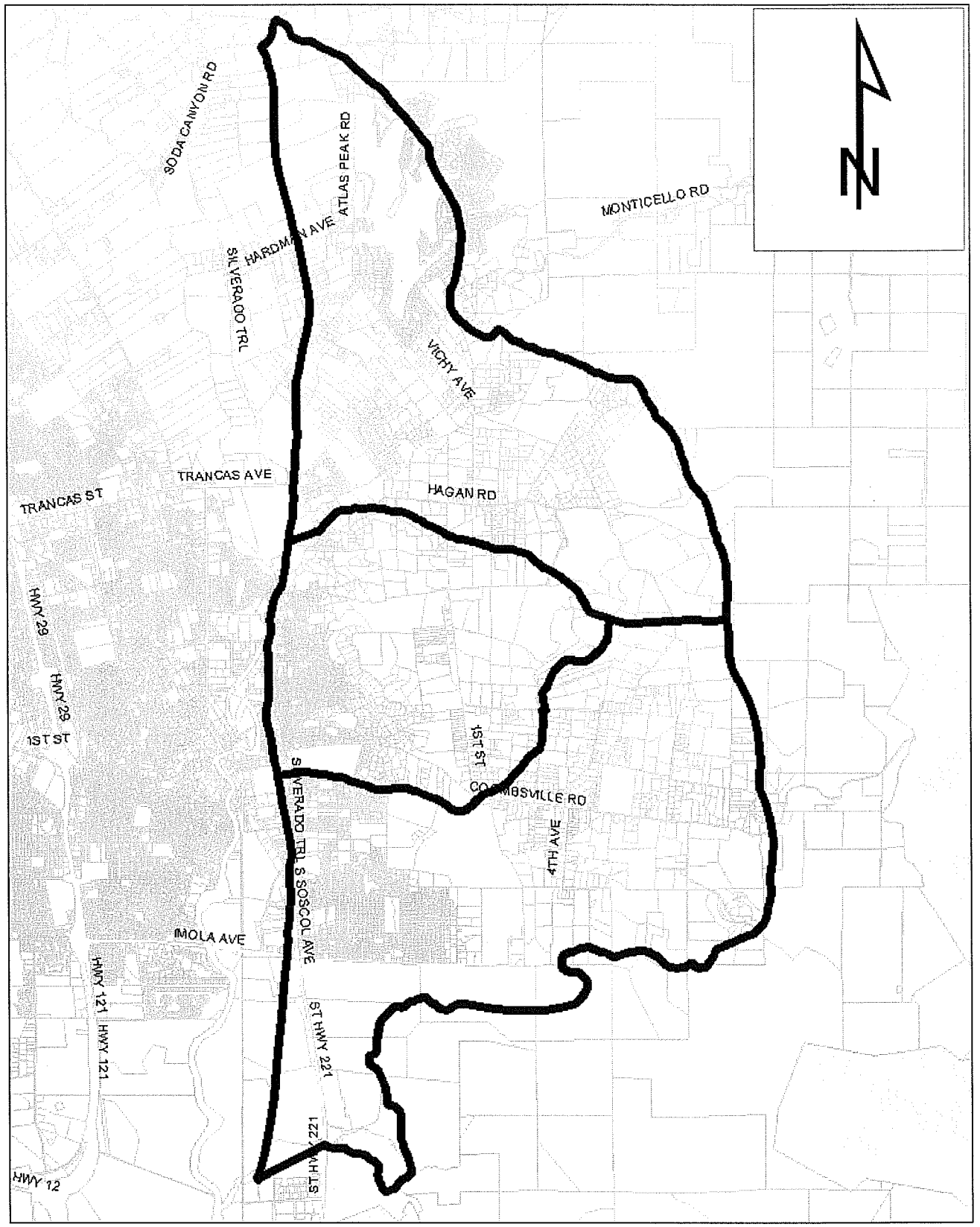
AYES:	SUPERVISORS	DODD, DILLON, WAGENKNECHT, LUCE and MOSKOWITE
NOES:	SUPERVISORS	NONE
ABSTAIN:	SUPERVISORS	NONE
ABSENT:	SUPERVISORS	NONE

HAROLD MOSKOWITE, CHAIR
Napa County Board of Supervisors

ATTEST: GLADYS I. COIL
Clerk of the Board of Supervisors
By: _____

APPROVED AS TO FORM
Office of County Counsel
By: Silva Darbinian (by e-signature)
Chief Deputy County Counsel
By: Sue Ingalls (by e-signature)
County Code Services
Date: July 20, 2007

APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS
Date: August 7, 2007
Processed by:
_____
Deputy Clerk of the Board



Map 13-1: Milliken Sarco Tulocay Groundwater Deficient Basin