

DEPARTMENT OF AGRICULTURE/WEIGHTS & MEASURES

Andrew F. Smith

Agricultural Commissioner
Sealer of Weights & Measures



133 Aviation Blvd., Suite 110
Santa Rosa, CA 95403-8279

(707) 565-2371 Fax (707) 565-3850

sonomacounty.ca.gov/AWM

NOTICE OF VIOLATION AND PROPOSED CIVIL PENALTY ORDER AND RIGHT TO REQUEST HEARING

Date: July 10, 2020

Property Owner:

Fahri Diner

File Number: 2021-001 LS VO

2505 Geysers Road

Geyserville, CA 95441

Penalty Amount: \$172,282.00

Site Address:

2505 Geysers Road

Geyserville, CA 95441

Dear Mr. Diner:

Notice of Unpermitted Agricultural Grading. You are being notified as the Recorded Owner of real property described on the latest equalized Sonoma County tax roll located at 2505 Geysers Road, Geyserville, CA, Sonoma County Assessor's Parcel Number(s) 131-030-008 (hereinafter "the Property"), that unpermitted agricultural grading occurred on the Property in violation of Chapter 36 of the Sonoma County Code ("SCC"), also known as the Vineyard/Orchard Erosion and Sediment Control Ordinance (VESCO).

Inspection and Observation. After receiving complaints from the public regarding unpermitted grading work, a visual inspection of the Property was performed by Sonoma County Department of Agriculture/Weights & Measures ("County" or "Department") inspectors on June 9, 2020, to verify that agricultural grading to create vineyard terraces without a permit had occurred. Visual evidence collected during that site visit combined with historic satellite imagery, confirmed that approximately 0.78 acres of land had been disturbed to create multiple terraces for vineyard expansion.

Also observed on the site inspection through visual evidence and subsequent review of historic satellite imagery were two instances of replanting of vineyard blocks without applying for or receiving the required VESCO permit. Vineyard block #1 is steep and, based on soil-type and slope gradient, would qualify for a Level 2 designation pursuant to SCC Chapter 36 Table 36-1. Vineyard Block #2 is located at the base of the agricultural grading work and would qualify as a Level 1 replant based on soil-type and slope gradient pursuant to SCC Chapter 36 Table 36-1. A Level 2 VESCO permit application requires, at minimum, erosion control plans with hydrologic calculations developed by a licensed civil engineer while a Level 1 VESCO permit application does not.

VESCO permit Level 1 and Level 2 designation thresholds are outlined in the table below.

Table 36-1 Vineyard and Orchard Development Designation

Parameter	Threshold	
	Level I Vineyard and Orchard Development	Level II Vineyard and Orchard Development
Natural slope of new planting area having no highly erodible soils	Less than 15 percent	15 to 50 percent ¹
Natural slope of replanting area having no highly erodible soils	Less than 30 percent	30 percent or greater
Natural slope of new planting area having any highly erodible soils	Less than 10 percent	10 to 50 percent ¹
Natural slope of replanting area having any highly erodible soils	Less than 15 percent	15 percent or greater
Natural slope descending below new planting area on ridgetop	Less than 50 percent for more than 500 feet in slope length above a blue-line stream	50 percent or greater for more than 500 feet in slope length above a blue-line stream
Location of new planting area on ridgetop	Not on a designated watershed or sub-watershed divide	On a designated watershed or sub-watershed divide

Notes:

1. New vineyard and orchard planting is prohibited on natural slopes greater than 50 percent. See Section 36.18.020.B.

Violations. In the absence of permits, this unpermitted work is in violation of Section 36-04-010A on three (3) separate and individual counts. One for the unpermitted agricultural grading to create vineyard terraces, one for the unpermitted Level 1 replanting, and one for the unpermitted Level 2 replanting.

These actions are in violation of Sonoma County Code Sections listed below.

1. **Sonoma County Code Section 36-04-010A Vineyard and Orchard Permit Requirements.** Permit required. A vineyard and orchard development permit shall be required prior to commencing any vineyard or orchard development or related work, including preparatory land clearing, vegetation removal, or other ground disturbance, except where exempted from permit requirements by Subsection D. A separate vineyard and orchard development permit shall be required for each site.
2. **Sonoma County Code Section 36-06-010A Agricultural Grading Permit Requirements.** Permit required. An agricultural grading permit shall be required prior to commencing any

agricultural grading or related work, including preparatory land clearing, vegetation removal, or other ground disturbance, except where exempted from permit requirements by Subsection C. A separate agricultural grading permit shall be required for each site.

In addition, there is a prohibition against agricultural grading and vineyard development on slopes steeper than 50% pursuant to SCC 36.18.030. Since the hillslope affected by the grading to create vineyard terraces is steeper than 50%, this is an additional violation of the VESCO ordinance. **No vineyard development will be allowed at the newly graded terraced area.**

3. **Sonoma County Code Section 36.18.030. - Prohibited agricultural grading.** Agricultural grading to prepare new cropland shall be prohibited on natural slopes greater than 50 percent.

Please refer to Exhibit A to this Notice for information related to the Agricultural Grading violation.
Please refer to Exhibit B to this Notice for information related to the two (s) vineyard replanting violations.

Penalty for Each Violation.

Penalty by violation associated with the unpermitted Agricultural Grading (see Exhibit A): The violations associated with the Agricultural Grading work are subject to SCC Section 36.24.040 – **Administrative Enforcement Action**, which states: “Where the agricultural commissioner determines that an activity has been, or is being performed, in violation of the provisions of this chapter or any permit issued pursuant to this chapter, the agricultural commissioner may initiate an administrative enforcement action pursuant to Section 1-7.3 of this code and seek the imposition of civil penalties and costs, including attorney’s fees.”

Based on SCC Section 36.24.050 – Civil Penalties and Costs, the violation associated with the unpermitted Agricultural grading (see exhibit A) is determined to be Class B. This is defined as “A Class B or moderate violation is a violation of a provision of this chapter or a requirement of a permit issued pursuant to this chapter designed to mitigate the risk of adverse effects on property, the public, or the environment, and is not designated as Class A.” The impact to the steep hillslope at the site has the potential to create harmful impacts to the property, personnel, and the environment. This violation carries a penalty range of \$500.00 to \$50,000.00 per violation.

This is the first violation on record of this Department for this property, however, the severity of the violation and the safety hazard created by the unpermitted work warrants a higher penalty within the penalty range.

1. **Sonoma County Code Section 36-04-010A Vineyard and Orchard Permit Requirements**
Penalty- \$45,000.00
2. **Sonoma County Code Section 36-06-010A Agricultural Grading Permit Requirements.**
Penalty - \$45,000.00
3. **Sonoma County Code Section 36.18.030. - Prohibited agricultural grading.**
Penalty - \$45,000.00

Total Penalties for Agricultural Grading Violations: \$135,000.00

Penalty by violation associated with the unpermitted Vineyard Development (see Exhibit B):

The two unpermitted vineyard replant violations are subject to SCC Section 1-7.1(a) (1) (iii), which states: “In the event that the use or structure in violation may be permitted with an appropriate permit, a minimum of three (3) times and up to a maximum of ten (10) times the amount of the standard fee for every required approval, review and permit.”

Unpermitted Level 2 vineyard replanting: penalty of \$32,228.00 based on the permit fee of \$4,604.00 for Level 2 vineyard/orchard development of less than ten (10) acres with no grading and/or drainage, multiplied by 7 times the cost of the original permit, based on the Penalty Calculation Sheet (Exhibit C).

Unpermitted Level 1 vineyard replanting: penalty of \$5,054.00 based on the permit fee of \$722.00 for Level 1 vineyard/orchard development of less than ten (10) acres with no grading and/or drainage, multiplied by 7 times the cost of the original permit, based on the Penalty Calculation Sheet (Exhibit C).

Total Penalties for Vineyard Development Violations: \$37,282.00

Total Penalties Due for All SCC Chapter 36 Violations: \$172,282.00

Requirements for Sonoma County Code Compliance. In order to come into compliance with the Sonoma County Code/VESCO you must:

- 1) Pay Total Penalties Due to Sonoma County Department of Agriculture/Weights & Measures within ten (10) days from date of this Notice;
- 2) Contract with a geotechnical consultant and civil engineering firm to create an interim stabilization plan to safely stabilize the newly terraced hillslope until permanent repair work can take place. Submit stabilization plans to this office within 30 days of this notice for review and approval;
- 3) Contract with a geotechnical consultant and civil engineering firm to create final remediation plans to permanently repair and reconstruct the terraced hillslope. Submit remediation plans to this Department within 60 days of this Notice for review and approval.
- 4) No later than October 15, 2020, complete implementation of approved stabilization plans of newly terraced hillslope.
- 5) No later than October 15, 2021, complete implementation of approved remediation plans to repair and reconstruct the terraced hillslope in accordance with approved plans.
- 6) Submit VESCO permit applications for unpermitted vineyard replanting outlined in this Notice within 60 days of this Notice for review and approval.

Stipulation and Waiver. If you do not wish to request an Administrative Hearing to contest the penalty amount and proposed action, you may stipulate (agree) to this Proposed Order by dating, signing, and returning the (enclosed) Stipulation and Waiver within ten (10) days of date of this Notice. *Please be aware that once you sign and return the Stipulation and Waiver, you must fulfill each of the Requirements for Sonoma County Code Compliance as set forth in this Notice.*

Right to Request Appeal Hearing. Alternatively, you have the right to appeal the Department's determination of violation and/or determination of penalty amount to an administrative hearing officer by signing, dating, and returning the enclosed Hearing Request. Pursuant to SCC Section 1-7.3(d), any appeal and hearing request must be made in writing and submitted *within ten (10) calendar days of the date of this Notice.*

If you choose to timely appeal, an administrative hearing will be scheduled and held at the Department of Agriculture/Weights & Measures located at the above address. At the hearing you are entitled to review the Department's evidence and to present any evidence, oral or written, on your behalf as to why the Department should not take the proposed action. You are not required to be represented by legal counsel at the hearing, but an attorney may accompany and represent you if you choose. A transcript or tape recording will be made of the hearing proceeding and will be available for your review.

Costs of Administrative Hearing. If you appeal and the administrative hearing officer upholds the Department's determination/Notice of Violation, in addition to the penalties identified in this Notice, you also may be ordered to pay the County's administrative abatement costs, including but not limited to costs for staff and County Counsel to prepare for and appear at the hearing, and the hearing officer's fees. See Sonoma County Code Section 1.7-3(i).

If you have any questions, please contact Andy Casarez, Agriculture and Vineyard Conservation Coordinator, at (707) 565-2371.

Sincerely,



Andrew F. Smith
Agricultural Commissioner/Sealer of Weights & Measures
Sonoma County Department of Agriculture/Weights & Measures

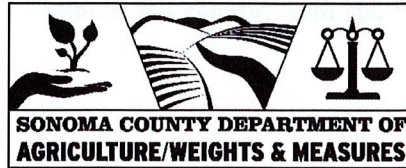
Enclosures:

1. Stipulation and Waiver
2. Hearing Request
3. Exhibit A: Agricultural Grading Violation
4. Exhibit B: Vineyard Development Violations
5. Exhibit C: Penalty Calculation Worksheet for Vineyard Development Violations

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ORDER

Date:	July 10, 2020	Property Owner:	Fahri Diner
File Number:	2021-001 LS VO		2505 Geysers Road
			Geyserville, CA, CA 95441
Penalty Amount:	\$172,282.00	Site Address:	2505 Geysers Road
			Geyserville, CA, CA 95441

Order: It is hereby ordered that **Fahri Diner** is penalized **\$172,282.00**. The penalty is now due and payable.



Andrew F. Smith
Agricultural Commissioner/Sealer

7/10/2020

Date

Instructions to Respondent: If you wish to pay the penalty and not request (waive) a hearing, you may sign the Stipulation and Waiver to Order below. By doing so, you also waive your right to an appeal or any other review in this matter. If you wish to sign the Stipulation and Waiver, submit it to the Sonoma County Department of Agriculture/Weights & Measures within ten (10) days of receipt of this Notice.

STIPULATION AND WAIVER

I hereby stipulate that the Sonoma County Department of Agriculture/Weights & Measures' Notice in the above-entitled matter states ground for civil penalty action based on the evidence now before the Department. Without admitting to the violations alleged in the Notice, I stipulate to the Department's Order, as set forth above, and I waive all rights to a hearing and appeal or any other review in this matter.

Property Owner Signature

Date

Payable to: Sonoma County AWM
Mail to: Sonoma County Department of Agriculture/Weights & Measures
133 Aviation Boulevard, Suite 110
Santa Rosa, CA 95403

Please be sure to include payment and signed Stipulation and Waiver.

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HEARING REQUEST

Date: July 10, 2020

Property Owner:

Fahri Diner

File Number: 2021-001 LS VO

2505 Geysers Road

Geyserville, CA, CA 95441

Penalty Amount: \$172,282.00

Site Address:

2505 Geysers Road

Geyserville, CA, CA 95441

IMPORTANT: This Hearing Request must be submitted to the Sonoma County Department of Agriculture/Weights & Measures within ten (10) days of this Notice.

I, the undersigned respondent in this proceeding, hereby acknowledge receipt of a copy of the Notice.

I hereby request a hearing to permit me to have an opportunity to present my defense to the violations contained in this Notice.

Property Owner Signature

Date

Business Name

Phone Number

Return to: Sonoma County Department of Agriculture/Weights & Measures
133 Aviation Boulevard, Suite 110
Santa Rosa, CA 95403

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DEPARTMENT OF AGRICULTURE/WEIGHTS & MEASURES

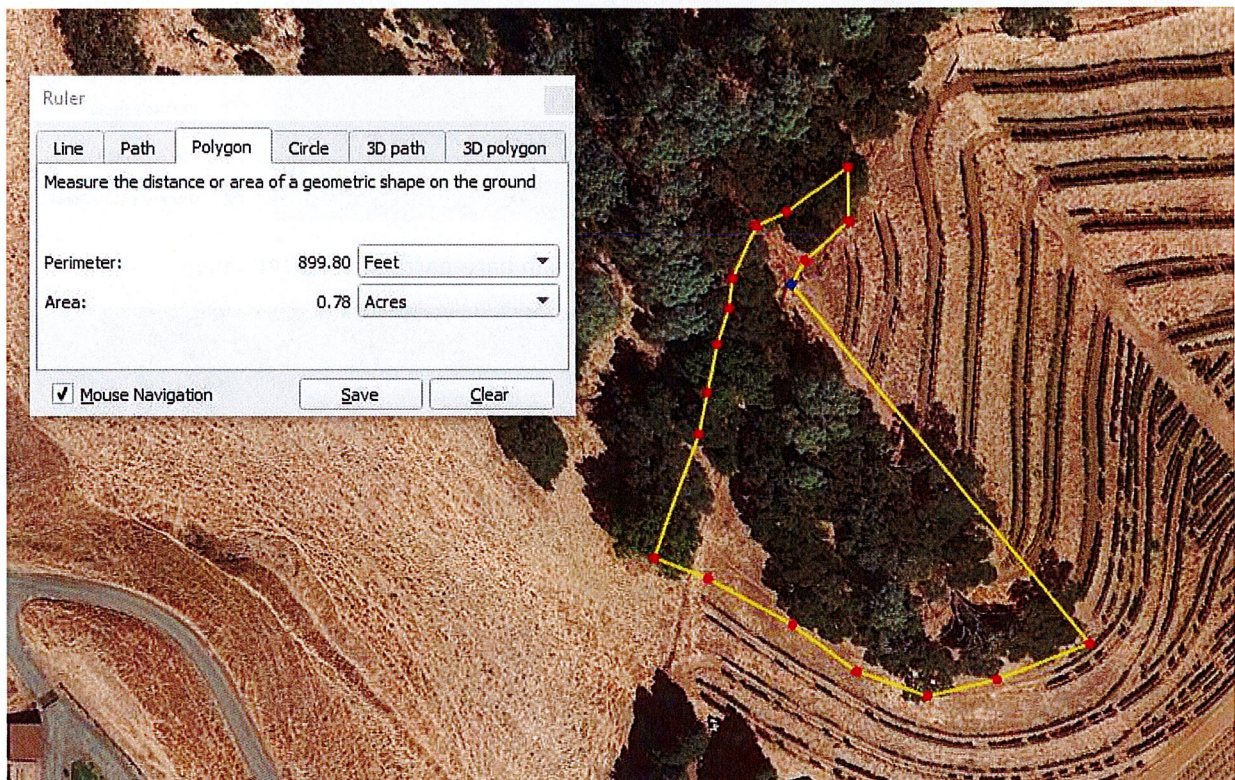
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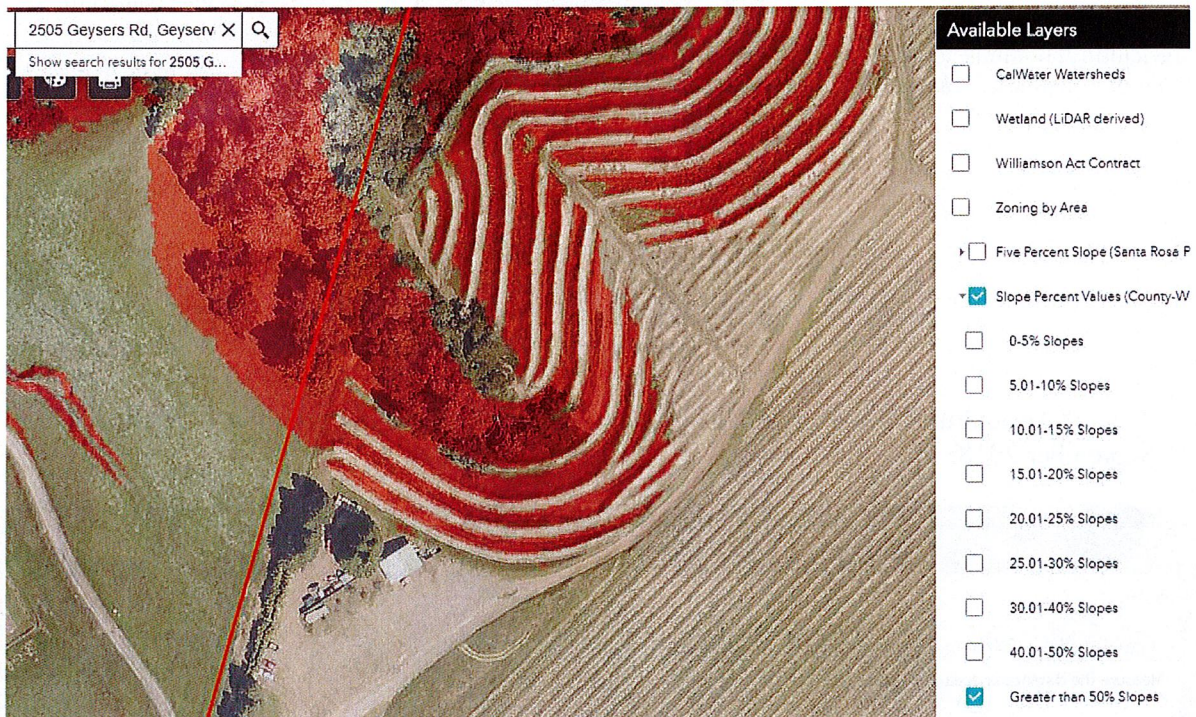
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Exhibit A: Agricultural Grading Violation 2505 Geysers Road_Diner Violation 2021-001 LS VO July 9, 2020

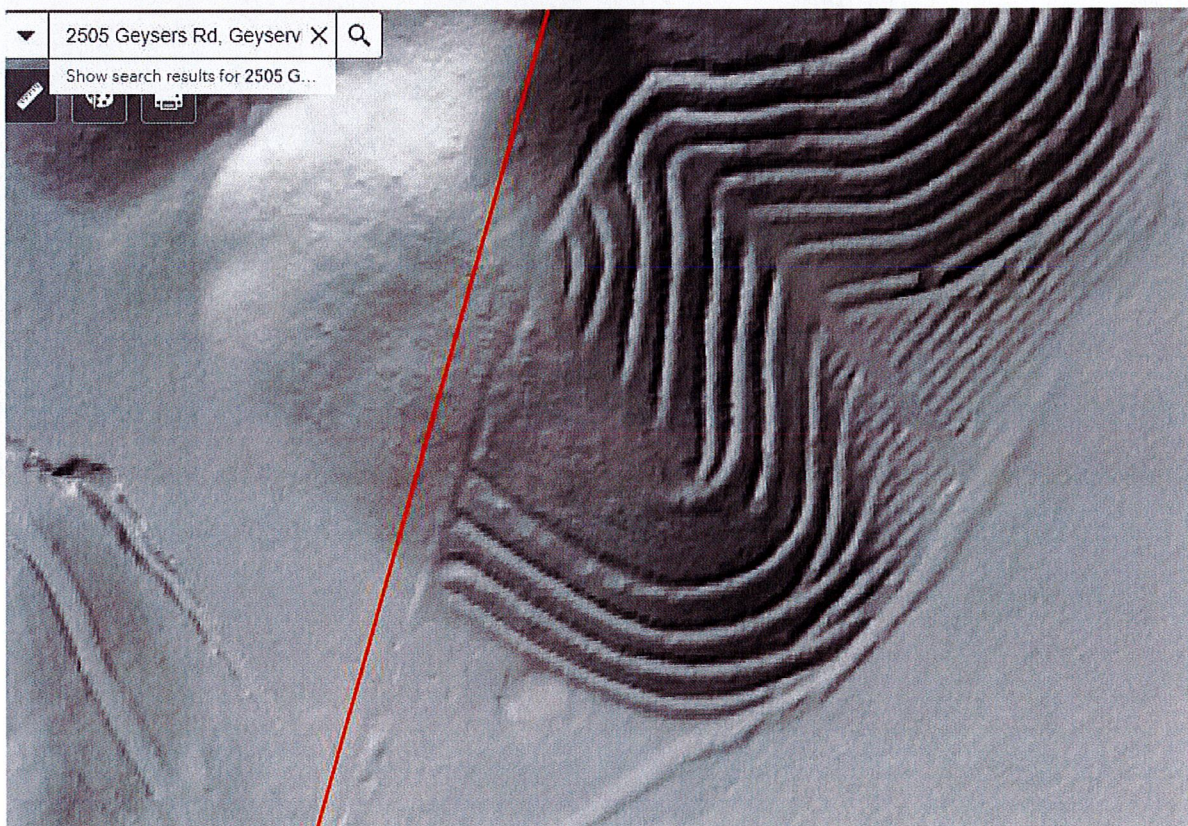
1. Area of Agricultural Grading work and tree removal from Google Earth image dated September 2018.



2. Graded area showing slopes steeper than 50% highlighted in red (2013 LIDAR derived slope information overlaid onto September 2018 satellite image).



3. Area of Agricultural Grading prior to grading work shown in bare-earth 2013 LIDAR image.



4. Photo of Agricultural Grading work taken the morning of June 9, 2020. New vineyard terraces are being graded into hillside with excavators.



5. Photo of Agricultural Grading work taken in afternoon of June 9, 2020.



6. Drone image of Agricultural Grading work taken on July 1, 2020.



DEPARTMENT OF AGRICULTURE/WEIGHTS & MEASURES

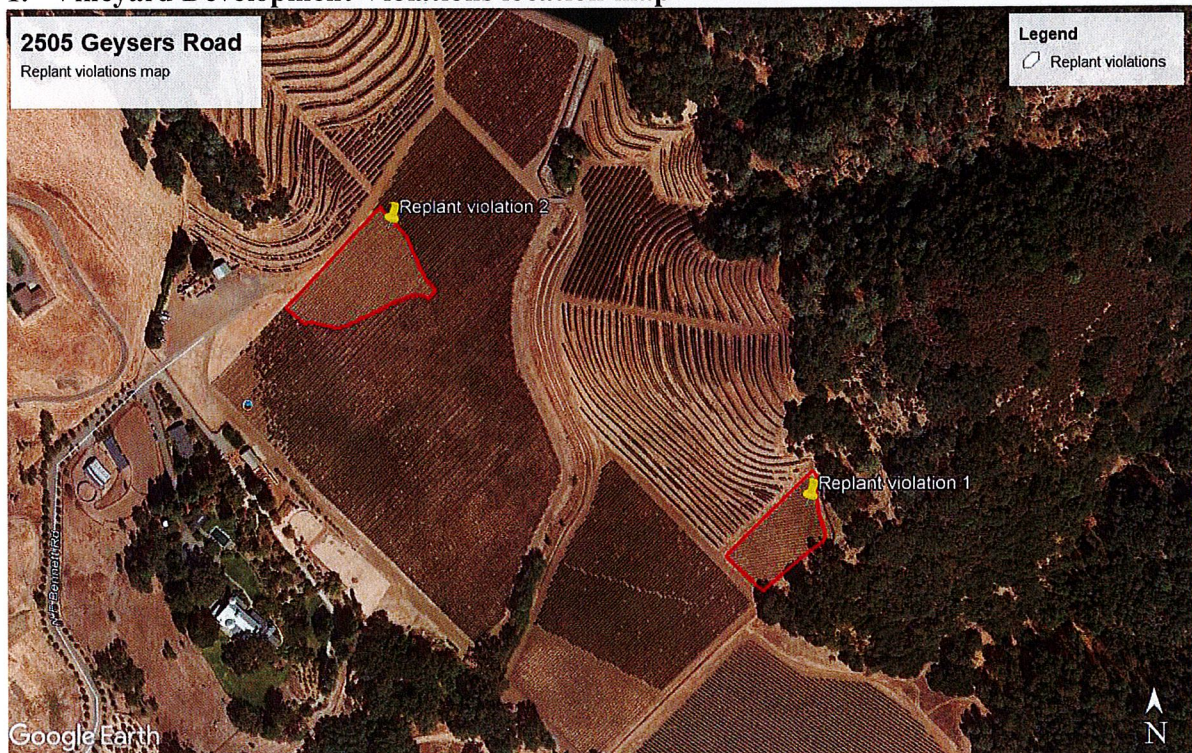
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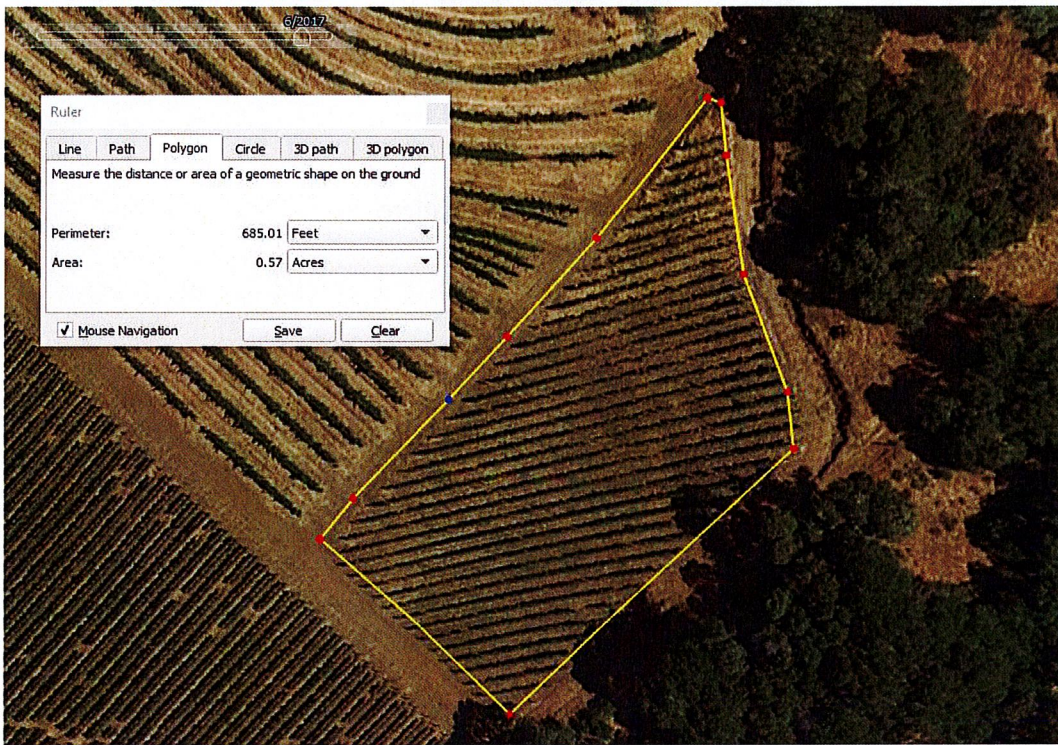
Exhibit B: Vineyard Development Violations 2505 Geysers Road_Diner Violation 2021-001 LS VO July 9, 2020

1. Vineyard Development Violations location map

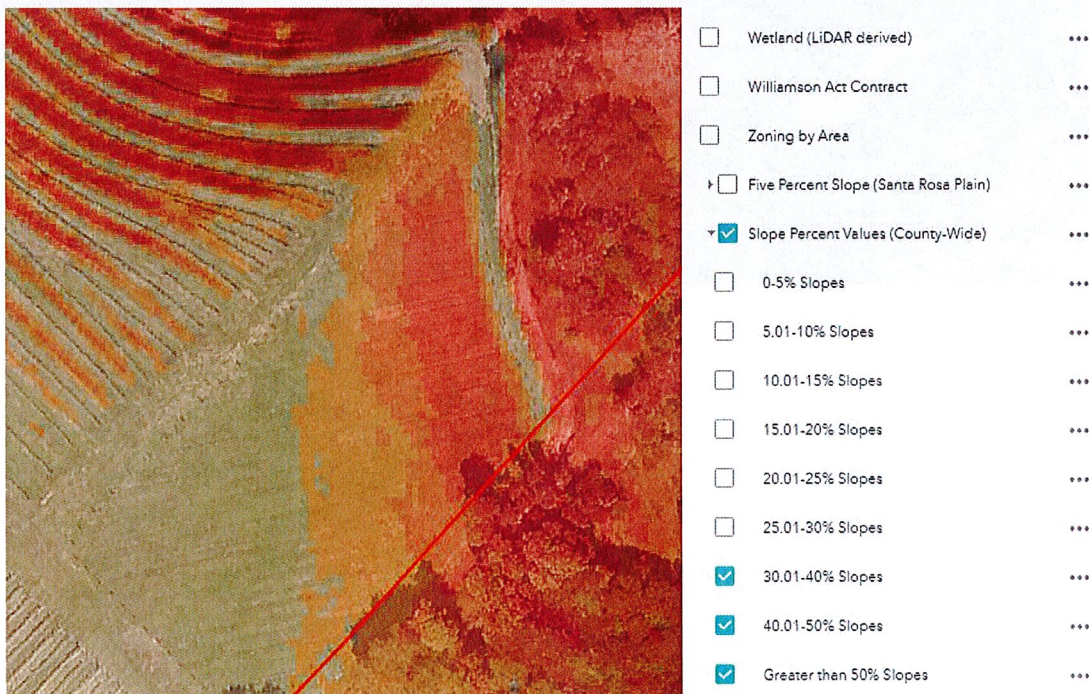


2. Vineyard Development Violation 1

Google Earth screenshot showing acreage and area where unpermitted Vineyard Development work has taken place at Vineyard Development Violation 1.



3. LIDAR image of Vineyard Development Violation 1, dated September 2018, showing areas from 30% to over 50% slope gradient (orange tint shows 30-40% slope, red tint shows over 50%)

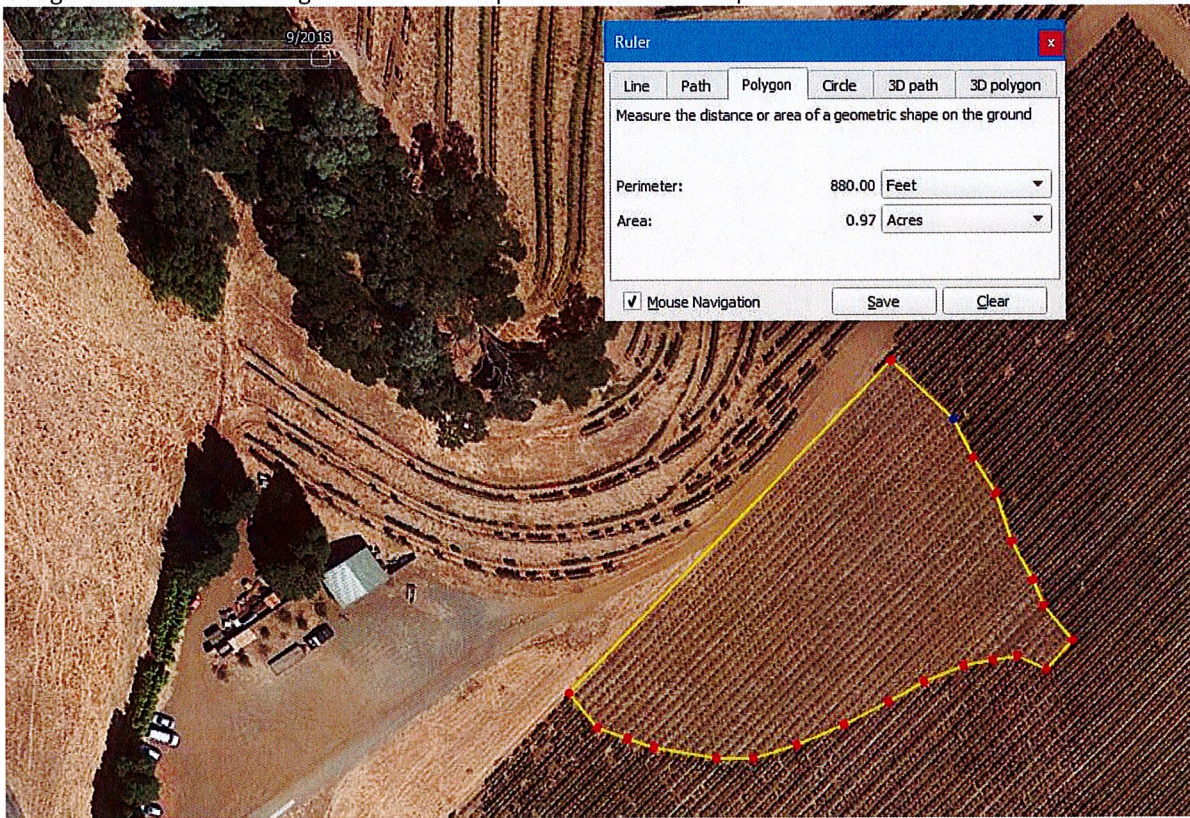


4. Photo of Vineyard Development Violation 1 taken on 6/9/20. Photo shows recently planted vines.

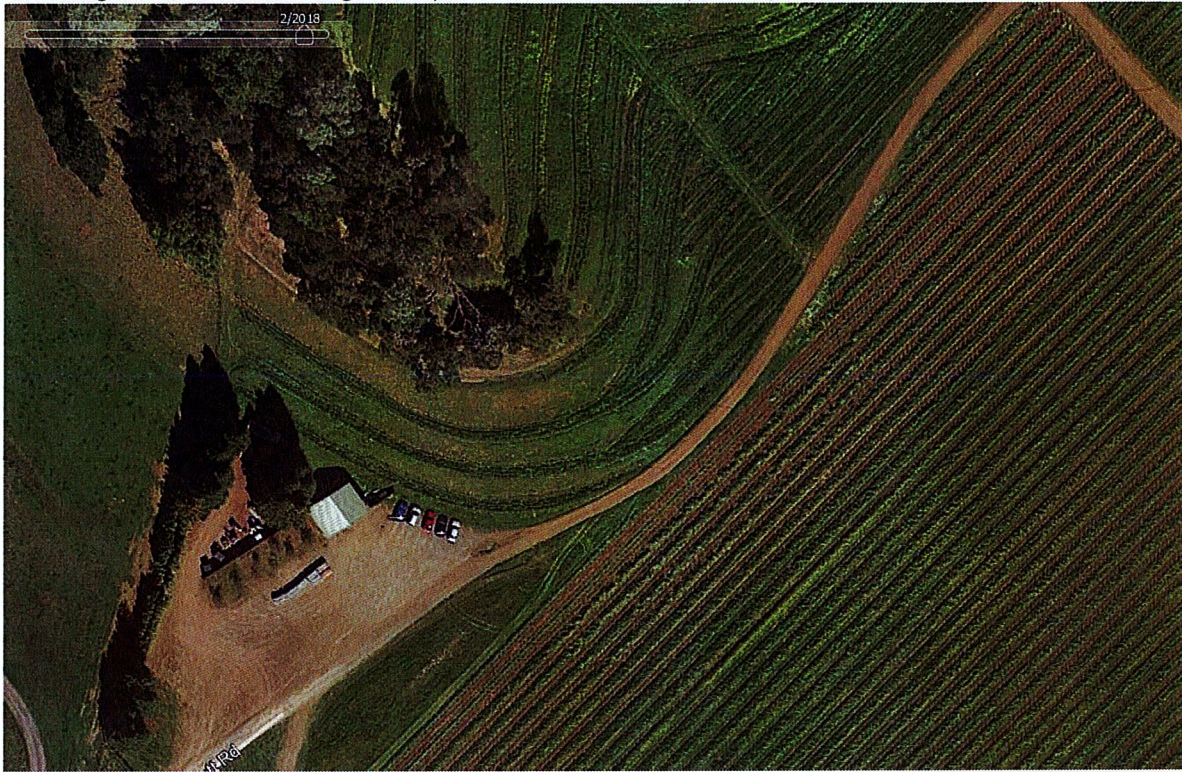


Vineyard Development Violation 2

Google Earth satellite Image of 0.97 acre replanted area from September 2018.



5. Google Earth satellite image of Replanted area before replanting work dated February 2018.



6. Photo of Vineyard Development Violation 2 taken on June 9, 2020. Photo shows young recently planted vines in white tubes.



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Exhibit C: Penalty Calculation Sheet and Penalty Schedule 2505 Geysers Road_Diner Violation 2021-001 LS VO

PENALTY CALCULATION SHEET

	SCORE	WEIGHT	WEIGHTED
Seriousness of Violation = 30% of Total			
a) Minor violations (1 pt)			
b) May cause human health/safety or environmental damage (5 pts)			
c) Has caused human health/safety or environmental damage (10 pts)	5	x .30 =	1.5
Length of Time Violation has Existed = 5% of Total			
a) Less than six (6) months (1 pt)			
b) Six (6) months to one (1) year (5 pts)	1	x .05 =	0.05
c) More than one (1) year (10 pts)			
Diligence/Cooperation of Violator/Owner = 15% of Total			
a) Violator/Owner quickly responded & acted w/ diligence (1 pt)			
b) Violator/Owner responded after numerous attempts (5 pts)	1	x .15 =	0.15
c) Violator/Owner delayed response (10 pts)			
Effect on Other Properties = 10% of Total			
a) Minor effect (1 pt)			
b) Some effect but not significant (5 pts)	1	x .10 =	0.10
c) Significant effect on other properties (10 pts)			
Culpability of Violator/Owner = 20% of Total			
a) Violator/Owner did not actively create violation (1 pt)			
b) Violator/Owner created or added to violation (5 pts)			
c) Violator/Owner had economic incentive/benefit, repeat Violator/Owner or flagrant violation (10 pts)	10	x .20 =	2
Sophistication of Violator/Owner = 20% of Total			
a) Unknowing of regulations (1 pt)			
b) Possible knowledge of regulations (5 pts)	10	x .20 =	2
c) Regulations were known (10 pts)			
TOTAL SCORE =			<u>5.8</u>

* If significant environmental damage was caused by the violation, add 5 points to the Total Score, but in no case shall the Total Score exceed 10.

Violation #: 2021-001 LS VO Site: 2505 Geysers Rd., Geyserville APN: 131-030-008

Completed by: Andy Casarez Date: 7/8/2020
Land Stewardship Division Manager
Department of Agriculture /Weights & Measures

PENALTY SCHEDULE

2021-001 LS VO
2505 Geysers Rd., Geyserville
APN: 131-030-008

	Residential	Commercial	Other	Residential	Commercial
	PERMITS*	PERMITS*	DAILY**	DAILY**	DAILY**
	1-7.1 (a) 2 & 3	1-7.1 (a) 1	1-7.1 (a) 3	1-7.1 (a) 2	1-7.1 (a) 1
SCORE					
0 to 1	3	3	5	15	25
1.1 to 1.5	3.1	3.3	6	17	30
1.6 to 2.0	3.2	3.7	8	20	35
2.0 to 2.5	3.3	4	10	25	40
2.6 to 3.0	3.4	4.5	13	30	45
3.0 to 3.5	3.5	5	17	35	50
3.6 to 4.0	3.6	5.5	20	40	55
4.0 to 4.5	3.7	6	23	45	60
4.6 to 5.0	3.8	6.5	27	50	62
5.0 to 5.5	3.9	6.7	30	55	67
5.6 to 6.0	4	7	35	60	70
6.0 to 6.5	4.1	7.5	40	65	75
6.6 to 7.0	4.2	8	45	70	80
7.0 to 7.5	4.4	8.3	50	75	85
7.6 to 8.0	4.5	8.7	60	80	87
8.0 to 8.5	4.7	9	70	85	90
8.6 to 9.0	4.8	9.3	80	90	95
9.0 to 9.5	4.9	9.7	90	95	97
9.6 to 10	5	10	100	100	100

Notes:

* The two **PERMITS** columns are multipliers of permits or other approvals.

** The three **DAILY** columns are dollars per day.

Multiply the **DAILY** penalty by 2 if the violation is for a second offense of the same Sonoma County Code Section within a 12 month period.

Multiply the **DAILY** penalty by 5 if the violation is for a third offense of the same Sonoma County Code Section within a 12 month period.

"Other" is defined under Sonoma County Code Section 1-7.1 (a) 3.