

## CHAPTER 36 OF THE SONOMA COUNTY CODE

### CHAPTER 36 – VINEYARD AND ORCHARD DEVELOPMENT AND AGRICULTURAL GRADING AND DRAINAGE

#### Article 02. General.

##### Sec. 36.02.010. - Title.

This chapter shall be known as the Sonoma County Vineyard and Orchard Development and Agricultural Grading and Drainage Ordinance. This chapter may also be referred to as the Sonoma County Vineyard Erosion and Sediment Control Ordinance or as VESCO

##### Sec. 36.02.020. - Purpose.

This chapter is enacted for the purpose of regulating vineyard and orchard development and agricultural grading and drainage within the unincorporated area of the county, and to establish ministerial standards for those activities that:

- A. Protect the public health, safety, and welfare of the county;
- B. Minimize hazards to life and property;
- C. Protect against erosion, and the pollution of watercourses with soil and other pollutants;
- D. Maintain natural and existing drainage patterns;
- E. Protect aquatic resources and wildlife habitat; and
- F. Promote water conservation and groundwater recharge.

##### Sec. 36.02.030. - Administration.

This chapter shall be administered under the direction of the board of supervisors, by and through the agricultural commissioner.

##### Sec. 36.02.040. Applicability.

- A. Compliance required. The provisions of this chapter shall apply to all vineyard and orchard development and agricultural grading and drainage occurring within the unincorporated area of the county. The permit requirements in this chapter shall apply to all vineyard and orchard development and agricultural grading and drainage, unless exempted from permit requirements by Section 36.04.010.D, 36.06.010.C, or 36.08.010.C. The standards in Article 16 and the best management practices in the department's best management practices for agricultural erosion and sediment control

shall apply to all vineyard and orchard development and agricultural grading and drainage, regardless of whether a permit is required by this chapter.

- B. **Liability.** Nothing in this chapter, nor the issuance of a permit pursuant to this chapter, nor compliance with the provisions of this chapter or with any permit conditions, shall relieve any person from responsibility for damage to other persons or property, or impose any liability upon the county, its officers, agents, or employees, for damage to other persons or property.
- C. **Relationship to other laws.** The provisions of this chapter are not intended to and shall not be construed or given effect in a manner that conflicts with state or federal law, or interferes with the achievement of state or federal regulatory objectives. The provisions of this chapter shall be interpreted to be supplementary to and compatible with state and federal enactments, and in furtherance of the public purposes those enactments express. Compliance with the provisions of this chapter, however, does not ensure compliance with state and federal requirements. Further, the provisions of this chapter are not intended to and shall not be construed or given effect in a manner that supersedes other provisions of this code. Where another provision of this code establishes a stricter requirement than a provision of this chapter, that stricter requirement shall prevail.
- D. **Other permits.** Nothing in this chapter shall eliminate the need for any person undertaking any vineyard or orchard development or agricultural grading or drainage from having to obtain any other permits, approvals, or authorizations required by this code or state or federal agencies.

**Sec. 36.02.050. - Interpretations.**

- A. **Authority to interpret.** The agricultural commissioner shall have the authority to interpret the provisions of this chapter. Whenever the agricultural commissioner determines that the meaning or applicability of any requirement of this chapter is subject to interpretation, the agricultural commissioner may issue an official written interpretation. The agricultural commissioner may also refer any issue of interpretation to the board of supervisors for determination.
- B. **Language.** When used in this chapter, the words “shall,” “must,” “will,” “is to,” and “are to” are always mandatory. “Should” is not mandatory but is strongly recommended; and “may” is permissive. The present tense includes the past and future tenses; and the future tense includes the present. The singular number includes the plural number, and the plural the singular, unless the natural construction of the word indicates otherwise. The words “include,” “includes,” and “including” shall mean “including but not limited to.”
- C. **Time limits.** Whenever a number of days is specified in this chapter, or in any permit, condition of approval, or notice provided in compliance with this chapter, the number of days shall be construed as calendar days, unless business days are specified. A time limit shall extend to 5 p.m. on the following business day where the last of the specified

number of days falls on a weekend, county-observed holiday, or other day the county is not open for business.

- D. State or federal law requirements. Where this chapter references applicable provisions of state or federal law, the reference shall be construed to be to the applicable state or federal law provisions as they may be amended from time to time.

**Sec. 36.02.060 – Best Management Practices.**

The agricultural commissioner may adopt, amend, or rescind best management practices for this chapter. The best management practices shall implement or make specific the standards in Article 16. The best management practices shall reference or detail only fixed standards and objective measurements that do not require the exercise of discretion by the agricultural commissioner. Failure by any person to comply with any applicable best management practice adopted or amended pursuant to this section shall be a violation of this chapter. The best management practices adopted or amended pursuant to this section shall be compiled by the agricultural commissioner and made available to the public.

**Sec. 36.02.070 – Legislative Intent.**

- A. Ministerial provisions; exception. It is the intent of the board of supervisors that the provisions of this chapter and the best management practices adopted pursuant to Section 36.02.060 shall be ministerial within the meaning of the California Environmental Quality Act and the State CEQA Guidelines. It is the further intent of the board of supervisors that the review of permit applications and the issuance of permits pursuant to this chapter shall be ministerial acts, except in the case of discretionary permit applications.
- B. Interpretation and application. This chapter and the best management practices adopted pursuant to Section 36.02.060 shall be interpreted, administered, and construed in light of the legislative intent expressed in Subsection A. If any provisions, sentences, or words in this chapter or any best management practice adopted pursuant to Section 36.02.060 are ambiguous or capable of more than one interpretation, staff shall interpret, administer, and construe them as conferring only ministerial authority. Staff shall not exercise personal judgment, special discretion or judgment, or personal, subjective judgment in deciding whether or how projects should be carried out, except in the case of discretionary permit applications.
- C. Ministerial system of regulation; automatic repeal. It is the intent of the board of supervisors in enacting this chapter to establish and maintain a ministerial system of regulation for vineyard and orchard development and agricultural grading and drainage, consistent with the strong policy direction in the general plan to expedite the processing of agricultural-related permits and not unduly complicate and discourage vineyard and orchard development and agricultural grading and drainage. The county has heretofore faced lawsuits seeking to transform ministerial permit applications for new vineyard planting into discretionary projects subject to the California Environmental Quality Act.

As a legislative matter, that result would be contrary to the legislative intent of this chapter, as well as the general plan and its Agricultural Resources Element. As a result, if for any reason a court of competent jurisdiction holds in a final order that a provision of this chapter or a best management practice adopted pursuant to Section 36.02.060 intended to be ministerial is, in fact, discretionary, this chapter shall be automatically repealed without further action by the board of supervisors. A “final order” means an order, writ, judgment, or other finding that is no longer subject to modification or reversal on appeal. If this chapter is repealed by this subsection, vineyard and orchard development shall be allowed and shall not require separate permitting, like all other forms of agriculture in the county, and agricultural grading and drainage shall become subject to the provisions of Chapter 11 of this code. Nothing in this subsection is intended to affect any court order. This subsection is declarative of existing law.

#### **Article 04. - Vineyard and Orchard Development Permits.**

##### **Sec. 36.04.010. – Vineyard and Orchard Development Permit Requirements.**

- A. 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.
- B. Designation and performance. Vineyard and orchard development shall be designated as “Level I vineyard and orchard development” or “Level II vineyard and orchard development” in compliance with Table 36-1, and shall be performed as follows:
  - 1. Level I vineyard and orchard development. Level I vineyard and orchard development shall be performed in compliance with approved plans and specifications prepared by the property owner or the authorized agent of the property owner.
  - 2. Level II vineyard and orchard development. Level II vineyard and orchard development shall be performed in compliance with approved plans and specifications prepared by a civil engineer.

**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 <sup>1</sup>
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 <sup>1</sup>
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.

C. Biotic resource and focused species assessments.

1. Biotic resource assessment. A biotic resource assessment shall be required for any new vineyard or orchard planting, except where exempted from permit requirements by Subsection D.
2. Focused species assessment. A focused species assessment shall be required for any vineyard or orchard replanting within a designated critical habitat area, except where exempted from permit requirements by Subsection D.

- D. Exemptions from permit requirements. The following vineyard and orchard development activities are exempt from the provisions of this section and may be conducted without obtaining a vineyard and orchard development permit, provided that these activities shall still be subject to the standards in Article 16 and the best management practices in the department's best management practices for agricultural erosion and sediment control.
1. Hobby vineyards and orchards. New planting and replanting of hobby vineyards and orchards, where the hobby vineyard or orchard is less than one-half acre in size. This exemption may only be used for one hobby vineyard or orchard per legal parcel. This exemption shall not apply where there is an existing commercial vineyard or orchard on the parcel.
  2. Interplanting grapevines or orchard trees. Interplanting young grapevines or orchard trees among established grapevines or orchard trees, where the existing vineyard or orchard infrastructure is kept intact.
  3. Low-impact vineyard replanting. Vineyard replanting within the Santa Rosa Plain Groundwater Subbasin, where the replanting area has a natural slope of less than 5 percent, no deep ripping is conducted, and the existing underground vineyard infrastructure and trellis system end posts are kept intact. This exemption is a pilot program. This exemption shall remain in effect only until December 31, 2019, and as of that date is repealed.
  4. Replacing individual missing, dead, or diseased grapevines or orchard trees. Replacing individual missing, dead, or diseased grapevines or orchard trees, where less than one-half acre of contiguous grapevines or orchard trees is replaced and the existing vineyard or orchard infrastructure is kept intact.

## **Article 06. – Agricultural Grading Permits.**

### **Sec. 36.06.010. – Agricultural Grading Permit Requirements.**

- A. 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.
- B. Designation and performance. Agricultural grading shall be designated as “regular agricultural grading” or “engineered agricultural grading” in compliance with Table 36-2, and shall be performed as follows:
1. Regular agricultural grading. Regular agricultural grading shall be performed in compliance with approved plans and specifications prepared by the property owner or a licensed professional acting within the scope of their license.

2. Engineered agricultural grading. Engineered agricultural grading shall be performed in compliance with approved plans and specifications prepared by a civil engineer.

**Table 36-2 Agricultural Grading Designation**

Parameter	Threshold	
	Regular Agricultural Grading	Engineered Agricultural Grading
Volume (cut or fill)	Does not exceed 5,000 cubic yards	Exceeds 5,000 cubic yards
Cut	No greater than 3 feet in depth and does not create a cut slope greater than 5 feet in height <sup>1</sup>	Greater than 3 feet in depth or creates a cut slope greater than 5 feet in height <sup>1</sup>
Fill	No greater than 3 feet in depth <sup>1</sup>	Greater than 3 feet in depth <sup>1</sup>
Fill inside the flood-prone urban area or special flood hazard areas	Does not exceed 50 cubic yards	Exceeds 50 cubic yards
Natural slope of grading area	No greater than 15 percent	Greater than 15 percent
Geologic Hazard Area Combining District	Grading area is not in the Geologic Hazard Area Combining District	Grading area is wholly or partially in the Geologic Hazard Area Combining District <sup>2</sup>
Geologic hazards	Grading area contains no geologic hazards	Grading area contains geologic hazards <sup>3</sup>

Notes:

1. The references to depths and heights for cuts and fills are between existing grade and proposed grade.
2. The engineered agricultural grading designation shall apply only to the portion of the grading area that is in the Geologic Hazard Area Combining District.
3. The engineered agricultural grading designation shall apply only to the portion of the grading area that is directly affected by the geologic hazards.

C. Exemptions from permit requirements. The following agricultural grading activities are exempt from the provisions of this section and may be conducted without obtaining an

agricultural grading permit, provided that these activities shall still be subject to the standards in Article 16 and the best management practices in the department's best management practices for agricultural erosion and sediment control.

1. Agricultural grading for vineyard or orchard development. Where authorized by a valid vineyard and orchard development permit, agricultural grading for vineyard or orchard development.
2. Emergency agricultural grading. Agricultural grading necessary to protect life or property, or to implement erosion prevention or control measures, where a situation exists that requires immediate action; provided that only the volume of agricultural grading necessary to abate an imminent hazard may be performed prior to obtaining an agricultural grading permit. The person performing the emergency agricultural grading or the property owner shall notify the agricultural commissioner and provide evidence acceptable to the agricultural commissioner of the scope and necessity of the emergency agricultural grading on or before the next business day after the onset of the emergency situation. The person performing the emergency agricultural grading or the property owner shall apply for an agricultural grading permit within ten days after the commencement of the emergency agricultural grading. The agricultural commissioner may order emergency agricultural grading to be stopped or restricted in scope based upon the nature of the emergency.
3. Environmental remediation. Agricultural grading for environmental remediation ordered or approved by a public agency exercising regulatory jurisdiction over a site contaminated with hazardous materials, where the ground surface is restored to its previous topographic condition within 60 days after the completion of the work. The agricultural commissioner shall be notified in writing at least 30 days prior to the commencement of the work.
4. Exploratory excavations. Exploratory excavations to investigate subsurface conditions, affecting or disturbing an area of less than 10,000 square feet and involving the movement of less than 50 cubic yards, under the direction of a civil engineer, soils engineer, engineering geologist, or registered environmental health specialist, where the ground surface is restored to its previous topographic condition within 60 days after the completion of the work.
5. Minor cut. A cut that does not exceed 50 cubic yards, and:
  - a. Is no greater than 3 feet in depth; or
  - b. Does not create a cut slope greater than 5 feet in height and greater than 2 feet horizontal to 1 foot vertical (50 percent).
6. Minor fill outside the flood-prone urban area and special flood hazard areas. A fill outside the flood-prone urban area and any special flood hazard area that does

not exceed 50 cubic yards or alter or obstruct a watercourse or wetland, and is no greater than 3 feet in depth and not intended to support structures or surcharges. This exemption shall not apply to any fill that is engineered grading.

7. Resource conservation, restoration, or enhancement projects. Where a public agency takes full responsibility for the work, agricultural grading for soil, water, wildlife, or other resource conservation, restoration, or enhancement projects. The agricultural commissioner shall be notified in writing at least 30 days prior to the commencement of the work.

## **Article 08. – Agricultural Drainage Permits.**

### **Sec. 36.08.010. – Agricultural Drainage Permit Requirements.**

- A. Permit required. An agricultural drainage permit shall be required prior to commencing any agricultural drainage involving construction or modification of drainage facilities 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 drainage permit shall be required for each site.
- B. Designation and performance. Agricultural drainage involving construction or modification of drainage facilities shall be designated as “engineered agricultural drainage,” and shall be performed in compliance with approved plans and specifications prepared by a civil engineer.
- C. Exemptions from permit requirements. The following agricultural drainage activities are exempt from the provisions of this section and may be conducted without obtaining an agricultural drainage permit, provided that these activities shall still be subject to the standards in Article 16 and the best management practices in the department’s best management practices for agricultural erosion and sediment control.
  1. Drainage facilities for vineyard or orchard development or agricultural grading. Where authorized by a valid vineyard and orchard development or agricultural grading permit, construction or modification of drainage facilities for vineyard or orchard development or agricultural grading.
  2. Emergency agricultural drainage alteration. Construction or modification of drainage facilities necessary to protect life or property, or to implement erosion prevention or control measures, where a situation exists that requires immediate action; provided that only the work necessary to abate an immediate hazard may be performed prior to obtaining an agricultural drainage permit. The person performing the emergency agricultural drainage alteration or the property owner shall notify the agricultural commissioner and provide evidence acceptable to the agricultural commissioner of the scope and necessity of the emergency agricultural drainage alteration on or before the next business day after the onset of the emergency situation. The person performing the emergency agricultural

drainage alteration or the property owner shall apply for an agricultural drainage permit within ten days after the commencement of the emergency agricultural drainage alteration. The agricultural commissioner may order emergency agricultural drainage alteration to be stopped or restricted in scope based upon the nature of the emergency.

3. Maintenance, repair, or replacement of existing private drainage facilities. Maintenance, repair, or replacement of existing, lawfully constructed private drainage facilities, where the location and design capacity are not changed. The agricultural commissioner shall be notified in writing at least 30 days prior to the commencement of the work.
4. Minor pipe and vee-ditch swale systems. Construction or modification of pipe and vee-ditch swale systems that meet all of the following criteria:
  - a. The drainage area is less than one-half acre for a smooth-walled pipe or vee-ditch swale system, or less than one-quarter acre for a corrugated pipe system.
  - b. The pipe or vee-ditch swale system is not located in the flood-prone urban area.
  - c. The pipe system is a single run, with a minimum diameter of 8 inches and installed slopes between 2 percent and 4 percent, or the vee-ditch swale system is lined with grass or rock, with side slopes no greater than 2 feet horizontal to 1 foot vertical (50 percent), maximum depth of 9 inches, and installed slopes between 2 percent and 4 percent.
5. Resource conservation, restoration, or enhancement projects. Where a public agency takes full responsibility for the work, construction or modification of drainage facilities for soil, water, wildlife, or other resource conservation, restoration, or enhancement projects. The agricultural commissioner shall be notified in writing at least 30 days prior to the commencement of the work.
6. Seasonal drainage swales. Construction or modification of seasonal drainage swales that meet all of the following criteria:
  - a. The flowline slope of the drainage swale does not exceed 4 percent.
  - b. The drainage swale does not exceed 150 feet in length.
  - c. The drainage swale is lined with grass, with side slopes no greater than 2 feet horizontal to 1 foot vertical (50 percent), and maximum depth of 9 inches.
  - d. The outlet for the drainage swale is protected to prevent erosion.

## **Article 10. - Permit Application Filing and Processing.**

### **Sec. 36.10.010. – Purpose.**

This article provides procedures and requirements for the preparation, filing, and initial processing of the permit applications required by this chapter.

### **Sec. 36.10.020. - Authority for Permit Decisions.**

The agricultural commissioner shall be responsible for reviewing and making decisions on each type of permit application required by this chapter.

### **Sec. 36.10.030. - Permit Application Preparation and Filing.**

- A. Pre-application contact. A prospective applicant is encouraged to contact the agricultural commissioner before completing and filing a permit application to determine the information and materials required for application filing. The provision of information by the agricultural commissioner shall not be construed as a recommendation for either approval or disapproval of an application. Any failure by the agricultural commissioner to identify all required information and materials shall not constitute a waiver of those requirements.
- B. Application. Permit applications shall be filed with the department on a county application form. Each permit application shall include all required fees and deposits, all plans and specifications, maps, reports, and other information and materials required by the department's list of required application contents for the specific type of application, and any other reports necessary to verify compliance with this chapter.
- C. Eligibility for filing or withdrawing. A permit application may only be filed or withdrawn by the owner of the site, an authorized agent of the owner, or other person with the written consent of the owner.
- D. Request for relief from standards. A permit application may include a request for relief from the standards in Article 16. The request shall state in writing each standard proposed to be varied, the proposed substitute measure, when it would apply, and its advantages. The agricultural commissioner may require additional information to evaluate the requested relief.

### **Sec. 36.10.040. - Application Fees.**

- A. Fee schedule. The board of supervisors shall establish a schedule of fees for the processing of permit applications required by this chapter.
- B. Refunds and withdrawals. The required application fees cover county costs for staff time and the other activities involved in processing permit applications. Therefore, no refund

due to disapproval or expiration shall be allowed. In the case of a withdrawal, the agricultural commissioner may refund up to 90 percent of the application fee prior to the commencement of plan review.

**Sec. 36.10.050. - Indemnification.**

- A. Applicant agreement. At the time of submitting a discretionary permit application, the applicant shall agree, as part of the permit application, to defend (with legal counsel of the county's selection), indemnify, and hold harmless the county and its agents, officers, attorneys, and employees, from any claim, action, or proceeding brought against the county or its agents, officers, attorneys, or employees to attack, set aside, void, or annul, an approval of the county concerning the permit application, which action is brought within the applicable statute of limitations. The required indemnification shall include damages awarded against the county, if any, costs of suit, attorneys' fees, and other costs and expenses incurred in connection with the action.
- B. County notification of applicant. In the event that a claim, action, or proceeding referred to in Subsection A is brought, the county shall promptly notify the applicant of the existence of the claim, action, or proceeding and shall cooperate fully in the defense of the claim, action, or proceeding.

**Sec. 36.10.060. - Initial Permit Application Review.**

The agricultural commissioner shall review each permit application for completeness and accuracy before it is accepted as complete and officially filed. The agricultural commissioner's determination of completeness shall be based on the department's list of required application contents and any additional instructions provided to the applicant in any pre-application contact, and/or during the initial review period. No permit application shall be deemed complete, and processing shall not commence on any permit application, until all required fees and deposits have been paid, and all required plans, maps, reports, and other information and materials have been submitted to the agricultural commissioner and reviewed to determine compliance with this chapter, including peer review where necessary to determine compliance with this chapter.

- A. Notification of applicant when permit application is incomplete. The agricultural commissioner shall inform the applicant in writing within 30 days of filing when a permit application is incomplete. The letter shall specify the additional information required to make the permit application complete.
- B. Withdrawal of application. If an applicant fails to provide the additional information specified in the agricultural commissioner's letter providing notice of an incomplete permit application within 120 days following the date of the letter, the permit application shall be deemed withdrawn without any further action by the agricultural commissioner. The agricultural commissioner may grant one 90-day extension, if the applicant files a written request with the agricultural commissioner before expiration of the original 120-day period. After the withdrawal of a permit application, future consideration by the

agricultural commissioner shall require the submittal of a new permit application and associated fees.

**Sec. 36.10.070. - Environmental Review.**

After a permit application has been accepted as complete, if the permit application is a discretionary permit application, the proposed activity shall be reviewed as required by the California Environmental Quality Act and the State CEQA Guidelines to determine the level of environmental processing required.

**Sec. 36.10.080. - Expiration of Permit Application.**

If a permit is not issued within one year following the filing of a permit application, the permit application shall expire and be deemed withdrawn, without any further action by the agricultural commissioner. The agricultural commissioner may grant one 180-day extension, if the applicant files a written request with the agricultural commissioner before expiration of the original one-year period and shows that the extension is warranted due to a lawsuit, staff error, or other circumstances beyond the control of the applicant. After the expiration of a permit application, future consideration by the agricultural commissioner shall require submittal of a new permit application and associated fees.

**Article 12. - Permit Review Procedures.**

**Sec. 36.12.010. – Purpose.**

This article provides procedures for the final review and approval or disapproval of the permit applications required by this chapter.

**Sec. 36.12.020. Permit Approval and Issuance.**

The approval of a permit application and issuance of a vineyard and orchard development or agricultural grading or drainage permit by the agricultural commissioner shall occur as follows:

- A. Criteria for approval. The agricultural commissioner may approve a permit application and issue a vineyard and orchard development or agricultural grading or drainage permit when the agricultural commissioner determines that the proposed vineyard or orchard development or agricultural grading or drainage will comply with the following:
  - 1. Ministerial permit application. A ministerial permit application shall be approved and a ministerial vineyard and orchard development or agricultural grading or drainage permit issued when the agricultural commissioner determines that the proposed vineyard or orchard development or agricultural grading or drainage complies with the provisions of this chapter and any applicable county land use approvals.

2. Discretionary permit application. A discretionary permit application may be approved and a discretionary vineyard and orchard development or agricultural grading or drainage permit issued when the agricultural commissioner determines that:
  - a. There are special circumstances affecting the site that make the strict application of the standards in Article 16 impractical;
  - b. The proposed vineyard or orchard development or agricultural grading or drainage is consistent with the purpose and intent of the standards in Article 16, and does not diminish the health, safety, and environmental protection benefits that would be obtained from the strict application of those standards;
  - c. The proposed vineyard or orchard development or agricultural grading or drainage complies with all other provisions of this chapter and any applicable county land use approvals.
- B. Permit conditions. In approving a discretionary permit application, the agricultural commissioner may impose any conditions deemed reasonable and necessary to protect the public health, safety, and welfare; prevent adverse environmental impacts or the creation of hazards to property; and ensure proper completion of the work.
- C. Permit holder. A vineyard and orchard development or agricultural grading or drainage permit shall be issued to the owner of the site.
- D. Effect of permit and approved plans and specifications.
  1. Compliance with plans and specifications required. All work for which a vineyard and orchard development or agricultural grading or drainage permit is issued shall be done in compliance with the approved plans and specifications and the recommendations of required reports. The approved plans and specifications shall not be changed without the written approval of the agricultural commissioner.
  2. Modifications. Proposed modifications to the approved plans and specifications shall be submitted to the agricultural commissioner in writing, together with all necessary technical information and design details. A proposed modification shall be approved only if the agricultural commissioner determines that the modification complies with the provisions of this chapter, other applicable provisions of this code, and the requirements of any applicable county land use approvals.
- E. Distribution and use of approved plans and specifications. The agricultural commissioner shall retain one or more sets of approved and dated plans and specifications for inspection and record keeping. Two sets of approved and dated plans and specifications shall be

provided to the permittee. The permittee shall maintain one set of approved and dated plans and specifications and the permit on the site at all times during the work.

#### **Article 14. - Permit Implementation, Time Limits, and Extensions.**

##### **Sec. 36.14.010. – Purpose.**

This article provides requirements for the implementation of the permits required by this chapter, including time limits and procedures for granting extensions of time.

##### **Sec. 36.14.020. - Effective Date of Permit.**

- A. Ministerial permit. A ministerial vineyard and orchard development or agricultural grading or drainage permit shall become effective on the date of ministerial permit application approval.
- B. Discretionary permit. A discretionary vineyard and orchard development or agricultural grading or drainage permit shall become effective on the 11th day following the date of discretionary permit application approval, provided that no appeal has been filed or direct review requested in compliance with Article 20.

##### **Sec. 36.14.030. - Time Limits and Extensions.**

- A. Time limits.
  - 1. Vineyard and orchard development permit. A vineyard and orchard development permit shall expire five years from the effective date of the permit, unless an extension has been granted in writing in compliance with Subsection B. All work for which a vineyard and orchard development permit is issued shall be completed and finalized prior to expiration of the permit or any extension granted pursuant to Subsection B.
  - 2. Agricultural grading permit. An agricultural grading permit shall expire three years from the effective date of the permit, unless an extension has been granted in writing in compliance with Subsection B, provided that the agricultural commissioner may limit an agricultural grading permit to a lesser time period where the permit is required to abate dangerous or hazardous conditions. All work for which an agricultural grading permit is issued shall be completed and finalized prior to expiration of the permit or any extension granted pursuant to Subsection B.
  - 3. Agricultural drainage permit. An agricultural drainage permit shall expire three years from the effective date of the permit, unless an extension has been granted in writing in compliance with Subsection B, provided that the agricultural commissioner may limit an agricultural drainage permit to a lesser time period where the permit is required to abate dangerous or hazardous conditions. All

work for which an agricultural drainage permit is issued shall be completed and finalized prior to expiration of the permit or any extension granted pursuant to Subsection B.

- B. Extensions of time. Any permittee holding an unexpired vineyard and orchard development or agricultural grading or drainage permit may apply for an extension of the time within which the work for which the permit is issued must be completed and finalized. The agricultural commissioner may extend the expiration date of the permit for a period not exceeding 180 days per extension request, where the permittee has requested the extension in writing and shown that a lawsuit, staff error, or other circumstances beyond the control of the permittee have prevented the work from being started or completed.
- C. Tolling of time. Any permittee holding an unexpired vineyard and orchard development or agricultural grading or drainage permit may request a tolling of the time within which the work for which the permit is issued must be completed and finalized, where a lawsuit is brought in a court of competent jurisdiction involving the approval of the permit. Upon receipt of a request, the agricultural commissioner shall grant a stay for the period during which the litigation is pending, subject to the following limitations:
  - 1. The stay may not be granted until the county is served with the initial petition or complaint. If the county is not a party to the litigation, the county must be served with a courtesy copy of the initial pleading.
  - 2. The stay may only be granted where the litigation is brought by opponents of the work to attack or overturn the approval.
- D. Effect of expiration. After the expiration of a vineyard and orchard development or agricultural grading or drainage permit, no further work shall be done on the site until a new permit is obtained.

**Sec. 36.14.040. - Performance of Work.**

All work for which a vineyard and orchard development or agricultural grading or drainage permit is required shall be subject to the following requirements.

- A. Pre-construction consultation. The permittee and the agricultural commissioner shall have a pre-construction consultation prior to the commencement of the work.
- B. Responsibility for the work. The permittee shall be responsible for ensuring that the work is performed in compliance with the approved plans and specifications and the standards in Article 16.
- C. Notification of change in ownership. The permittee shall notify the agricultural commissioner of any change in ownership of the site prior to completion of the work.

- D. Inspection. The work shall be subject to inspection as required by the agricultural commissioner. Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of this chapter or other provisions of this code. Inspections presuming to give authority to violate or cancel the provisions of this chapter or other provisions of this code shall not be valid.
1. Site access. The permittee shall provide adequate access to the site for inspection by inspectors designated by the agricultural commissioner during the performance of all work and for a minimum of three years after final inspection.
  2. Professional inspections and certifications. The agricultural commissioner may require professional inspections and certifications to verify proper completion of the work.
    - a. Type of inspections and certifications. The professional inspections and certifications may include, but shall not be limited to requiring: the permittee to provide a civil engineer, soils engineer, engineering geologist, professional biologist, professional geologist, registered professional forester, or other professional to perform inspections of work in progress and to certify the proper completion of work; inspection and testing by an approved testing agency; or the submittal of periodic progress reports.
    - b. Notification of noncompliance. Where the use of a civil engineer, soils engineer, engineering geologist, professional biologist, professional geologist, registered professional forester, or other professional is required, these personnel shall immediately report in writing to the agricultural commissioner and the permittee any instance of work not being done in compliance with this chapter, other applicable provisions of this code, the department's best management practices for agricultural erosion and sediment control, the approved plans and specifications, or any permit conditions, and shall also provide recommendations for corrective measures, if determined by the consultant to be necessary.
    - c. Transfer of responsibility for approval. If a required civil engineer, soils engineer, engineering geologist, professional biologist, professional geologist, registered professional forester, or other professional is changed during the course of the work, the work shall be stopped until the permittee notifies the agricultural commissioner in writing of the change of professional and the new professional notifies the agricultural commissioner in writing of their agreement to accept responsibility for approval of the completed work within the area of their technical competence.
- E. Field changes. After permit issuance, no change to the approved work shall occur without the prior written approval of the agricultural commissioner. If the agricultural commissioner determines that the changes are minor, the changes shall be shown on the

as-built plans. If the agricultural commissioner determines that the changes are significant, a request for a modification to the approved plans and specifications shall be filed as provided in Section 36.12.020.D.2.

- F. Protection of utilities. As required by Government Code section 4216.2, the permittee shall contact the Underground Service Alert (USA) prior to starting any excavation that will be conducted in an area that is known, or reasonably should be known, to contain subsurface utility installations. Contact shall occur at least two working days, but not more than fourteen calendar days, before the excavation starts. If practical, the excavator shall delineate with white paint or other suitable markings the area to be excavated.
- G. Stop work orders. The agricultural commissioner may order that any work performed contrary to the requirements of this chapter, other applicable provisions of this code, the approved plans and specifications, or any permit conditions, or any work that has otherwise become hazardous to property or the public, be immediately stopped. It shall be unlawful and a violation of this chapter for any person to resume work that was ordered to be stopped by the agricultural commissioner, unless the agricultural commissioner has required and the permittee has agreed to any necessary corrective measures, and the agricultural commissioner has authorized resumption of the work in writing. A violation of a stop work order shall be punishable in compliance with Section 36.24.080.B.

#### **Sec. 36.14.050. - Completion of Work.**

- A. Final reports. Upon final completion of all work for which a vineyard and orchard development or agricultural grading or drainage permit is required, the agricultural commissioner may require the following plans and reports, supplements thereto, or other documentation, prepared by the appropriate professionals in the format required by the agricultural commissioner. The agricultural commissioner may also require such plans and reports at other stages of the work.
  - 1. As-built plans. A set of as-built plans including original and finished contours at intervals acceptable to the agricultural commissioner, parcel drainage patterns with directional arrows, and locations and elevations of all surface and subsurface drainage facilities.
  - 2. Testing records. A complete record of all field and laboratory tests, including the location and elevation of all field tests.
  - 3. Declarations about completed work. Declarations by any civil engineer, soils engineer, engineering geologist, professional biologist, professional geologist, registered professional forester, or other professional required by the agricultural commissioner pursuant to Section 36.14.040.D.2, that all work was done in compliance with the approved plans and specifications and the recommendations of required reports.

- B. Final inspection. No permittee shall be deemed to have complied with the provisions of this chapter until a final inspection of the work has been completed and approved by the agricultural commissioner. The permittee shall notify the agricultural commissioner when the work is ready for final inspection. Final approval shall not be given until all work has been completed in compliance with the approved plans and specifications, and all reports required by Subsection A have been submitted and accepted.

**Article 16. - Standards.**

**Sec. 36.16.010. - Purpose.**

This article provides ministerial standards for the proper conduct of vineyard and orchard development and agricultural grading and drainage. All vineyard and orchard development and agricultural grading and drainage shall comply with the requirements of this article, regardless of whether a permit is required by this chapter.

**Sec. 36.16.020. – Agricultural Grading.**

Agricultural grading shall be designed and constructed in compliance with the following requirements.

A. General.

1. Areas of agricultural grading. Agricultural grading shall be limited to the grading area identified and delineated on the approved plans and specifications.
2. Final contours. Contours, elevations, and shapes of finished surfaces shall be blended with adjacent natural terrain to achieve a consistent grade and natural appearance. Borders of cut slopes and fills shall be rounded off to a minimum radius of 5 feet to blend with the natural terrain.
3. MS4 permit. Where agricultural grading is within an MS4 permit boundary, the agricultural grading shall comply with the applicable standards and provisions of the MS4 permit.

B. Cuts.

1. Slope. The slope of cut surfaces shall be no greater than 2 feet horizontal to 1 foot vertical (50 percent), unless a soils report justifies a greater slope.
2. Terracing and drainage. Terracing and drainage of cuts shall be provided as required by Subsection D.

C. Fills.

1. Fill location. Fill shall not be placed on natural slopes greater than 2 feet horizontal to 1 foot vertical (50 percent).
2. Surface preparation. Ground surfaces shall be prepared to receive fill by removing vegetation, topsoil, and other unsuitable materials, and scarifying the ground to provide a bond with the fill material.
3. Benching. Benching into sound bedrock or other competent material, as determined by a civil engineer, shall be required where existing grade is at a slope greater than 5 feet horizontal to 1 foot vertical (20 percent) and the depth of the fill exceeds 5 feet. Benching shall be provided in accordance with Figure 36-1, subject also to the following requirements:
  - a. A key at least 10 feet in width and 2 feet in depth shall be installed.
  - b. The key shall be installed at least 1 foot into sound bedrock or other competent material.
  - c. The area beyond the toe of the fill shall be sloped for sheet overflow or a non-erosive drain shall be provided.
  - d. Cuts for benching and keys shall be accepted by a soils engineer as a suitable foundation for fill prior to the placement of the fill material.

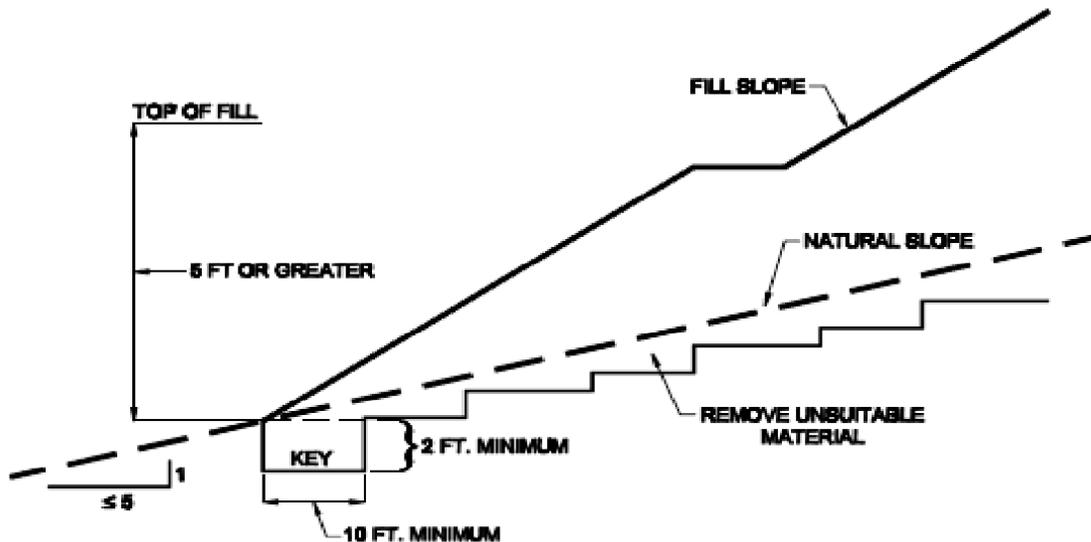


Figure 36-1 Benching Details

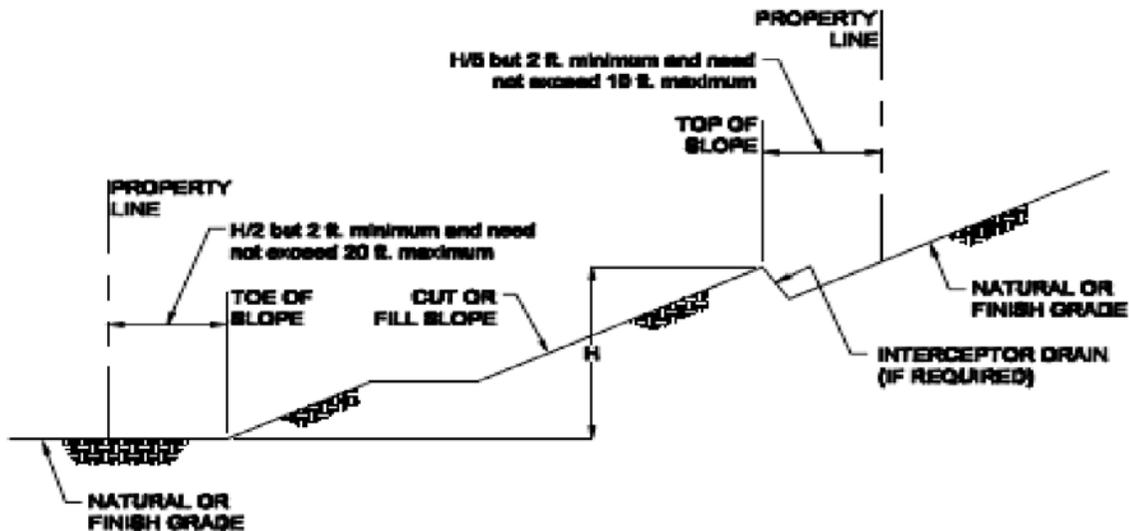
4. Fill material. Fill material shall not include organic, frozen, or other deleterious materials. No rock or similar irreducible material greater than 6 inches in any dimension shall be included in fills, except where a soils engineer devises a method of placement of larger rock, continuously inspects its placement, and approves fill stability, subject also to the following requirements:
    - a. Potential rock disposal areas shall be shown on the plans and specifications.
    - b. Rocks shall be placed so as to assure filling of all voids with well-graded soil.
  5. Fill placement. Fills shall be constructed in lifts not exceeding 8 inches in depth. Completed fills shall be stable, well-integrated, and bonded to adjacent materials and the materials on which they rest. Fills shall be competent to support anticipated loads and be stable at the design slopes shown on the approved plans and specifications.
  6. Compaction.
    - a. Fills below 30 inches from finished grade shall be compacted to a minimum of 90 percent of maximum dry density, as determined by ASTM D 1557, Modified Proctor, or as specified by a soils engineer.
    - b. Fills at or above 30 inches from finished grade shall be compacted to a minimum density necessary for the intended use or as specified by a soils engineer.
  7. Slope. The slope of fill surfaces shall be no greater than 2 feet horizontal to 1 foot vertical (50 percent), unless a soils report justifies a greater slope.
  8. No net fill in flood-prone urban area or special flood hazard areas. No fill shall be placed in the flood-prone urban area or any special flood hazard area, unless prior to permit issuance an analysis comparing the pre-development and proposed post-development site topography demonstrates that no reduction in flood storage capacity within the special flood hazard area will result from the fill placement and related improvements, and prior to the permit being finalized an analysis comparing the pre-development and as-built topography confirms that no reduction in flood storage capacity within the special flood hazard area has resulted from the fill placement and related improvements.
  9. Terracing and drainage. Terracing and drainage of fills shall be provided as required by Subsection D.
- D. Terracing and drainage of cuts and fills. Terracing and drainage of cuts and fills shall be designed and constructed to ensure the integrity of the cuts and fills. Unless otherwise

justified by a soils report, terracing and drainage of cuts and fills with surface slopes greater than 3 feet horizontal to 1 foot vertical (33 percent) shall comply with the following requirements. Additional requirements applicable to the provision of drainage facilities and systems are established by Section 36.16.030.B.

1. Terraces. Terraces shall be established on cut and fill slopes to control surface drainage and debris. Suitable access shall be provided to permit proper cleaning and maintenance of terraces.
  - a. For cut and fill slopes up to 30 feet in vertical height, terraces need not be provided.
  - b. For cut and fill slopes greater than 30 feet and up to 60 feet in vertical height, one terrace at least 6 feet in width shall be established at mid-height.
  - c. For cut and fill slopes greater than 60 feet and up to 120 feet in vertical height, terraces at least 6 feet in width shall be established at not more than 30-foot intervals or one terrace at least 12 feet in width shall be established at mid-height.
  - d. For cut and fill slopes greater than 120 feet in vertical height, terrace widths and spacing shall be designed by a civil engineer.
2. Terrace drainage.
  - a. Swales or ditches. Swales or ditches shall be provided on terraces, and shall:
    - (1) Have a minimum gradient of 20 feet horizontal to 1 foot vertical (5 percent);
    - (2) Be paved with reinforced concrete not less than three inches in thickness, or with other materials suitable to the application; and
    - (3) Have a minimum depth of 1 foot and a minimum width of 5 feet.
  - b. Limitation on single run of swale or ditch. A single run of swale or ditch shall not collect runoff from a tributary area exceeding 13,500 square feet (projected) without discharging into a down drain.
3. Subsurface drainage. Cut and fill slopes shall be provided with subsurface drainage as necessary for stability.
4. Surface interceptor drains. Surface interceptor drains shall be installed along the top of all cut and fill slopes receiving drainage from a tributary width greater than

40 feet, measured horizontally upslope. The drains shall be paved with reinforced concrete not less than three inches in thickness, or with other materials suitable to the application. The drains shall be designed in compliance with the Flood Control Design Criteria Manual, or superseding document, for the 100-year design discharge. This surface interceptor drains requirement shall not apply to outslope constructed roadways designed to prevent the concentration of stormwater runoff, provided that the stability of the cut and fill slope is maintained.

- E. Setbacks. Cut and fill slopes shall be set back from property lines in compliance with the following requirements. Setback dimensions shall be measured perpendicular to the property line and shall be as shown in Figure 36-2.
1. Top of slope. The setback at the top of a slope shall be not be less than that shown in Figure 36-2, or than is required to accommodate any required surface interceptor drains, whichever is greater.
  2. Toe of slope. The setback at the toe of a slope shall not be less than that shown in Figure 36-2.



**Figure 36-2 Cut and Fill Slope Setback Requirements**

- F. Protection of footings, buildings, and structures. Footings that may be affected by any excavation shall be underpinned or otherwise protected against settlement and shall be protected against lateral movement. Fills or other surcharge loads shall not be placed adjacent to any building or structure unless the building or structure is capable of withstanding the additional loads caused by the fill or surcharge. The rights of adjacent affected property owners shall be as set forth in Civil Code section 832.

**Sec. 36.16.030. Drainage.**

- A. Drainage patterns and runoff. Vineyard and orchard development and agricultural grading and drainage shall be designed and constructed to maintain natural and existing drainage patterns. Post-development stormwater runoff shall be limited in compliance with the department's best management practices for agricultural erosion and sediment control.
  
- B. Design and construction of drainage facilities and systems.
  - 1. Except as provided in Subsection B.2, drainage facilities and systems shall be designed and constructed in compliance with the Flood Control Design Criteria Manual, or superseding document, and the department's best management practices for agricultural erosion and sediment control for no less than the 25-year design discharge.
  - 2. Stream crossings shall be designed and constructed for no less than the 100-year design discharge.
  - 3. Drainage facilities required for cuts and fills are also subject to Section 36.16.020.D.
  
- C. Disposal of stormwater runoff. Drainage facilities and systems shall convey stormwater runoff to disposal locations that maximize infiltration and minimize erosion, and shall dissipate the energy or diffuse the flow prior to releasing the stormwater runoff to any setback area or off the site.
  
- D. Limit erosion. Drainage facilities and systems shall limit erosion in compliance with the department's best management practices for agricultural erosion and sediment control.

**Sec. 36.16.040. Protection of Human Remains and Archaeological Resources.**

Where human remains or archaeological resources are discovered during vineyard and orchard development and agricultural grading and drainage, all work shall be halted in the vicinity of the find, the agricultural commissioner shall be notified, and the following shall occur before work may be resumed:

- A. Human remains. If human remains or suspected human remains are discovered, the permittee shall notify the county coroner and comply with all state law requirements, including Health and Safety Code section 7050.5 and Public Resources Code section 5097.98, to ensure proper disposition of the human remains or suspected human remains, including those identified to be Native American remains.
  
- B. Archaeological resources. If archaeological resources or suspected archaeological resources are discovered, the agricultural commissioner shall notify the State Historic Preservation Officer and the Northwest Information Center at Sonoma State University,

and the permittee shall retain a qualified archeologist to evaluate the find to ensure proper disposition of the archaeological resources or suspected archaeological resources. All costs associated with the evaluation and mitigation of the find shall be the responsibility of the permittee. The agricultural commissioner shall provide notice of the find to any tribes that have been identified as having cultural ties and affiliation with the geographic area in which the archaeological resources or suspected archaeological resources were discovered, if the tribe or tribes have requested notice and provided a contact person and current address to which the notice is to be sent. The agricultural commissioner may consult with and solicit comments from notified tribes to aid in the evaluation, protection, and proper disposition of the archaeological resources or suspected archaeological resources. The need for confidentiality of information concerning the archaeological resources or suspected archaeological resources shall be recognized by all parties. For the purposes of this section, archaeological resources include historic or prehistoric ruins, burial grounds, pottery, arrowheads, midden, or culturally modified soil deposits. Artifacts associated with prehistoric ruins include humanly modified stone, shell, bone, or other cultural materials such as charcoal, ash, and burned rock indicative of food procurement or processing activities. Prehistoric domestic features include hearths, fire pits, or floor depressions; mortuary features are typically represented by human skeletal remains.

#### **Sec. 36.16.050. Protection of Watercourses.**

Vineyard and orchard development and agricultural grading and drainage within, adjacent to, or involving the alteration of watercourses shall comply with the provisions of Article II (Water Clarity) of Chapter 23 of this code, any necessary state and federal permits, approvals, or authorizations, and the following requirements.

- A. Flood carrying capacity. The flood carrying capacity of any altered or relocated portion of a watercourse shall be maintained.
- B. Obstruction of watercourses. Watercourses shall not be obstructed unless an alternate drainage facility complying with Section 36.16.030.B is installed.
- C. Fills within watercourses. Fills placed within watercourses shall have protection against erosion.
- D. Streams in closed conduits. Except for stream crossings, streams shall not be placed in closed conduits. Stream crossings shall be limited to the minimum width necessary to cross the stream.
- E. Heavy equipment. Heavy equipment shall not cross or disturb channels of actively flowing streams unless best management practices referenced or detailed in the department's best management practices for agricultural erosion and sediment control are in place.

- F. Materials storage. Materials that could contribute to pollution shall not be deposited or stored in or adjacent to a watercourse.

**Sec. 36.16.060. - Removal of Trees and Other Vegetation.**

Vineyard and orchard development and agricultural grading and drainage shall not remove or disturb trees and other vegetation except in compliance with the department’s best management practices for agricultural erosion and sediment control and the approved plans and specifications. Vineyard and orchard development and agricultural grading and drainage shall be conducted in compliance with the following requirements.

- A. The limits of work-related ground disturbance shall be clearly identified and delineated on the approved plans and specifications and defined and marked on the site to prevent damage to surrounding trees and other vegetation.
- B. Trees and other vegetation within the limits of work-related ground disturbance that are to be retained shall be identified and protected from damage by marking, fencing, or other measures.

**Sec. 36.16.070. Setbacks for Areas of Slope Instability.**

Vineyard and orchard development shall be set back from areas of slope instability in compliance with the requirements in Table 36-4, unless the area is repaired in compliance with this chapter or an engineering geologist determines that the area is suitable for new planting or replanting. Setback areas for areas of slope instability shall be managed in compliance with the department’s best management practices for agricultural erosion and sediment control.

**Table 36-4 – Area of Slope Instability Setback Requirements**

Location	Setback
Below and lateral to area of slope instability	50 feet from the mapped edge, unless an engineering geologist recommends a different setback
Above area of slope instability	100 feet from the mapped edge, unless an engineering geologist recommends a different setback

**Sec. 36.16.080. – Setbacks for Lakes and Ponds.**

Vineyard and orchard development and agricultural grading shall be set back from lakes and ponds in compliance with the requirements in Table 36-5, unless a greater setback is required by the general plan, local coastal plan, or zoning code. Setback areas for lakes and ponds shall be managed in compliance with a biotic resource assessment or focused species assessment, if

applicable, and the department’s best management practices for agricultural erosion and sediment control.

**Table 36-5 – Lake and Pond Setback Requirements**

Setback for New Vineyard and Orchard Planting	Setback for Vineyard and Orchard Replanting	Setback for Agricultural Grading
50 feet from the high water mark, unless a biotic resource assessment recommends a different setback	Existing setback from the high water mark or 25 feet from the high water mark, whichever is greater, unless a focused species assessment recommends a greater setback	50 feet from the high water mark

**Sec. 36.16.090. – Setbacks for Reservoirs.**

Vineyard and orchard development and agricultural grading shall be setback from reservoirs in compliance with the requirements in Table 36-6, unless a greater setback is required by the general plan, local coastal plan, or zoning code. Setback areas for reservoirs shall be managed in compliance with the department’s best management practices for agricultural erosion and sediment control.

**Table 36-6 – Reservoir Setback Requirements**

Setback for Vineyard and Orchard Development	Setback for Agricultural Grading
25 feet from the high water mark, unless a civil engineer recommends a different setback	50 feet from the high water mark

**Sec. 36.16.100. - Setbacks for Ridgetops**

Where tree removal is involved, new vineyard and orchard planting on ridgetops shall be set back 50 feet from the delineated slope break of descending natural slopes greater than 50 percent for more than 50 feet in slope length. Setback areas for ridgetops shall be managed in compliance with the department’s best management practices for agricultural erosion and sediment control.

**Sec. 36.16.110. - Setbacks for Streams.**

Vineyard and orchard development and agricultural grading shall be set back from streams in compliance with the requirements in Table 36-7, unless a greater setback is required by the general plan, local coastal plan, or zoning code. Setback areas for streams shall be managed in

compliance with a biotic resource assessment or focused species assessment, if applicable, and the department’s best management practices for agricultural erosion and sediment control.

**Table 36-6 - Stream Setback Requirements**

Type of Stream	Setback for New Vineyard and Orchard Planting	Setback for Vineyard and Orchard Replanting	Setback for Agricultural Grading
Blue-line Stream	Setback required by the zoning code, unless a biotic resource assessment recommends a greater setback	Existing setback from the top of the higher bank or 25 feet from the top of the higher bank, whichever is greater, unless a focused species assessment recommends a greater setback	25 feet from the top of the higher bank
All other Streams	25 feet from the top of the higher bank, unless a biotic resource assessment recommends a greater setback	25 feet from the top of the higher bank, unless a focused species assessment recommends a greater setback	25 feet from the top of the higher bank

**Sec. 36.16.120. - Setbacks for Wetlands.**

Vineyard and orchard development and agricultural grading shall be set back from wetlands in compliance with the requirements in Table 36-7, unless a greater setback is required by the general plan, local coastal plan, or zoning code. Setback areas for wetlands shall be managed in compliance with the wetland delineation study or wetland assessment, as applicable, and the department’s best management practices for agricultural erosion and sediment control. The setback requirements in this section shall not apply where all necessary state and federal permits, approvals, or authorizations to fill the wetlands are obtained, or the vineyard or orchard development or agricultural grading is exempt from such requirements.

**Table 36-7 - Wetland Setback Requirements**

Type of Wetland	Setback
Wetland designated in the zoning code	100 feet from the delineated wetland boundary
All other wetlands	50 feet from the assessed wetland boundary, unless the wetland assessment recommends a different setback

**Sec. 36.16.130. - Soil and other pollutant discharges.**

- A. During the work. Vineyard and orchard development and agricultural grading and drainage shall prevent or control soil and other pollutant discharges during the work through the use of best management practices referenced or detailed in the department's best management practices for agricultural erosion and sediment control.
- B. During qualifying rain events. Vineyard and orchard development and agricultural grading and drainage shall prevent or control soil and other pollutant discharges during qualifying rain events by implementing erosion prevention or control measures referenced or detailed in the department's best management practices for agricultural erosion and sediment control at least 48 hours prior to any qualifying rain event, unless the site has been winterized pursuant to Section 36.16.150.
- C. Post-development. Vineyard and orchard development and agricultural grading and drainage shall be designed to limit post-development soil and other pollutant discharges in compliance with the department's best management practices for agricultural erosion and sediment control.

**Sec. 36.16.140. - Work during the rainy season.**

Vineyard and orchard development and agricultural grading and drainage shall only be permitted during the rainy season as follows:

- A. New vineyard and orchard planting.
  - 1. Initial new planting work shall be permitted between October 1 and October 14 and April 1 and April 30 when on-site soil conditions permit the work to be performed in compliance with this article and the department's best management practices for agricultural erosion and sediment control, and the erosion prevention or control measures required by Section 36.16.130.B are implemented, if applicable. Initial new planting work shall be prohibited between October 15 and March 31, except for emergency work to protect life or property, or to implement erosion prevention or control measures.
  - 2. Final new planting work shall be permitted during the rainy season when on-site soil conditions permit the work to be performed in compliance with this article and the department's best management practices for agricultural erosion and sediment control.
- B. Vineyard and orchard replanting.
  - 1. Initial replanting work shall be permitted between October 1 and November 14 and April 1 and April 30 when on-site soil conditions permit the work to be performed in compliance with this article and the department's best management practices for agricultural erosion and sediment control, and the erosion prevention

or control measures required by Section 36.16.130.B are implemented, if applicable. Initial replanting work shall be prohibited between November 15 and March 31, except for emergency work to protect life or property, or to implement erosion prevention or control measures.

2. Final replanting work shall be permitted during the rainy season when on-site soil conditions permit the work to be performed in compliance with this article and the department's best management practices for agricultural erosion and sediment control.
- C. Agricultural grading and drainage. Agricultural grading and drainage shall be permitted between October 1 and October 14 and April 1 and April 30 when on-site soil conditions permit the work to be performed in compliance with this article and the department's best management practices for agricultural erosion and sediment control, and the erosion prevention or control measures required by Section 36.16.130.B are implemented, if applicable. Agricultural grading and drainage shall be prohibited between October 15 and March 31, except for emergency agricultural grading or drainage alteration.

**Sec. 36.16.150. – Winterization.**

- A. Requirements. Vineyard and orchard development and agricultural grading and drainage sites shall be winterized in compliance with the department's best management practices for agricultural erosion and sediment control, the approved plans and specifications, and the following requirements each year until the vineyard and orchard development or agricultural grading or drainage permit is finalized.
1. A cover crop referenced or detailed in the department's best management practices for agricultural erosion and sediment control shall be either:
    - a. Established on all disturbed surfaces by the installation date specified in Subsection A.2; or
    - b. Planted and straw mulch applied at the rate of 2 tons per acre on all disturbed surfaces by the installation date specified in Subsection A.2.
  2. Cover crops shall be installed by:
    - a. October 15 for all of the following:
      - (1) Initial and final new planting work;
      - (2) Final replanting work; and
      - (3) Agricultural grading and drainage.
    - b. November 15 for initial replanting work.

3. After installation, cover crops shall be maintained through March 31.
- B. Declaration. The permittee shall submit a declaration to the agricultural commissioner within 15 days following the installation date specified in Subsection A.2 each year until the vineyard and orchard development or agricultural grading or drainage permit is finalized certifying that all of winterization measures required by the department's best management practices for agricultural erosion and sediment control, the approved plans and specifications, and this section have been properly installed on the site.

## **Article 18. - Prohibited Activities.**

### **Sec. 36.18.010. - Purpose.**

This article establishes prohibitions against certain vineyard and orchard development and agricultural grading.

### **Sec. 36.18.020. - Prohibited Vineyard and Orchard Development.**

- A. Fill slopes supporting structures or surcharges. Vineyard and orchard development shall be prohibited on fill slopes supporting structures or surcharges, unless an engineering geologist determines that the fill slope is suitable for new planting or replanting.
- B. Natural slopes greater than 50 percent. New vineyard and orchard planting shall be prohibited on natural slopes greater than 50 percent.
- C. Removal of existing contiguous riparian vegetation. Vineyard and orchard development shall be prohibited from removing existing contiguous riparian vegetation within 200 feet of the higher bank of blue-line streams.
- D. Removal of trees. New vineyard and orchard planting shall be prohibited from removing trees on natural slopes greater than 40 percent with non-cohesive soil.

### **Sec. 36.18.030. - Prohibited agricultural grading.**

Agricultural grading to prepare new cropland shall be prohibited on natural slopes greater than 50 percent.

## **Article 20. – Appeals and Direct Review.**

### **Sec. 36.20.010. – Purpose.**

This article establishes procedures for the appeal and review and direct review of certain decisions of the agricultural commissioner.

**Sec. 36.20.020. – Appeal and Direct Review Subjects and Jurisdiction.**

Decisions of the agricultural commissioner on discretionary permit applications may be appealed to and/or directly reviewed by the board of supervisors. All other decisions of the agricultural commissioner under this chapter shall be final, subject only to judicial review.

**Sec. 36.20.030. – Filing and Processing of Appeals.**

- A. Eligibility. An appeal in compliance with this article may be filed by any interested person.
- B. Timing and form of appeal. An appeal shall be submitted in writing and filed with the department on a county appeal form within 10 calendar days following the decision that is the subject of the appeal. The appeal shall specifically state the pertinent facts and the basis for the appeal, and shall be accompanied by the required filing fee.
- C. Effect of filing appeal. The filing of an appeal in compliance with this article shall stay the effective date of the decision that is the subject of the appeal until the board of supervisors has acted upon the appeal.
- D. Report and scheduling of hearing. When an appeal has been filed, the agricultural commissioner shall prepare a report on the matter, and schedule the matter for a public hearing by the board of supervisors. The hearing shall be de novo. Notice of the hearing shall be provided, and the hearing shall be conducted, in compliance with Article 22. Any interested person may appear and be heard at the hearing.
- E. Decision. At the hearing on the appeal, the board of supervisors may consider any issue involving the matter that is the subject of the appeal, in addition to the specific grounds for the appeal. After the hearing, the board of supervisors may affirm, affirm in part, modify, or reverse the decision that is the subject of the appeal.
- F. Effective date of appeal decision. A decision by the board of supervisors on an appeal is final and shall be effective on the date of the decision.
- G. Withdrawal of appeal. After filing, an appeal may not be withdrawn except with the consent of the board of supervisors.

**Sec. 36.20.040. – Board Direct Review.**

- A. Request for direct review. Any member of the board of supervisors may request the board of supervisors, upon its own initiative, to review the decision of the agricultural commissioner on a discretionary permit application.
- B. Timing and form of request for direct review. A request for direct review shall be made orally at a board of supervisors meeting, or filed in writing or by e-mail with the clerk of the board of supervisors, before the expiration of the appeal period for the decision that is

the subject of the request. A request for direct review need not state the reasons for the request. A request for direct review shall not be deemed to be an allegation of any flaw in or a pre-judgment of the decision of the agricultural commissioner.

- C. Effect of request for direct review. A request for direct review shall stay the effective date of the decision that is the subject of the request until the board of supervisors takes action in compliance with Subsection D, below, and, if applicable, until the board of supervisors takes action in compliance with Subsection F, below. The stay shall not extend the time for filing an appeal of the decision that is the subject of the request.
- D. Consideration of request for direct review. A request for direct review shall be considered by the board of supervisors at a public meeting.
  - 1. If the board of supervisors approves the request for direct review, the board of supervisors shall assume jurisdiction over the matter and take action in compliance with Subsection F.
  - 2. If the board of supervisors denies the request for direct review, the decision of the agricultural commissioner shall stand, unless an appeal of the decision was timely filed in compliance with this article.
- E. Report and scheduling of hearing. When a request for direct review has been approved, the agricultural commissioner shall prepare a report on the matter, and schedule the matter for a public hearing by the board of supervisors. The hearing shall be de novo. Notice of the hearing shall be provided, and the hearing conducted, in compliance with Article 22. Any interested person may appear and be heard at the hearing.
- F. Decision. At the hearing on the direct review, the board of supervisors may consider any issue involving the matter that is the subject of the direct review. After the hearing, the board of supervisors may affirm, affirm in part, modify, or reverse the decision of the permit authority that is the subject of the direct review.
- G. Effective date of direct review decision. A decision by the board of supervisors on a direct review is final and shall be effective on the date of the decision.
- H. Participation by initiator of request for direct review. Any member of the board of supervisors who initiates a request for direct review may fully participate in determining whether to approve the request and, if the request is approved, in hearing and deciding upon the matter, including the right to vote, unless actual bias or prejudice is otherwise shown.
- I. Withdrawal of request for direct review. After filing, a request for direct review may not be withdrawn except with the consent of the board of supervisors.

**Sec. 36.20.050. - Simultaneous Appeal and Direct Review.**

When the decision of the agricultural commissioner on a discretionary permit application is both appealed and jurisdiction is taken by the board of supervisors through direct review, both the appeal and the direct review shall be heard and considered concurrently.

**Article 22. - Public Hearings.**

**Sec. 36.22.010. – Purpose.**

This article provides procedures for public hearings by the board of supervisors required by this chapter. When a public hearing is required, advance notice of the hearing shall be given, and the hearing shall be conducted, in compliance with this article.

**Sec. 36.22.020. - Notice of Hearing.**

When this chapter requires a public hearing by the board of supervisors before a decision on a matter, the public shall be provided notice of the hearing in compliance with Government Code sections 65090, 65091, and 65094, and Public Resources Code section 21000 et seq. The failure of any person or entity to receive notice given pursuant to this section shall not constitute grounds for any court to invalidate the actions of the board of supervisors, provided that there has been substantial compliance with the requirements of this section.

**Sec. 36.22.030. - Hearing Procedures.**

- A. Date, time, and place of hearing. A hearing by the board of supervisors shall be held at the date, time, and place for which notice was given.
- B. Continued hearing. Any hearing may be continued from time to time without further notice; provided the chairperson of the board of supervisors announces the date, time, and place to which the hearing will be continued prior to the adjournment or recess of the hearing.
- C. Deferral of final decision. The board of supervisors may announce a tentative decision and defer its action on a final decision until appropriate findings or conditions of approval have been prepared.

**Sec. 36.22.040. – Decision.**

The board of supervisors may announce and record its decision on the matter being considered at the conclusion of a scheduled hearing, or may defer action and continue the matter to a later meeting in compliance with Section 36.22.030.

## **Article 24. - Enforcement.**

### **Sec. 36.24.010. – Purpose.**

This article establishes provisions that are intended to ensure compliance with the requirements of this chapter and permits issued pursuant to this chapter, and provide for the protection of the public health, safety, and welfare of the county.

### **Sec. 36.24.020. – Decisions in Compliance with Chapter.**

All departments, officials, and employees of the county assigned the authority or duty to issue permits shall comply with the provisions of this chapter.

- A. Permits in conflict with chapter. Permits for activities that would be in conflict with the provisions of this chapter shall not be issued.
- B. Permits deemed void. Any permit for an activity issued in conflict with the provisions of this chapter, or in error, shall be void and of no effect.
- C. County may refuse to issue permits. The county may refuse to issue any permit sought pursuant to this chapter for an activity where the property upon which the activity is proposed is in violation of this code.

### **Sec. 36.24.030. – Authority for Enforcement.**

- A. Enforcement responsibility. The agricultural commissioner shall be responsible for enforcing the provisions of this chapter and permits issued pursuant to this chapter. The agricultural commissioner may initiate proceedings to suspend, revoke, or modify permits issued pursuant to this chapter, act as enforcing officer for the purposes of exercising the authority provided in Sections 1-7.1, 1-7.3, and 1-7.6 of this code, and issue letters of correction, notices of violation, notices of proposed action, stop work orders, and citations for any violations of this chapter or any permit issued pursuant to this chapter.
- B. Authority to inspect. The agricultural commissioner is authorized, upon reasonable notice to the property owner or permittee, to enter upon and inspect any property where vineyard or orchard development or agricultural grading or drainage has been or is being performed, to determine whether the work complies with the provisions of this chapter and any applicable permits issued pursuant to this chapter. These inspections may include the taking of photographs, samples, or other physical evidence, and the making of video and/or audio recordings. If the property owner or permittee refuses permission to enter and/or inspect, the county may seek an inspection warrant pursuant to Section 36.24.070.A.

**Sec. 36.24.040. – Administrative Enforcement Action.**

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.

**Sec. 36.24.050. – Civil Penalties and Costs.**

A. Civil penalties. Any person violating or causing the violation of any provision of this chapter or any permit issued pursuant to this chapter shall be liable for a civil penalty of not more than \$100,000.00 for each violation. When taking civil penalty action on violations of this chapter or permits issued pursuant to this chapter, the agricultural commissioner shall use the following provisions to determine the violation class and the penalty amount.

1. The agricultural commissioner shall designate violations as “Class A,” “Class B,” or “Class C” using the following definitions:
  - a. A Class A or serious violation is one of the following:
    - (1) A violation of a provision of this chapter or a requirement of a permit issued pursuant to this chapter that caused adverse effects on property, the public, or the environment.
    - (2) 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 the agricultural commissioner determines that one or more of the following aggravating circumstances support elevation to Class A:
      - (a) The violator has a history of violations;
      - (b) The violator failed to cooperate in the investigation of the incident or allow a lawful inspection of the site; or
  - b. 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.
  - c. A Class C or minor violation is a violation of a provision of this chapter or a requirement of a permit issued pursuant to this chapter that is not designed to mitigate the risk of adverse effects on property, the public, or the environment.

2. The penalty range for each class of violation is:
    - a. Class A: \$50,000.00 to \$100,000.00.
    - b. Class B: \$500.00 to \$50,000.00.
    - c. Class C: \$50.00 to \$500.00.
  3. When determining the penalty amount within the penalty range, the agricultural commissioner shall use relevant facts, including the severity of actual or potential effects of the violation and the violator's compliance history, and include those relevant facts in the notice of proposed action.
- B. Costs. Any person violating or causing the violation of any provision of this chapter or any permit issued pursuant to this chapter shall be liable to the county for the costs, including attorney's fees, incurred by the county, its agents, and agencies as a direct result of the violation(s).

**Sec. 36.24.060. – Violations.**

- A. Violation of provisions. Any activity performed contrary to the provisions of this chapter shall constitute a violation of this chapter and a public nuisance.
- B. Violation of permit requirement. The violation of any requirement of a permit issued pursuant to this chapter shall constitute a violation of this chapter and a public nuisance.

**Sec. 36.24.070. – Legal Remedies.**

The county may undertake any of the following legal actions to correct and/or abate any violation(s) of this chapter or any permit issued pursuant to this chapter.

- A. Inspection warrants. The county counsel may apply to the court for an inspection warrant to enter upon and inspect property and/or collect samples.
- B. Civil actions. The county counsel may apply to the court for injunctive relief, abatement, civil penalties and costs, and any other remedies available under law.
- C. Criminal actions and penalties.
  1. Any person violating or causing the violation of any provision(s) of this chapter or any permit issued pursuant to this chapter shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable in compliance with Section 1-7 of this code.

2. Each and every day during any portion of which any violation(s) of this chapter or any permit issued pursuant to this chapter is committed, continued, or allowed to continue by the person shall be deemed a separate offense.

D. Citations.

1. Any person violating or causing the violation of any provision(s) of this chapter or any permit issued pursuant to this chapter may be issued an administrative citation by the agricultural commissioner.
2. Any person issued an administrative citation shall be liable for and shall remit payment of any fine(s) assessed in connection with the citation in compliance with Section 1-7.6 of this code.
3. Any person issued an administrative citation may appeal the citation to a hearing officer in compliance with Section 1-7.6 of this code.

**Sec. 36.24.080. – Stop Work Order.**

- A. Issuance of stop work order. Any activity performed in violation of the provisions of this chapter or any permit issued pursuant to this chapter shall be subject to the issuance of a stop work order.
- B. Violation of stop work order. Any violation of a stop work order shall constitute a misdemeanor and a public nuisance, and shall be subject to the remedies and penalties established by this article and this code.

**Sec. 36.24.090. – Hazard abatement.**

- A. Issuance of hazard abatement notice. Whenever the agricultural commissioner determines that any existing excavation, embankment, or fill on cropland has become a hazard to public safety, endangers property, or adversely affects the safety, use, or stability of adjacent property, an overhead or underground utility, or a public way or watercourse, or could adversely affect the water quality of any watercourse or water body, the agricultural commissioner shall issue a hazard abatement notice to the owner or other person in control of the property advising of the problem. Upon receipt of the hazard abatement notice, the owner or other person in control of the property shall, within the time specified in the notice, eliminate the hazard and conform to the requirements of this chapter.
- B. Violation of hazard abatement notice. Any violation of a hazard abatement notice shall constitute a violation of this chapter and a public nuisance, and shall be subject to the remedies and penalties authorized by this chapter.

**Sec. 36.24.100. – Suspension or Revocation.**

The agricultural commissioner may suspend or revoke a permit issued pursuant to this chapter if the agricultural commissioner determines any of the following:

- A. Circumstances under which the permit was issued have changed and the public health, safety, and welfare require the suspension or revocation;
- B. The permit was issued on the basis of inaccurate or incomplete information; or
- C. One or more of the requirements of the permit have not been substantially fulfilled or have been violated.

**Sec. 36.24.110. – Remedies are Cumulative.**

- A. Cumulative, not exclusive. All remedies contained in this chapter for the handling of violations or enforcement of the provisions of this chapter or any permit issued pursuant to this chapter shall be cumulative and in addition to any other remedies available under law.
- B. Other remedies. Should a person be found guilty and convicted of a misdemeanor for the violation of any provision(s) of this chapter or any permit issued pursuant to this chapter, the conviction shall not prevent the county from pursuing any other remedies available under law to correct the violation(s).

**Sec. 36.24.120. – Additional Permit Processing Fee.**

Any person who performs any activity requiring a permit under this chapter without first obtaining the required permit shall pay the permit processing fees required for the correction of the violation(s), and any applicable civil penalties and costs, including attorney's fees, before being granted a permit for the activity.

**36.20.130. – Reinspection fees.**

- A. A reinspection fee shall be imposed on any person who receives a letter of correction, notice of violation, or stop work order requiring a follow-up inspection(s).
  - 1. The fee shall not apply to the original inspection to document the violation(s) or to the first scheduled compliance inspection made after the issuance of the letter of correction, notice of violation, or stop work order; and
  - 2. The fee shall apply to each subsequent inspection or reinspection conducted when the particular violation for which the inspection or reinspection is scheduled is not fully abated or corrected as directed by, and within the time and manner specified in, the letter of correction, notice of violation, or stop work order.

- B. The reinspection fee is intended to compensate for the actual cost of providing county inspections or reinspections, and is not a penalty for violating this chapter, any permit issued pursuant to this chapter, or this code.
- C. Any reinspection fees imposed shall be separate and apart from any fines or penalties imposed for violation of this chapter, any permit issued pursuant to this chapter, or this code, or costs incurred by the county for the abatement of a public nuisance.

## **Article 26. - Glossary.**

### **Sec. 36.26.010. - Purpose.**

This article provides definitions of terms and phrases used in this chapter that are technical or specialized, or that may not reflect common usage. If any of the definitions in this article conflict with definitions in other provisions of this code, these definitions shall control for the purposes of this chapter. If a word is not defined in this article, or in other provisions of this code, the agricultural commissioner shall determine the correct definition.

### **Sec. 36.26.020. - Definitions of specialized terms and phrases.**

As used in this chapter, the following terms and phrases shall have the meanings ascribed to them in this section, unless the context in which they are used clearly requires otherwise. The definition of a term or phrase applies to any of that term's or phrase's variants.

**Agricultural Commissioner.** The agricultural commissioner-sealer of the county or his or her authorized representative.

**Agricultural Crop.** Any cultivated crop grown and harvested for commercial purposes. Agricultural crop does not include trees regulated by the Z'Berg-Nejedly Forest Practice Act of 1973, Public Resources Code section 4511 et seq.

**Agricultural Drainage.** Any drainage alteration to prepare new cropland or maintain existing cropland. Agricultural drainage does not include drainage alteration for roads, dams, reservoirs, lakes, ponds, or structures.

**Agricultural Drainage Permit.** See Section 36.08.010.

**Agricultural Grading.** Any grading to prepare new cropland or maintain existing cropland. Agricultural grading does not include grading for roads, dams, reservoirs, lakes, ponds, or structures.

**Agricultural Grading Permit.** See Section 36.06.010.

**Approved Plans and Specifications.** Plans and specifications, including reports, material lists, estimates, maintenance agreements, and professional recommendations, approved by the agricultural commissioner pursuant to this chapter.

**Architect.** An individual licensed by the state to practice architecture and to use the title, architect.

**Area of Slope Instability.** An area of soil or rock prone to mass wasting, including slides, falls, slumps, and flows.

**As-Built Plans.** Plans or drawings that depict the final installed configuration of vineyard or orchard development or agricultural grading or drainage (whether physical or functional). The plans or drawings shall indicate any construction deviations and show all features as actually built. The plans or drawings are intended to provide a permanent record of as-built conditions and aid as key references for future maintenance processes.

**Assessed Wetland Boundary.** The estimated edge of a wetland identified by a wetland assessment.

**Best Management Practice.** A program, technology, process, siting criteria, operational method, or engineered system, which when implemented prevents, controls, removes, or reduces pollution or other adverse environmental effects.

**Biotic Resource Assessment.** A study prepared by a qualified professional biologist to identify any potential biotic resources present on a site, including aquatic resources, sensitive terrestrial habitats, and/or potential habitat suitable to support listed species. A biotic resource assessment must meet the general requirements specified in the department's guidelines for preparing biotic resource assessments.

**Blue-line Stream.** A stream that appears as a broken or solid blue line (or a purple line) on a USGS topographic map.

**California Environmental Quality.** Public Resources Code section 21000 et seq.

**Civil Engineer.** An individual registered by the state to practice civil engineering and to use the title, civil engineer.

**Coastal Zone.** The portion of the county within the California Coastal Zone, as defined by Public Resources Code section 30103.

**Commercial Orchard.** Any orchard producing fruit or nuts for commercial purposes.

**Commercial Vineyard.** Any vineyard producing wine grapes for commercial purposes.

**Compaction.** The densification of a fill by mechanical means.

**Contiguous riparian vegetation.** Riparian vegetation that is physically touching or adjacent, and not separated by features like roads, developed land, or cropland.

**County Land Use Approval.** A discretionary permit or approval granted by the county pursuant to Chapter 25, 26, or 26C of this code.

**Cropland.** Land devoted to the production of agricultural crops.

**Cut.** See excavation.

**Deep Ripping.** The mechanical manipulation of the soil at depths greater than 16 inches to break up or pierce highly compacted, impermeable or slowly permeable subsurface soil layers, or other similar kinds of restrictive soil layers.

**Delineated Wetland Boundary.** The precise edge of a wetland identified by a wetland delineation study.

**Department.** The Department of Agriculture/Weights & Measures of the county.

**Department's Best Management Practices for Agricultural Erosion and Sediment Control.** The compilation of best management practices adopted or amended by the agricultural commissioner pursuant to Section 36.02.060.

**Design Discharge.** See the Flood Control Design Criteria Manual.

**Designated Critical Habitat Area.** The critical habitat for a listed species designated by the U.S. Fish and Wildlife Service or NOAA Fisheries pursuant to 16 U.S.C. § 1532(5).

**Designated Watershed or Sub-Watershed.** A watershed or sub-watershed designated in the general plan.

**Discretionary Permit Application.** A permit application that includes a request pursuant to Section 36.10.030.D for relief from the standards in Article 16.

**Drainage.** Refers to the collection, conveyance, containment, and/or discharge of stormwater runoff.

**Drainage Alteration.** Construction or modification of any drainage system.

**Drainage Facility.** A constructed component of a drainage system.

**Drainage System.** Constructed and/or natural features that work together to collect, convey, channel, hold, inhibit, retain, detain, infiltrate, divert, treat, or filter stormwater runoff, including detention and retention basins, overland flow paths, pipes, channels, and the inlets and outlets to these features.

**Earth Material.** Any rock or natural soil or combination thereof.

**Embankment.** A fill consisting of a deposit of soil, rock, or other materials mechanically placed.

**Engineering Geologist.** A professional geologist certified by the state as an engineering geologist.

**Erosion.** The process by which soil particles are detached and transported by the actions of wind, water, or gravity.

**Excavation.** The removal of earth material by artificial means, also referred to as a cut.

**Fill.** The deposition of earth material by artificial means. Fill does not include soil amendment and fertilizing materials.

**Final New Planting Work.** The work undertaken as part of the final phase of new vineyard or orchard planting, including laying out of vineyard or orchard blocks and vine or tree rows, construction or modification of aboveground vineyard or orchard infrastructure, planting of grapevines or orchard trees, and other similar work.

**Final Replanting Work.** The work undertaken as part of the final phase of vineyard or orchard replanting, including laying out of vineyard or orchard blocks and vine or tree rows, construction or modification of aboveground vineyard or orchard infrastructure, planting of grapevines or orchard trees, and other similar work.

**Flood Control Design Criteria Manual.** The Flood Control Design Criteria Manual for Waterways, Channels, and Closed Conduits, Sonoma County Water Agency, latest edition.

**Flood-Prone Urban Area.** The area within the boundaries defined on the north by River Road; on the west by the easterly boundary of the Laguna de Santa Rosa to its intersection with Highway 12 and continuing with the easterly limit of the city of Sebastopol to Highway 116; on the south by Highway 116 to its intersection with Old Redwood Highway then south to East Cotati Avenue and east to its intersection with Petaluma Hill Road; and on the east by Petaluma Hill Road, north to Highway 12 then west to Highway 101 and north to River Road.

**Focused Species Assessment.** A study prepared by a qualified professional biologist to identify any potential habitat present on a site within a designated critical habitat area suitable to support the listed species for which the critical habitat has been designated, identify potential impacts, and recommend appropriate avoidance measures, if warranted. A focused species assessment must meet the general requirements specified in the department's guidelines for preparing biotic resource assessments, except that the assessment shall only include analysis of the listed species for which the critical habitat has been designated.

**General Plan.** The Sonoma County General Plan.

**Geologic Hazard.** Slope instability, landsliding, fault displacement, liquefaction, flooding, subsidence, differential settlement, expansive soil, creeping soil, or other similar geologic condition, either mapped or observed in the field.

**Geologic Hazard Area Combining District.** See Article 70 of Chapter 26 and Article XXV of Chapter 26C of this code.

**Grading.** An excavation or fill or combination thereof. Grading does not include routine farming practices, such as soil preparation, planting, seeding, and other similar activities.

**Grading Area.** The land area subject to agricultural grading.

**Ground Disturbance.** Any work, operation, or activity that results in the penetration or compaction of the ground, including land clearing, vegetation removal, soil preparation, agricultural grading, storage of supplies and equipment, use of hand tools, heavy equipment, and heavy trucks, and any other similar activities.

**Highly Erodible Soils.** Soils in the Diablo, Dibble, Goldridge, Laughlin, Los Osos, Steinbeck, and Suther soil series as mapped by the U.S. Department of Agriculture.

**Hobby Orchard.** Any orchard producing fruit or nuts for non-commercial hobby purposes.

**Hobby Vineyard.** Any vineyard producing wine grapes for non-commercial hobby purposes.

**Initial New Planting Work.** The work undertaken as part of the initial phase of new vineyard or orchard planting, including land clearing, vegetation removal, soil preparation, agricultural grading, construction or modification of vineyard or orchard infrastructure, and other similar work.

**Initial Replanting Work.** The work undertaken as part of the initial phase of vineyard or orchard replanting, including land clearing, vegetation removal, soil preparation, agricultural grading, construction or modification of vineyard or orchard infrastructure, and other similar work.

**Invasive Plant Species.** Any plant species that is not native to an environment, and once introduced, establishes, quickly reproduces and spreads, and causes harm to the environment, economy, or human health. Examples of invasive plants include Himalayan blackberry (*Rubus armeniacus*), giant reed (*Arundo donax*), salt cedar (*Tamarix sp.*) and star thistle (*Centaurea solstitialis*).

**Irrigation System.** Equipment and facilities installed to apply water for irrigation and frost protection, including water source, water distribution network, control components, emission devices, and other irrigation equipment.

**Key.** A compacted fill placed in a trench excavated in earth material beneath the toe of a slope.

**Lake.** A permanent natural body of water, or an artificially impounded body of water, isolated from the sea, with at least one acre of open water of sufficient depth and permanency to prevent complete coverage by rooted aquatic plants

**Land Clearing.** The removal of trees, stumps, and other vegetation, including grapevines and orchard trees, by any method.

**Landscape Architect.** An individual licensed by the state to practice landscape architecture and to use the title, landscape architect.

**Licensed Professional.** An architect, civil engineer, landscape architect, professional geologist, or registered professional forester.

**Listed Species.** Any plant or animal species protected by the federal Endangered Species Act of 1973 (16 U.S.C. § 1531 et seq.) or the state Fish and Game Code.

**Local Coastal Plan.** The Sonoma County Local Coastal Plan.

**Ministerial Permit Application.** A permit application that does not include a request pursuant to Section 36.10.030.D for relief from the standards in Article 16.

**MS4 Permit.** A Municipal Separate Storm Sewer Systems National Pollutant Discharge Elimination System Permit.

**Natural Slope.** The slope of the ground prior to any soil disturbance. Natural slope shall be determined by measuring the horizontal distance between adjacent contours on a USGS 7.5 minute quadrangle map or other topographic map acceptable to the county with a scale of not less than 1:24000 (1" = 2000') and contour intervals of not more than 20 feet, and then dividing the difference in elevation between the two contours by the measured horizontal distance. The horizontal distance shall be measured perpendicular to the contours.

**New Orchard Planting.** The planting of a new orchard, increasing the footprint of an existing orchard, or replanting of an existing orchard that does not qualify as an orchard replanting, as defined herein.

**New Planting.** See new vineyard planting or new orchard planting.

**New Planting Area.** The land area subject to a new vineyard planting or new orchard planting.

**New Vineyard Planting.** The planting of a new vineyard, increasing the footprint of an existing vineyard, or replanting of an existing vineyard that does not qualify as a vineyard replanting, as defined herein.

**Non-Cohesive Soil.** Soil where the particle size of the smaller than 2 mm fraction of the soil is coarser than Loam as defined by the Natural Resources Conservation Service soil texture classification scheme.

**Orchard.** A planting of orchard trees. Land devoted to the cultivation of such a planting.

**Orchard Development.** Any new orchard planting or orchard replanting.

**Orchard Infrastructure.** The drainage system, irrigation system, and other basic facilities and systems needed for the operation of an orchard.

**Orchard Replanting.** The replanting of an existing orchard where the orchard is under active cultivation, no orchard trees are removed prior to the issuance of a vineyard and orchard development permit, unless the replanting is exempt from permit requirements, and the footprint of the orchard is not increased.

**Orchard Tree.** Any fruit- or nut-bearing tree.

**Permit Application.** An application for a permit required by this chapter.

**Permit Holder.** The owner of the site. See Section 36.12.020.C.

**Permittee.** The permit holder or an authorized agent of the permit holder.

**Person.** Any individual, firm, partnership, corporation, company, association, joint stock association; city, county, state, or district; tribe; and includes any trustee, receiver, assignee, or other similar representative thereof.

**Pit.** An earthen excavation designed to store water.

**Pond.** A body of still freshwater smaller than a lake, often artificially impounded.

**Professional Biologist.** An individual possessing academic and professional experience in biological sciences and related resource management activities who is able to identify biotic resources and can recognize and is familiar with the habitats and behaviors of listed species that may be present in the county. The individual must have specialized skills and appropriate licenses/permits/certifications specific to the study being conducted (e.g., general botanical, wetland, and wildlife habitat knowledge for biotic resource assessments and focused species assessments, applicable permits to handle special status wildlife species for presence/absence surveys, and certification by the U.S. Army Corps of Engineers in wetland delineation for wetland assessments and wetland delineation studies).

**Professional Geologist.** An individual registered by the state to practice geology and to use the title, professional geologist.

**Public Agency.** Any state or federal agency, any city, county, or special district.

**Qualifying Rain Event.** Any weather pattern that is forecasted by the National Weather Service to have a 50 percent or greater chance of producing 0.5 inches or more precipitation on a site within a 48 hour or greater period between rain events.

**Rain Event.** Any weather pattern producing precipitation.

**Rainy Season.** The period of the year during which there is a substantial chance of precipitation. For the purposes of this chapter, the rainy season is defined as starting on October 1 and ending on April 30.

**Registered Environmental Health Specialist.** An individual registered by the state to practice as an environmental health specialist and to use the title, registered environmental health specialist.

**Registered Professional Forester.** An individual licensed by the state to practice forestry and to use the title, registered professional forester.

**Replanting.** See vineyard replanting or orchard replanting.

**Replanting Area.** The land area subject to a vineyard replanting or orchard replanting.

**Reservoir.** A water storage structure made by constructing a dam, embankment, or pit with an impermeable liner such as clay or synthetic material.

**Ridgetop.** A relatively flat topographic divide above divergent and descending slopes where one or more of the descending slopes has a natural slope greater than 50 percent for more than 50 feet in slope length.

**Riparian Vegetation.** Plant communities contiguous to and affected by surface and subsurface hydrologic features of water bodies (rivers, streams, lakes, or wetlands) that have one or both of the following characteristics: (1) distinctly different vegetative species than adjacent areas, and (2) species similar to adjacent areas but exhibiting more vigorous or robust growth forms. Riparian vegetation is usually transitional between wetland and upland.

**Road.** Any public or private road.

**Santa Rosa Plain Groundwater Subbasin.** The Santa Rosa Plain Groundwater Subbasin, as designated by the California Department of Water Resources in Bulletin 118 (Groundwater Basin No. 1-55.01).

**Sediment.** Solid particulate matter, both mineral and organic, that is in suspension, is being transported, or has been moved from its site of origin by air, water, gravity, or ice and has come to rest on the earth's surface either above or below sea level.

**Setback Area.** The area within a setback required by Sections 36.16.070 through 36.16.120.

**Site.** All or part of a parcel or adjoining parcels under single ownership or control where vineyard or orchard development or agricultural grading or drainage is performed or permitted; considered a unit for the purposes of this chapter.

**Slope.** An inclined surface, the inclination of which is expressed as a ratio of horizontal distance to vertical distance (e.g., 2:1) or as a percentage (e.g., 50 percent).

**Soil Amendment and Fertilizing Materials.** Organic and in-organic substances applied to the existing soil to improve physical properties of the soil or increase available nutrients in the soil. Soil amendment and fertilizing materials include commercial fertilizers, agricultural minerals such as gypsum and lime, pumice, straw, and manure.

**Soil Disturbance.** Any alteration to the natural surface of the ground through the use of construction equipment, tractors, or other mechanized equipment.

**Soil Preparation.** Deep ripping, chisel plowing, field cultivating, disking, plowing, harrowing, cultipacking, rototilling, application of soil amendment and fertilizing materials, and other similar activities.

**Soils Engineer.** A civil engineer experienced and knowledgeable in the practice of soils engineering.

**Soils Engineering.** The application of the principles of soils mechanics in the investigation, evaluation, and design of civil works involving the use of earth materials and the inspection or testing of the construction thereof.

**Soils Report.** A soils report prepared by a soils engineer, which identifies the nature and distribution of existing soils; conclusions and recommendations for grading procedures; soil design criteria for any structures or embankments required to accomplish the proposed grading; and, where necessary, slope stability studies, and recommendations and conclusions regarding site geology.

**Special Flood Hazard Area.** Any area designated by the Federal Emergency Management Agency as subject to flooding by the 1 percent annual chance flood (100-year flood).

**State CEQA Guidelines.** California Code of Regulations, title 14, section 15000 et seq.

**Stormwater Runoff.** Surface runoff generated by a rain event.

**Stream.** Any natural channel with bed and banks containing flowing water or showing evidence of having contained flowing water, such as deposit of rock, sand, gravel, or soil. Stream includes creeks and rivers.

**Surface Runoff.** Any water that flows over the land surface.

**Terrace.** A relatively level step constructed in the face of a graded slope for drainage and maintenance purposes.

**Tree.** A woody perennial plant, typically large with a well-defined stem carrying a definite crown, with a minimum diameter at breast height of five inches, and a minimum height of 15 feet.

**Tree Removal.** The removal of more than one-half acre of tree canopy within a new planting area.

**Tree Canopy.** The more or less continuous cover of branches formed by the crowns of adjacent trees other than orchard trees.

**Trellis System.** Structures put in place to support and train grapevines in vine rows, including end posts, T-posts, wire, and other trellis materials.

**Tribe.** A California Native American tribe that is on the contact list maintained by the Native American Heritage Commission.

**USGS 7.5 Minute Quadrangle Map.** The 7.5 minute series United States Geological Survey quadrangle map most recently published.

**Vegetation.** All natural, non-cultivated plant life, including the root system, stem, trunk, crown, branches, leaves, and blades.

**Vegetation Removal.** The cutting, breaking, burning, or uprooting of vegetation, the application of herbicide to vegetation, the covering over of vegetation with earth, or the compacting of the soil under and around vegetation. Vegetation removal does not include removal of invasive plant species.

**Vegetative Filter Strip.** An area seeded to close growing or sod forming grasses, designed to filter out soil and other pollutants carried in stormwater or waste water.

**Vineyard.** A planting of grapevines. Land devoted to the cultivation of such a planting.

**Vineyard and Orchard Development Permit.** See Section 36.04.010.

**Vineyard Development.** Any new vineyard planting or vineyard replanting.

**Vineyard Infrastructure.** The drainage system, irrigation system, trellis system, and other basic facilities and systems needed for the operation of a vineyard.

**Vineyard Replanting.** The replanting of an existing vineyard where the vineyard is under active cultivation, no grapevines are removed prior to the issuance of a vineyard and orchard development permit, unless the replanting is exempt from permit requirements, and the footprint of the vineyard is not increased.

**Watercourse.** Any stream, or any artificial channel constructed to facilitate the use of water or convey stormwater runoff.

**Wetland.** Land transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. A wetland must have one or more of the following three attributes in the Coastal Zone, and two or more of the following three attributes in all other parts of the unincorporated area of the county:

1. At least periodically, the land supports predominantly hydrophytes (plants specifically adapted to live in wetlands).
2. The substrate is predominantly undrained hydric soil.
3. The substrate is saturated with water or covered by shallow water at some time during the growing season of each year.

**Wetland Assessment.** A study prepared by a qualified professional biologist to identify and approximately map the boundary of wetlands on a site, conduct an assessment of the condition of the wetlands, and recommend an appropriate setback and management practices for the setback area. A wetland assessment must meet the general requirements specified in the department's guidelines for preparing wetland assessments.

**Wetland Delineation Study.** A study prepared by a qualified professional biologist to identify and precisely map the boundary of wetlands on a site and recommend appropriate management practices for the setback area. A wetland delineation study must meet the general requirements specified in the department's guidelines for preparing wetland delineation studies.

**Zoning Code.** Chapters 26 and 26C of this code.