

**ENDORSED**

NOV 08 2016

CLERK OF THE NAPA SUPERIOR COURT  
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12 NAPA VISION 2050, KATHY FELCH, and SUSANNE  
13 VON GYMNICH-ROSENBERG,  
14

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 COUNTY OF NAPA

17 STOP SYAR EXPANSION, an )  
18 unincorporated nonprofit association, and )  
19 NAPA VISION 2050, a California public )  
20 benefit corporation, KATHY FELCH, an )  
21 individual, and SUSANNE VON GYMNICH- )  
22 ROSENBERG, an individual, )

23 Plaintiffs,

24 v.

25 SYAR INDUSTRIES, INC., a California )  
26 corporation, )

27 Defendants. )  
28

Case No. 16CV001015

COMPLAINT

Safe Drinking Water And Toxic Enforcement Act of 1986, Health & Safety Code §25249.5, et seq. (Proposition 65); Public Nuisance (Civil Code §3480); Nuisance (Civil Code §3479); Trespass

CASE MANAGEMENT CONFERENCE

DATE: 4/18/17

TIME: 8:30am

PLACE: Courtroom I

~~625 Brown Street, Napa CA 94559~~

~~111 Third St.~~

DELAY REDUCTION CASE

23 Plaintiffs STOP SYAR EXPANSION, NAPA VISION 2050, KATHY FELCH, and  
24 SUSANNE VON GYMNICH-ROSENBERG (collectively, "Plaintiffs") on behalf of  
25 themselves, their members, and in the interests of the general public, on information and belief,  
26 hereby allege:  
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1 **INTRODUCTION**

2 1. Plaintiffs and their members live near the Syar Napa Quarry in Napa County,  
3 California. Plaintiffs and their neighbors’ health, safety, and the value of their houses and  
4 properties are being impacted by the constant stream of dust, particulate matter, diesel engine  
5 exhaust, odors, and other toxic contaminants being emitted from the Quarry. This action is  
6 designed to address and resolve the continuing nuisance and trespass created by Defendant’s  
7 acts and omissions which have caused and continue to cause damage to the environment and to  
8 the health, safety, and property of Plaintiffs and their neighbors.

9 2. This action also seeks to remedy the failure of Defendant to warn residents living  
10 near its quarry in Napa County that they are being exposed to diesel engine exhaust, a chemical  
11 known to the State of California to cause cancer in humans. Defendant’s actions including but  
12 not limited to its failure to provide clear and reasonable warnings to Plaintiffs, their members  
13 and the general public, violate California Health & Safety Code [“H&S Code”] §§ 25249.6 et  
14 seq., also known as Proposition 65.

15 **PARTIES**

16 1. Plaintiff STOP SYAR EXPANSION (“SSE”) is a nonprofit unincorporated  
17 organization. The purpose of Stop Syar Expansion is to stop the expansion of the Napa Syar  
18 Quarry whether by its permits, its functions, its footprint and/or its adverse effect on the  
19 community and to protect the community from any adverse effects of the Napa Syar Quarry  
20 through group action. Members of SSE own and occupy properties in the neighborhood  
21 surrounding the Quarry, and the use of such properties is being interfered with by the acts and  
22 omissions of Defendant.

23 2. Plaintiff NAPA VISION 2050 is a California public benefit corporation and an  
24 Internal Revenue Code §501(c)(4) public benefit corporation. Its mission is to promote the  
25 health, welfare, and safety of the people of Napa by advocating for responsible planning to  
26 insure sustainability of the finite resources of Napa County. NAPA VISION 2050 is a  
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1 coalition of numerous affiliates in Napa County that have joined together to lobby local  
2 governments on current development policies and practices.

3 3. Plaintiff KATHY FELCH is a resident of the County of Napa, and at all times  
4 relevant to this Complaint has owned and occupied the rural residential real property located at  
5 2196 Penny Lane, Napa, California, which is located near the Syar Napa Quarry. Ms. Felch is  
6 being exposed to diesel engine exhaust from the Facility at rates requiring a warning under  
7 Proposition 65. On information and belief, dust, particulate matter, diesel engine exhaust and  
8 hazardous materials from the Syar Napa Quarry is routinely deposited on Ms. Felch's property.

9 4. Plaintiff SUSANNE VON GYMNIICH-ROSENBERG is a resident of the County of  
10 Napa, and at all times relevant to this Complaint has owned and occupied the rural residential  
11 property located at 2168 Penny Lane, Napa, California, which is located near the Syar Napa  
12 Quarry. Ms. Von Gymnich-Rosenberg is being exposed to diesel engine exhaust from the  
13 Facility at rates requiring a warning under Proposition 65. On information and belief, dust,  
14 particulate matter, diesel engine exhaust and hazardous materials from the Syar Napa Quarry is  
15 routinely deposited on Ms. Von Gymnich-Rosenberg's property.

16 5. SSE, NAPA VISION 2050, KATHY FELCH, and SUSANNE VON GYMNIICH-  
17 ROSENBERG are each persons within the meaning of H&S Code §25118 and bring this  
18 Proposition 65 enforcement action in the public interest pursuant to H&S Code §25249.7(d).

19 6. Defendant SYAR INDUSTRIES, INC. ("Syar" or "Defendant") is a California  
20 corporation and a "person in the course of doing business" within the meaning of Health and  
21 Safety 25249.11 with its corporate office located at 2301 Napa Vallejo Highway, Napa,  
22 California.

23 7. Defendant has employed ten or more persons at all times relevant to this action.

24 8. At all times relevant to this complaint, Defendant has owned, operated, managed,  
25 and maintained the Syar Industries, Inc. Napa Quarry, located at 2301 Napa Vallejo Highway,  
26 Napa, California (the "Quarry"). Syar crushes recycled concrete and mines mineral aggregate  
27 at the quarry, which is processed and sold as a variety of building and construction materials.

1 In the process of manufacturing, crushing, mining and transporting sand, rock and aggregate,  
2 Syar generates and emits large amounts of dust, particulate matter, crystalline silica, odors,  
3 diesel engine exhaust, and other toxic substances that are emitted into the air and migrate  
4 beyond the boundaries of the Quarry property, and onto the properties of the individual  
5 Plaintiffs and members of SSE.

6 **JURISDICTION AND VENUE**

7 9. This Court has jurisdiction over this action pursuant to California Constitution  
8 Article VI, Section 10, which grants the Superior Court “original jurisdiction in all causes  
9 except those given by statute to other trial courts.” The statutes under which this action is  
10 brought does not specify any other basis for jurisdiction.

11 10. This Court has jurisdiction over Defendant because Defendant is located in this  
12 State and incorporated in this State, thereby intentionally availing itself of the California  
13 market through the operation of its Quarry facility in the California to render the exercise of  
14 jurisdiction over it by the California courts consistent with traditional notions of fair play and  
15 substantial justice.

16 11. Venue in this action is proper in this Court because exposures, trespasses, and  
17 nuisances occurred, and continue to occur, in this County; a substantial portion of the activities  
18 complained of herein occurred, and continue to occur, here; Defendant has received substantial  
19 compensation from the operation of the Quarry facility causing the exposures, trespasses, and  
20 nuisances at issue in this County by doing business here and exposing residents and visitors of  
21 this County to a known carcinogen and other pollutants which had, and continues to have, an  
22 effect in this County.

23 12. On August 26, 2016, Plaintiffs sent a 60-Day Notice of Violation of Proposition 65  
24 (“Notice”) to the requisite public enforcement agencies, and to Defendant. A true and correct  
25 copy of the Notice is attached hereto as Exhibit 1 and incorporated by reference. The Notice  
26 was issued pursuant to, and in compliance with, the requirements of H&S Code §25249.7(d)  
27 and the statute’s implementing regulations regarding the notice of the violations to be given to  
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1 certain public enforcement agencies and to the violator. The Notice included, *inter alia*, the  
2 following information: the name, address, and telephone number of the noticing individuals;  
3 the name of the alleged violator; the statute violated; the approximate time period during which  
4 violations occurred; and descriptions of the violations, including the chemicals involved, the  
5 routes of toxic exposure, and the specific product or type of product causing the violations, and  
6 was issued as follows:

- 7 a. Defendant was provided a copy of the Notice by Certified Mail.
- 8 b. Defendant was provided a copy of a document entitled “The Safe  
9 Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A  
10 Summary.”
- 11 c. The California Attorney General and the requisite public prosecutors  
12 were provided a copy of the Notice via online submission and electronic  
13 mail, respectively, pursuant to H&S Code Code §25249.7.
- 14 d. The California Attorney General was provided with a Certificate of  
15 Merit by the attorney for the noticing party, stating that there is a  
16 reasonable and meritorious case for this action, and attaching factual  
17 information sufficient to establish a basis for the certificate, including  
18 the identity of the persons consulted with and relied on by the certifier,  
19 and the facts, studies, or other data reviewed by those persons, pursuant  
20 to H&S Code §25249.7(h)(2).

21 13. At least 60-days have elapsed since Plaintiffs sent the Notice to Defendant.  
22 Additionally, the appropriate public enforcement agencies have failed to commence and  
23 diligently prosecute a cause of action under H&S Code §25249.5, *et seq.* against Defendant  
24 based on the allegations herein.

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1 area, which such announcements being made at least once in any three-month  
2 period.

3 27 CCR §25606.1(a).

4 19. “‘Knowingly’ refers only to knowledge of the fact that a discharge of, release of, or  
5 exposure to a chemical listed pursuant to Section 25249.8(a) of the Act is occurring. “No  
6 knowledge that the discharge, release or exposure is unlawful is required.” 27 California Code  
7 of Regulations (“CCR”) §25102(n).

8 20. Proposition 65 provides that any person “violating or threatening to violate” the  
9 statute may be enjoined in a court of competent jurisdiction. H&S Code §25249.7. The phrase  
10 “threatening to violate” is defined to mean creating “a condition in which there is a substantial  
11 likelihood that a violation will occur.” H&S Code §25249.11(e). Violators are liable for civil  
12 penalties of up to \$2,500 per day for each violation of the Act. H&S Code §25249.7.

### 13 **PROPOSITION 65 FACTUAL BACKGROUND**

#### 14 **What is Diesel Engine Exhaust?**

15 21. Diesel engine exhaust is a complex mixture of gases and fine particles formed by  
16 the combustion of diesel fuel. Many known and potential cancer-causing substances such as  
17 arsenic, benzene, formaldehyde, nickel and polycyclic aromatic hydrocarbons are present in  
18 the exhaust gases, some of which are bound to the surfaces of the diesel-exhaust particles. The  
19 exhaust contains more than 40 substances that California Air Resources Board (“ARB”) has  
20 identified as Toxic Air Contaminants.

21 22. Diesel exhaust particles are small enough (less than 10 microns in diameter, about  
22 one-seventh of the width of a human hair) to be inhaled deep into the lungs, where they can  
23 affect lung performance and cause damage over time.

24 23. The small size of the particles in diesel exhaust and the large number of toxic  
25 chemicals it contains make diesel exhaust a particularly potent threat to the human body.

26 24. Up to 85% of fine particles remain in the lungs 24 hours after initial exposure. This  
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1 means that diesel exhaust has easy, long-lasting access to the most sensitive parts of the lungs.

2 **What are the Health Effects of Diesel Engine Exhaust?**

3 25. The scientific evidence associating diesel exhaust and human health problems is  
4 quite extensive. Diesel engine exhaust poses a significant health threat, particularly to  
5 children. Diesel exhaust and the many chemicals, gases and particulates that it contains have  
6 been linked to decreases in lung function, cancer, asthma exacerbations, and premature death.

7 26. Numerous human epidemiological studies have demonstrated that diesel exhaust  
8 increases cancer risk. In fact, long-term exposure to diesel exhaust particles poses the highest  
9 cancer risk of any toxic air contaminant evaluated by California's Office of Environmental  
10 Health Hazard Assessment ("OEHHA").

11 27. The ARB estimates that about seventy percent (70%) of the cancer risk that the  
12 average Californian faces from breathing toxic air pollutants stems from diesel exhaust  
13 particles.

14 28. Diesel exhaust is associated with a wide range of health effects beyond cancer,  
15 including neurological effects, a weakened immune system, respiratory disease and  
16 cardiovascular disease.

17 29. Short-term exposure to diesel exhaust causes inflammation in the bloodstream and  
18 thickening of the blood, symptoms which are associated with cardiovascular disease and heart  
19 attacks. Short-term exposure can even have immediate effects like dizziness, headaches, light-  
20 headedness, and nausea. People who inhale diesel exhaust can experience nasal irritation,  
21 breathing difficulties, coughing and chest tightness.

22 30. Long-term exposure to diesel exhaust has been associated with other respiratory  
23 effects including chronic inflammation of lung tissue. Several studies have also linked diesel  
24 exhaust particles to asthma, suggesting that these particles can increase the severity of  
25 respiratory symptoms in individuals with pre-existing conditions like asthma.

26 31. Children, the elderly, individuals with asthma, cardiopulmonary disease and other  
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1 lung diseases, and individuals with chronic heart diseases are particularly susceptible to the  
2 effects of diesel exhaust.

3 32. Evidence continues to mount that children, especially those with asthma, are  
4 exceptionally sensitive to the effects of fine particle pollution, such as diesel exhaust. As a  
5 result, there is no known safe level of exposure to diesel exhaust for children, especially those  
6 with respiratory illness. Exposures that occur in childhood are of special concern because  
7 children's developmental processes can easily be disrupted and the resulting dysfunctions may  
8 be irreversible. In addition, exposures that occur earlier in life appear more likely to lead to  
9 disease than do exposures later in life.

10 **Defendant is Exposing People to Diesel Engine Exhaust from the Quarry.**

11 33. Operation of the Quarry emits diesel engine exhaust into the air, which results in  
12 human exposure to the diesel engine exhaust through inhalation.

13 34. Defendant operates the Quarry near a residential neighborhood. As a result of the  
14 Quarry's close proximity, nearby residents are being unwittingly exposed to diesel engine  
15 exhaust through inhalation on a daily basis without any prior warning.

16 35. Every day that Defendant operates the Quarry, Defendant exposes nearby residents  
17 and others to diesel engine exhaust through a variety of vehicular activities at the Quarry that  
18 emit diesel engine exhaust. These include the operation of haul trucks, water trucks, graders,  
19 dozers, drills, excavators, loaders, scrapers, cranes, and other vehicles serving the Quarry.

20 **What the Model Shows**

21 36. Plaintiffs hired a well-respected and experienced Atmospheric Scientist to assess  
22 Defendant's diesel engine exhaust emissions from the Quarry and determine whether residential  
23 areas nearby were exposed to diesel engine exhaust excess cancer risks above the Proposition  
24 65 NSRL.

25 37. The resulting Air Dispersion Modeling and Excess Cancer Risk Analysis show that  
26 individuals living within a defined "plume" near the Quarry are exposed to diesel engine  
27 exhaust above the No Significant Risk Level of 10 excess cases of cancer in an exposed  
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1 population of one million people. Each person living within the Plume is exposed to diesel  
2 engine exhaust from the Quarry at levels that require a warning under Proposition 65.

3 38. The Air Dispersion Modeling and Excess Cancer Risk Analysis includes a map of  
4 the Quarry and surrounding areas with isopleths (lines of equal value) showing where  
5 Defendant's emissions result in residential excess cancer risks greater than 10 per million in the  
6 areas near the Quarry ("Plume"). A copy of the Exposure Map is attached hereto as Exhibit 2.

7 39. Dozens of homes, the Napa State Hospital, Napa Valley College, the Napa County  
8 Office of Education and its schools, including a preschool and a daycare, are all within the  
9 "Plume" where exposures to the Quarry's diesel engine exhaust create a cancer risk great than  
10 10 per million.

11 40. Diesel engine exhaust from Defendant's Quarry operations lands on homes and other  
12 properties within the "Plume" without the consent of the owners of those properties, and  
13 without the clear and reasonable warnings required by Proposition 65.

14 41. Defendant is in violation of Proposition 65's regulations because Defendant is not  
15 providing a clear and reasonable warning to members of the public that are being exposed to  
16 diesel engine exhaust at levels exceeding the NSRL.

17 **Defendant has not Provided "Clear and Reasonable" Proposition 65 Warnings.**

18 42. At all times relevant to this action, Defendant has failed and continues to fail to  
19 provide individuals being exposed to diesel engine exhaust emitted from the Quarry with a  
20 "clear and reasonable warning" before exposing those individuals to cancer-causing diesel  
21 engine exhaust.

22 **Additional Facts.**

23 43. On or about May 20, 2003, a Proposition 65 lawsuit was filed against All American  
24 Asphalt and Astro Paving in the Alameda County Superior Court alleging Proposition 65  
25 violations related to asphalt paving ("Asphalt Paving Case"). *Consumer Advocacy Group, et al.*  
26 *v. All American Asphalt, et al.*, Case No. RG03097307 (Alameda Sup. Ct.). The Asphalt Paving  
27 Case contained allegations involving occupational, consumer, and environmental exposures

1 related to asphalt operations from a number of Proposition 65 chemicals, including diesel  
2 engine exhaust. By the terms of the complaint, however, the Asphalt Paving Case was limited  
3 to exposures “within a 100 foot radius of the violators’ places of businesses,” and applied only  
4 to asphalt operations. The complaint did not refer or relate to quarry operations at all. A  
5 Consent Judgment was entered in the Asphalt Paving Case requiring warnings only to  
6 employees of the defendant asphalt paving companies, and not to any members of the general  
7 public. While not originally a party, months after final judgment was entered in the case by the  
8 court, on or about August 22, 2005, Defendant opted-in to a Consent Judgment in the Asphalt  
9 Paving Case. Each of the exposures complained of herein occurred after August 22, 2005.

10 44. Prior to Defendant opting-in to the Asphalt Paving Consent Judgment, Defendant did  
11 not receive a valid 60-day notice of Proposition 65 violations meeting the requirements of H&S  
12 Code §25249.7. Neither the California Attorney General nor the requisite public prosecutors  
13 were provided with a copy of a 60-day notice sent to Defendant regarding the Asphalt Paving  
14 Case. Plaintiffs in the Asphalt Paving Case did not provide the California Attorney General  
15 with facts, studies, or other data supporting a Certificate of Merit demonstrating that Defendant  
16 had violated Proposition 65.

17 45. Although the Asphalt Paving case involved diesel engine exhaust, the complaint in  
18 that case was limited to exposures that occurred within 100-feet of Defendant’s place of  
19 business, and was limited only to asphalt operations. All of the exposures in this action occur  
20 beyond a 100 foot radius of the Quarry, and involve diesel engine exhaust emissions related to  
21 Quarry operations. Indeed, exposures above the NSRL are occurring more than 7,000 feet  
22 from the Quarry. Also, the Asphalt Paving Consent Judgment required warnings only to  
23 employees and not to the general public. The instant action does not allege any violations  
24 related to Defendant’s employees, but only to members of the general public.

25 **TRESPASS AND NUISANCE FACTUAL BACKGROUND**

26 46. In addition to diesel engine exhaust, Defendant’s operation, management, and  
27 maintenance of the Quarry also generates and emits dust, particulate matter, crystalline silica,

1 odors, and other toxic contaminants into the air (collectively referred to as the “Pollutants”).  
2 The wind carries these Pollutants into the air and onto properties throughout the neighborhood  
3 surrounding the Quarry, including the properties of Ms. Felch and Ms. Von Gymnich-  
4 Rosenberg, and members of SSE. On information and belief, in a matter of a few days, dust  
5 sometimes accumulates on Plaintiffs’ properties in levels sufficient so that Plaintiffs are able to  
6 write their names in the dust.

7 47. The Pollutants from the Quarry migrate over the entire neighborhood near the  
8 Quarry, and settle on neighbors’ flowers, trees, and lawns, and enter into their homes, creating  
9 a layer of dust. In addition to homes, the Pollutants also enter the air and property of the public  
10 Skyline Wilderness Park, the Napa State Hospital, Napa Valley College, which has a preschool  
11 onsite, the Napa County Office of Education and its schools, including a preschool.

12 48. By causing these emissions to reach the environment beyond the Quarry property,  
13 Defendant is exposing individuals living, working, and recreating in the surrounding  
14 neighborhood to conditions that are injurious to the health, offensive to the senses, and  
15 interfere with the comfortable use and enjoyment of property.

16 **FIRST CAUSE OF ACTION**  
17 **Injunctive Relief for Violations of Health and Safety Code § 25249.5, *et seq.***  
18 **(By All Plaintiffs Against Defendant)**

19 49. Plaintiffs reallege and incorporate by reference all of the above paragraphs as if  
20 fully set forth herein.

21 50. Defendant is a person in the course of doing business within the meaning of Health  
22 & Safety Code § 25249.11.

23 51. The people of the State of California have declared in Proposition 65 their right  
24 “[t]o be informed about exposure to chemicals that cause cancer, birth defects or other  
25 reproductive harm.” H&S Code §25249.5, (Proposition 65), Note § 1(b).

26 52. To carry out those statutory purposes, Proposition 65 requires that a clear and  
27 reasonable warning be given by persons who, in the course of doing business, knowingly and  
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1 intentionally expose any individual to a chemical known to the State of California to cause  
2 cancer.

3 53. On October 1, 1990, diesel engine exhaust was listed as a chemical known to the  
4 State of California to cause cancer. No warning needs to be given concerning a chemical so  
5 listed until one year after the chemical first appears on the list. Cal. Health & Saf. Code §  
6 25249.10(b). Therefore, on October 1, 1991, diesel engine exhaust became subject to the  
7 warning requirements of Proposition 65.

8 54. Defendant's operation of the Quarry causes exposures to diesel engine exhaust at  
9 levels requiring a "clear and reasonable warning" pursuant to Health & Safety Code §25249.6.

10 55. Defendant has failed, and continues to fail, to provide the clear and reasonable  
11 health hazards warnings required by Proposition 65.

12 56. The California Office of Environmental Health Hazard Assessment ("OEHHA")  
13 has established "safe harbor" levels below which warnings are generally not required.  
14 (<http://www.oehha.ca.gov/prop65/pdf/safeharbor081513.pdf>). The safe harbor level for diesel  
15 engine exhaust is a level that does not result in more than 10 increased cancer cases per one  
16 million exposed people.

17 57. Defendant knowingly and intentionally exposed individuals to the diesel engine  
18 exhaust without first providing a clear and reasonable warning.

19 58. By committing the acts alleged in this Complaint, Defendant at all times relevant to  
20 this action, and continuing through the present, has violated H&S Code §25249.6 by, in the  
21 course of doing business, knowingly and intentionally exposing individuals living within the  
22 Diesel Engine Exhaust Plume, depicted in Exhibit 2, to diesel engine exhaust, without first  
23 providing a clear and reasonable warning to such individuals pursuant to H&S Code §§ 25249.6  
24 and 25249.11(f).

25 59. By the above-described acts, Defendant has violated H&S Code § 25249.6 and is  
26 therefore subject to an injunction ordering Defendant to comply with Proposition 65, including  
27 its requirement that exposed individuals be provided with a clear and reasonable warning that  
28

1 Defendant's Quarry emits a chemical known to the State of California to cause cancer and to  
2 provide warnings to all exposed individuals.

3 60. An action for injunctive relief under Proposition 65 is specifically authorized by  
4 H&S Code §25249.7(a).

5 61. Continuing commission by Defendant of the acts alleged above will irreparably  
6 harm the citizens of the State of California, for which harm they have no plain, speedy, or  
7 adequate remedy at law. In the absence of injunctive relief, Defendant will continue to create a  
8 substantial risk of irreparable injury by continuing to cause nearby residents to be involuntarily  
9 and unwittingly exposed to diesel engine exhaust from the Quarry.

10 **SECOND CAUSE OF ACTION**

11 **Civil Penalties for Violations of Health and Safety Code § 25249.5, et seq.**  
12 **(By All Plaintiffs Against Defendant)**

13 62. Plaintiffs reallege and incorporate by reference all of the above paragraphs, as if  
14 fully set forth herein.

15 63. By committing the acts alleged in this Complaint, Defendant at all times relevant to  
16 this action, and continuing through the present, has violated H&S Code §25249.6 by, in the  
17 course of doing business, knowingly and intentionally exposing individuals living within the  
18 Diesel Engine Exhaust Plume to diesel engine exhaust, without first providing a clear and  
19 reasonable warning to such individuals pursuant to H&S Code §§ 25249.6 and 25249.11(f).

20 64. By the above-described acts, Defendant is liable, pursuant to H&S Code  
21 §25249.7(b), for a civil penalty of up to \$2,500 per day per violation for each unlawful exposure  
22 to diesel engine exhaust from the Quarry operations.

23 **THIRD CAUSE OF ACTION**

24 **Continuing Trespass**  
25 **(By SSE, Kathy Felch, and Susanne Von Gymnich-Rosenberg Against Defendant)**

26 65. Plaintiffs reallege and incorporate by reference all of the above paragraphs, as if  
27 fully set forth herein.

28 66. In Defendant's operation, management, and maintenance of the Quarry, Defendant

1 intentionally, recklessly, willfully, or negligently caused and continues to cause dust, particulate  
2 matter, diesel engine exhaust, and other toxic substances emitted from the Quarry to enter onto  
3 the properties of Kathy Felch, Susanne Von Gymnich-Rosenberg, and members of Stop Syar  
4 Expansion.

5 67. Plaintiffs Kathy Felch, Susanne Von Gymnich-Rosenberg, and members of Stop Syar  
6 Expansion did not give permission for this entry to Defendant or anyone acting in concert with  
7 Defendant.

8 68. Defendant's actions resulted in the pollution of air, deposition of dust and toxins onto  
9 Plaintiffs' properties, and deprived Plaintiffs of their ability to live on their properties free of  
10 pollutants and dust.

11 69. Defendant's actions were a substantial factor in causing Plaintiffs' harm.

12 70. Plaintiffs have no adequate remedy at law for the injuries suffered by reason of  
13 Defendant's ongoing trespass. Unless Defendant is ordered to immediately stop causing  
14 particulate matter, dust, and other toxins from the Quarry from entering onto Plaintiffs'  
15 properties, it will be necessary for Plaintiffs to commence many successive actions against  
16 Defendant to secure compensation for the damages sustained, thus requiring a multiplicity of  
17 suits.

18 71. As a direct and proximate cause of Defendant's conduct, Plaintiffs have suffered and  
19 continue to suffer harm, including, but not limited to, polluted land and air in and around  
20 Plaintiffs' properties, and diminution of value of Plaintiffs' properties.

21 **FOURTH CAUSE OF ACTION**  
22 **Public Nuisance**

23 **(By SSE, Kathy Felch, and Susanne Von Gymnich-Rosenberg Against Defendant)**

24 72. Plaintiffs reallege and incorporate by reference all of the above paragraphs, as if  
25 fully set forth herein.

26 73. Section 3479 of the Civil Code defines a "nuisance," in relevant part, as "[a]nything  
27 which is injurious to health, . . . or is indecent or offensive to the senses, or an obstruction to  
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1 the free use of the property, so as to interfere with the comfortable enjoyment of life or  
2 property, or unlawfully obstructs the free passage or use, in the customary manner, of any  
3 navigable lake, or river, bay stream, canal or basin.”

4 74. Section 3480 of the Civil Code defines a “public nuisance” as: “[o]ne which affects  
5 at the same time an entire community or neighborhood, or any considerable number of persons,  
6 although the extent of the annoyance or damage inflicted upon individuals may be unequal.”

7 75. Defendant’s negligent or intentional acts and omissions have caused, created,  
8 maintained, contributed to, and neglected to abate a public nuisance as defined in Civil Code  
9 §§ 3479 and 3480.

10 76. By emitting dust, particulate matter, diesel engine exhaust, odors, and other toxic  
11 substances from the Quarry and into the environment in the surrounding neighborhood and  
12 public lands, Defendant created conditions that are injurious to the health, offensive to the  
13 senses, and obstruct the free use of property by Plaintiffs and the public. These conditions  
14 affect a substantial number of people in the neighborhood at the same time.

15 77. The public nuisance resulting from the emission of dust, particulate matter, diesel  
16 engine exhaust, odors, and other toxic materials into the environment in the areas surrounding  
17 the Quarry affects the entire surrounding community because it interferes with the free use and  
18 enjoyment of publicly-owned property and natural resources, including the air breathed at  
19 nearby residences, public schools, a state hospital, and at the Skyline Wilderness Park.

20 78. Plaintiffs have suffered special injury and damages as a direct and proximate result  
21 of the Quarry’s emission of dust, particulate matter, diesel engine exhaust, odors, and other  
22 toxic substances into the environment in the areas surrounding the Quarry. The public  
23 nuisance has substantially interfered with Plaintiffs’ use and enjoyment of their homes and  
24 properties and has caused a diminution of value of their properties.

25 79. Emissions of dust, particulate matter, diesel engine exhaust, odors, and other toxic  
26 substances into the environment in areas surrounding the Quarry is ongoing, and continues to  
27 occur every day that the Quarry operates.





1 88. Plaintiffs did not consent to Defendant's acts and omissions that caused or  
2 contributed to dust, particulate matter, diesel engine exhaust, odors, and other toxic  
3 materials to enter the environment at and around Plaintiffs' properties.

4 89. An ordinary person would be reasonably annoyed or disturbed by the ongoing  
5 deposition and entrance of dust, particulate matter, diesel engine exhaust, odors, and  
6 other toxic materials on and near their residential properties.

7 90. As a direct and proximate result of the acts or omissions of Defendant,  
8 Plaintiffs have suffered and continue to suffer damages as alleged herein, including a  
9 diminution of value of their homes.

10 91. The continuing private nuisance is abatable. Plaintiffs are entitled to relief  
11 restraining Defendant and requiring it to take such actions as may be necessary to abate  
12 the private nuisance at issue. Plaintiffs are also entitled to damages for diminution of the  
13 value of Plaintiffs' properties.

14 **PRAYER FOR RELIEF**

15 Wherefore, Plaintiffs accordingly pray for the following relief:

16 A. A preliminary and permanent injunction, pursuant to H&S Code §25249.7(b),  
17 enjoining Defendant, its agents, employees, assigns and all persons acting in concert or  
18 participating with Defendant, from operating their Quarry in a manner that exposes nearby  
19 residents to diesel engine exhaust without first providing a clear and reasonable warning that  
20 the Quarry is exposing those residents within the Diesel Engine Exhaust Plume to a chemical  
21 known to the State of California to be a carcinogen;

22 B. A preliminary and permanent injunction compelling Defendant to abate the  
23 continuing trespass, public nuisance, and private nuisance alleged herein;

24 C. An assessment of civil penalties pursuant to Health & Safety Code §25249.7(b),  
25 against Defendant in the amount of \$2,500 per day for each violation of Proposition 65;

26 D. An award of special damages, according to proof;

27 E. An award to Plaintiffs of their reasonable attorney's fees and costs of suit  
28


1 pursuant to California Code of Civil Procedure §1021.5 or any other applicable provision(s) of  
2 law, as Plaintiffs shall specify in further application to the Court; and,

3 F. Any and all such other and further relief as this Court may deem just and proper.

4 DATED: November 8, 2016

LOZEAU DRURY LLP

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Rebecca L. Davis  
Richard T. Drury  
Attorneys for Plaintiffs

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# EXHIBIT 1



T 510.836.4200  
F 510.836.4205

410 12th Street, Suite 250  
Oakland, Ca 94607

www.lozeaudrury.com  
rebecca@lozeaudrury.com

August 26, 2016

**Via Certified Mail**

Current CEO or President  
Syar Industries, Inc.  
2301 Napa Vallejo Highway  
Napa, CA 94558

Ralston P. Roberts  
2301 Napa Vallejo Highway  
Napa, CA 94558

**Via Online Submission**

Office of the California Attorney General

**Via Electronic Mail**

Napa County District Attorney  
931 Parkway Mall  
Napa, CA 94559  
CEPD@countyofnapa.org

**Re: Notice of Violations of California Health & Safety Code Section 25249.5 et seq.**

Dear Addressees:

This firm represents Stop Syar Expansion (“SSE”) and Napa Vision 2050 in connection with this notice of violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* (“Proposition 65”). Stop Syar Expansion is an unincorporated nonprofit association that includes citizens living in Napa County, near the Syar Napa Quarry. In addition, this firm represents the following individuals in connection with this notice: Susan M. von Gymnich-Rosenberg, Julia Winiarski, Steve and Sandra Booth, Kathy Felch, Richard Scott Blair, and David Lopez (Stop Syar Expansion, Napa Vision 2050, and individuals collectively, “Noticing Parties”).

This letter constitutes notice that the entity listed below has violated and continues to violate provisions of Proposition 65. Specifically, the entity listed below has violated and continues to violate the warning requirement at § 25249.6 of the California Health & Safety Code, which provides, “No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual...”

Alleged Violator (“Violator”): **Syar Industries, Inc.**

Pursuant to Cal. Health & Safety Code section 25249.7, subd. (d), the Noticing Parties, as defined below, intend to bring an enforcement action against the Violator sixty (60) days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations. A summary of Proposition 65 and its implementing regulations, prepared by the Office of Environmental Health Hazard Assessment, the lead agency designated under Proposition 65, is enclosed with the copy of this notice served on the Violator. The specific details of the violations that are the subject of this Notice are provided below.

The Violator operates the Syar Napa Quarry, located in southern Napa County, on the east side of State Highway 221 at its intersection with Basalt Road, which is between Kaiser Road and Streblow Drive (the “Site”).<sup>1</sup> A variety of vehicular activities throughout the Syar Site emit diesel engine exhaust. These include the operation of haul trucks, water trucks, graders, dozers, drills, excavators, loaders, scrapers, and cranes. On October 1, 1990, the State of California listed diesel engine exhaust as a chemical known to cause cancer.

On each and every day on which the Violator operated the Syar Napa Quarry from at least August 25, 2013 through the present, the Violator exposed nearby residents and others to diesel engine exhaust. Information available to the Noticing Parties, including air monitoring data from the Syar Napa Quarry Expansion Project Draft Environmental Impact Report, establishes that these operations expose people to diesel engine exhaust excess cancer risks at levels exceeding the Proposition 65 No Significant Risk Level. These exposures are ongoing, and will continue every day until appropriate remedial efforts are undertaken by the Violator to abate the violations.

Exposure has occurred, and continues to occur through inhalation of diesel engine exhaust from vehicular activities throughout the Site, which is the source of the diesel engine exhaust exposures. These exposures have occurred and continue to occur beyond the property owned and/or controlled by the Violator. The location of the exposures at issue is set forth in the “plume” maps, attached hereto as **Exhibit A**.

This notice is provided on behalf of the following persons and organizations (collectively, the “Noticing Parties”):

Stop Syar Expansion  
952 School Street  
#275  
Napa, CA 94559

Susan M. von Gymnich-Rosenberg  
2168 Penny Lane  
Napa, CA 94559  
(510) 774-9085

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<sup>1</sup> Syar proposes expanding the existing Syar Napa Quarry, but has not yet received the regulatory approvals to do so. This notice covers existing operations, and does not include the proposed expansion.

August 26, 2016

Page 3

Julia Winiarski  
9 Bonita Street  
Napa, CA 94559  
(707) 287-5508

Steve and Sandra Booth  
2100 Seville St.  
Napa, CA 94559  
(707) 257-6958

Kathy Felch & Richard Scott Blair  
2196 Penny Lane  
Napa, CA 94559  
(707) 332-6842  
(707) 363-6697

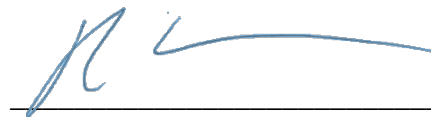
David Lopez  
2034 Morlan Drive  
Napa, CA 94558  
(707) 738-7126

Napa Vision 2050  
P.O. Box 2385  
Yountville, CA 94599  
(707) 815-7503

The Noticing Parties are represented in this matter by the law firm Lozeau Drury, LLP.  
All communications concerning this matter should be directed to:

Richard T. Drury  
Rebecca L. Davis  
LOZEAU DRURY LLP  
410 12th St., Suite 250  
Oakland, CA 94607  
(510) 836-4200  
rebecca@lozeaudrury.com  
richard@lozeaudrury.com

Sincerely,



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Rebecca L. Davis

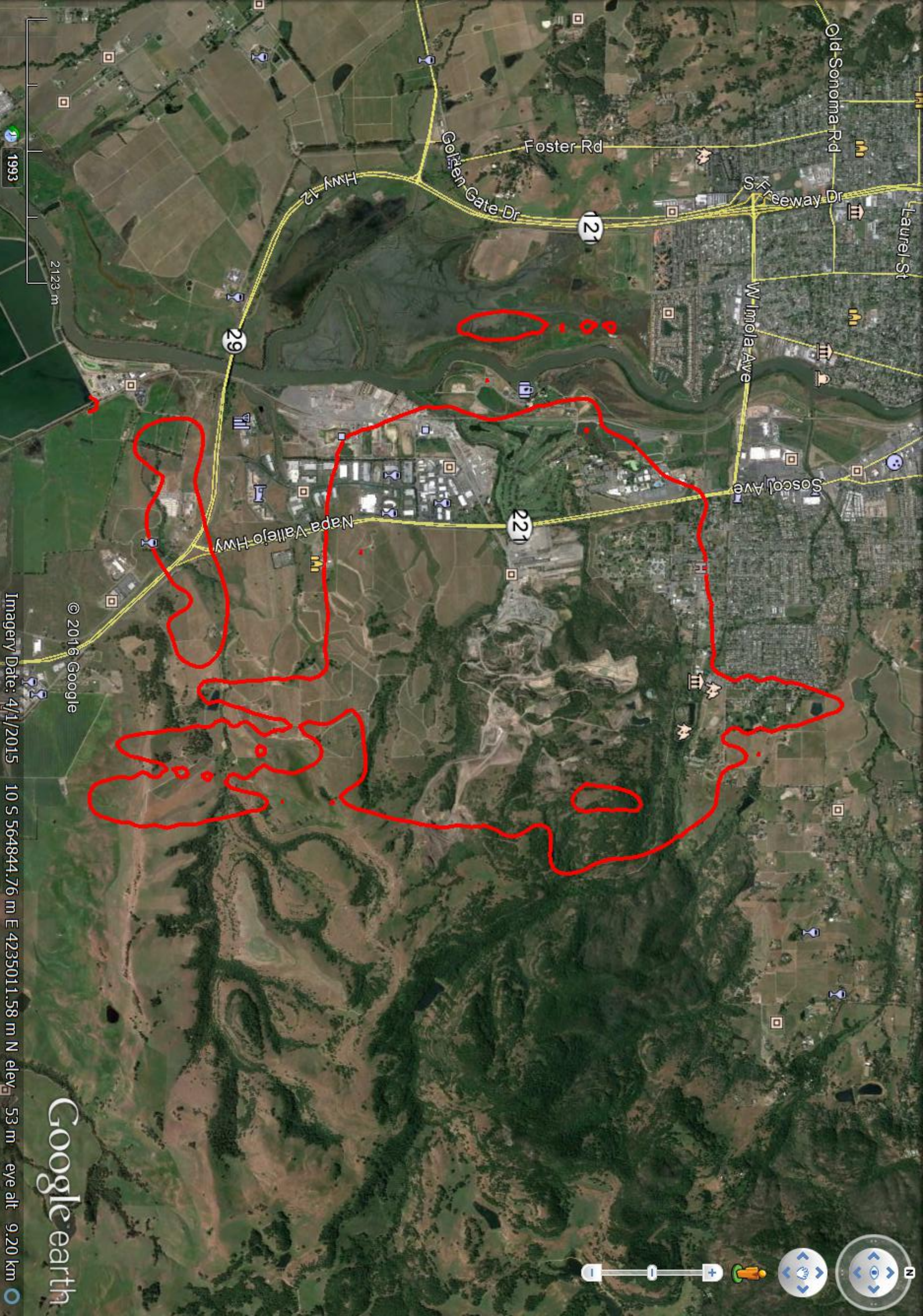
Attachments:

Certificate of Merit  
Certificate of Service  
OEHHA Summary (to Syar Industries, Inc. and their Registered Agents for Service of Process only)  
Additional Supporting Information for Certificate of Merit (to AG only)



# EXHIBIT A





Old Sonoma Rd

Foster Rd

Golden Gate Dr

Freeway Dr

Laurel St

W Imola Ave

Soscol Ave

Napa Valley Hwy

29

121

221

2123 m

1993

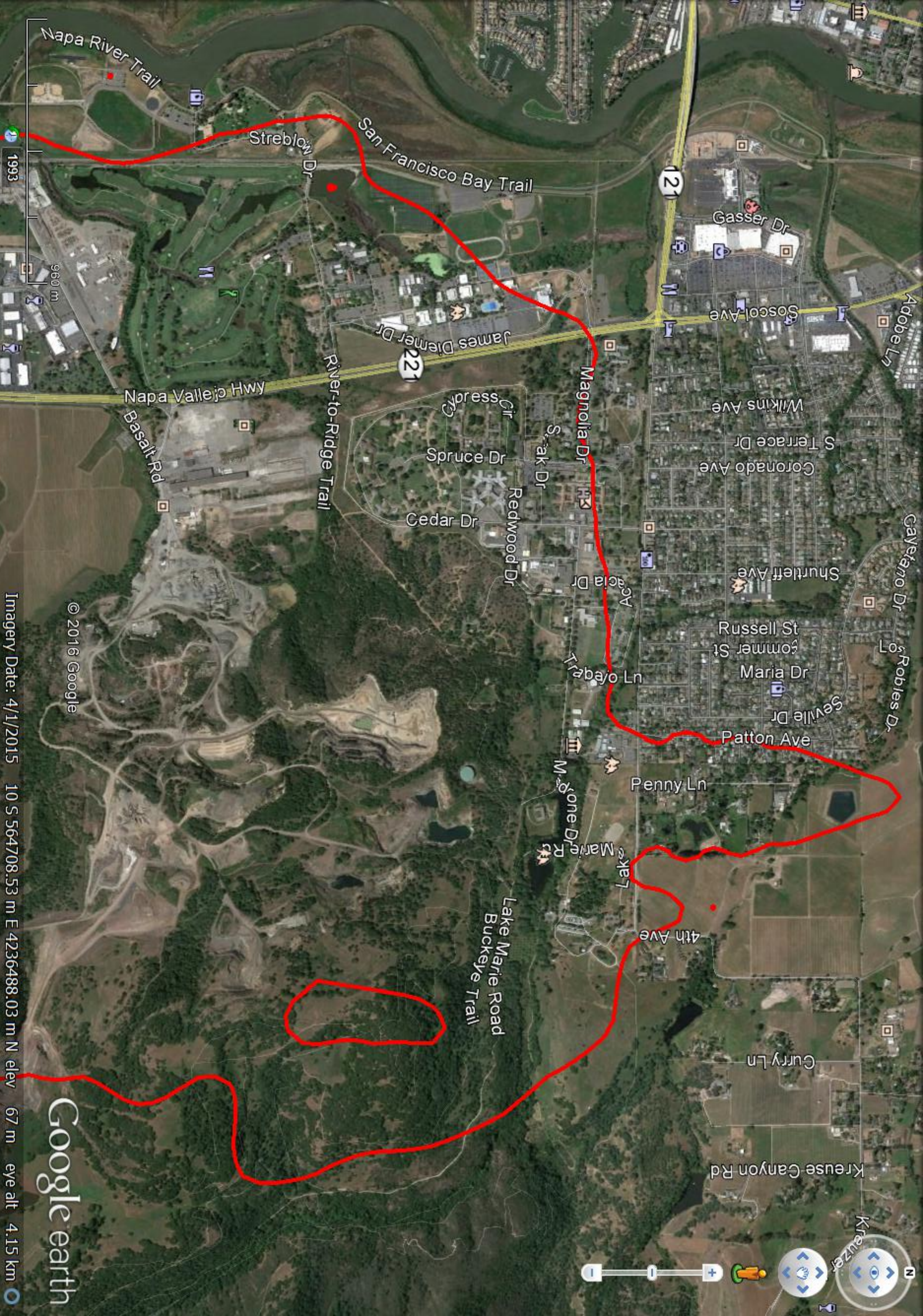
© 2016 Google

Imagery Date: 4/1/2015

10 S 564844.76 m E 4235011.58 m N elev. 53 m eye alt 9.20 km

Google earth





Google earth

Imagery Date: 4/1/2015 10 S 564708.53 m E 4236488.03 m N elev 67 m eye alt 4.15 km

© 2016 Google

Napa River Trail  
1993  
360 m

Streblow Dr  
San Francisco Bay Trail

Napa Valley Hwy

Basalt Rd

River-to-Ridge Trail

James Diemer Dr

Cypress Cir

Spruce Dr

Cedar Dr

Redwood Dr

Sak Dr

Magnolia Dr

Acacia Dr

Willow Ln

Marion Dr

Lake Marie Rd

Lake Marie Road  
Buckeye Trail

121

Gasser Dr

Soscol Ave

Wilkins Ave

S Terrace Dr

Coronado Ave

Shurtleff Ave

Russell St

Tommer St

Maria Dr

Seville Dr

Patton Ave

Penny Ln

Lake Marie Rd

4th Ave

Gurry Ln

Kreuse Canyon Rd





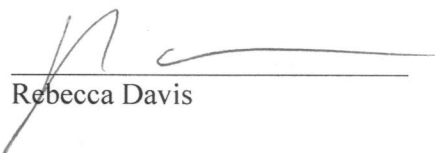
**CERTIFICATE OF MERIT**

**Re: Stop Syar Expansion's Notice of Proposition 65 Violations by Syar Industries, Inc.**

I, Rebecca Davis, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing parties.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed the facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violators will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit, served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §§ 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: August 26, 2016

  
\_\_\_\_\_  
Rebecca Davis

**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to this action. My business address is 410 12th Street, Suite 250, Oakland, California, 94607.

On August 26, 2016, I served the following documents:

- **Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.***
- **Certificate of Merit**
- **“The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary”**

on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President  
Syar Industries, Inc.  
2301 Napa Vallejo Highway  
Napa, CA 94558

Ralston P. Roberts  
(Syar Industries, Inc.’s Registered Agent for Service of Process)  
2301 Napa Vallejo Highway  
Napa, CA 94558

On August 26, 2016, I verified the following documents:

- **Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.***
- **Certificate of Merit**
- **Additional Supporting Information for Certificate of Merit as Required by California Health & Safety Code § 25249.7(d)(1)**

were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice>:

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Oakland, CA 94612-0550

Notice of Violation of Cal. Health & Safety Code §§ 25249.5 *et seq.*

August 26, 2016

Page 6

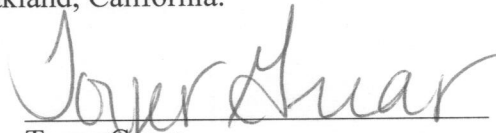
On August 26, 2016, I verified the following documents:

- **Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.***
- **Certificate of Merit**

were served on the following party when a true and correct copy thereof was sent via electronic mail to the party listed below:

Napa County District Attorney  
931 Parkway Mall  
Napa, CA 94559  
CEPD@countyofnapa.org

Executed on August 26, 2016 in Oakland, California.

  
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Toyer Grear

**Appendix A**

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986  
(PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as “Proposition 65”). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. Please refer to the statute and OEHHA's implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

*WHAT DOES PROPOSITION 65 REQUIRE?*

**The “Proposition 65 List.”** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

**Clear and reasonable warnings.** A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and

reasonable.” This means that the warning must: (1) clearly say that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

***Prohibition from discharges into drinking water.*** A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

#### ***DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?***

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

***Grace Periods.*** Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

***Governmental agencies and public water utilities.*** All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

***Businesses with nine or fewer employees.*** Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

***Exposures that pose no significant risk of cancer.*** For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at:

<http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

***Exposures that will produce no observable reproductive effect at 1,000 times the level in question.*** For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at:

<http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.



***Exposures to Naturally Occurring Chemicals in Food.*** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

***Discharges that do not result in a “significant amount” of the listed chemical entering any source of drinking water.*** The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

#### ***HOW IS PROPOSITION 65 ENFORCED?***

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off- premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;

- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties any reimbursement for costs and attorney's fees, if the notice was served on or after October 5, 2013, and the alleged violator has done *all* of the following within 14 days of being served notice:

- Corrected the alleged violation;
  - Agreed to pay a civil penalty of \$5B500 (subject to change as noted below) to the private party within 30 days;
- and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city of greater than 750,000 population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

A copy of the notice of special compliance procedure and proof of compliance form is included with this notice and can be downloaded from OEHHA's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>.

The notice is reproduced here:

Date: November 5, 2015

Name of Noticing Party or attorney for Noticing Party: Environmental Research Center, Inc.

Address: 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108

Phone number: 619-500-3090

## **SPECIAL COMPLIANCE PROCEDURE**

### **PROOF OF COMPLIANCE**

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

**The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:**

- 1. You have actually taken the corrective steps that you have certified in this form**
- 2. The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice**
- 3. The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.**
- 4. This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.**

### **PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY**

The alleged violation is for an exposure to: (check one)

Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination.

Environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises.

Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

### **IMPORTANT NOTES:**

- 1. You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.**
- 2. Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.**

Date: November 5, 2015

Name of Noticing Party or attorney for Noticing Party: Environmental Research Center, Inc.

Address: 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108

Phone number: 619-500-3090

**PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE**

**Certification of Compliance**

Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

- Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;
- Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately its placement on my premises; OR
- Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

**Certification**

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

---

Signature of alleged violator or authorized representative Date

---

Name and title of signatory

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS. . .*

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at [P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov).

Revised: May 2014

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<sup>1</sup> All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

<sup>2</sup> See Section 25501(a)(4).

Note: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

## **HISTORY**

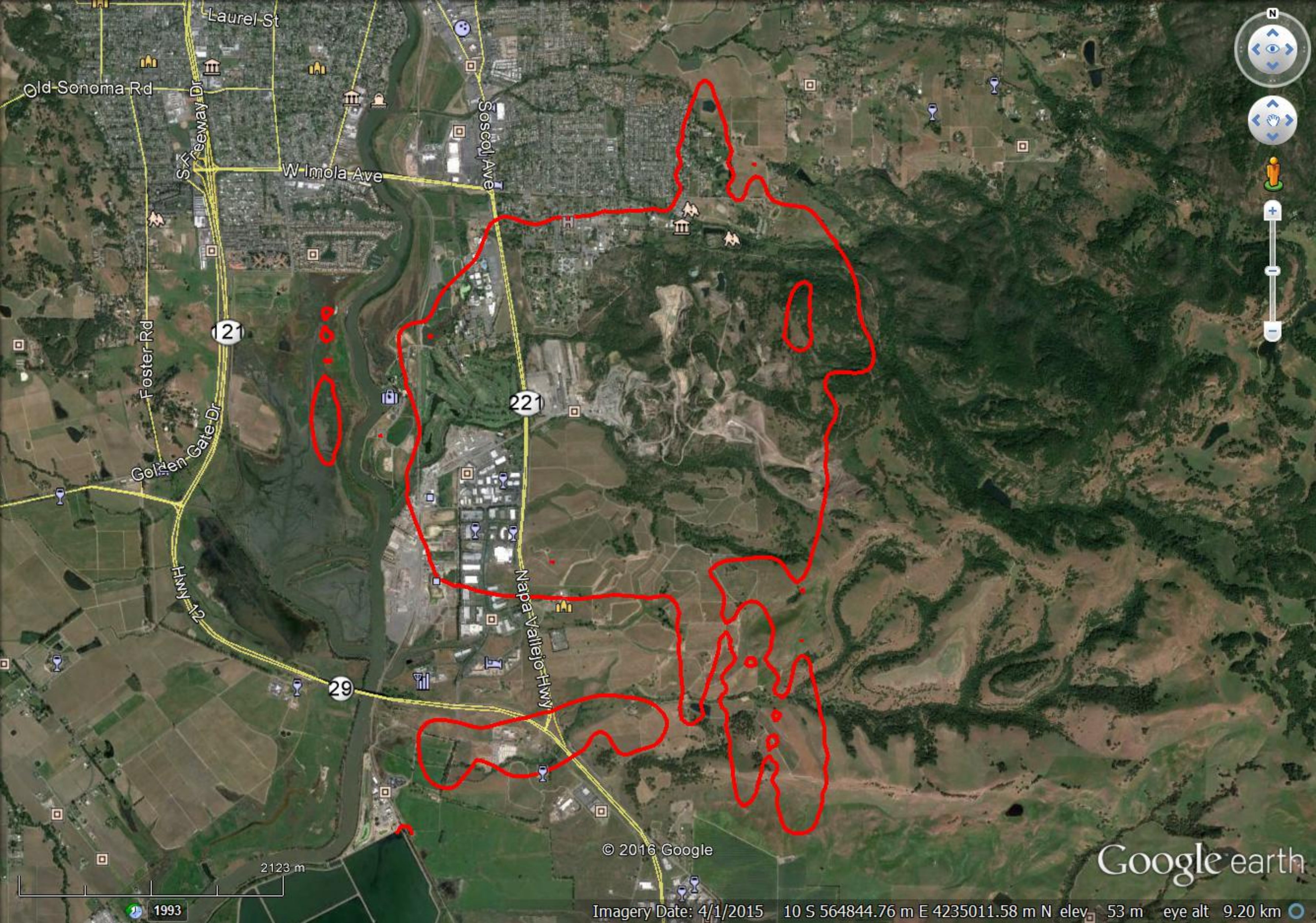
1. New Appendix A filed 4-22-97; operative 4-22-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 17).
2. Amendment filed 1-7-2003; operative 2-6-2003 (Register 2003, No. 2).
3. Change without regulatory effect renumbering title 22, section 12903 and Appendix A to title 27, section 25903 and Appendix A, including amendment of appendix, filed 6-18-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 25).
4. Amendment filed 11-19-2012; operative 12-19-2012 (Register 2012, No. 47).
5. Amendment of appendix and Note filed 11-19-2014; operative 1-1-2015 (Register 2014, No. 47).

This database is current through 9/18/15 Register 2015, No. 38

27 CCR Appendix A, 27 CA ADC Appendix A

# EXHIBIT 2





Google earth

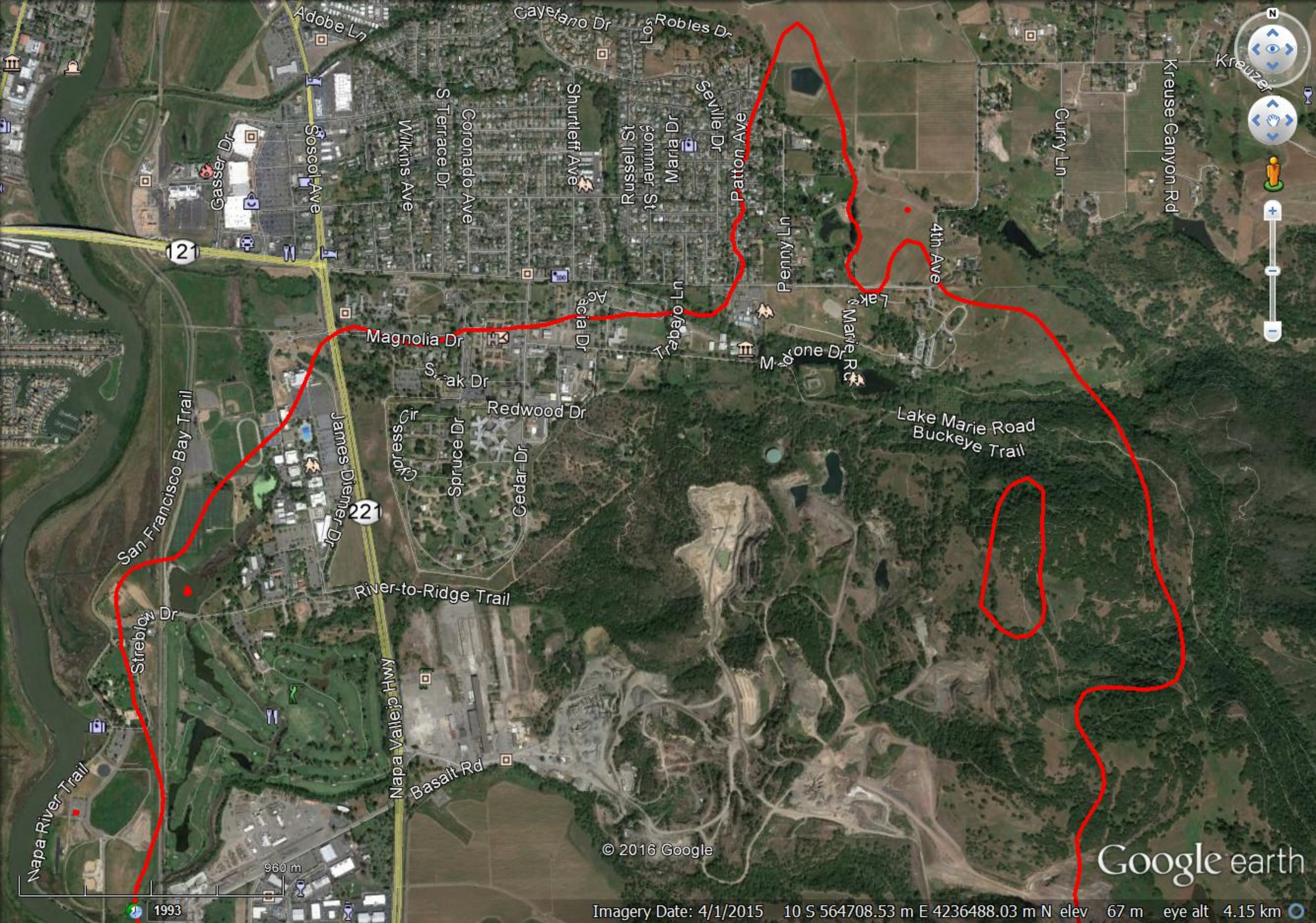
© 2016 Google

Imagery Date: 4/1/2015 10 S 564844.76 m E 4235011.58 m N elev. 53 m eye alt 9.20 km

1993

2123 m





Kreuzer

Navigation controls: compass, pan, zoom, street view, and scale bar.

San Francisco Bay Trail

River-to-Ridge Trail

Lake Marie Road Buckeye Trail

Napa River Trail

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Google earth

1993

Imagery Date: 4/1/2015 10 S 564708.53 m E 4236488.03 m N elev 67 m eye alt 4.15 km