
North Coast Regional Water Quality Control Board

August 24, 2020

Jason and Keri Wandrey
8275 Pillow Road
Sebastopol, CA 95472
jasonwkerib@gmail.com

Dear Mr. Wandrey:

Subject: Notice of Violation Associated with Heavy Equipment Crossing Atascadero Creek

File: Jason Wandrey, 8275 Pillow Road, Sebastopol, Atascadero Creek, CW-868535, WDID No. 1B20163WNSO

The North Coast Regional Water Quality Control Board (Regional Water Board) is the public agency with primary responsibility for the protection of ground and surface water quality for all uses within the north coast portion of the State of California. It has come to our attention that you and/or your agents have conducted activities involving accessing Atascadero Creek with heavy equipment, driving in the creek channel, and exiting the channel on the subject parcel at 8275 Pillow Road in Sebastopol (Site). By this letter, we are providing you notice that such activities violate provisions of the Water Quality Control Plan for the North Coast Region (Basin Plan), the California Water Code (Refer to Exhibit A, Regulatory Citations), and the federal Clean Water Act, due to the discharges and/or threatened discharges of earthen material and pollutants into waters of the state and the United States. In particular, you have failed to comply with section 401 (33 U.S.C. 1341) and section 404 (b)(1) (33 U.S.C. 1344) of the Clean Water Act.¹

On June 9, 2020, Regional Water Board staff received a citizen complaint through the CalEPA Complaints Database regarding heavy equipment (excavator) crossing Atascadero Creek (jurisdictional waters of the state and United States) and driving down the creek for some distance at the Site. Staff shared this complaint with staff of the California Department of Fish and Wildlife (CDFW), and in response, on June 10, 2020, CDFW Warden Tiffany Wolvek and fisheries biologist James Hansen inspected the Site, and reported observing evidence that heavy equipment had recently crossed

¹ Dredge and fill activities within waters of the United States require prior authorization from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act and issuance of a state water quality certification by the Regional Water Board under section 401 of the Clean Water Act.

Atascadero Creek. The Regional Water Board has no record of any active or past permits for construction of crossings or temporary crossings at the Site.

On June 11, 2020, Warden Wolvek provided Regional Water Board staff a summary of the CDFW Site inspection, observations made of the location where heavy equipment had crossed Atascadero Creek, and three photographs. The Site is bisected by Atascadero Creek. Warden Wolvek reported observing fresh excavator tracks extending down the east bank of Atascadero Creek, continuing down the stream channel for a distance, and exiting on the west bank where freshly disturbed soil and excavator tracks were visible (Refer to Exhibit B, Photographs of Impact, Photographs 1, 2, and 3).

This Notice of Violation (NOV) is specifically for unpermitted activities associated with heavy equipment (excavator) access and crossing of Atascadero Creek. Atascadero Creek is considered a jurisdictional water of the state and United States. Other jurisdictional waters at the site may also include wetlands. Atascadero Creek is located within the Guerneville Hydrologic Subarea 114.11. The existing and potential Beneficial Uses of Atascadero Creek include:

- Municipal and Domestic Supply
- Agricultural Supply
- Industrial Service Supply
- Groundwater Recharge
- Freshwater Replenishment
- Navigation
- Water Contact Recreation
- Non-Contact Water Recreation
- Commercial and Sport Fishing
- Warm Freshwater Habitat
- Cold Freshwater Habitat
- Wildlife Habitat
- Rare, Threatened, or Endangered Species
- Migration of Aquatic Organisms
- Spawning, Reproduction, and/or Early Development

Please be aware that the operation of heavy equipment and work in waters of the state and or United States, including wetlands, requires a permit from the Regional Water Board. Specifically, you have failed to comply with section 401 (33 U.S.C. 1341) and section 404 (b)(1) (33 U.S.C. 1344) of the Clean Water Act.

On August 20, 2020, we met with you to discuss this matter, and advised you that you must decommission the crossing area by **October 31, 2020**, in order to prevent the discharge of sediment during rain events. By no later than **September 24, 2020**, we request that you submit a plan describing how you propose to decommission the crossing, including details of Best Management Practices to be employed to control

pollutant discharges during and following decommissioning work, including materials to be used and seeding proposed to prevent sediment from entering the stream after decommissioning.

Activities that may directly or indirectly impact waters of the state require you to apply for a Water Quality Certification and/or Waste Discharge Requirements (WDRs). These activities might also require input, consultation, and permits from other federal, state, and local agencies. Activities that might/typically result in impacts to the waters of the state include, but are not limited to, watercourse crossing construction and use (temporary and/or permanent), vineyard development, and physical and hydrological alterations and modifications to riparian zones and wetlands. (Exhibit C: Mapped Wetlands on 8275 Pillow Road in Sebastopol). Information on permits for fill and excavation within waters of the state please consult our website here: https://www.waterboards.ca.gov/northcoast/water_issues/programs/water_quality_certification/.

Please note that correcting the conditions of non-compliance at the Site does not preclude enforcement for the violations alleged in this notice. The Regional Water Board reserves its right to fully enforce the law against any violation and threatened violation by taking enforcement actions. Discharges or threatened discharges of waste, including earthen material, into waters of the state that create a condition of nuisance or pollution may subject a person to a Cleanup and Abatement Order pursuant to Water Code section 13304. An actual discharge to waters of the state, including allowing fill to remain within a wetland, may subject a person to an administrative liability up to \$5,000 per day of violation for each violation, or \$10 for each gallon of waste discharged pursuant to Water Code section 13350. Unlawful discharges to waters of the United States and/or violations of the Clean Water Act may subject a person to up to \$10,000 per day of violation for each violation, and up to \$10 per gallon of waste discharged over 1,000 gallons not cleaned up pursuant to Water Code section 13385. The Regional Water Board retains its discretion to refer this matter to the Attorney General for enforcement. We will contact you upon further assessment of these violations to discuss any potential associated civil liability or other enforcement actions.

Summary/Conclusion

Submit your decommissioning plan, by **September 24, 2020**, to Northcoast@waterboards.ca.gov and copy Gil Falcone of the 401 Unit at Gil.Falcone@waterboards.ca.gov.

Additionally, **submit evidence of complete implementation of decommissioning of the crossing by October 31, 2020**, to Northcoast@waterboards.ca.gov and copy Gil Falcone at Gil.Falcone@waterboards.ca.gov.

If you have any questions regarding this matter, please contact me at Gil.Falcone@waterboards.ca.gov or (707) 576-2830.

Sincerely

Gil Falcone
Senior Environmental Scientist
Southern Nonpoint Source and 401 Certification Unit

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Exhibit A: Regulatory Citations

Exhibit B: Photographs of Impact

Exhibit C: Mapped Wetlands on 8275 Pillow Road in Sebastopol

cc:

Sonoma County Agricultural Commissioner's Office, Andy Casarez,
Andy.Casarez@sonoma-county.org

California Department of Fish and Wildlife, Warden Tiffany Wolvek,
Tiffany.Wolvek@wildlife.ca.gov

California Department of Fish and Wildlife, James Hansen,
James.Hansen@wildlife.ca.gov

Army Corps of Engineers, Roberta Morganstern,
Roberta.A.Morganstern@usace.army.mil

Nathan Jacobsen, State Water Resources Control Board, Office of Chief Counsel,
Nathan.Jacobsen@waterboards.ca.gov

Jennifer Siu, EPA Wetlands Office,
siu.jennifer@epa.gov

Diana Henriouille, Regional Water Board,
Diana.Henriouille@waterboards.ca.gov

Exhibit A: Regulatory Citations

Regulatory Section	Citation
California Water Code Section 13304	“A person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall, upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts...”
California Water Code Section 13350	“A person who (1) violates a cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board, or (2) in violation of a waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state, or (3) causes or permits any oil or any residuary product of petroleum to be deposited in or on any of the waters of the state, except in accordance with waste discharge requirements or other actions or provisions of this division, shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).”
California Water Code section 13376	“A person who discharges pollutants or proposes to discharge pollutants to the navigable waters of the United States within the jurisdiction of this state or a person who discharges dredged or fill material or proposes to discharge dredged or fill material into the navigable waters of the United States within the jurisdiction of this state shall file a report of the discharge in compliance with the procedures set forth in Section 13260.”
California Water Code Section 13385	“A person who violates any of the following shall be liable civilly in accordance with this section: (1) Section 13375 or 13376...(5) A requirement of Section 301...401...of the Federal Clean Water Act...”
Clean Water Act	section 401 (33 U.S.C. 1341) and section 404 (b)(1) (33 U.S.C. 1344) of the Clean Water Act

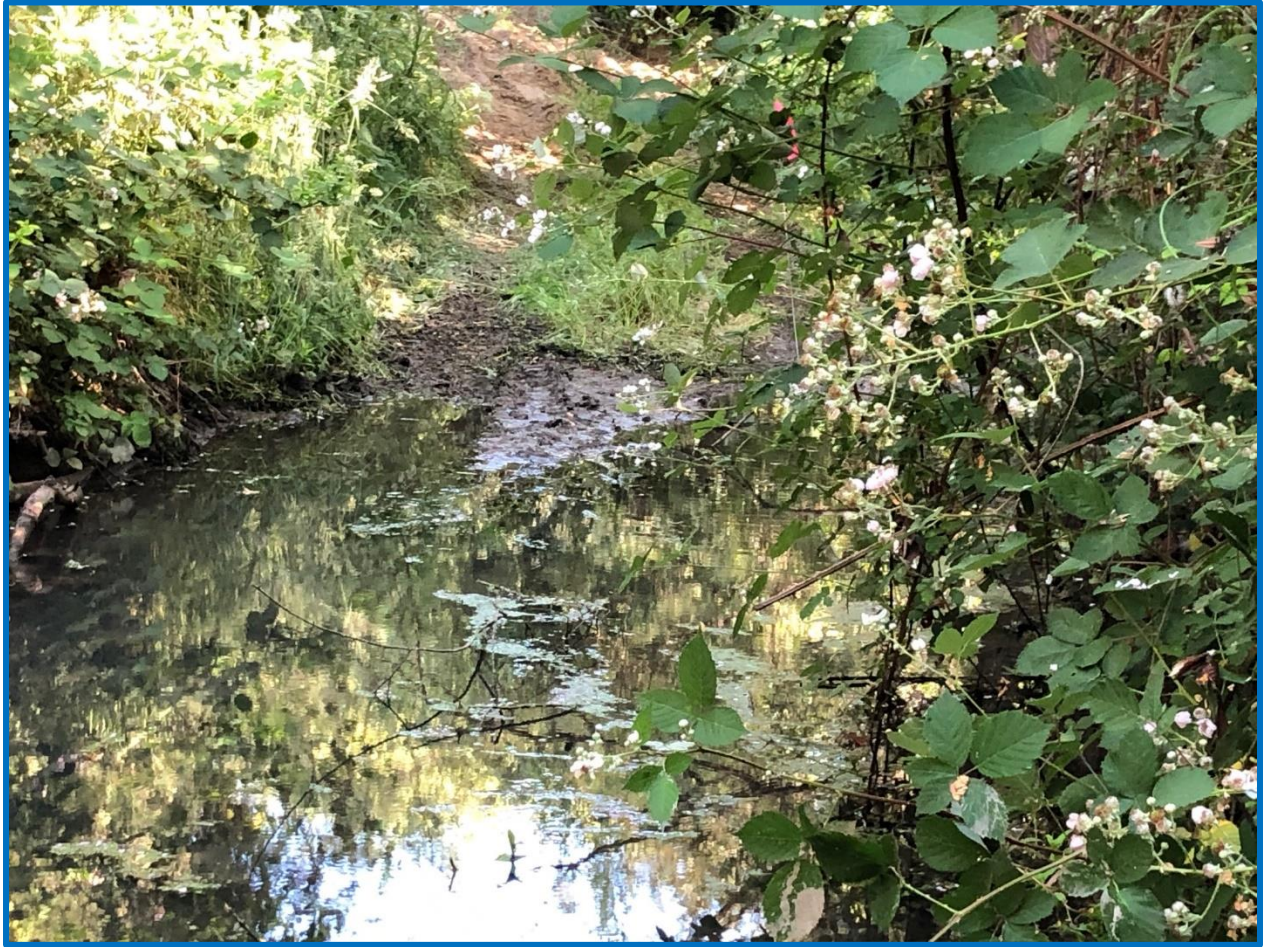
Exhibit B: Photographs of Impact



Photograph 1. Photograph taken by Warden Wolvek on June 10, 2020, at 8275 Pillow Road, Sebastopol. The photograph shows fresh excavator tracks extending down the east bank of Atascadero Creek into the creek channel.



Photograph 2. Photograph taken by Warden Wolvek on June 10, 2020, at 8275 Pillow Road, Sebastopol. The photograph shows fresh excavator tracks on the channel bottom of Atascadero Creek that extend to the point of exit located where freshly disturbed soil can be seen in the distance on the left bank.



Photograph 3. Photograph taken by Warden Wolvek on June 10, 2020, at 8275 Pillow Road, Sebastopol. The photograph shows fresh excavator tracks on the channel bottom of Atascadero Creek that extend to the point of exit located where freshly disturbed soil can be seen on the left bank. The excavator exited on the west bank to access the pasture west of Atascadero Creek.

Exhibit C: Mapped Wetlands on 8275 Pillow Road in Sebastopol

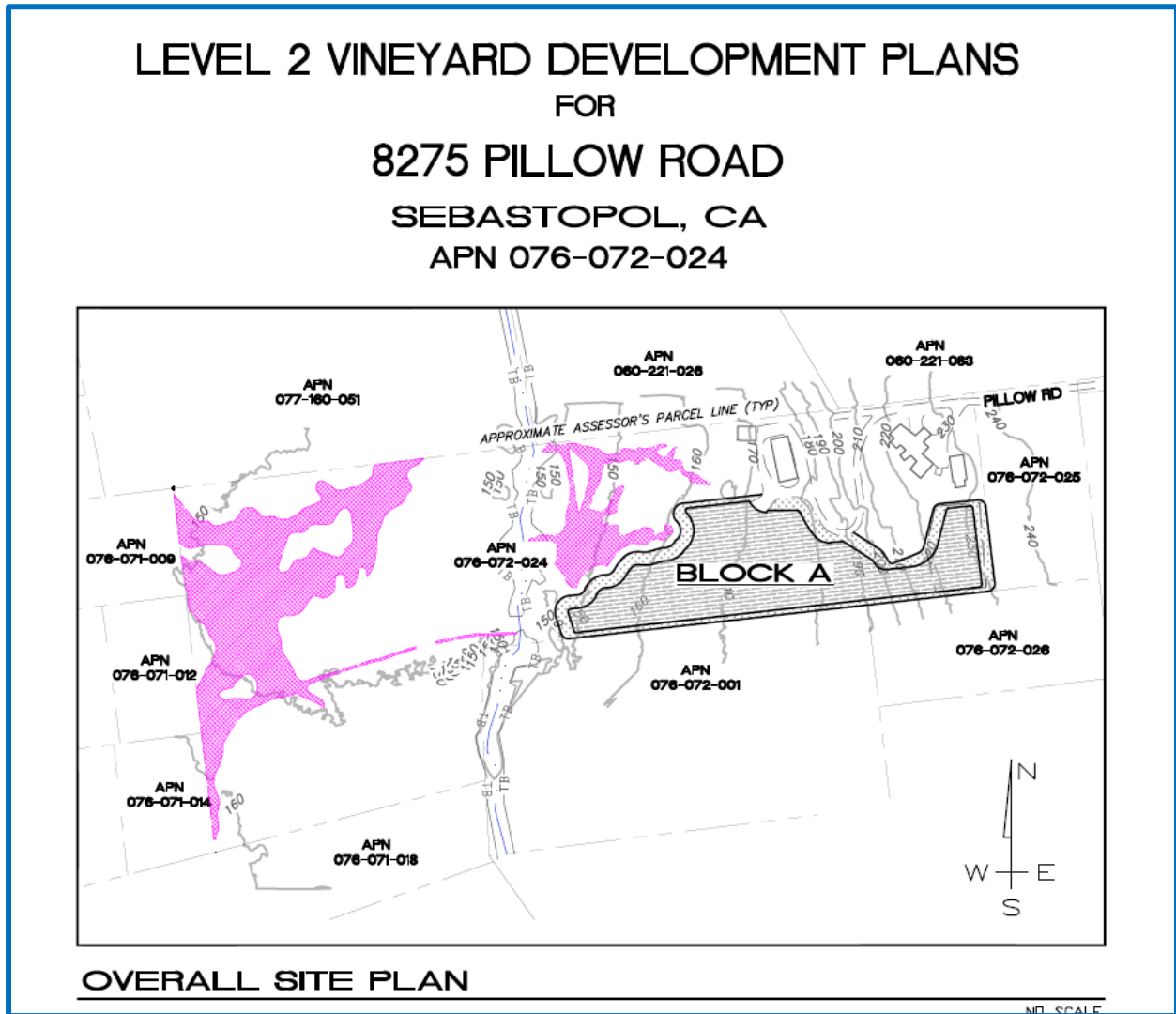


Image of Overall Site Plan taken from Level 2 Vineyard Development Plans for 8275 Pillow Road, Sebastopol, CA, Sheet 1. The pink areas shown on both sides of Atascadero Creek are where mapped wetlands exist.