



North Coast Regional Water Quality Control Board

October 11, 2021

Undrinkable LLC
c/o Avram Deixler
PO Box 952
Mendocino, CA 95460
adeixler@gmail.com

Certified Mail 7021 0950 0001 6499 5066

Dear Avram Deixler:

Subject: Notice of Violation and transmittal of Site Inspection Memo, Deixler Property, 43050 Little Lake Road, Mendocino

File: Avram Deixler, 43050 Little Lake Road, Mendocino,
CW-872226, WDID No. 1B21207WNME

This letter is to notify you of observed and documented violations of the requirements listed below for unauthorized discharges to waters of the state from the above-referenced subject property:

1. California Water Code (Water Code) sections 13260 and 13264.
2. Federal Clean Water Act sections 301, 401, and 404.

Within 20 days of receipt this letter, please contact Regional Water Board staff to discuss your plan to correct the observed violations.

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 beneficial uses within the north coast portion of the State of California. The Regional Water Board issues permits for discharges or threatened discharges of waste to waters of the state and Water Quality Certifications for dredge or fill activities within Waters of the United States, including wetlands. On February 5, 2021, Mendocino County Department of Planning and Building Services (Mendocino County) staff brought to our attention that a portion of your property, 43050 Little Lake Road in Mendocino (latitude 39.316868° N, longitude 123.763244° W) had recently been cleared of Mendocino cypress, with possible unpermitted impacts to wetlands.

On March 19, 2021, Regional Water Board staff participated in a joint agency site inspection of 43050 Little Lake Road (see Attachment 1, Site Inspection Memo, Deixler Property, 43050 Little Lake Road, Mendocino). The inspection report documents and provides evidence of unpermitted impacts to wetlands that are waters of the state and/or United States at the site. On August 10, 2021, Mendocino County staff informed us that you had recently started work on a building foundation in one of the cleared areas on your property.

By this letter, we are providing you notice that such activities violate provisions of the California Water Code and the federal Clean Water Act, due to the unpermitted discharges and/or threatened discharges of earthen material, building foundation, and pollutants into wetlands, waters of the state and/or the United States (see Exhibit A, Regulatory Citations).

March 19, 2021 site inspection

During the March 19, 2021 joint agency site inspection, Regional Water Board staff observed three areas on the property that had been recently cleared of Mendocino cypress and other vegetation (see Attachment 1). In addition to the vegetation clearing, gravel was laid to create a driveway. The National Wetlands Inventory (NWI) map indicates the approximate location of wetlands onsite where some of the clearing occurred (see Figure 1). As documented in Attachment 1, Regional Water Board staff observed standing water and mud in some of the cleared areas onsite (evidence of hydrology) and documented a wetland plant growing on the property (Western Labrador Tea, *Rhododendron columbianum*, an obligate wetland indicator species). These observations indicate wetlands are likely present on the property.

Discharge of dredge or fill material to a water of the state requires authorization from the Regional Water Board under Section 13260 of the California Water Code (see Exhibit A). The vegetation clearing and driveway construction was conducted without prior authorization from the Regional Water Board and are in violation of these regulations. During the inspection, you stated that vegetation clearing was conducted by the previous landowner before you purchased the property in January 2021, and you explained that you intend to build structures in some of the cleared areas onsite. Regional Water Board staff explained that the site must be brought into compliance through permitting of the impacts from the vegetation clearing, driveway construction, and any future planned impacts, or through enforcement and restoration. Staff explained that a forensic wetland delineation would be necessary to determine the extent of the impacts to wetlands before any further work is conducted at the site.

Follow-up investigation

After the March 19, 2021 site inspection, Regional Water Board staff contacted you via email on March 25, 2021 to discuss your plans to have a qualified wetland professional to perform a forensic wetland delineation on your property.

We stressed the importance of this delineation to confirm the extent of wetlands on the property to identify areas impacted and inform future fill locations that would be outside the wetlands. Regional Water Board staff followed up via email on April 27, 2021, May 13, 2021, and June 14, 2021, but never received a response from you.

On August 10, 2021, Mendocino County staff informed us that you had recently started work on a building foundation in one of the cleared areas on your property. Regional Water Board staff checked Google Earth and found imagery captured on June 2, 2021 that showed additional work has been conducted at the site since the March 19, 2021 joint agency site inspection (Figure 1). As shown in Figure 1, the Google Earth imagery shows that gravel and/or concrete has been filled in the northeastern cleared area at the site, and gravel has been laid to create a second driveway further east of the first driveway that was documented in Attachment 1. Additionally, the Google Earth imagery shows material piled in the largest cleared area. As shown in Figure 1, the building foundation site, second driveway, and piled material are located within the wetland identified by the NWI.

This continued work at the site, including construction of the building foundation and second driveway, is a violation of Section 13260 of the California Water Code. Figure 1 clearly documents your activities have discharged fill materials into waters of the state without prior authorization.

Non-compliance and enforcement

Please note that correcting the conditions of non-compliance at the sites does not preclude enforcement for the violations alleged in this notice. The following Sections of the California Water Code may apply: 13261(a), 13264 (a), 13265(a), 13304, 13350, 13385 (See Exhibit A). 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 and/or United States 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

To limit the days that aquatic resources are impacted and therefore your exposure to financial liability, we recommend that you submit a forensic wetland delineation, prepared by a qualified professional, to confirm the extent of wetlands on the property and the location of wetland impacts. When the forensic wetland delineation results are complete, you may request permitting through the Regional Water Board under a Water Quality Certification and/or Waste Discharge Requirements (WDRs) for the wetland impacts that have occurred to date, and any future impacts if planned. You will need to include appropriate compensatory mitigation plans to mitigate for the wetland impacts that have already occurred onsite, and any future planned impacts.

These activities might also require input, consultation, and permits from other federal, state, and local agencies. For information on permits for fill and excavation within waters of the state and/or United States, please consult our website here:

https://www.waterboards.ca.gov/northcoast/water_issues/programs/water_quality_certification/.

Within 20 days of receipt this letter, contact Catherine lantosca of the 401 Certification Unit at Catherine.lantosca@waterboards.ca.gov to discuss your plan to correct the violations.

Submit your forensic wetland delineation, permit application, and permit fee for review and authorization, by **November 30, 2021**, to NorthCoast@waterboards.ca.gov and copy Gil Falcone at Gil.Falcone@waterboards.ca.gov and Catherine lantosca at Catherine.lantosca@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 Supervisor
Southern 401 Certification Unit

211011_CMI_dp_43050LittleLakeRd_NOV

Figure 1: Google Earth aerial imagery dated June 2, 2021 overlaid with National Wetlands Inventory data

Exhibit A: Regulatory Citations

Attachment 1: Site Inspection Memo, Deixler Property, 43050 Little Lake Road, Mendocino

cc: Jennifer Garrison, California Department of Fish and Wildlife,
Jennifer.Garrison@wildlife.ca.gov

William M. Connor, Army Corps of Engineers, William.M.Connor@usace.army.mil

U.S. Environmental Protection Agency, R9cwa401@epa.gov

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

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

Mark Cliser, Mendocino County Planning & Building Services,
cliserm@mendocinocounty.org

Gretchen McLaughlin, Mendocino County Planning & Building Services,
mclaughling@mendocinocounty.org

Figure 1: Google Earth aerial imagery dated June 2, 2021 overlaid with National Wetlands Inventory data:

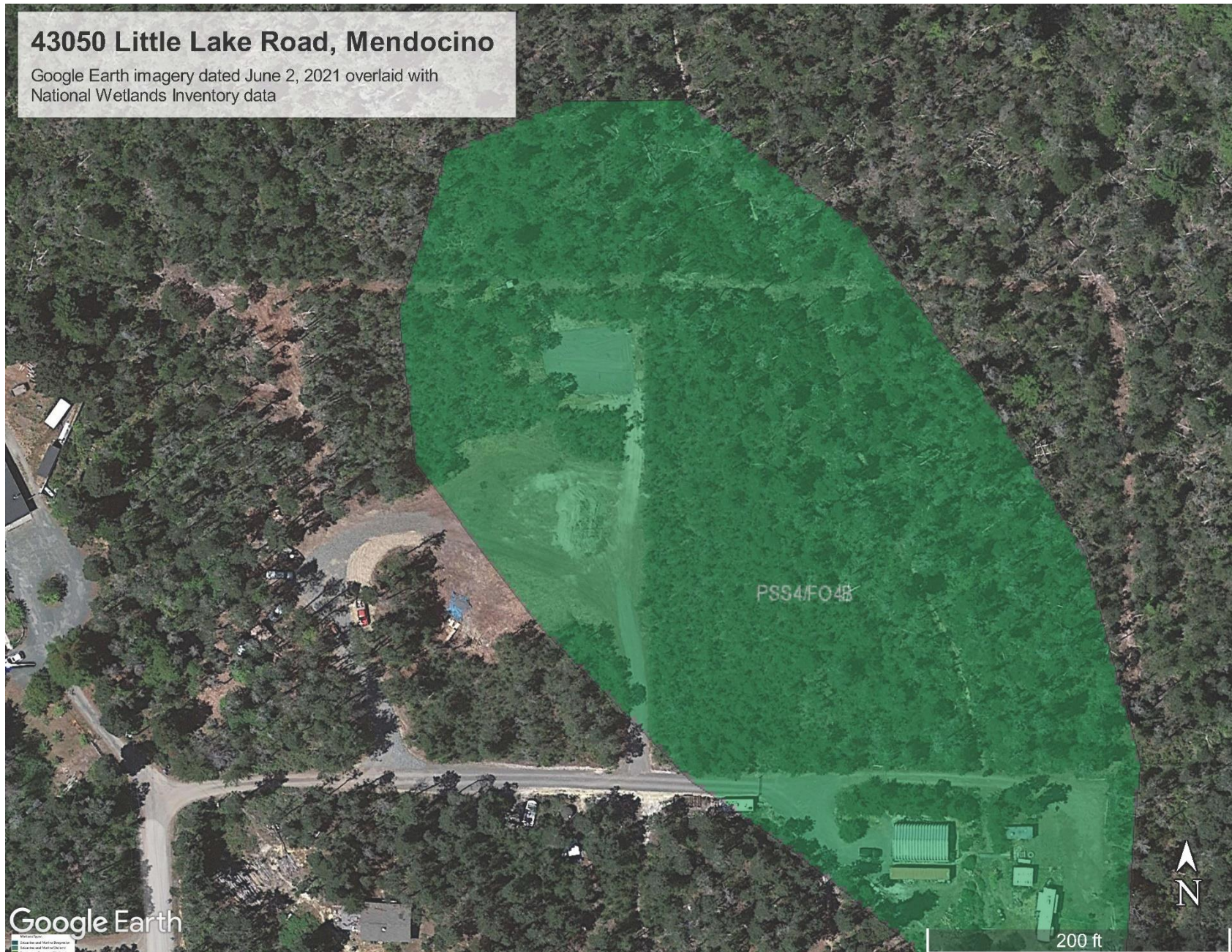


Exhibit A: Regulatory Citations:

Regulatory Section	Citation
California Water Code Section 13260	<p>“(a) Each of the following persons shall file with the appropriate regional board a report of the discharge, containing the information that may be required by the regional board:</p> <p>(1) A person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system.</p> <p>(2) A person who is a citizen, domiciliary, or political agency or entity of this state discharging waste, or proposing to discharge waste, outside the boundaries of the state in a manner that could affect the quality of the waters of the state within any region.”</p>
California Water Code Section 13261(a)	<p>“A person who fails to furnish a report or pay a fee under Section 13260 when so requested by a regional board is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).”</p>
California Water Code Section 13264(a)	<p>“No person shall initiate any new discharge of waste or make any material changes in any discharge, or initiate a discharge to, make any material changes in a discharge to, or construct, an injection well, prior to the filing of the report required by Section 13260 and no person shall take any of these actions after filing the report but before whichever of the following occurs first:”</p>
California Water Code Section 13265(a)	<p>“Any person discharging waste in violation of Section 13264, after such violation has been called to his attention in writing by the regional board, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b). Each day of such discharge shall constitute a separate offense.”</p>
California Water Code Section 13304	<p>“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...”</p>

Regulatory Section	Citation
California Water Code Section 13350	<p>“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).”</p>
California Water Code section 13376	<p>“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.”</p>
California Water Code Section 13385	<p>“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...”</p>
Clean Water Act	<p>Section 301 (a) (33 U.S.C. 1311), section 401 (33 U.S.C. 1341), and section 404 (b)(1) (33 U.S.C. 1344) of the Clean Water Act</p>

North Coast Regional Water Quality Control Board

To: Gil Falcone, Senior Environmental Scientist, Southern 401 Certification Unit

From: Catherine Iantosca, Environmental Scientist, Southern 401 Certification Unit

Date: April 2, 2021

Subject: Site Inspection Memo, Deixler Property, 43050 Little Lake Road, Mendocino

Background

On March 19, 2021 Catherine Iantosca and Gil Falcone participated in an inspection of the Deixler property, located at 43050 Little Lake Road, Mendocino, CA (approximately latitude 39.316868° N, longitude 123.763244° W). The inspection was initiated in response to a notification from the Mendocino County Department of Planning and Building Services on February 5, 2021. The notification described possible impacts to wetlands from vegetation removal in Mendocino cypress (pygmy forest) habitat on the Deixler property (Map 1). Prior to the site inspection, Vandy Vandewater of Mendocino County Planning and Building Services provided maps of the property, including maps overlaid with the US Fish and Wildlife Service's National Wetlands Inventory showing possible freshwater forested/shrub wetland on the property (Map 2).

Participants

Avram Deixler, Landowner

Mark Cliser, Mendocino County Planning and Building Services Department

Jennifer Garrison, CA Department of Fish and Wildlife

Gil Falcone, North Coast Regional Water Quality Control Board

Catherine Iantosca, North Coast Regional Water Quality Control Board

Inspection Observations

During the inspection, Avram Deixler stated that he purchased the property in January 2021 and that the previous landowner had cleared vegetation on the property prior to the sale. Mr. Deixler said he has not conducted any further clearing on the property but had "cleaned up" around the edges of the cleared areas. Mr. Deixler explained that he plans to build wine processing/production facilities in at least one of the cleared areas.

A driveway path near the southwestern corner of the property appeared to have been recently cleared of vegetation and rocked (Photo 1). A cleared area directly east of the driveway was very wet and muddy at the time of the inspection; a portion of this area was covered with straw with standing water visible underneath the straw (Photo 2). Mr. Deixler stated that he thinks the wet area at the driveway site is being caused by a new culvert installed adjacent to his property by a neighbor, which he said is concentrating flow onto his property (Photo 9).

We observed three cleared forested areas on the property, including Mendocino cypress forest and other vegetation. Cleared Area #1 was the largest and was located east of the driveway, in the central portion of the southern half of the property (Photo 3). Bare soil visible in Cleared Area #1 was muddy at the time of the inspection.

Cleared Area #2 was smaller and was located directly north of Cleared Area #1 (Photos #4 and 5). Cleared Areas #1 and 2 were connected by a cleared path, one of several paths cleared throughout the property (Photo #6).

Cleared Area #3 was the smallest, located west of Cleared Area #2 (Photo 7). Cleared Area #3 was connected to Cleared Area #2 and to the driveway by two cleared paths. We observed a wetland plant (Western Labrador Tea, *Rhododendron columbianum*; a wetland indicator species [OBL]) growing on both sides of the cleared path between Cleared Areas #2 and 3 (Photo 8).

Mr. Deixler is proposing to construct a wine processing/production building in Cleared Area #1 or 2. During the inspection he proposed preserving the remainder of the property with a conservation easement. Jennifer Garrison of CDFW suggested that a deed restriction may be a better option for site protection.

Gil Falcone spoke with Mr. Deixler and explained the Water Board's role in protecting water quality and that permits are required for disturbance to wetlands or other waters of the state. Gil explained that the National Wetlands Inventory (NWI) map indicated there may be wetlands on the property, but a formal wetland delineation is the only way to confirm the presence or absence of wetlands on a property-specific level. Because it is likely that clearing and grading was done within the footprint of the NWI mapped wetlands, a forensic wetland delineation would be necessary in these areas to determine the extent of the current impacts to wetlands. Gil explained that since no permit was obtained and the work at the site likely impacted wetlands, the site was likely not in compliance with the Regional Water Board's regulations. Gil explained that compliance could come through permitting the impacts or through enforcement and restoration. Gil also explained that a wetland delineation could identify areas outside wetland areas that might not require other future permitting. Mr. Deixler expressed interest in getting into compliance and stated that the clearing was done by the previous landowner, and we discussed permitting and mitigation for possible impacts to the existing wetlands.

Inspection Action Items

1. Mr. Deixler indicated he is open to hiring a consultant to perform a wetland delineation on his property to determine if wetlands have been impacted by the vegetation clearing and/or driveway development, and if wetlands would be impacted by Mr. Deixler's proposed development plans. Gil suggested various specialists that might have the expertise to perform the delineation.
2. Gil emailed Mr. Deixler on March 25, 2021 to follow-up and explain that the inspection indicated it was likely that clearing and grading on his property has caused impacts to wetlands and that we would need the results of a forensic delineation to determine impacts and possible permitting to bring the site back into compliance.
3. Mendocino County is holding a pre-application conference for the project on April 8, 2021. All site inspection attendees plan to participate in the pre-application conference.

Map 1: Deixler Property, 43050 Little Lake Road, Mendocino



Map 2: National Wetlands Inventory

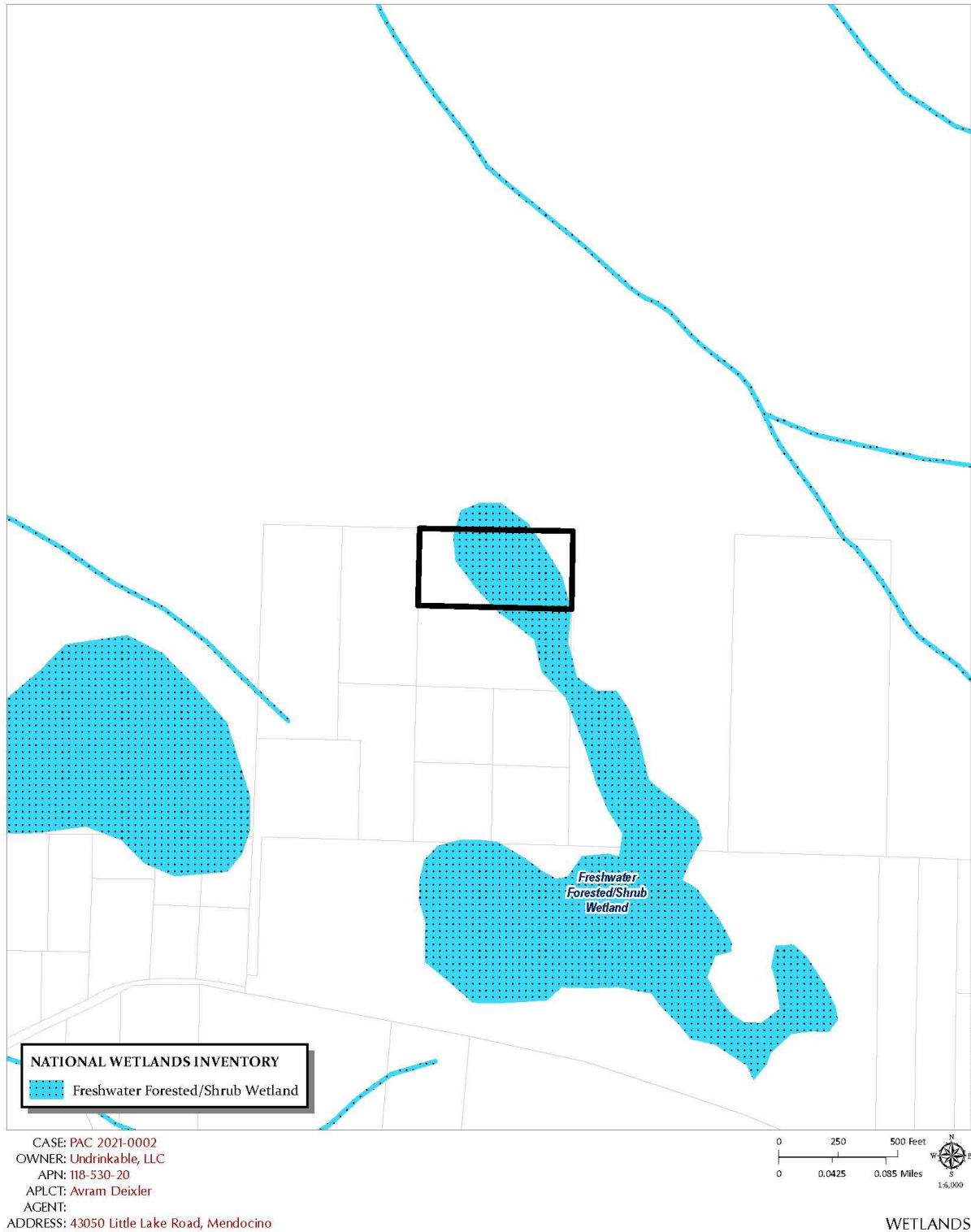




Photo 1: Rocked driveway looking south



Photo 2: Cleared area east of driveway is muddy and partially covered with straw, looking northeast



Photo 3: Cleared Area #1 in central portion of southern half of property (end of rocked driveway visible in foreground)



Photos 4 & 5: Cleared Area #2, north of Cleared Area #1



Photo 6: One of several cleared paths through property



Photo 7: Cleared Area #3, west of Cleared Area #2



Photo 8: Western Labrador Tea,
Rhododendron columbianum



Photo 9: New culvert installed on gravel access road near Deixler property.
The culvert appears to outlet toward Deixler property (left side of photo).