

NORTH CAROLINA
Environmental Quality

ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

RICHARD E. ROGERS, JR.
Director

July 15, 2022

CERTIFIED MAIL # 7020 3160 0002 0860 7525
RETURN RECEIPT REQUESTED

Bottomley Evergreens & Farms, Inc.
Attn: Martha R. Bottomley, Registered Agent
6460 Glade Valley Rd
Ennice, NC 28623-9141

CERTIFIED MAIL #7020 3160 0002 0860 7532
RETURN RECEIPT REQUESTED

Bottomley Properties NC, LLC
Attn: Martha R. Bottomley, Registered Agent
140 South Sparta Parkway
Sparta, NC 28675

Subject: **NOTICE OF VIOLATION, NOTICE OF CONTINUING VIOLATION and RECOMMENDATION FOR ENFORCEMENT**
NOV-2022-SS-0021
Parcel PINs: 4031433357; 4031310314; 4031513742; 4021868050
Alleghany & Surry Counties

Dear Ms. Bottomley:

On October 5, 2021, the Division of Water Resources (DWR) issued a Notice of Violation, Notice of Continuing Violation and Recommendation for Enforcement (NOV) to you regarding the parcels referenced above. Additional inspections and sampling activities conducted by staff from DWR have documented continuing violations of water quality standards as a result of the original land clearing/ land disturbing activities and sediment losses that occurred on the above-noted parcels and additional violations of water quality standards as a result of re-stocking of cattle within a portion of the cleared parcels.

During sampling activities conducted on April 4-5, 2022 and June 29, 2022, and during site visits on May 12 and June 30, 2022 staff observed current stream conditions within and downstream of the above-noted parcels and current site conditions within above-noted parcels. Staff also observed the current status of compliance with the required conditions of the Bottomley Work Plan Approval letter issued by the DWR on November 19, 2021.

DWR recognizes that as of the May 12, 2022 site inspection, all almost all disturbed areas have reached >80% vegetative cover. However some slopes above UT5 were not sufficiently vegetated and stabilized and staff observed some additional areas within the parcels that continue to lose sediment into other tributaries. The following table lists the continuing stream impacts observed by DWR during the May 12, 2022 and June 29, 2022 site visits. Locations are identified on Attachment A:



ID	Impacts
UT5 to Ramey Creek (Class WS-II, Trout, HQW) within Parcel C and immediately downstream of Parcel C	<p>Continued sediment deposition was observed in the upper 1100 feet of UT5. Sediment deposits of trace amounts up to 6 inches stream continues to be present from prior land clearing activities which was not removed as part of the Fall 2021 sediment removal activities. In addition, staff observed additional loss of sediment from unstable slopes above this portion of the channel. Continued issues with slope stability and retaining sediment at this area have been noted in BREC inspection reports submitted to DWR.</p> <p>Streambanks continue to erode and stream incision is increasing throughout UT5 within the channel on the above noted parcels as well as downstream parcels as previously noted by staff. Staff observed a significant amount of algae within the upper portion of the channel, as a result of the loss of vegetated buffer and likely fertilizer runoff. Algae blooms can cause major changes in water chemistry, including high pH and dramatic swings in dissolved oxygen. Lack of oxygen created by decomposing algal blooms may cause or contribute to detrimental aquatic life impacts.</p>
Ramey Creek (Class WS-II, Trout, HQW) Parcel 403104900821	While conducting sampling activities on June 29, 2022 staff observed fine silt & sediment deposits of trace amounts in with localized accumulation of 1-6 inches in pools within approximately 1700 feet of channel. These sediment impacts are in addition to previously documented stream impact amounts.
UT1 to Ramey Creek (Class WS-II, Trout, HQW)	Continued sediment deposition and erosion was observed in the location of the culvert crossing on UT1. The Work Plan stated that "Erosion Control BMPs will be installed adjacent to new culvert crossing on UT1 in Spring of 2022". No evidence of measures was observed at this location.
UT3 to Ramey Creek (Class WS-II, Trout, HQW)	Culvert has not been retrofitted with baffles as required to support aquatic passage.
UT4 to Ramey Creek (Class WS-II, Trout, HQW)	Continued sediment deposition was observed in the upper portion of UT4. Sediment deposits continues to be present from prior land clearing activities which was not removed during the Fall 2021 sediment removal activities. The Work Plan stated that "BREC will design and install stone weirs in line of the drainage in order to provide additional erosion control protection. These weirs will be installed by Bottomley in the winter of 21-22 in and along the UT4 drainage above the bedrock knickpoint identified by BREC in the field." No evidence of additional measures was observed at this location.

	Staff observed evidence of maintenance activities conducted along previously installed BMPs above UT4, however some erosion was occurring around and/or through some existing BMPs.
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Additional Staff Observations:

UT1 to Ramey Creek (Class WS-II, Trout, HQW)	Streambank degradation and erosion was observed throughout the length of UT1. Natural regeneration of herbaceous vegetation and small trees observed in Fall 2021 has not stabilized the eroded streambanks. Staff observed no small tree saplings and less herbaceous cover than previously observed along the streambank in Fall 2021. Hoof shear and manure were present along the streambanks causing additional degradation of the stream channel. Staff observed a significant amount of algae within the channel.
	Cattle were present within the field. Livestock exclusion fencing and an alternate water source was required be installed prior to livestock access in accordance with the Work Plan but had not yet occurred. Staff observed significantly less natural herbaceous vegetation along streambanks than previously observed in Fall 2021. No evidence of tree planting in accordance with the Work Plan was present along UT1.

The following table lists the results of recent fecal coliform sampling activities conducted by DWR. Cattle were documented as present within the field throughout the sampling period (sampling location identified on Attachment A):

Roaring Fork

Map location 16

36°31'21.51"N, 80°55'36.45"W

Date	Weather	CFU/100 mL
6/20/22	No rain within 48 hours preceding sample	1414
6/21/22	No rain within 48 hours preceding sample	866.4
6/28/22	Trace amounts of rain 24 hours preceding sample	1733
6/29/22	No rain within 48 hours preceding sample	>2419.6
6/30/22	No rain within 48 hours preceding sample	>2419.6

Accordingly, the following observations and violations were noted during the DWR inspections and upon review of recent sampling data:

1. Title 15A North Carolina Administrative Code 02B .0211 (2) requires that, at minimum, "The waters shall be suitable for aquatic life propagation and maintenance of biological integrity, wildlife, secondary recreation, and agriculture. Sources of water pollution which preclude any of these uses on either a short-term or long-term basis shall be deemed to violate a water quality standard." DWR identified an additional 1700 linear feet of Ramey Creek that has been impacted by sediment deposition from the original land clearing/ land disturbing activities on the subject



parcels and continued mobility of prior sedimentation into streams flowing to this location. These impacts contribute to precluding the use of classified trout waters.

2. Title 15A North Carolina Administrative Code 02B .0211 (12) requires that “Oils; deleterious substances; colored or other wastes” (including sediment): “only such amounts as shall not render the waters injurious to public health, secondary recreation or to aquatic life and wildlife or adversely affect the palatability of fish, aesthetic quality or impair the waters for any designated uses.” Since sediment cleanout has not occurred within UT4 or UT5 as required in the Work Plan, violations of this standard have continued since the original land clearing/ land disturbing activities on the subject parcels within UT4 and UT5. In addition, as noted above, DWR identified an additional 1700 linear feet of Ramey Creek that has been impacted by sediment deposition from the original land clearing/ land disturbing activities on the subject parcels and continued mobility of prior sedimentation into streams flowing to this location.
3. Title 15A North Carolina Administrative Code 2B .0211 (7) requires “Fecal coliform: shall not exceed a geometric mean of 200/100ml (MF count) based upon five samples taken over a 30-day period, nor exceed 400/100 ml in more than 20 percent of samples examined during such period;” Fecal coliform sample data collected by DWR staff is provided in the table above. Results of fecal coliform samples indicate violations of NC Water Quality Standards have occurred in the headwaters of Roaring Fork where cattle have had access to the stream and headwater wetland.
4. Title 15A North Carolina Administrative Code 02B .0211 (2) requires that, at minimum, “The waters shall be suitable for aquatic life propagation and maintenance of biological integrity, wildlife, secondary recreation, and agriculture. Sources of water pollution which preclude any of these uses on either a short-term or long-term basis shall be deemed to violate a water quality standard.” The multiple culvert stream crossing installed in UT3 has impaired aquatic passage and is adversely affecting the aquatic habitat for fish and other organisms.

Required Response

The following corrective actions are necessary to address these violations:

1. **Within 30 calendar days of receipt of this letter** install erosion control BMPs to protect UT5 from the continued impacts from unstable slopes above the channel and provide a permanent stabilization plan to DWR for the slopes above the start of UT5.
2. **Within 30 calendar days of receipt of this letter**, provide a stream restoration plan as required in the June 30, 2021 NOV for the upper portion of UT4 to Ramey Creek within Parcel C for DWR review and approval. No work shall be conducted within the stream channels until the plan has been reviewed and approved by DWR. As a part of this plan, you should provide and address the following:
 - a. Provide a detailed stream restoration plan to restore the stream to natural channel conditions, including plan and profile dimensions as expected from reference reach information available for similar locations, slopes and watershed sizes. The plan should include identification of the start of stream as identified by the US Army Corps of Engineers.



- b. Provide a detailed schedule, including dates, explaining when the stream restorations will be accomplished.

Upon DWR approval you will be required to initiate and complete the stream restoration plans in a timely manner and may be required to perform monitoring for a period of time to be determined by DWR.

3. **Within 15 calendar days of receipt of this letter** remove cattle from the field within Parcel A that drains to Roaring Fork (north of Horton Rd) and notify DWR by phone or email when the cattle have been removed. DWR requires that you provide for fencing cattle out of the headwaters of Roaring Fork, including the headwater wetland on Parcel A, as you committed to do in your November 1, 2021 Work Plan, in order to resolve the fecal coliform water quality violation. The fencing shall be installed and inspected by DWR prior to reintroduction of cattle into the area.
4. **Within 30 calendar days of receipt of this letter**, install fencing and alternative water sources within Parcel D as stated in the Bottomley Work Plan **OR** remove cattle from the field.
5. **Within 30 calendar days of receipt of this letter**, complete the retrofits to the culvert crossing at UT3 as specified by NCWRC to ensure aquatic passage and compliance with the Clean Water Act in order to establish compliance with 15A NCAC 2B water quality standards.
6. **Prior to stocking cattle on all fields**, install fencing and alternative water sources as stated in the Bottomley Work Plan.

You are directed to respond to this letter in writing **within 30 calendar days** of receipt of this Notice. In your response, please identify the corrective actions you have taken or propose to take to address the violations. Your response should be sent to this office at the letterhead address or by email to rebecca.chandler@ncdenr.gov or sue.homewood@ncdenr.gov and shall include the following:

Thank you for your attention to this matter. Pursuant to G.S. 143-215.6A, the above-mentioned violations and any future violations are subject to a civil penalty assessment of up to a maximum of \$25,000.00 per day for each violation. Pursuant to G.S. 143-215.6C, DWR can request injunctive relief through the courts to obtain compliance on the site. **This office continues to consider requesting injunctive relief and/or an additional recommendation for civil penalty assessment to the Director of DWR of Water Resources regarding the above-mentioned ongoing violations and new violations on the subject site. This office requires that the violations, as detailed above, be abated immediately and properly resolved.** Your above-mentioned response to this correspondence will be considered **in any further process that may occur.**



This office appreciates your attention to this matter and efforts to resolve the above-noted concerns. Should you have any questions regarding these matters, please contact Rebecca Chandler at 336-776-9705 or me at 336-776-9695.

Sincerely,

DocuSigned by:
Lon Snider

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Lon T. Snider

Regional Supervisor

Water Quality Regional Operations Section

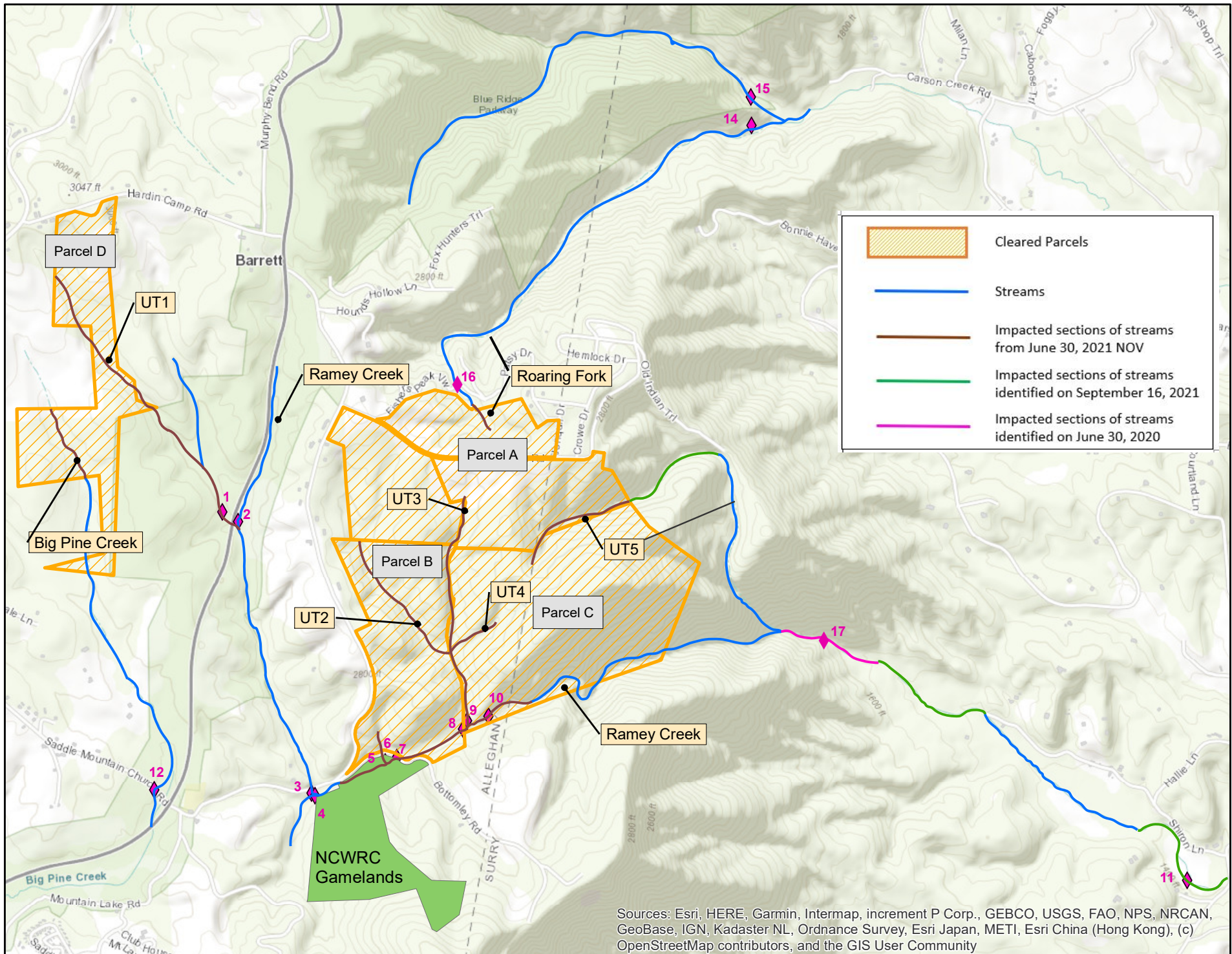
Division of Water Resources, NCDEQ – WSRO

Enclosures: Attachment A: Stream Impacts and Sampling Location Map

Electronic cc: Mitchell Bottomley
Joseph Ponzi, Brooks Pierce
WSRO File Copy
401 & Buffer Permitting Unit
NC Wildlife Resources Commission
US Army Corps of Engineers - Asheville Field Office
Alleghany County Soil and Water Conservation
Surry County Soil and Water Conservation
Division of Energy, Mineral and Land Resources (WSRO)



NOV-2022-SS-0021 Attachment A - Map 1: Overall Topo with Streams and Sampling Locations



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community