ROY COOPER
Governor
JOHN NICHOLSON
Interim Secretary
S. DANIEL SMITH
Director

NORTH CAROLINA
Environmental Quality

June 30, 2021

CERTIFIED MAIL #7018 1130 0000 1608 2385
RETURN RECEIPT REQUESTED

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

CERTIFIED MAIL #7018 1130 0000 1608 2330
RETURN RECEIPT REQUESTED

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

Subject: **NOTICE OF VIOLATION and RECOMMENDATION FOR ENFORCEMENT**
NOV-2021-SS-0007
Parcel PINs: 4031433357; 4031310314; 4031513742; 4021868050
Alleghany & Surry Counties

Dear Ms. Bottomley:

On October 19, 2020, Division of Water Resources (DWR) staff conducted a site inspection of property along Horton Rd in Alleghany County as a result of a citizen complaint and referral from other State agencies. The site inspection of Parcel PINs 4031433357 (Parcel A), 4031310314 (Parcel B), and 4031513742 (Parcel C) resulted in NOV-2020-SS-0026 issued to you on November 13, 2020. A follow-up site inspection was conducted by DWR staff Sue Homewood and Rebecca Chandler on February 9, 2021. Mitchell Bottomley was present for a portion of that site inspection. At the time of the follow-up visit, DWR had not received a response to the NOV, and staff confirmed that action had not been taken to correct the deficiencies identified in the NOV. On March 12, 2021, DWR received a response from Paul Harrison on your behalf, however another follow-up inspection conducted on June 9, 2021 by DWR Regional Supervisor Lon Snider and staff person Rebecca Chandler documented that the required actions had yet to be commenced. The violations indicated in NOV-2020-SS-0026 are therefore ongoing.

On March 30, 2021 DWR staff Rebecca Chandler and Lauren Housley visited Bottomley Rd below Parcel B and Parcel C to assess site conditions for a possible long-term biological survey of Ramey Creek. Additional land clearing of Parcel B and Parcel C and along Ramey Creek was noted at that time. Land clearing had and was occurring immediately adjacent to and up to the top of stream banks along Ramey Creek and tributaries within the subject parcels. DWR staff also noted that a multiple pipe stream crossing approximately 30 feet in length had been installed on Parcel C

within an unnamed tributary to Ramey Creek. The stream crossing was documented to have been installed such that water quality impacts were occurring both upstream and downstream of the crossing.

On June 3, 2021 DWR received a referral from the North Carolina Wildlife Resources Commission (NCWRC) regarding concerns of turbidity within streams adjacent to and within the aforementioned parcels and from additional recent land clearing activities on Hardin Camp Rd which also drain to Ramey Creek. A county tax map review showed that Parcel D (Parcel PIN 4021868050) on Hardin Camp Rd was under the ownership of both Bottomley Evergreens & Farms, Inc and Bottomley Properties NC, LLC. In response to the referral, another DWR site inspection was conducted on June 9, 2021 by Lon Snider and Rebecca Chandler to assess the activities on all previously identified parcels, as well as the additional property on Hardin Camp Rd. Mr. Bottomley was present during the site inspection. During the site inspection, DWR documented that sediment loss from recently cleared land had deposited into Ramey Creek and multiple unnamed tributaries to Ramey Creek. At the time of the inspection June 9, DWR staff documented that there was no evidence of any sediment and erosion control measures, agricultural best management practices, or forestry best management practices in order to retain sediment on site and ensure water quality protection.

A special study of benthic macroinvertebrates by DWR Biological Assessment Branch within Ramey Creek and Roaring Fork is on-going. The initial collection event occurred on April 6, 2021, and additional sampling was conducted on June 28, 2021. The final report from this study will be provided to you once it is available.

On June 23, 2021 and June 28, 2021, DWR staff Sue Homewood and Rebecca Chandler conducted follow-up site inspections to survey streams for sediment deposition within the parcels noted and to conduct water quality parameters sampling. It was noted that some sediment and erosion control measures had recently been installed along a portion Big Pine Creek on Parcel D. Instantaneous data from the sampling activities is provided in Attachment A. Additional data from the sampling activities will be provided to you when available. The following are the observations of sediment accumulation in unnamed tributaries (UTs) to Ramey Creek, Ramey Creek, and to Big Pine Creek (see maps in Attachment B for locations):

ID	Linear length of sediment impacts	Sediment Depths
UT1 to Ramey Creek	4650 feet	1-10 inches
Big Pine Creek	1270 feet	1-6 inches
UT2 to Ramey Creek	2360 feet	Trace coating to 3 inches
UT3 to Ramey Creek	3975 feet (upper 500 feet previously identified in NOV=2020-SS-0026)	Trace coating to 3 inches
UT4 to Ramey Creek	820 feet	Upper portion: 3 inches to 2 feet Lower portion: Trace coating to 6 inches
UT5 to Ramey Creek	2055 feet	Trace coating to 6 inches
Ramey Creek	2400 feet (portion evaluated by staff as shown on map)	Trace coating to 3 inches

File review has indicated that UTs present on the subject parcels constitute the headwaters of Ramey Creek, Roaring Fork, and Big Pine Creek. Roaring Fork and Ramey Creek are both classified by the NC Surface Waster Classification (15A NCAC 02B .0300) as Water Supply-II (WS-II), Trout Waters, and High Quality Waters streams within the Yadkin River Basin, one of the highest classifications available to streams in NC. Big Pine Creek is classified as a Class C, Trout Waters stream in the New River Basin. Unnamed tributaries carry the same classifications as the streams that they drain to. In addition, NCWRC has previously identified Ramey Creek as containing an important genetic strain of NC native Brook Trout. NCWRC has an established trout monitoring site on Ramey Creek within North Carolina Game Lands (Parcel PIN 4030281877) immediately upstream of Parcel B. Results of recent annual trout surveys were as follows: 2019: 71 trout; 2020: 31 trout; June 2, 2021: 38 trout; June 15, 2021: 13 trout.

Accordingly, the following observations and violations were noted during the Division of Water Resources inspections and subsequent file reviews:

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." Approximately 17,530 linear feet of streams have been impacted by sediment runoff and accumulation. NCWRC has provided DWR with documentation of recent adverse effects to trout populations in Ramey Creek and on-site observations during DWR's benthic macroinvertebrate sampling events indicated negative impacts to aquatic biology within tributaries to Ramey Creek, Ramey Creek, Big Pine Creek, and tributaries of Roaring Fork.

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." DWR identified 17,530 linear feet of streams have been impacted by sediment deposition from recent land clearing events. Early indications of impacts to biological populations further support this evaluation of impairment/ adverse effects on aquatic life.

3. 15A North Carolina Administrative Code 02B .0231 (c) requires that "Liquids, fill or other solids, or dissolved gases… Floating or submerged debris, oil, deleterious substances, or other material shall not be present in amounts that may cause adverse impacts on existing wetland uses." DWR identified 0.75 acres of wetlands impacted by sediment runoff and accumulation.

4. Title 15A North Carolina Administrative Code 02B .0211 (21) requires that "the receiving waters shall not exceed 10 NTU in streams, lakes, or reservoirs designated as trout waters; if turbidity exceeds these levels due to natural background conditions, the existing turbidity level shall not be increased. Compliance with this turbidity standard shall be deemed met when land management activities employ Best Management Practices (BMPs), as defined by Rule .0202 of this Section, recommended by the Designated Nonpoint Source Agency, as defined by Rule .0202 of this Section". Turbidity field readings collected by NCWRC staff constitute violations of NC Water Quality Standards. Sampling data is provided in Attachment C for your reference and records.

5. Title 15A North Carolina Administrative Code 2B .0211 (18) requires "Temperature: not to exceed 2.8 degrees C (5.04 degrees F) above the natural water temperature, and in no case to exceed 29 degrees C (84.2 degrees F) for mountain and upper piedmont waters …; the temperature for trout waters shall not be increased by more than 0.5 degrees C (0.9 degrees F) due to the discharge of heated liquids, but in no case to exceed 20 degrees C (68 degrees F);" Forested buffers adjacent to streams are important measures in regulating water temperature of streams, particularly in shallow tributaries as exists on the subject Parcels. Clearing of the vegetated buffers may results in increased temperatures of surface waters draining to Ramey Creek and Big Pine Creek. Temperature field readings collected by DWR staff on June 28, 2021 constitute violations of NC Water Quality Standards.

6. Section 404(f)(1) of the Clean Water Act states that culverts may be installed for farm roads under this exemption provided "that flow and circulation patterns and chemical and biological characteristics of waters of the U.S. are not impaired and that the reach of the waters of the U.S. is not reduced, and that any adverse effect on the aquatic environment are minimized." If these activities do not meet the exemption in Section 404(f)(1) then they require authorization for the culvert. DWR determined that the stream crossing does not appear to meet the criteria for exemption as impacts have occurred to the UT3 to Ramey Creek on Parcel C from the multiple pipe installations. Further, a DWR file review indicates that the culvert installation has occurred without the issuance of a 401 Water Quality Certification.

Additional Concerns / Continued Violations

1. DWR has determined that violations included in NOV-2020-SS-0026 remain unresolved. Remedial actions as required in the NOV had not occurred as of the June 23, 2021 site inspection. Mr. Bottomley indicated the wet winter conditions prevented the work from being completed.

2. During the June 9, 2021 site inspection, Mr. Bottomley indicated to DWR staff that he may choose to construct a pond on one of the recently cleared parcels. Please be aware that impacts to streams may require a Section 404 permit from the US Army Corps of Engineers—this includes many "farm" ponds. DWR's site inspections have documented the presence of regulated stream channels within all drainage areas of recently cleared

parcels. Contact the Alleghany County representative for the US Army Corps of Engineers Asheville Regulatory Field Office prior to construction of any ponds within Waters of the United States.

3. During the June 24, 2021 site inspection by DWR staff, stream bank stabilization efforts appeared to have been attempted on Big Pine Creek on Parcel D. DWR staff noted that synthetic fiber material had been used. Be aware that this is not a DWR approved material for use on stream banks.

Required Response

Accordingly, you are directed to respond to this letter in writing **within 10 business days** of receipt of this Notice. Your response should be sent to this office at the letterhead address or by email to rebecca.chandler@ncdenr.gov and shall include the following:

1. Immediately submit the plans requested in NOV-2020-SS-0026 and, upon DWR approval of those plans, implement the same. In addition, conduct the other remedial actions as indicated in NOV-2020-SS-0026.

2. Provide a sediment removal plan and stream restoration plan for the following streams: Big Pine Creek within Parcel D; UT1 to Ramey Creek within Parcel D, and 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. DWR strongly recommends that you secure the assistance of a knowledgeable stream restoration consultant. As a part of this plan, you should provide and address the following:
    a. Describe the means by which sediment is proposed to be removed for each location. DWR may require hand labor with buckets and shovels but if you propose to use mechanized equipment and hand labor, then the plan should clearly indicate in what specific areas the equipment is to be used. The plan should describe in detail how you propose to remove sediment down to the original grade without disturbing the original stream bed.
    b. If the stream has been impacted to an extreme extent, additional stream restoration activities may be required to restore the channel to a natural stable condition when sediment removal activities have been completed.
    c. Sediment that is removed from the stream channel shall be placed at least 50 ft. from the stream, in uplands, and properly stabilized to prevent erosion back into the stream feature.
    d. Detail the measures that will be used for temporary stabilization/sediment control of removed sediment while this work is under way.
    e. Provide a stream restoration plan to restore the streams to natural channel conditions, including plan and profile dimensions as expected from reference reach information available for similar locations, slopes and watershed sizes.
    f. Provide a detailed schedule, including dates, explaining when the sediment removal and streams restorations will be accomplished.

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

4. Provide a detailed sediment and erosion control management plan for DWR review and approval for all drainage areas that are currently not stabilized by at least 80% successful vegetation coverage in order to avoid continued sediment impacts to all streams within, and downgradient of, the parcels noted. The plan may propose agricultural or silviculture best management practices, or traditional sediment and erosion control measures as recommended by the NC Erosion and Sediment Control Planning and Design Manual issued by NC Division of Energy, Mineral and Land Resources or a combination of practices. The plan shall include detailed information for each proposed measure including design details, including appropriate sizing criteria, installation specifications and operation, inspection, and maintenance specifications. The plan should include a proposed schedule for installation of all measures.

5. Upon DWR approval you will be required to install all measures in a timely manner and will be required to inspect and maintain all measures until drainage areas are stable with at least 80% successful vegetation coverage.

6. DWR understands that you plan to stock cattle back onto the cleared parcels. DWR strongly encourages fencing cattle out of the streams and providing an alternative water source to prevent additional degradation and impacts to surface waters which have the potential to cause additional water quality violations. Additional downstream sampling once cattle are placed may be implemented by DWR to determine if surface water impacts and additional violations exist.

7. Contact the US Army Corps of Engineers to conduct a wetland delineation of the areas noted as potential wetlands with sediment impacts and to determine if the culverts installed for the crossing require approvals under Section 404 and Section 401 of the Clean Water Act. Contact should be made to Ms. Amanda Jones-Fuemmeler at the US Army Corps of Engineers Asheville Field Office at 828-271-7980 x4225.

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 is considering a recommendation for civil penalty assessment to the Director of the Division of Water Resources and/or a request for injunctive relief to the Attorney General's Office regarding the above-mentioned, ongoing 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:
Jennifer F. Graznak
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Jennifer F. Graznak
Assistant Regional Supervisor
Water Quality Regional Operations Section
Division of Water Resources, NCDEQ – WSRO

Enclosures: Attachment A: DWR June 28, 2021 Sampling Data
Attachment B: Maps
Attachment C: NCWRC Sampling data

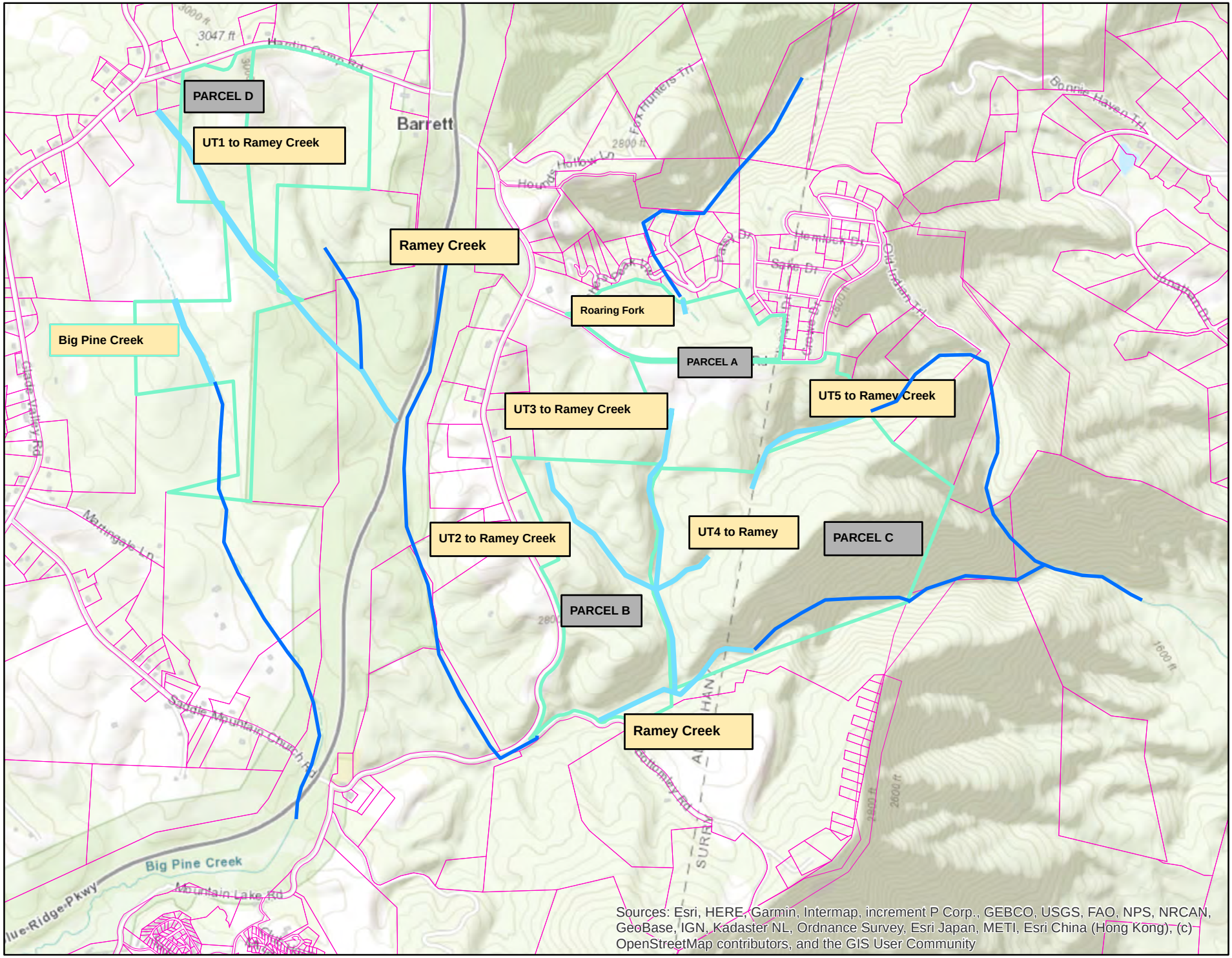
cc: Mitchell Bottomley
WSRO File Copy
401 & Buffer Permitting Unit
NC Wildlife Resources Commission
US Army Corps of Engineers - Asheville Field Office
National Parks Service – Blue Ridge Parkway Asheville Headquarters
Alleghany County Soil and Water Conservation
Surry County Soil and Water Conservation
Division of Energy, Mineral and Land Resources (WSRO)

Attachment A: DWR Instantaneous Data from June 28, 2021 Water Quality Parameters Sampling event

Date & Time	Sampling Location			Temperature (°C)	RDO Concentration (mg/L)	RDO Saturation (%Sat)	Specific Conductivity	pH (pH)	pH mV (mV)
	Latitude (°)	Longitude (°)	DWR ID						
6/28/2021 11:41	36.52013903	-80.93760127	UT1 to Ramey	20.11526	7.710557	92.45663	41.21286	7.342673	-27.60092
6/28/2021 11:46	36.52014613	-80.93756416	UT1A to Ramey	17.72079	8.459276	96.88076	24.21119	7.21668	-20.21951
6/28/2021 12:16	36.51833696	-80.93652069	UT1B to Ramey	17.36671	8.357245	94.95014	28.13824	7.128761	-15.20265
6/28/2021 13:22	36.5264366	-80.94434445	UT1 to Ramey Source	27.99931	7.701832	108.089	91.49268	7.015892	-9.118536
6/28/2021 14:22	36.50836529	-80.93994252	Big Pine Creek	20.51891	7.831085	94.84645	46.24003	7.217831	-20.4839
6/28/2021 15:13	36.50943867	-80.93047756	Ramey Upstream	19.20486	8.340338	98.03225	25.35472	7.33809	-27.25967
6/28/2021 16:55	36.51159078	-80.92502907	Ramey Downstream	20.73486	8.271693	100.1508	27.28958	7.314375	-26.04591
6/28/2021 17:59	36.53250306	-80.9127969	Roaring Fork Unaffected	17.26391	8.970182	98.16312	21.32064	7.290548	-24.3879
6/28/2021 18:04	36.53217588	-80.91287176	Roaring Fork Affected	18.02205	8.775933	97.54446	26.60321	7.156425	-16.8164

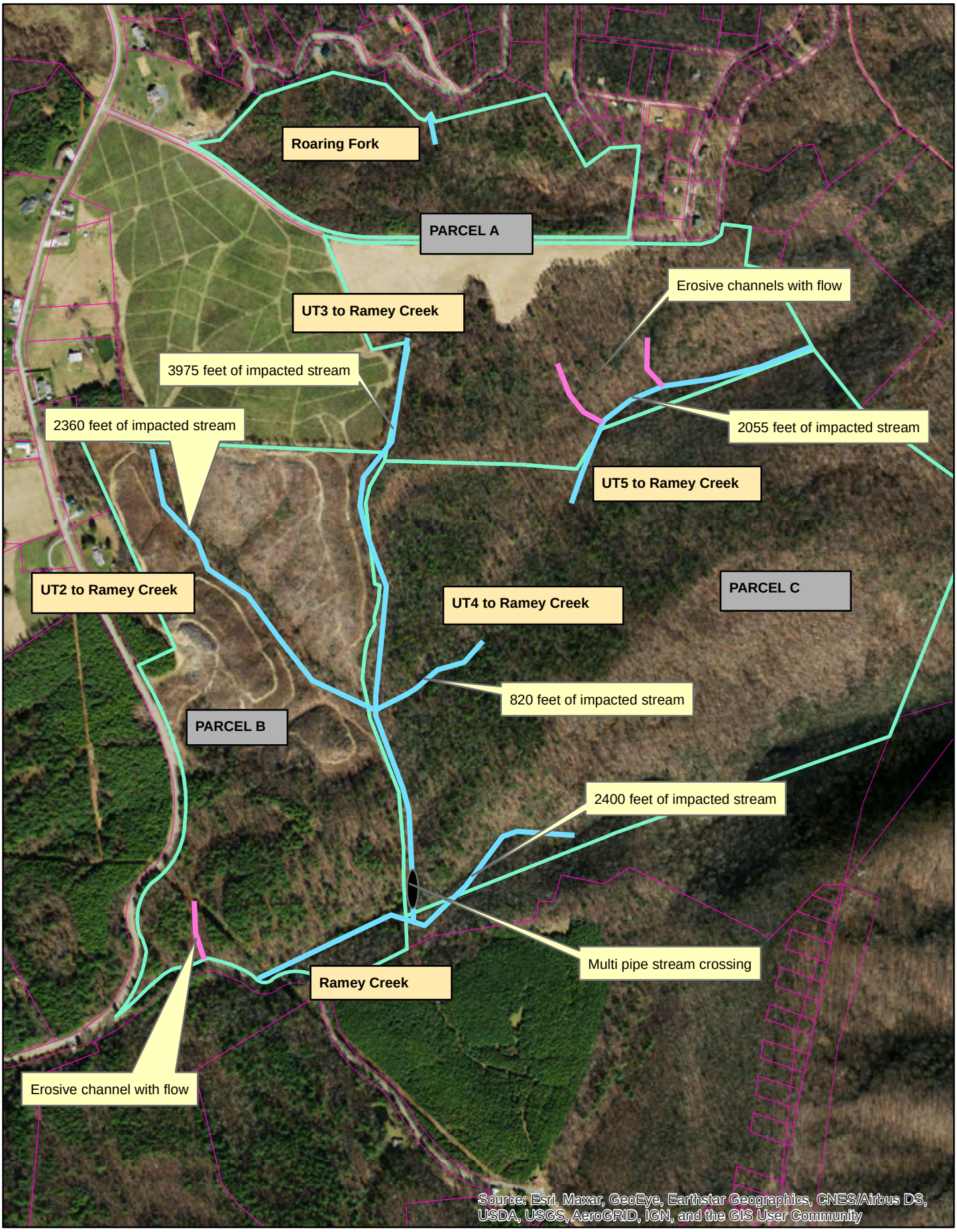
Attachment B: Maps

Map 1: Overall Topo Map with Streams



Attachment B: Maps

Map 2: Saddle Mountain Church Rd and Horton Road Parcels



Attachment B: Maps

Map 3: Hardin Camp Road Parcel

Attachment C
NCWRC Provided Data

Ramey Creek and associated tributaries

Coordinates	36°30'18.78"N, 80°53'41.08"W	36°30'39.81"N, 80°55'32.11"W	36°30'39.26"N, 80°55'35.49"W	36°30'38.19"N, 80°55'36.12"W	36°30'34.54"N, 80°55'46.64"W	36°30'33.89"N, 80°55'48.52"W
Location	Ramey Creek Rd	Mixing Zone Downstream Below Main Cutover Tributary	Main Cutover Tributary	Upstream of Main Cutover Tributary	Bottomley Rd. bridge	Gamelands cutover tributary
	Mean (NTU)	Mean (NTU)	Mean (NTU)	Mean (NTU)	Mean (NTU)	Mean (NTU)
Date						
5/10/2021	6.9	-	-	-	2.9	-
5/12/2021	5.7	7.5	3.5	-	3.5	-
5/26/2021	41.7	41.7	50	33	26.7	180
5/28/2021	-	ERR	ERR	420	ERR	550
6/15/2021	-	-	337	7.1	-	-
6/17/2021	8.8	-	-	-	3.5	8.4
6/22/2021	1000	550	187	450	300	28

Ramey Creek and associated tributaries (continued)

Coordinates	36°30'33.66"N, 80°55'49.02"W	36°30'29.64"N, 80°55'59.66"W	36°31'4.65"N, 80°56'11.88"W	36°31'5.85"N, 80°56'14.37"W	
Location	Just upstream of Gamelands cutover tributary	UT from Saddle Mountain Church Rd	Blue Ridge Parkway - east fork	Blue Ridge Parkway - west fork	**Weather**
	Mean (NTU)	Mean (NTU)	Mean (NTU)	Mean (NTU)	
Date					
5/10/2021	2.5	-	-	-	No rain preceding sample
5/12/2021	2.8	-	-	-	After small rain - no runoff
5/26/2021	21.3	-	-	-	After t'storm
5/28/2021	583	8.9	-	-	After t'storm
6/15/2021	-	-	-	-	No rain preceding sample
6/17/2021	3.1	-	3	4.7	No rain preceding sample
6/22/2021	263	4	6.5	180	After steady gentle rain

Roaring Fork tributaries

Location	Bottomley Fork	Parkway Fork	**Weather**
	Mean (NTU)	Mean (NTU)	
Date			
6/9/2021	ERR	116.7	After t'storm
6/15/2021	4.4	4	No rain preceding sample
6/22/2021	5.3	5.2	After steady gentle rain

Big Pine Creek at Blue Ridge Parkway

Coordinates	36°30'29.35"N, 80°56'25.04"W	
Location	Saddle Mtn Church Rd. bridge	**Weather**
	Mean (NTU)	
Date		
5/26/2021	10	After t'storm
6/22/2021	1000	After steady gentle rain

KEY

NTU -nephelometric tubidityy units

\- -indicates that no sample was collected on that day in the given location

ERR- -indicates that sample exceeded capacity for field measurement