



NORTH CAROLINA
Environmental Quality

March 16, 2022

ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

S. DANIEL SMITH
Director

CERTIFIED MAIL #7018 1130 0000 1612 8991
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-2021-SS-0012
Parcel PIN: 408002559377 (formerly Parcel PINs: 408000650532; 408000762018)
Surry County

Dear Ms. Bottomley:

On August 11, 2021, the Division of Water Resources (DWR) issued a Notice of Violation and Recommendation for Enforcement (NOV) to you and Robert J. & Elizabeth J. Lovill (previous property owners) regarding the parcels referenced above. Mr. Lovill informed DWR that the land was in the process of being sold to, and that the work referenced in the NOV was conducted by, Bottomley Properties NC, LLC. On September 23, 2021, DWR notified you that your response received on August 24, 2021 was insufficient. On November 1, 2021, DWR received a response from your consultant (BREC) that included a proposed work plan. DWR indicated that they would conduct a follow-up inspection in early 2022.

Additional inspections conducted by staff from DWR have documented inadequate work pursuant to the work plan, additional disturbances to streams previously identified in the August 11, 2021 NOV, water quality violations to two additional stream segments on a portion of the property that was not previously inspected, and unlawful storage of poultry litter on-site.

During a site visit on February 15, 2022, DWR observed that significant efforts had been made to regrade/smooth the previously identified cleared areas, to vegetate the cleared areas, and to rehabilitate the ponds. However, DWR did not identify any measures that had been taken, nor BMPs installed as set forth in your work plan, to protect streams, wetlands or open waters from continued sediment losses and/or additional regrading disturbances or erosive velocities caused by land clearing activities and removal of buffers. Staff also identified that additional buffer clearing, grading, grubbing and land disturbing activities occurred up to the edge of streams throughout the property. Staff also observed areas of continued and/or additional sediment deposition and areas of stream erosion and instability within streams UT2 through UT5 (as previously identified in NOV-2021-SS-00012). In addition, staff observed that approximately 125 linear feet of UT1 had been significantly dredged such that it no longer exhibits stream characteristics.



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On February 22, 2022, staff also conducted a site visit to evaluate two unnamed tributaries within a portion of the property not previously inspected and labeled UT6 (approximately 1200 linear feet of stream length inspected) and UT7 (approximately 1800 linear feet of stream length inspected) on the attached map. Staff observed sediment deposition ranging from 1 to 8 inches in depth within portions of these channels and within small wetland areas adjacent to UT6. Staff also observed significant evidence of extreme channel incision within portions of these channels. The impacts from sediment deposition and scour and erosion from upstream land clearing activities has caused extreme degradation to the stream geomorphology and hydrology within these channels. In addition, staff observed significant sediment deposition into a wetland above a pond immediately below a fence at the bottom of UT6 and UT7, just before the property line. Staff was not able to access the area for a detailed evaluation of this wetland. Staff did not observe any evidence of past or current erosion control measures or BMPs installed or employed to protect UT6, the adjacent wetlands, UT7 or the downstream pond/wetland complex during clearing and grading activities.

During the site visits on February 15, 2022 and March 15, 2022 staff observed that an uncovered poultry litter pile was present on the property and had not been utilized within this time period. In addition, inspection reports provided to staff from BREC indicate that the entire site has been too wet/cold to work throughout the winter, indicating that this litter has likely been present and unused well before February 15, 2022.

A DWR file review has indicated that the two newly identified unnamed tributaries, UT6 and UT7, present on the subject parcel drain to the Little Fisher River and are classified by the NC Surface Water Classification (15A NCAC 02B .0300) as Class C, Trout Waters within the Yadkin River Basin.

Accordingly, the following continuing and additional violations were noted during the recent DWR inspections:

1. 15A NCAC 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 observed that approximately 3000 linear feet streams UT6 & UT7 have been impacted by runoff and significant accumulation of sediment as a result of recent land clearing activities.
2. 15A NCAC 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 observed that streams UT2 through UT5 continue to be impacted as described in NOV-2021-SS-00012.
3. 15A NCAC 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 observed approximately 3000 linear feet of UT6 & UT7 have been impacted by sediment deposition as a result of recent land clearing activities.



4. 15A NCAC 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 observed that streams UT2 through UT5 continue to be impacted as described in NOV-2021-SS-00012.
5. 15A NCAC 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 observed that multiple wetlands adjacent to UT6 and at the top of Pond 5 had been impacted by sediment runoff and accumulation as a result of recent land clearing activities.
6. 15A NCAC 2T .1303 requires that "litter is not stockpiled uncovered for greater than 15 days." DWR observed that uncovered litter piles have remained for more than 15 days.

Work Plan Observations:

On November 1, 2021, DWR received a response from your consultant (BREC) that included a proposed work plan ("Bottomley Work Plan"). DWR indicated that they would conduct a follow-up inspection in early 2022. Recent DWR inspections indicate that the following items have been initiated:

- BREC is conducting weekly site inspections and submitting regular Erosion Control BMP Inspection Reports to DWR via email.
- Disturbed areas have been graded and seeded, and vegetation is becoming established within the previously disturbed areas.
- Three ponds have been rehabilitated and one pond is currently undergoing rehabilitation.

However, the staff observed that some of the proposed activities outlined in the Bottomley Work Plan dated November 1, 2021 have not been conducted. DWR has incorporated updated information and additional comments in blue text, following the text of the Bottomley Work Plan.

1. BREC has redirected work to focus on erosion control BMP installation in areas adjacent to streams, ponds, and wetlands.
DWR staff did not observe any evidence of past or current BMP installation to protect streams, ponds or wetlands for the majority of the property. DWR identified 3 areas where matting had been installed however the areas of matting all required maintenance.
2. The attached seeding specification will be used for site stabilization.
DWR staff did not evaluate this activity in detail during recent site inspections.
3. Ponds 1-4 will be reconstructed and retrofitted.
 - A. Surface dewatering to provide for attenuation and settlement of runoff water.
Ponds 1, 2 and 4 have been retrofitted; Pond 3 is under construction. DWR staff observed turbid water at the outlet of Pond 4, which is evidence that upstream activities continue to contribute to water quality standards violations and that Pond retrofits alone are not a sufficient protection measure.
 - B. Ability to drain them for maintenance.
No comment.



- C. Littoral areas around the pond edge and in the backwater areas that will be seeded with a wetland seed mix to provide pollutants treatment.

DWR staff saw no evidence that pond maintenance activities retained and/or included construction of littoral areas around the rehabilitated ponds. DWR staff observed that all backwater areas were completely dredged of any shallow areas that could be seeded for future pollutant control.

- D. All ponds will be fenced off from livestock.

DWR staff observed that fencing had been installed along the cleared areas. However, there is no evidence of installation of fencing to protect ponds from livestock.

4. Streams will be reassessed following site stabilization and 80% cover to evaluate the need for the sediment removal and/or stream restoration.

DWR inspections indicate that streams UT1-UT5 continue to exhibit evidence of instream sedimentation. In addition, all streams exhibit areas of unstable stream banks and evidence of streambank erosion. UT1 has been dredged and widened to no longer exhibit stream characteristics.

5. Alternate watering via wells or offline systems will be provided for the cattle.

DWR staff did not observe any evidence of wells or offline watering systems.

6. No additional trees will be cut in the riparian areas.

DWR staff documented additional clearing of trees within riparian areas along UT2, UT4 and UT5.

Additional Concerns

1. DWR staff identified multiple stream crossings that appear to have been recently installed or replaced/repared. As you are aware from recent information provided by the US Army Corps of Engineers (USACE), specific criteria are required for a crossing to be considered exempt under Section 404(f) of the Clean Water Act. Staff observed that stream crossings along UT6 and UT7 appear to be failing and/or clogged and causing or contributing to sedimentation, erosion and loss of aquatic life passage. These stream crossings are impairing flow, circulation patterns, and biological characteristics, and do not minimize the adverse effect on the aquatic environment with the stream reaches inspected. Therefore these crossings may not qualify for exemption in their current condition. Please note that repair and/or replacement of these crossings must be conducted such that the activities do not cause or contribute to violations of water quality standards.

Required Response

In order to address the additional violations noted above, 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 or sue.homewood@ncdenr.gov and shall include the following:

1. Immediately install erosion control BMPs in areas adjacent to streams, wetlands and ponds as stated in the Bottomley Work Plan. Provide a proposed schedule to complete the remaining activities identified within the Bottomley Work Plan.



2. Provide stream restoration plans as required in the August 11, 2021 NOV for UT2, UT3, UT4 and UT5. Provide a stream restoration plan to re-establish UT1 where it has been dredged. Provide a stream restoration plan for UT6 and UT7. As a part of this plan, you should provide and address the following:
 - a. Provide a detailed 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. The plan should include identification of all existing and proposed crossings. Specifically, the plan for UT1 shall address rebuilding the stream where it has been dredged and/or widened.
 - 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. Existing poultry litter stockpiles must be fully covered (i.e., roof, synthetic covering such as agricultural plastic sheeting, etc.) or land applied according to agronomic rates immediately. Agronomic rates may be calculated according to the receiving crop and soil type. The Surry County Soil and Water office or Natural Resources Conservation Service staff may be able to assist with determining agronomic rates. **Please be aware that land application of poultry litter must maintain a 25-foot vegetated buffer to perennial streams, may not be applied on land that is saturated or frozen, and may not be applied during precipitation events.**

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 a recommendation for civil penalty assessment to the Director of the Division of Water Resources 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, Sue Homewood at 336-776-9693, or me at 336-776-9695.

Sincerely,

DocuSigned by:
Lon T. Snider
145B49E225C94EA...

Lon T. Snider
Regional Supervisor
Water Quality Regional Operations Section
Division of Water Resources, NCDEQ – WSRO



Enclosures: Site Maps – Overall Topo
Site Maps – Waters Map

Electronic cc: Mitchell Bottomley
WSRO File Copy
401 & Buffer Permitting Unit
NC Wildlife Resources Commission

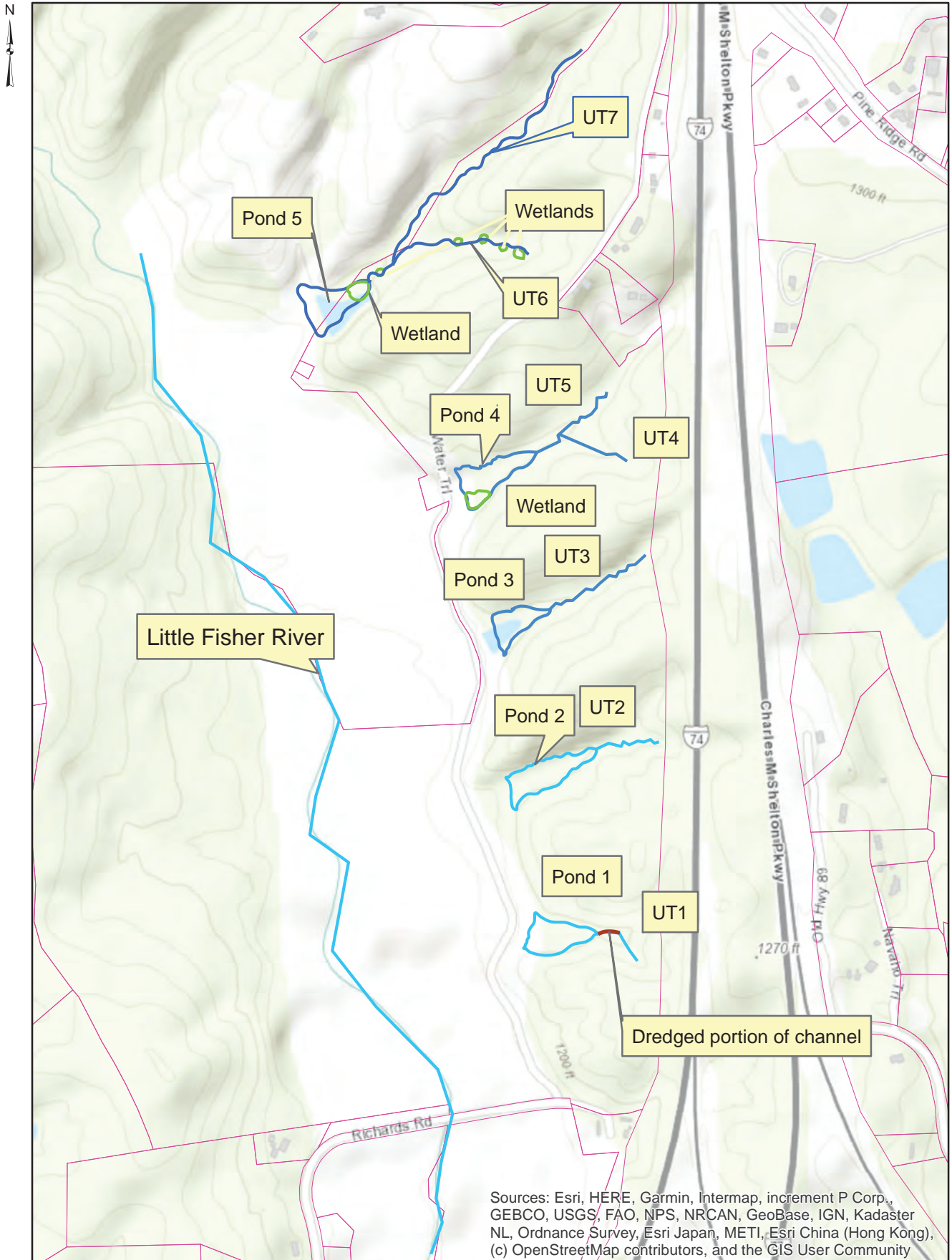


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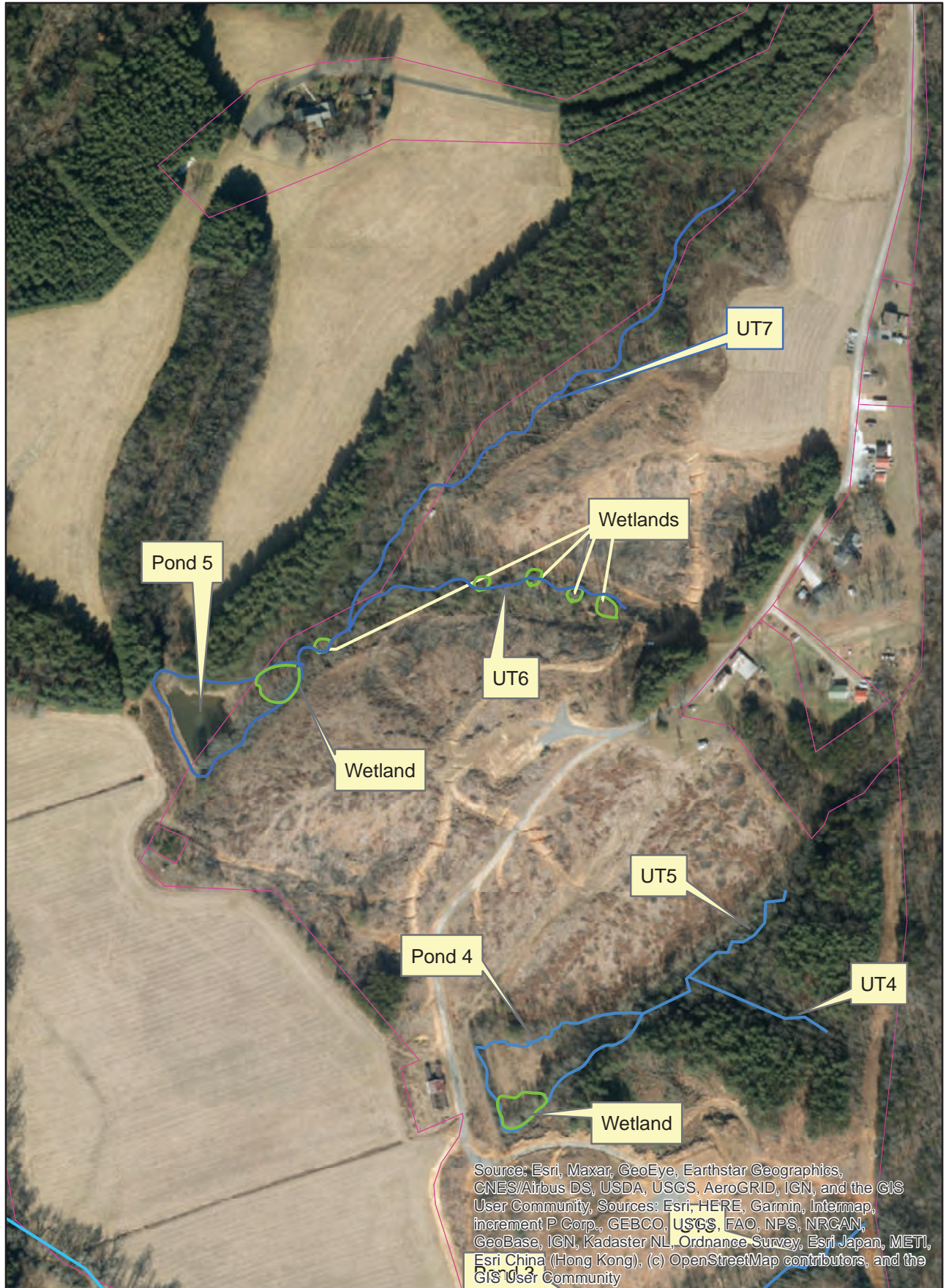
336.776.9800

NOV-2021-SS-0012: Overall Topo Map



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

NOV-2021-SS-0012: Waters Map



Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community, 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