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Secretary

RICHARD E. ROGERS, JR.
Director

July 18, 2022

CERTIFIED MAIL #7020 1810 0001 2074 8003
RETURN RECEIPT REQUESTED

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

Subject: **NOTICE OF VIOLATION**
NOV-2022-WT-0005
Parcel PIN: 3989760853, Hopper Dairy Rd, Glade Valley
Alleghany County

Dear Ms. Martha Bottomley:

On June 30, 2022 and July 11, 2022, Division of Water Resources (DWR) staff Sue Homewood and Rebecca Chandler conducted a site inspection of property noted above in Alleghany County as a result of a referral from the Alleghany Soil and Water Conservation District. Based on Alleghany County GIS information, you also own two adjacent Parcels (PINs: 3989844425, 3989931605) which staff partially inspected during the July 12, 2022 site visit. The site inspection of the parcel noted above indicated that recent and ongoing land clearing activities have occurred on the property which have currently impacted approximately 1000 square feet of 1 wetland within the property.

A DWR file review has indicated that the wetland is Class WL adjacent to an unnamed tributary to Wolf Branch classified by the NC Surface Water Classification (15A NCAC 02B .0300) as Class C, Trout Waters within the New River Basin.

Accordingly, the following observations and violations were noted during the DWR inspection and subsequent file reviews:

1. 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 1000 square feet of wetlands currently impacted by grading and fill activities.



Required Response

Accordingly, you are directed to respond to this letter in writing **within 15 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. Provide a wetland restoration plan for the removal of fill and the restoration of wetland functions to the portions of wetland that have been recently filled and/or graded.
2. Ensure that a qualified professional identifies the wetland adjacent to UT1 (see attached map) and provide fencing or flagging along the limits of the wetland to ensure that future activities adjacent to this area do not further impact this wetland.

Additional Concerns

1. During the site inspections staff observed that clearing, grubbing, and land grading that has been conducted to date (approximately 45 acres on June 30 and additional 10 acres on July 11) had occurred up to the streambank in multiple locations and had impacted the edges of a wetland adjacent to a stream. The impacted wetland had not been identified in the field with flags or other markings to ensure impacts did not occur. Staff did not observe *any* measures being employed to protect downstream water quality from sediment runoff, sediment deposition, or turbidity.
2. During the inspection on July 11, staff observed two culverted stream crossings, and one culverted wetland crossing. The Division is concerned that the type and size of material used for the culverts may not provide sufficient aquatic passage. 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 culverts. In addition, Title 15A NCAC .0211(2) requires that “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 considered to be violating a water quality standard.” The Division strongly recommends that you carefully consider these requirements prior to designing and installing any future crossings within the parcels.
3. During the inspection on July 11, staff observed evidence of recent runoff of sediment from land clearing activities into an unnamed tributary to Wolf Branch. Sediment deposition within Wolf Branch and UT1 was minimal at the time of the inspection, however any additional sediment deposition from recent land disturbing activities may result in a violation of Title 15A North Carolina Administrative Code 02B .0211 (12) which 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.”



4. During the inspection on July 11, staff observed at least two additional unmapped tributaries and wetland areas within the additional adjacent parcels. Available mapping resources indicate that multiple tributaries and wetlands exist throughout both adjacent parcels. All three parcels should be evaluated by a qualified wetland professional, and all wetlands should be delineated and clearly identified by flagging or other similar high visibility marking, in order to avoid additional violations of 15A North Carolina Administrative Code 02B .0231 (c) and/or Sections 404 and 401 of the Clean Water Act.

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 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 336-776-9700.

Sincerely,

DocuSigned by:
Lon Snider
145B49E225C94EA...

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

Enclosure: Site Map

Cc via email: Mitchell Bottomley
WSRO File Copy
401 & Buffer Permitting Unit
Amanda Jones-Fuemmeler, US Army Corps of Engineers, Asheville Field Office



NOV-2022-WT-0005: Site Map

