



North Coast Regional Water Quality Control Board

October 6, 2022

Laura Allison Rowland
Robert Gutierrez
951 Hunts Drive
McKinleyville, CA 95519

Certified Mail No. 7021 0950 0001 6499 8883

Robert Gutierrez
PO Box 225
Bayside, CA 95524
Redwoodempireglass@gmail.com

Certified Mail No. 7021 0950 0001 6499 8890

Dear Laura Rowland and Robert Gutierrez:

Subject: **Notice of Violation, Transmittal of Inspection Report for September 27, 2022 Inspection of Humboldt County Assessor's Parcel 507-440-001-000, and Requirement to Respond within 30 days**

File: Complaint Inspections, Humboldt County, September 27, 2022,
CIWQS Place ID 883628

THIS LETTER REQUIRES THAT YOU RESPOND WITHIN 30 DAYS

This letter is to notify you of observed violations of the requirements listed below, and cited in Attachment A, at the property identified as Humboldt County Assessor's Parcel Number: 507-440-001-000 (the Property):

1. Water Quality Control Plan for the North Coast Region (Basin Plan) Section 4.2.1, Action Plan for Logging Construction and Associated Activities, Prohibitions 1 and 2
2. California Water Code (Water Code) Section 13260 and 13264 (a)
3. Clean Water Act Section 301

According to our records, there is no history of regulatory coverage for the Property with the Regional Water Board.

On September 27, 2022, North Coast Regional Water Quality Control Board (Regional Water Board) staff (Staff) inspected the Property and observed recent tree and stump

GREGORY A. GIUSTI , CHAIR | MATTHIAS ST. JOHN, EXECUTIVE OFFICER

clearing and grading, without permits, and in a manner that threatens water quality. Accordingly, this letter directs you to address the violations noticed herein. Within 30 days, please contact Regional Water Board Staff to discuss your plan to correct the observed violations.

Background

LandVision records show that the Property was purchased by Laura Allison Rowland on October 19, 2021. Review of aerial imagery available in Land Vision, by Staff on June 28, 2022, identified that approximately three quarters of the Property was forested. Around the residence, driveway, and garden area, all located in the northwest portion of the parcel, was cleared for several years prior to recent grading observed by Staff in September 2022.

In response to a complaint, on September 20, 2022, California Department of Fish and Wildlife (CDFW) inspected the Property and identified recent grading and logging along a stream and in riparian areas located along a headwater tributary to Mill Creek, tributary to the Mad River.

CDFW coordinated the inspection of the Property on September 27, 2022, and Staff inspected the Property, accompanied by: CDFW personnel Michael Van Hattem, Nicholas Simpson, Jonathan Hollis, and John Fraley; California Department of Forestry and Fire Protection (CalFire) personnel Douglas Madsen, Jeremy Ward, and Rhett Imperial; and Humboldt County Code Enforcement personnel Brady Wiley. Robert Gutierrez was present on the Property and provided verbal consent to inspect the area of concern. Also present with Mr. Gutierrez were consultants, including representative from Hohman and Associates and Floyd Law Firm. The purpose of Staff's inspection was to evaluate onsite development and conditions, and to identify and assess any impacts or threatened impacts to the quality and beneficial uses of waters of the state and United States resulting from the unpermitted grading and logging activities.

Attached is a copy of the water quality inspection report (Attachment B – Property Inspection Report and Attachment C – Inspection Map and Photolog). Please review the inspection report carefully and completely. The inspection report contains recommendations for correcting observed violations and advises you of the Regional Water Board permits necessary for instream work and projects/activities that result in discharges of waste to receiving waters.

Relevant Requirements

During the inspection, Staff identified several features and conditions on the Property that represent violations of water quality requirements and regulations. Attachment A – Regulatory Citations, provides references to these, and related, requirements and regulations.

Observed Violations

As documented in the September 27, 2022 inspection report, the site conditions observed on the Property violated the Basin Plan and the Water Code. The recent timber harvesting and grading activities, the placement of slash and stumps and felling of trees into the watercourse, discharge of fine sediment, and the placement of unconsolidated earthen fill where it can discharge to the watercourse, do not meet the requirements of the Basin Plan. The activities to create these conditions that threaten water quality were conducted without first seeking and obtaining authorization from the Regional Water Board, in violation of Water Code section 13260. The unauthorized discharge of waste to the watercourse is a violation of Water Code, section 13264 (a) and the federal Clean Water Act, section 301. Staff observed these violations at Property locations identified in the inspection report.

Additional Potential Liabilities

The Regional Water Board is in the process of considering whether the violations of the Water Code and the Basin Plan warrant further enforcement. We encourage you to take steps, to correct the violations as soon as possible, securing any applicable permits from this and other agencies prior to conducting work. Please note that the existing conditions, as observed and documented in the Inspection Report, may represent continuing violations of the Water Code and Basin Plan.

Please note that correcting the conditions of non-compliance at the Property does not preclude enforcement for the violations alleged in this notice. As noted above, the Regional Water Board reserves its right to fully enforce the law against any violation and threatened violation by taking enforcement actions such as a cleanup and abatement order, time schedule order, administrative civil liabilities, and referral to the California Attorney General's office. Administrative civil liabilities may be assessed on a daily basis in the amount up to \$5,000 for each day the violation occurs or up to \$10 per gallon, but not both, pursuant to Water Code section 13350.

Inspection Report Recommendations

As mentioned above, the September 27, 2022 Inspection Report provides recommendations to correct the alleged violations, as well as to address features and conditions that threaten to impact water quality.

Within 30 days of this letter, please advise our Staff Adona White of your intentions, plan, and schedule to implement recommendations in the inspection report. If you have questions about what is required of you to comply with the requirements outlined above, and to advise as to your plan and schedule to correct the alleged violations, please contact our Staff Adona White by email at Adona.White@waterboards.ca.gov or by phone at 707-576-2672.

Future correspondence regarding this matter will be sent to you at this address unless an alternative address is provided to the Regional Water Board. Failure to accept mail

from the Regional Water Board is not a valid excuse for non-compliance with any future enforcement orders, and a failure to respond or otherwise appear at a future enforcement proceeding could subject you to a default order and the imposition of administrative civil liability.

You may also contact me at Jeremiah.Puget@waterboards.ca.gov or by phone at 707-576-2835. Additionally, we are available to meet with you if you wish to discuss this letter or our waste discharge regulatory programs in further detail.

Sincerely,

Jeremiah Puget
Senior Environmental Scientist
Enforcement Unit

Attachments: Attachment A – Regulatory Citations
Attachment B – Facilities Inspection Report and Photo Appendix

Certified Mail – Return Receipt requested

cc: North Coast Regional Water Quality Control Board

Forest Fortescue, Forest.Forestescue@waterboards.ca.gov
Jonathan Warmerdam, Jonathan.Warmerdam@waterboards.ca.gov
Jessie Cahill, Jessie.Cahill@waterboards.ca.gov
Ryan Bey, Ryan.Bey@waterboards.ca.gov
Adona White, Adona.White@waterboards.ca.gov
Kason Grady, Kason.Grady@waterboards.ca.gov

Department of Fish and Wildlife

Michael Van Hatten, Micheal.Vanhatten@wildlife.ca.gov
Jonathan Hollis, Jonathan.Hollis@wildlife.ca.gov
Nicholas Simpson, Nicholas.Simpson@wildlife.ca.gov
John Fraley, John.Fraley@wildlife.ca.gov

Humboldt County Planning and Building Department

Brady Wylie, Brady.Wylie@co.humboldt.ca.us

California Department of Forestry and Fire Protection

Rhett Imperiale, Rhett.Imperiale@fire.ca.gov

Jeremy Ward, Jeremy.Ward@fire.ca.gov
Douglas Madsen, Douglas.Madsen@fire.ca.gov

Floyd Law Firm

Carlton Floyd, cdfloyd@floydlawfirm.net

Attachment A – Regulatory Citations

Regulatory Section	Citation
Basin Plan Section 4.2.1, Prohibition 1	Prohibits “[t]he discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses.”
Basin Plan Section 4.2.1, Prohibition 2	Prohibits “[t]he placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses.”
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 style="padding-left: 40px;">(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 style="padding-left: 40px;">(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)	“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).”
California Water Code Section 13264(a)	“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: (3) The issuance of waste discharge requirements pursuant to Section 13263. (2) The expiration of 140 days after compliance with Section 13260 if the waste

Regulatory Section	Citation
	to be discharged does not create or threaten to create a condition of pollution or nuisance and any of the following applies:...(3) The issuance of a waiver pursuant to Section 13269.”
Federal Clean Water Act Section 301 (a):	Section 301(a) provides that subject to certain exceptions, “the discharge of any pollutant by any person shall be unlawful.” 33 U.S.C. § 1311(a). One of the exceptions allowed for under the Clean Water Act is the discharge from a dredge and fill activity under the auspices of § 404 and 401 of the Clean Water Act. 33 U.S.C. § 1342. The Clean Water Act prohibits the discharge of any pollutant from a point source into waters of the United States without a section 404 dredge and fill permit and a section 401 state water quality certification.
Federal Clean Water Act Section 401	Section 401 (a)(1) “Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates”
Federal Clean Water Act Section 404	Section 404(a) provides, in relevant part, “The Secretary may issue permits...for the discharge of dredged or fill material into the navigable waters...” The Code of Federal Regulations defines the term “dredged material” as material that is excavated or dredged from waters of the United States. 33 C.F.R. § 323.2(c). The term “discharge or dredged material” mean any addition of dredge material into the waters of the United States. 33 C.F.R. § 323.2(d)(1). The Code of Federal Regulations defines “fill material” as material placed in waters of the United States that has the effect of replacing any portion of a water of the United States with dry land or changing the bottom elevation of any portion of a water of the United States. 33 C.F.R. § 323.2(e)(1). The term “discharge of fill material” means the additional of fill material into waters of the United States. 33 C.F.R. § 323.2(f).

FACILITIES INSPECTION REPORT

Region/Office: 1	Status: Performed	Reg. Measure ID: 449459
Program Type: TH	WDID:	Order Number:
Scheduled Insp. Date:	Actual Insp. Date: 09/27/2022	

Discharger Information

Party ID: 635580	Discharger Organization Name: Robert Gutierrez	
Address: Po Box 225	City, State, Zip: Bayside, CA 95524	
Discharger Contact Person:	Discharger Contact Phone:	
Discharger Contact Email Address:		

Facility Information

Place ID 883628	Facility Name: 951 Hunts Dr		
Address: 951 Hunts Drive	City, State, Zip: Mckinleyville, CA 95519		
County: Humboldt	Latitude: 40.92147	Longitude: -124.06702	Method: Map Interpolation (digital)

Lead Inspector Information

Lead Inspector Party ID: 526285	Lead Inspector Name: Adona White		
Inspector Type:	<input checked="" type="checkbox"/> State	<input type="checkbox"/> State Contractor	<input type="checkbox"/> EPA Contractor
	<input type="checkbox"/> EPA and State (EPA Lead)	<input type="checkbox"/> EPA and State (State Lead)	<input type="checkbox"/> EPA (Regional)

INSPECTION TYPE

Inspection Type: Complaint inspection

VIOLATIONSWere Violations noted during this inspection? Yes No

Violation ID	Violation Type	Occurrence Date	Rank	Description
1108934	Basin Plan Prohibition	09/27/2022	B	Water Quality Control Plan for the North Coast Region (Basin Plan) Section 4.2.1, Discharge Prohibitions 1 & 2
1108935	Other Codes	09/27/2022	B	California Water Code Section 13260 for unauthorized land disturbing activities and threatened discharge of waste and 13264 (a) for unauthorized discharge of waste
1108936	Other Codes	09/27/2022	B	Federal Clean Water Act section 301 for unauthorized discharge of waste to a watercourse

INSPECTION SUMMARY (REQUIRED) (500 character limit)

Cleared ~3 acres of trees, roots, vegetation, & topsoil, including ~1.5 acres of riparian forest, to the stream over a length of approximately 500 feet. I observed trees slash in stream, stumps with root wads placed in watercourse, and unconsolidated fill pushed to top of bank & perched there, vulnerable to delivery. Stream is perennial & low gradient, class I downstream & wetland upstream. No erosion control measures onsite. No plan available for review. Immediate threat to watercourse.

GENERAL NOTES (OPTIONAL) (2000 character limit)

Recommendations:

1. Immediately hire a qualified profession to submit and implement an interim stabilization plan to include:
 - a. Moving the earthen fill away from the watercourse and out of the riparian area and at least 150 feet from the top of the bank of the watercourse and stabilizing it so that it will not erode or deliver to the watercourse.
 - b. Hand removal of the slash from the watercourse.
 - c. Stabilization of disturbed areas with appropriate erosion control measures to protect the disturbed surfaces from rainfall impact and overland flow.
 - d. Hydrologic disconnection of road drainage from the watercourse.
 - e. Prevention of discharges of sediment to surface waters.
 - g. Avoidance of additional unauthorized instream work.
 - f. A monitoring plan and schedule to regularly inspect the Property to determine if actions are being implemented as planned, evaluate the effectiveness of cleanup and stabilization measures and corrective actions, and identify needed improvements.

2. Develop a cleanup and restoration plan to:
 - a. Impacts assessment to receiving waters
 - b. Remove the logging debris from the watercourse.
 - c. Restore the topography and soils of the bank and riparian area out to 150' from top of bank.
 - d. Restore native vegetation to stream banks and riparian areas.
 - e. Mitigate spatial and temporal loss of mature riparian forest.
 - f. A monitoring and reporting plan
 - g. An implementation schedule that includes a time schedule for submitting permit applications to all applicable local, state, and federal agencies necessary and, detailed project milestones and a deadline for having fully implemented and completed the cleanup and restoration.

Failure to comply with regulatory requirements prior to conducting land disturbing and instream activities led to watercourse impacts. Please review the Regional Water Board's relevant permitting programs at our website:

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

For Internal Use (Optional)

Reviewed By:	(1)	(2)	(3)
CIWQS Entry Date:		Regional Board File Number:	CIWQS Inspection ID:

Gutierrez Inspection Maps and Photo Appendix
September 27, 2022 Inspection
CIWQS Inspection ID 49150801

Maps



Figure 1. Property map.



Figure 2. Inspection map with GPS way point (WP) locations shown.

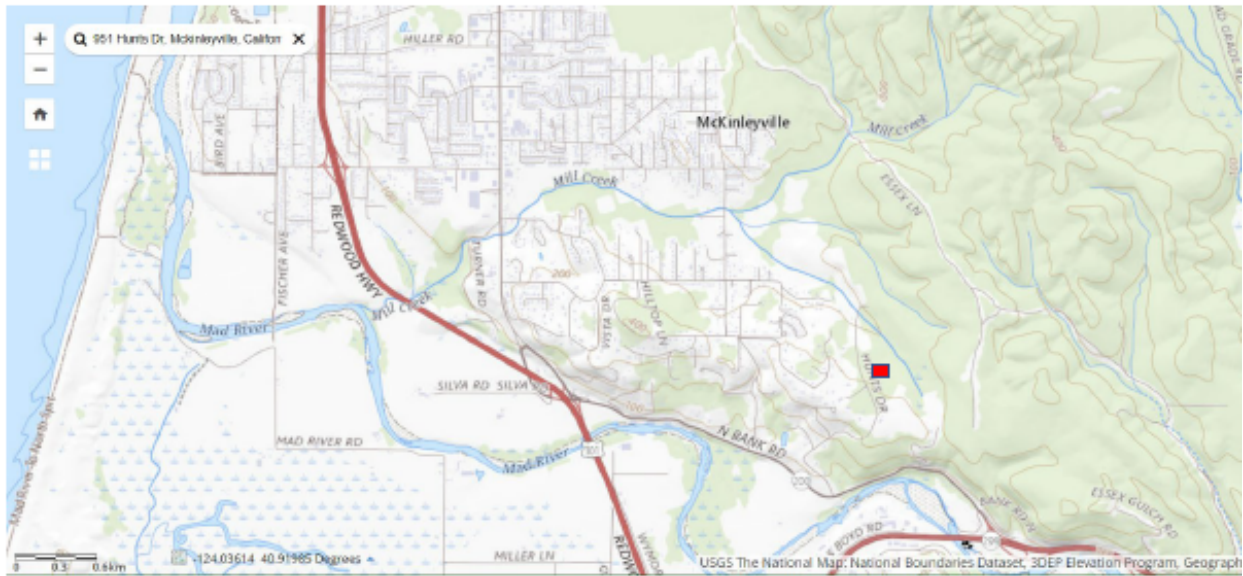


Figure 3. The Property is located adjacent to a blue line stream, which appears on the USGS Topo Arcata North 2021, at the headwaters of Mill Creek, tributary to the Mad River near the estuary. Location of Property indicated in red. Based on the field inspection, we believe the watercourse we viewed is denoted by a solid blue line on the most recent USGS map but is mis-labeled and should be shifted slightly to the west.

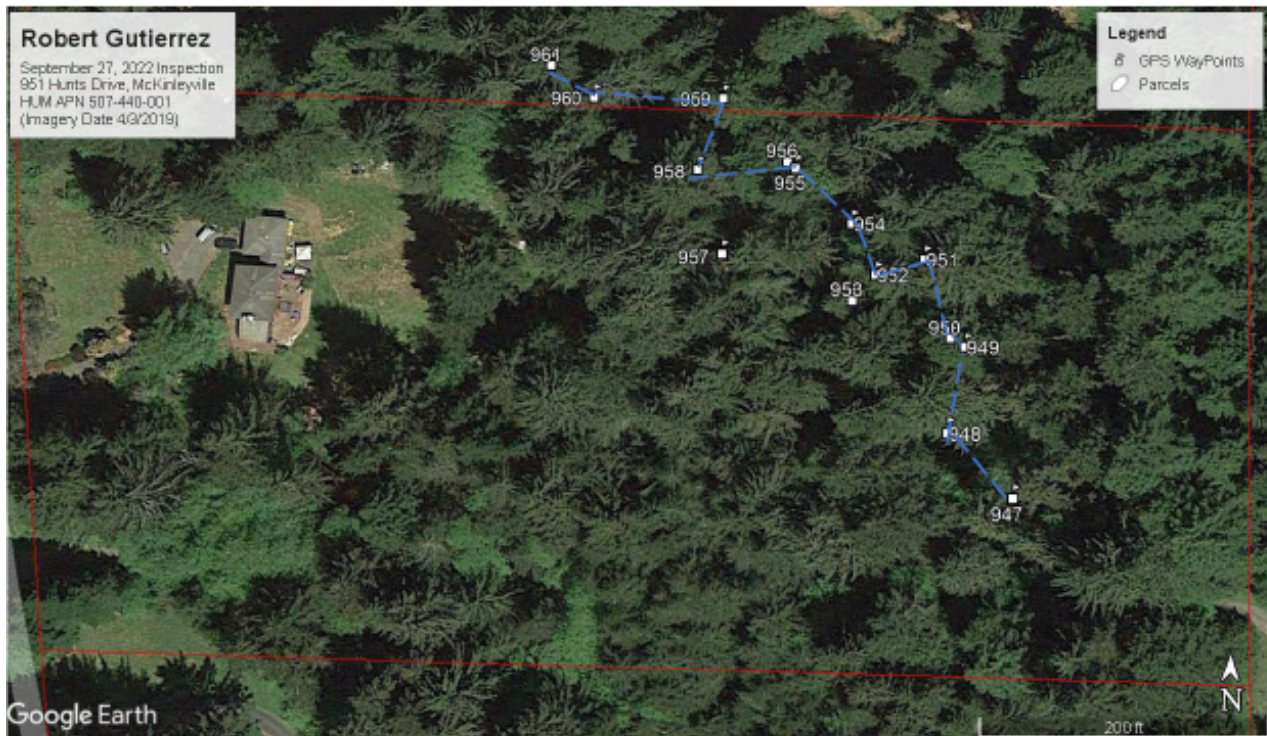


Figure 4. The approximate location of the impacted stream segment observed during the inspection.

Gutierrez Inspection Maps and Photo Appendix
September 27, 2022 Inspection
CIWQS Inspection ID 49150801

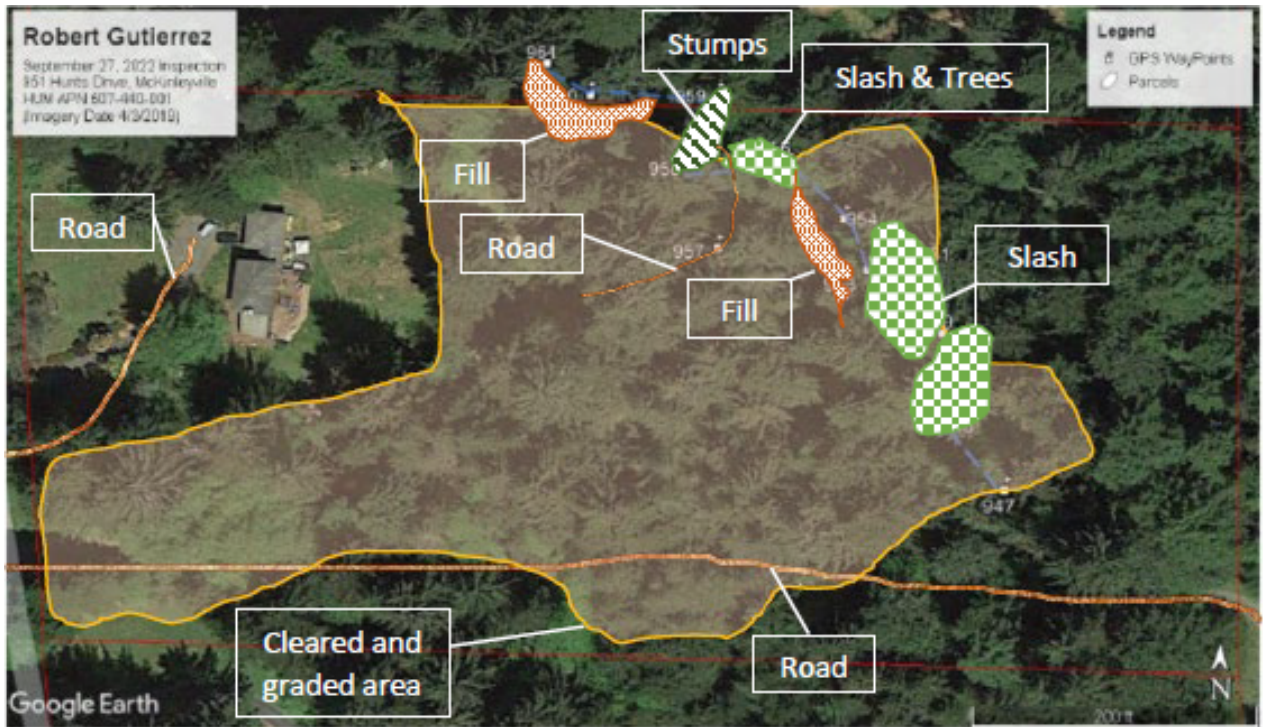


Figure 5. Illustration of Property conditions during inspection



Figure 6. Aerial imagery from LandVision shows conditions on June 28, 2022 with approximately three-quarters of the seven acre parcel as forested.

Inspection Photographs

Unless otherwise noted, all photographs taken by Adona White on September 27, 2022 between 7 AM and 9 AM. It was early and foggy thus dark conditions for some photos.



Figure 7. Slash felled from left bank to right bank looking downstream of WP 948.



Figure 9. Tributary entering from left bank at WP 948.



Figure 8. Big leaf maple felled from riparian area over watercourse near WP 947.



Figure 10. Looking upstream from WP 949, the channel is buried up to WP 948.



Figure 11. Fill pushed onto left bank of watercourse near WP 949. Photo by Jesse Cahill on September 27, 2022.



Figure 12. Trees felled across channel near WP 950.



Figure 13. View from watercourse of left bank with fill pushed to the top of the bank and riparian forest removed.



Figure 14. Fill placed on left bank above channel near WP956, over a 25' channel length.



Figure 15. Fill placed on left bank above channel near WP956, is prone to direct delivery to the watercourse. Photo by Jessie Cahill on September 27, 2022.



Figure 16. Sediment delivery path at WP956 to watercourse from perched fill.



Figure 17. Watercourse at WP 956. The channel in this area is approximately 30" D x 14" W, with flow 29" W x 3" D.



Figure 19. At WP956, the fill placed by the stream is approximately 25' L x 10' W x 12' high at watercourse side and 3' high on interior slope of fill.



Figure 18. Fill next to watercourse and riparian area opened up by tree removal.



Figure 20. At WP957, a road is pushed down from the cleared slope, into the riparian area to the watercourse. Photo of road. Photo by Jessie Cahill on September 27, 2022.



Figure 21. Road pushed through riparian area to watercourse at WP957.



Figure 24. Stumps at WP958 that are placed in channel.



Figure 22. At WP958, the road arrives at the watercourse where stumps and root wads were placed in the watercourse.



Figure 25. View of stumps and riparian harvest at WP958, from right bank.



Figure 23. View from right bank, looking across at seven large stumps at WP958 that are placed in channel and left bank road.



Figure 26. Watercourse looking upstream at stumps.



Figure 27. View from WP959, looking upstream. The placed stumps filled the watercourse for a channel length of approximately 120'. Sediment deposits are visible downstream of the stumps in the channel bottom.



Figure 28. Fine sediment deposits in the watercourse. Photo by Jessie Cahill on September 27, 2022.



Figure 29. Watercourse looking downstream from stumps.



Figure 30. Riparian clearing on left banks between WP959 and WP960.



Figure 31. Fill and debris in riparian area near WP 961.



Figure 32. Fill placed in riparian area near WP960.



Figure 35. Fill pushed into riparian area.



Figure 33. Fill placed in riparian area near WP960.



Figure 36. Riparian harvest and fill. Stump is 45" diameter at breast height.



Figure 34. Fill pushed into riparian area.



Figure 37. Logging debris pushed into riparian area.



Figure 38. View down at road between WP957 and WP958.



Figure 41. Slash, fill, and debris in riparian area.



Figure 39. View of fill placed near WP956; material is loose and mixed with organic debris and is perched above watercourse.



Figure 42. Loose soil in riparian area. Mound in rear of photo was recently constructed reportedly to build a largescale mound feature in the shape of a salamander.



Figure 40. Example of fill pile with different soil types.



Figure 43. View of riparian area.



Figure 44. Trees were extensively cut, and stumps cleared, with a cluster of trees left along the southern Property boundary that is being used for tents. Photo by Jessie Cahill on September 27, 2022.



Figure 45. Excavator onsite rented from Don's Rent All.



Figure 46. Stockpiled cut logs.



Figure 47. View toward southern Property boundary with harvested trees and piled fill.



Figure 48. View of clearing and piling material, looking toward western Property boundary along Hunts Dr.



Figure 49. View of clearing around house.