#### U.S. ARMY CORPS OF ENGINEERS WILMINGTON DISTRICT

Action Id. SAW-2021-01535 STIP Project No. <u>HE-0001</u> County: <u>Buncombe</u>

#### NOTIFICATION OF JURISDICTIONAL DETERMINATION

Property Owner / Authorized Agent: North Carolina Department of Transportation Environmental Analysis Unit Attn: Michael Turchy Environmental Coordination and Permitting [ECAP] Group Leader Address: 1598 Mail Service Center Raleigh, North Carolina 27699-1598 Telephone: 919-707-6157

Property description/project area: <u>The project study area is approximately 210 acres in size and is</u> <u>located approximately 6 miles south of Asheville along and west of I-26 and north of the Blue Ridge</u> <u>Parkway.</u>

Center Coordinates	<u>35.5037, -82.5779</u>
Size	Approximately 210 acres
Nearest Town(s)	Asheville
Nearest Waterway(s)	French Broad River and tributaries to the French Broad River
River Basin	Upper French Broad
USGS HUC	06010105

Indicate Which of the Following Apply:

#### A. Preliminary Determination

- X There are waters, including wetlands, on the above-described property/project area that may be subject to Section 404 of the Clean Water Act (CWA)(33 USC § 1344) and/or Section 10 of the Rivers and Harbors Act (RHA) (33 USC § 403). The waters, including wetlands, have been delineated, and the delineation has been verified by the Corps to be sufficiently accurate and reliable. Therefore, this preliminary jurisdiction determination may be used in the permit evaluation process, including determining compensatory mitigation. For purposes of computation of impacts, compensatory mitigation requirements, and other resource protection measures, a permit decision made on the basis of a preliminary JD will treat all waters and wetlands that would be affected in any way by the permitted activity on the site as if they are jurisdictional waters of the U.S. This preliminary determination is not an appealable action under the Regulatory Program Administrative Appeal Process (Reference 33 CFR Part 331). However, you may request an approved JD, which is an appealable action, by contacting the Corps district for further instruction.
- There are waters, including wetlands, on the above-described property/project area, that may be subject to Section 404 of the Clean Water Act (CWA)(33 USC § 1344) and/or Section 10 of the Rivers and Harbors Act (RHA) (33 USC § 403). However, since the waters, including wetlands, have not been properly delineated, this preliminary jurisdiction determination may not be used in the permit evaluation process. Without a verified wetland delineation, this preliminary determination is merely an effective presumption of CWA/RHA jurisdiction over all of the waters, including wetlands, at the project area, which is not sufficiently accurate and reliable to support an enforceable permit decision. We recommend that you have the waters of the U.S. on your property/project area delineated. As the Corps may not be able to accomplish this wetland delineation in a timely manner, you may wish to obtain a consultant to conduct a delineation that can be verified by the Corps.

#### **B.** Approved Determination

- There are Navigable Waters of the United States within the above-described property/project area subject to the permit requirements of Section 10 of the Rivers and Harbors Act (RHA) (33 USC § 403) and Section 404 of the Clean Water Act (CWA)(33 USC § 1344). Unless there is a change in law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.
- There are waters of the U.S., including wetlands, on the above-described property/project area subject to the permit requirements of Section 404 of the Clean Water Act (CWA) (33 USC § 1344). Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.

\_ We recommend you have the waters of the U.S. on your property/project area delineated. As the Corps may not be able to accomplish this wetland delineation in a timely manner, you may wish to obtain a consultant to conduct a delineation that can be verified by the Corps.

\_ The waters of the U.S., including wetlands, on your property/project area have been delineated and the delineation has been verified by the Corps. We strongly suggest you have this delineation surveyed. Upon completion, this survey should be reviewed and verified by the Corps. Once verified, this survey will provide an accurate depiction of all areas subject to CWA jurisdiction on your property which, provided there is no change in the law or our published regulations, may be relied upon for a period not to exceed five years.

\_\_\_\_\_ The waters of the U.S., including wetlands, have been delineated and surveyed and are accurately depicted on the plat signed by the Corps Regulatory Official identified below on \_\_\_\_\_\_. Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.

- There are no waters of the U.S., to include wetlands, present on the above-described property/project area which are subject to the permit requirements of Section 404 of the Clean Water Act (33 USC 1344). Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.
- The property is located in one of the 20 Coastal Counties subject to regulation under the Coastal Area Management Act (CAMA). You should contact the Division of Coastal Management in Morehead City, NC at (252) 808-2808 to determine their requirements.

Placement of dredged or fill material within waters of the US, including wetlands, without a Department of the Army permit may constitute a violation of Section 301 of the Clean Water Act (33 USC § 1311). Placement of dredged or fill material, construction or placement of structures, or work within navigable waters of the United States without a Department of the Army permit may constitute a violation of Sections 9 and/or 10 of the Rivers and Harbors Act (33 USC § 401 and/or 403). If you have any questions regarding this determination and/or the Corps regulatory program, please contact Lori Beckwith, Regulatory Project Manager, Asheville Regulatory Field Office at 828-271-7980, ext. 4223 or loretta.a.beckwith@usace.army.mil.

**C. Basis For Determination:** N/A – this is a preliminary JD (PJD); an approved JD has not been completed for this project study area.

#### D. Remarks:

The Corps conducted a field verification on August 27, 2021. The boundaries of potentially jurisdictional features/waters located in the project study area are shown on the attached maps numbered 1-5 and titled, "Potential Jurisdictional Features Topographic Map, New I-26 Interchange in Buncombe County, STIP Project HE-0001", updated September 8, 2021.

#### E. Attention USDA Program Participants

This delineation/determination has been conducted to identify the limits of Corps' Clean Water Act jurisdiction for the particular site identified in this request. The delineation/determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985. If you or your tenant are USDA Program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service, prior to starting work.

## F. Appeals Information for Approved Jurisdiction Determinations (as indicated in Section B. above)

If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal this determination you must submit a completed RFA form to the following address:

US Army Corps of Engineers South Atlantic Division Attn: Mr. Philip A. Shannin Administrative Appeal Review Officer 60 Forsyth Street SW, Floor M9 Atlanta, Georgia 30303-8803 PHILIP.A.SHANNIN@USACE.ARMY.MIL

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by November 7, 2022.

## It is not necessary to submit an RFA form to the Division Office if you do not object to the determination in this correspondence.

Monte Matthews Date: 2022.09.08 11:26:59 -04'00'

Date: September 8, 2022

Expiration Date: N/A - PJD

Copy Furnished:

Gannett Fleming, Attn: John Thomas

Appendix 2 - PRELIMINARY JURISDICTIONAL DETERMINATION (PJD) FORM

#### **BACKGROUND INFORMATION**

A. REPORT COMPLETION DATE FOR PJD: 07/30/2021

B. NAME AND ADDRESS OF PERSON REQUESTING PJD: Michael A. Turchy ECAP NCDOT Div 13

C. DISTRICT OFFICE, FILE NAME, AND NUMBER: NCDOT Div 13 I-26 proposed exit 35

#### D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION: (USE THE TABLE BELOW TO DOCUMENT MULTIPLE AQUATIC RESOURCES AND/OR AQUATIC RESOURCES AT DIFFERENT SITES)

State: North Carolina County/parish/borough: Buncombe City: Asheville

Center coordinates of site (lat/long in degree decimal format):

Lat.: 35.546624 Long.: -82.57796

Universal Transverse Mercator: NAD 83

Name of nearest waterbody: French Broad River Sec 10/404

#### E. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

Office (Desk) Determination. Date:

Field Determination. Date(s): 07/13-15/2021, USACE field visit August 27, 2021.

## TABLE OF AQUATIC RESOURCES IN REVIEW AREA WHICH "MAY BE" SUBJECT TO REGULATORY JURISDICTION.

Site number	Latitude (decimal degrees)	Longitude (decimal degrees)	Estimated amount of aquatic resource in review area (acreage and linear feet, if applicable)	Type of aquatic resource (i.e., wetland vs. non-wetland waters)	Geographic authority to which the aquatic resource "may be" subject (i.e., Section 404 or Section 10/404)
SA	35.5013060	-82.5778650	2,939 ln.ft.	Non-wetland waters	Section 404
SA-A	35.5082537	-82.5756799	311 ln.ft.	Non-wetland waters	Section 404
SA-B	35.5082842	-82.5756581	305 ln.ft.	Non-wetland waters	Section 404
SB	35.5021443	-82.5787202	141 ln.ft.	Non-wetland waters	Section 404
SC	35.5034570	-82.5779742	31 ln.ft.	Non-wetland waters	Section 404
SD	35.5040540	-82.5784568	293 ln.ft.	Non-wetland waters	Section 404

## TABLE OF AQUATIC RESOURCES IN REVIEW AREA WHICH "MAY BE" SUBJECT TO REGULATORY JURISDICTION.

#### SA through SD repeated from previous page

#### HE-001 Project Study Area

35.5013060		and linear feet, if applicable)		resource "may be" subject (i.e., Section 404 or Section 10/404)
	-82.5778650	2,939 In.ft.	Non-wetland waters	Section 404
35.5082537	-82.5756799	311 ln.ft.	Non-wetland waters	Section 404
35.5082842	-82.5756581	305 In.ft.	Non-wetland waters	Section 404
35.5021443	-82.5787202	141 In.ft.	Non-wetland waters	Section 404
35.5034570	-82.5779742	31 In.ft.	Non-wetland waters	Section 404
35.5040540	-82.5784568	293 In.ft.	Non-wetland waters	Section 404
35.5026722	-82.5761795	679 In.ft.	Non-wetland waters	Section 404
35.5052828	-82.5774303	218 In.ft.	Non-wetland waters	Section 404
35.5048409	-82.5752765	496 In.ft.	Non-wetland waters	Section 404
	35.5082842 35.5021443 35.5034570 35.5040540 35.5026722 35.5052828	35.5082842       -82.5756581         35.5021443       -82.5787202         35.5034570       -82.5779742         35.5040540       -82.5784568         35.5026722       -82.5761795         35.5052828       -82.5774303	35.5082842       -82.5756581       305 ln.ft.         35.5021443       -82.5787202       141 ln.ft.         35.5034570       -82.5779742       31 ln.ft.         35.5040540       -82.5784568       293 ln.ft.         35.5026722       -82.5761795       679 ln.ft.         35.5052828       -82.5774303       218 ln.ft.	35.5082842       -82.5756581       305 In.ft.       Non-wetland waters         35.5021443       -82.5787202       141 In.ft.       Non-wetland waters         35.5034570       -82.5779742       31 In.ft.       Non-wetland waters         35.5040540       -82.5784568       293 In.ft.       Non-wetland waters         35.5026722       -82.5761795       679 In.ft.       Non-wetland waters         35.5052828       -82.5774303       218 In.ft.       Non-wetland waters

35.503147	-82.5722507	187 ln.ft.	Non-wetland waters	Section 404
35.5031035	-82.5716195	25 In.ft.	Non-wetland waters	Section 404
35.5021320	-82.5708675	62 In.ft.	Non-wetland waters	Section 404
35.5016931	-82.5721982	555 ln.ft.	Non-wetland waters	Section 404
35.5020113	-82.5719845	78 ln.ft.	Non-wetland waters	Section 404
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35.5012527	-82.5704763	81 In.ft.	Non-wetland waters	Section 404
35 5036411	-82 5694671	24 In ft	Non-wetland waters	Section 404
00.0000411	-02.0004071	2 - 111.10.		
35.5035644	-82.5693112	77 In.ft.	Non-wetland waters	Section 404
35 5014454	-82 5780295	2 007 sq ft	Wetland	Section 404
00.0014404	02.0100200	0.046 acre		
35.5017578	-82.5781035	595 sq.ft.	Wetland	Section 404
		0.014 acre		
35.5022045	-82.5782884	558 sq.ft.	Wetland	Section 404
		0.013 acre		
35.5034088	-82.5780061	1,695 sq.ft.	Wetland	Section 404
		0.039 acre		
35.5040075	-82.5775218	2,379 sq.ft.	Wetland	Section 404
		0.055 acre		
	35.5031035         35.5021320         35.5016931         35.5016931         35.5020113         35.5012527         35.5036411         35.5035644         35.5014454         35.5017578         35.5022045         35.5034088	35.5031035       -82.5716195         35.5021320       -82.5708675         35.5021320       -82.5721982         35.5016931       -82.5721982         35.5020113       -82.5719845         35.5012527       -82.5704763         35.5036411       -82.5694671         35.5035644       -82.5693112         35.5014454       -82.5780295         35.5017578       -82.5781035         35.5022045       -82.5782884         35.5034088       -82.5780061	35.5031035       -82.5716195       25 ln.ft.         35.5021320       -82.5708675       62 ln.ft.         35.5016931       -82.5721982       555 ln.ft.         35.5020113       -82.5719845       78 ln.ft.         35.5012527       -82.5704763       81 ln.ft.         35.5036411       -82.5694671       24 ln.ft.         35.5035644       -82.5693112       77 ln.ft.         35.5014454       -82.5780295       2,007 sq.ft.         0.046 acre       .0046 acre         35.5017578       -82.5781035       595 sq.ft.         0.014 acre       .013 acre         35.5034088       -82.5780061       1,695 sq.ft.         0.039 acre       .039 acre	35.5031035       -82.5716195       25 ln.ft.       Non-wetland waters         35.5021320       -82.5708675       62 ln.ft.       Non-wetland waters         35.5016931       -82.5721982       555 ln.ft.       Non-wetland waters         35.5020113       -82.5719845       78 ln.ft.       Non-wetland waters         35.5020113       -82.5719845       78 ln.ft.       Non-wetland waters         35.5012527       -82.5704763       81 ln.ft.       Non-wetland waters         35.5036411       -82.5694671       24 ln.ft.       Non-wetland waters         35.5035644       -82.5693112       77 ln.ft.       Non-wetland waters         35.5014454       -82.5780295       2,007 sq.ft.       Non-wetland         35.5017578       -82.5781035       595 sq.ft.       Wetland         35.5022045       -82.5782884       568 sq.ft.       Wetland         35.5034088       -82.5780061       1,895 sq.ft.       Wetland         0.039 acre       35.5040075       -82.5775218       2,379 sq.ft.       Wetland

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WS	35.5023547	-82.5710286	1,969 sq. ft. 0.045 acre	Wetland	Section 404
WT	35.5019965	-82.5713242	103 sq.ft. 0.002 acre	Wetland	Section 404
wu	35.5019710	-82.571700	615 sq. ft. 0.014 acre	Wetland	Section 404
Totals			6,502 ln.ft.	Non-wetland waters	Section 404
			32,377 sq.ft. 0.743 acre	Wetland	Section 404

### Project Ranger Section PJD

	Latitude (decimal degrees)	Longitude (decimal degrees)	•	resource (i.e., wetland vs. non-wetland waters)	Geographic authority to which the aquatic resource "may be" subject (i.e., Section 404 or Section 10/404)
FBR*			300 ln.ft.	Non-Wetland Waters	Section 10/404

\*French Broad River

### **Bifurcated Section PJD I-4700**

Site number	(decimal	(decimal degrees)	-	resource (i.e., wetland vs. non-wetland waters)	Geographic authority to which the aquatic resource "may be" subject (i.e., Section 404 or Section 10/404)
SDX	35.501983	-82.569955	3,919 ln.ft.	Non-wetland waters	Section 404
SDY	35.503536	-82.569906	72 In.ft.	Non-wetland waters	Section 404

SDZ	35.503416	-82.570415	151 ln.ft.	Non-wetland waters	Section 404
SEQ	35.50889	-82.575300	306 In.ft.	Non-wetland waters	Section 404
SEU	35.501047	-82.570074	18 In.ft.	Non-wetland waters	Section 404
SEV	35.503133	-82.571506	145 In.ft.	Non-wetland waters	Section 404
SEW	35.502127	-82.571068	161 ln.ft.	Non-wetland waters	Section 404
WCL	35.501407	-82.569444	0.01 acre	Wetland	Section 404
WCM	35.501645	-82.569598	<0.01 acre	Wetland	Section 404
WCN	35.503147	-82.570406	0.13 acre	Wetland	Section 404
WCQ	35.505444	-82.570958	<0.01 acre	Wetland	Section 404
WCR	35.505959	-82.571007	<0.01 acre	Wetland	Section 404
WCS	35.504992	-82.570704	0.05 acre	Wetland	Section 404
WCT	35.504372	-82.570691	0.08 acre	Wetland	Section 404
WCU	35.503208	-82.570713	<0.01 acre	Wetland	Section 404
WCV	35.503606	-82.569575	0.01 acre	Wetland	Section 404
WCW	35.508855	-82.573517	1.32 acres	Wetland	Section 10/404

35.508592	-82.575532	0.09 acre	Wetland	Section 404
35.503078	-82.571703	0.02 acre	Wetland	Section 404
35.503186	-82.571782	<0.01 acre	Wetland	Section 404
35.502077	-82.571306	0.07	Wetland	Section 404
35.502077	-82.571306	<0.01 acre	Wetland	Section 404
		4,772 In.ft.	Non-wetland waters	Section 404
		0.52 acre	Wetland	Section 404
		1.32 acres	Wetland	Section 10/404
	35.503078 35.503186 35.502077	35.503078       -82.571703         35.503186       -82.571782         35.502077       -82.571306	35.503078       -82.571703       0.02 acre         35.503186       -82.571782       <0.01 acre	35.503078       -82.571703       0.02 acre       Wetland         35.503186       -82.571782       <0.01 acre

- The Corps of Engineers believes that there may be jurisdictional aquatic resources in the review area, and the requestor of this PJD is hereby advised of his or her option to request and obtain an approved JD (AJD) for that review area based on an informed decision after having discussed the various types of JDs and their characteristics and circumstances when they may be appropriate.
- 2) In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "preconstruction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an AJD for the activity, the permit applicant is hereby made aware that: (1) the permit applicant has elected to seek a permit authorization based on a PJD, which does not make an official determination of jurisdictional aquatic resources; (2) the applicant has the option to request an AJD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an AJD could possibly result in less compensatory mitigation being required or different special conditions; (3) the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) undertaking any activity in reliance upon the subject permit authorization without requesting an AJD constitutes the applicant's acceptance of the use of the PJD; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a PJD constitutes agreement that all aquatic resources in the review area affected in any way by that activity will be treated as jurisdictional, and waives any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an AJD or a PJD, the JD will be processed as soon as practicable. Further, an AJD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331. If, during an administrative appeal, it becomes appropriate to make an official determination whether geographic jurisdiction exists over aquatic resources in the review area, or to provide an official delineation of jurisdictional aquatic resources in the review area, the Corps will provide an AJD to accomplish that result, as soon as is practicable. This PJD finds that there "may be" waters of the U.S. and/or that there "may be" navigable waters of the U.S. on the subject review area, and identifies all aquatic features in the review area that could be affected by the proposed activity, based on the following information:

#### SUPPORTING DATA. Data reviewed for PJD (check all that apply)

Checked items should be included in subject file. Appropriately reference sources below where indicated for all checked items:
Maps, plans, plots or plat submitted by or on behalf of the PJD requestor: Map: PJD features topo/aerial map
<ul> <li>Data sheets prepared/submitted by or on behalf of the PJD requestor.</li> <li>Office concurs with data sheets/delineation report.</li> <li>Office does not concur with data sheets/delineation report. Rationale:</li></ul>
Data sheets prepared by the Corps:
Corps navigable waters' study:
U.S. Geological Survey Hydrologic Atlas:
<ul> <li>USGS NHD data.</li> <li>USGS 8 and 12 digit HUC maps.</li> </ul>
U.S. Geological Survey map(s). Cite scale & quad name: Asheville 7.5 minute series 2019
Natural Resources Conservation Service Soil Survey. Citation:
National wetlands inventory map(s). Cite name: <u>NWI Mobile Website</u>

FEMA/FIRM maps: FEMA Flood Map Service area number 3700964900J

100-year Floodplain Elevation is: \_\_\_\_\_\_.(National Geodetic Vertical Datum of 1929)

] Photographs: 🔲 Aerial (Name & Date): \_\_\_\_\_

or Other (Name & Date): \_\_\_\_\_

Previous determination(s). File no. and date of response letter: \_\_\_\_\_\_

Other information (please specify): NC drought map, USACE field visit August 27, 2021

# IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.

Matthews

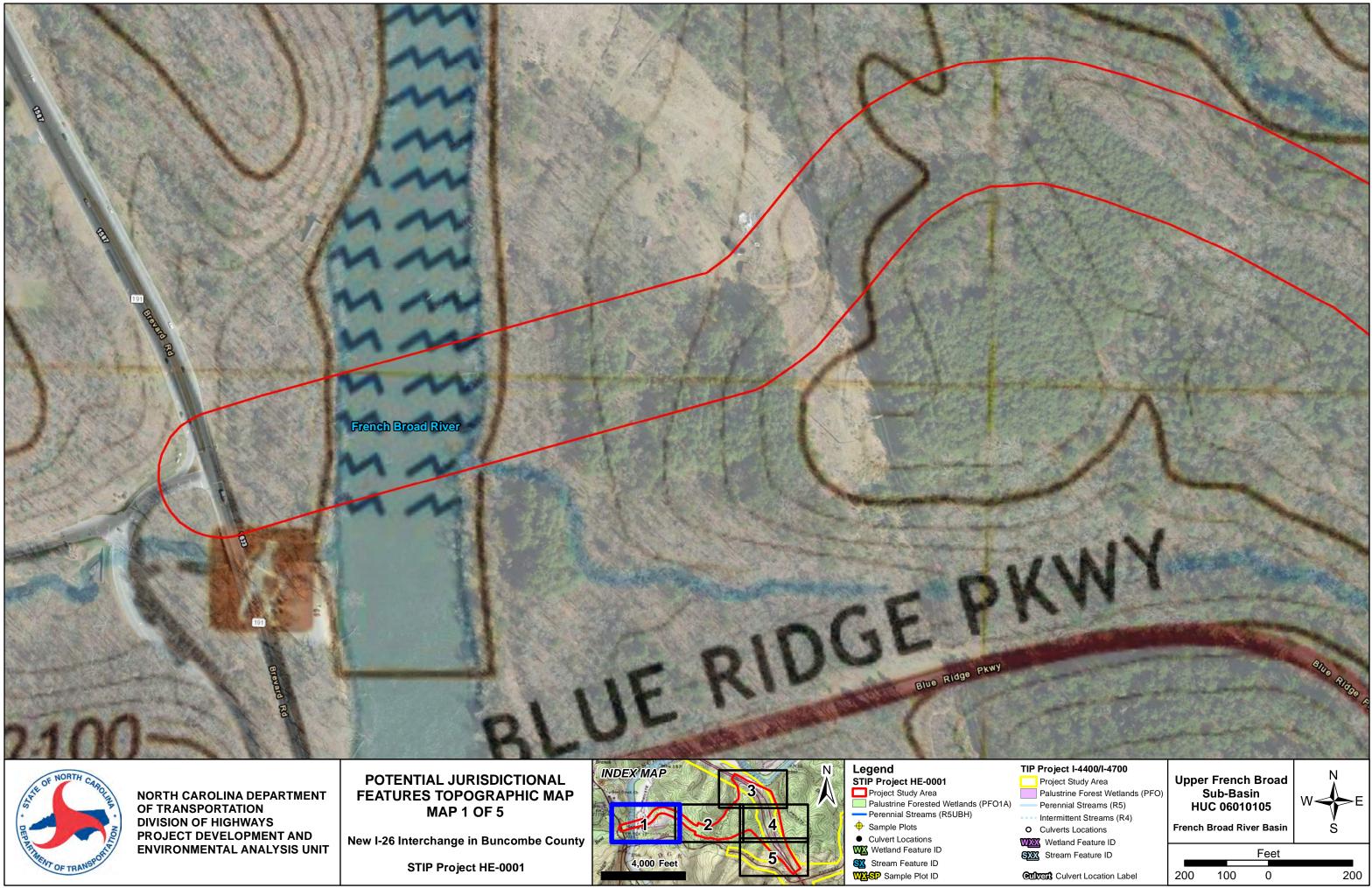
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Signature and date of Regulatory staff member completing PJD

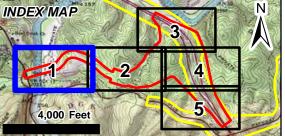
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Signature and date of person requesting PJD (REQUIRED, unless obtaining the signature is impracticable)<sup>1</sup>

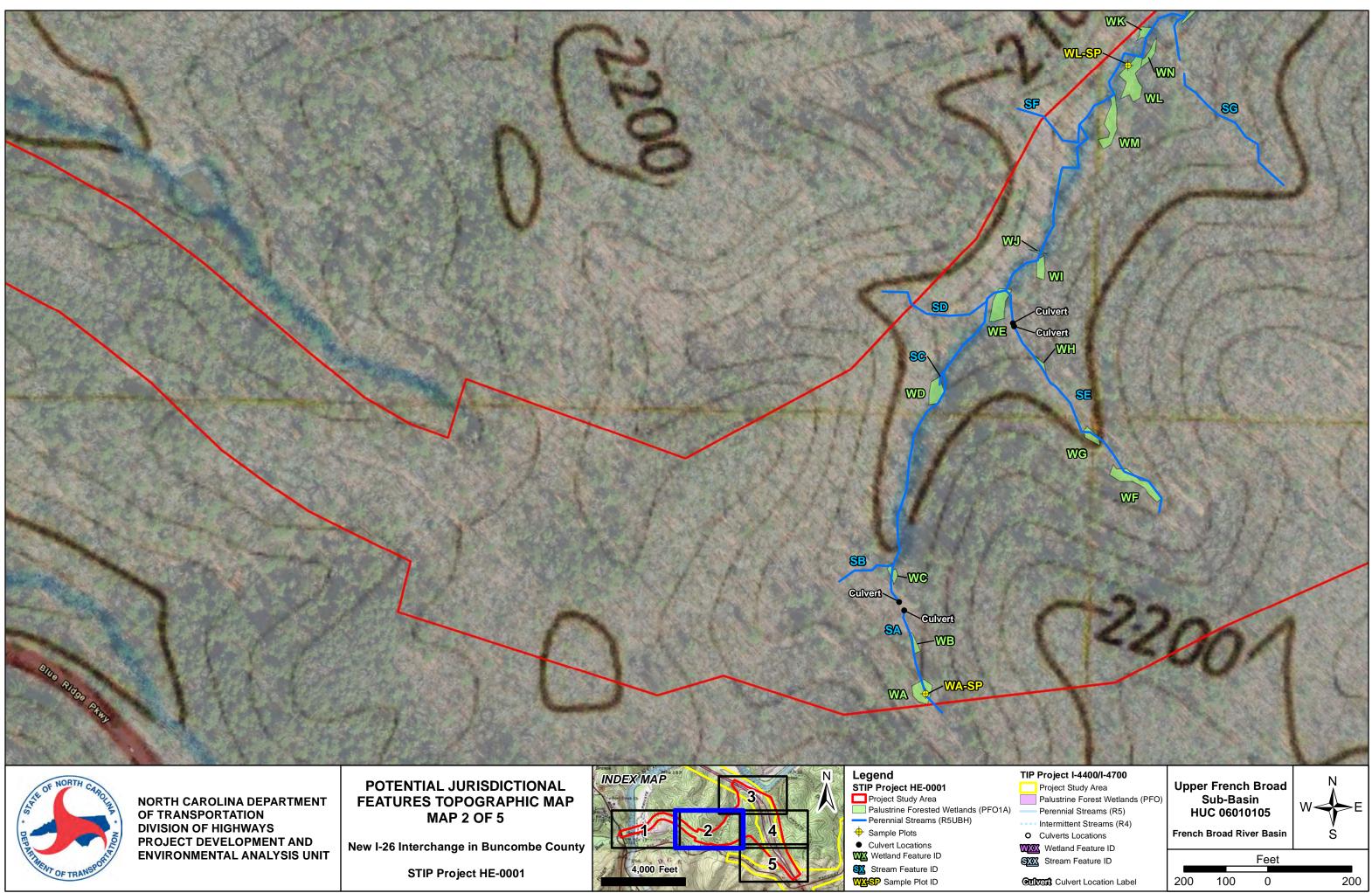
<sup>&</sup>lt;sup>1</sup> Districts may establish timeframes for requestor to return signed PJD forms. If the requestor does not respond within the established time frame, the district may presume concurrence and no additional follow up is necessary prior to finalizing an action.



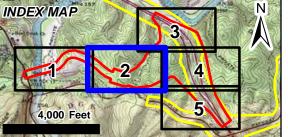




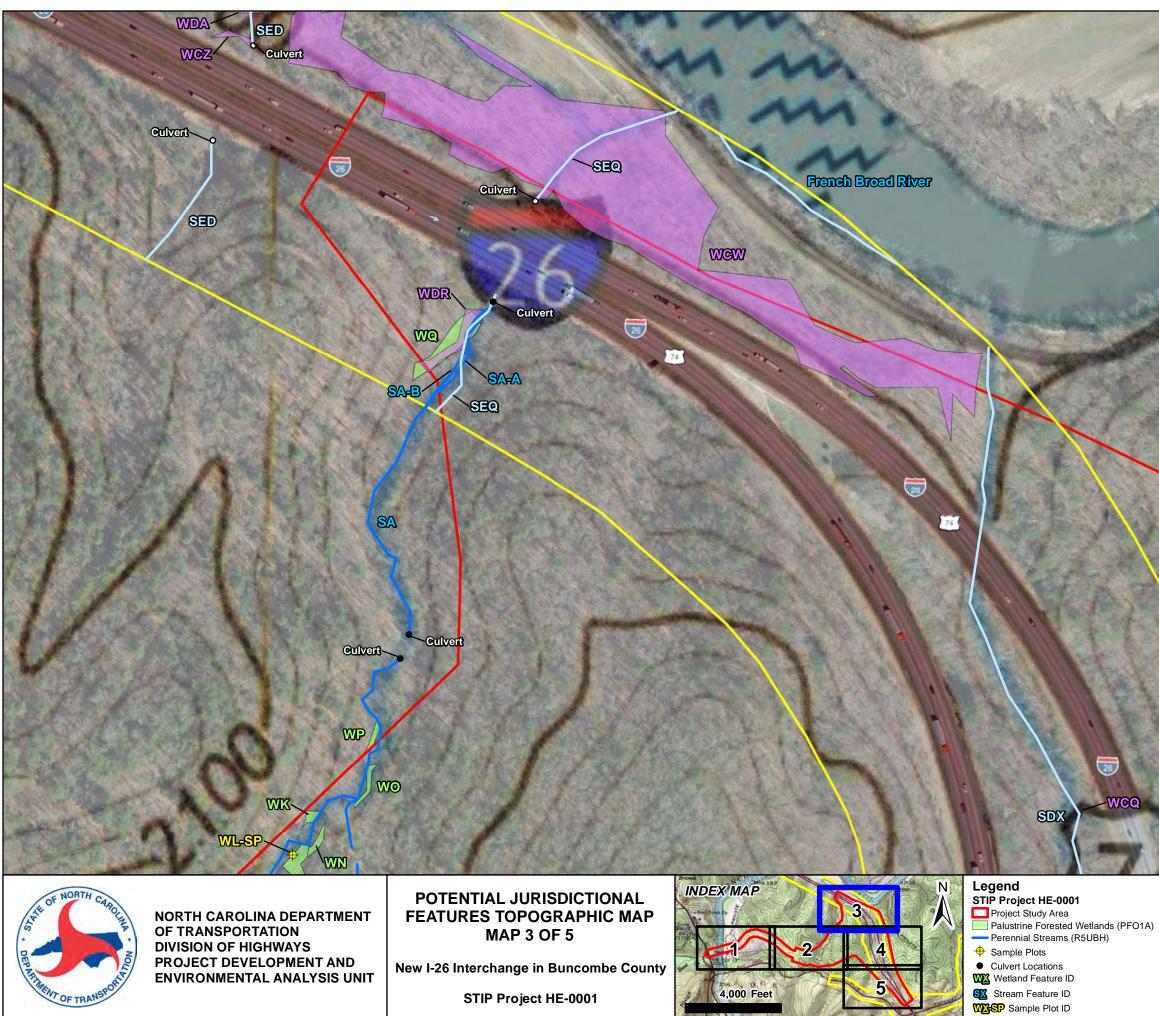
vided by ESRI ArcGIS Online. Wetlands and waterways were delienated in the field by Gannett Fleming, Inc. (July 2021). Map Prepared: 07/24/2021, Updated: 09/08/2021; GF Project No. 64926





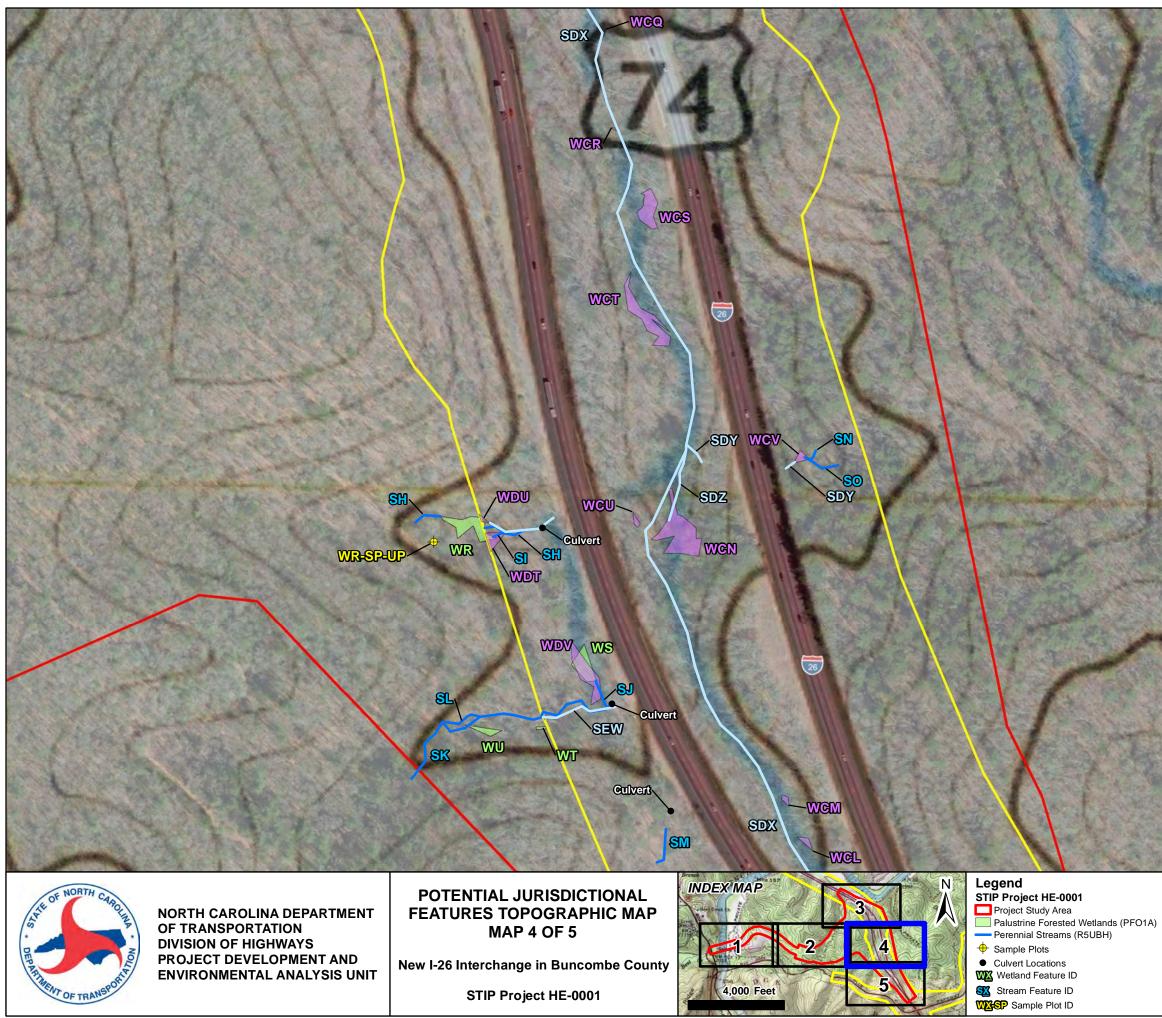


emapping provided by ESRI ArcGIS Online. Wetlands and waterways were delienated in the field by Gannett Fleming, Inc. (July 2021). Map Prepared: 07/24/2021, Updated: 09/08/2021; GF Project No. 64926



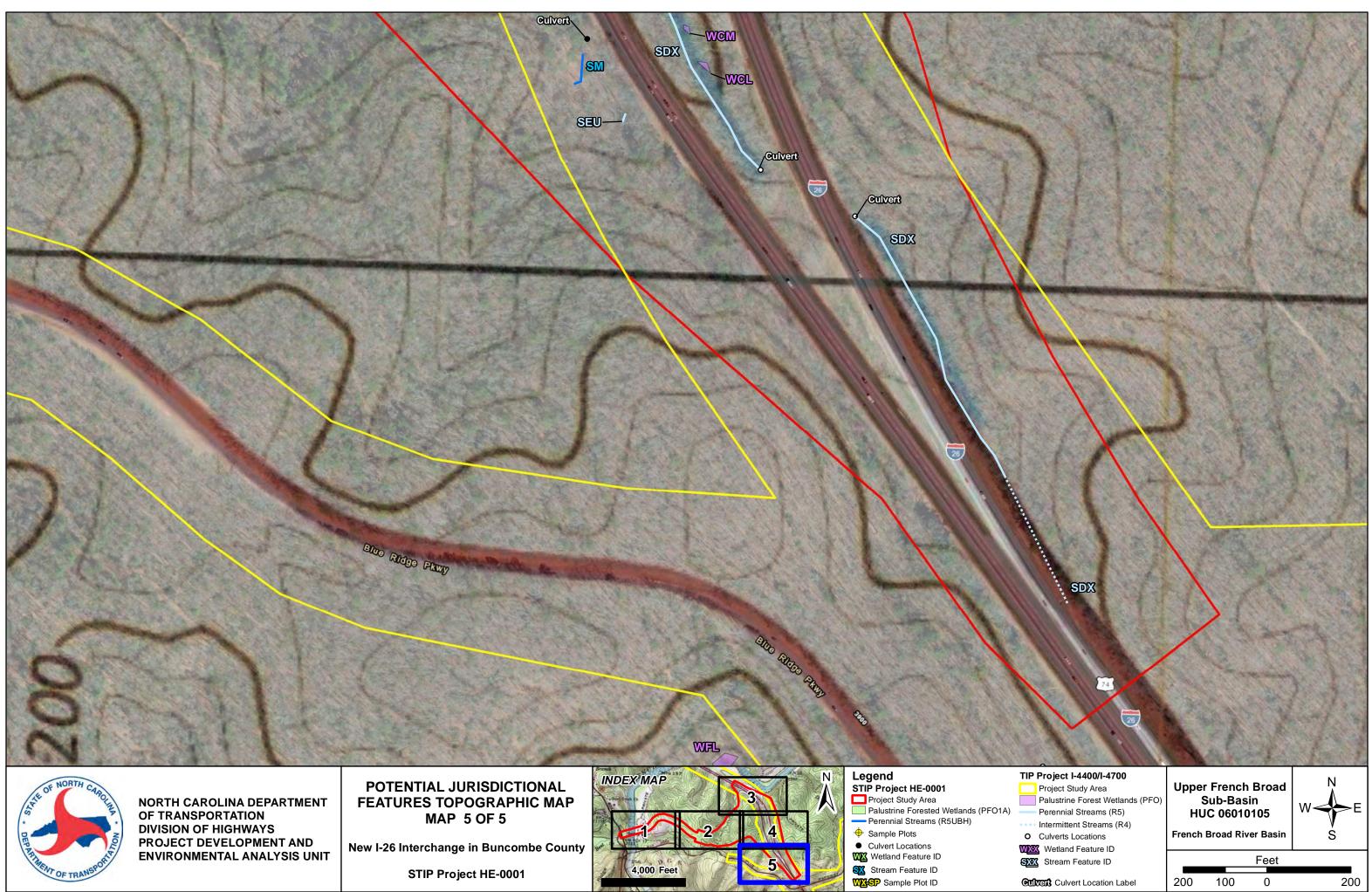
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TIP Project I-4400/I-4700 Project Study Area Palustrine Forest Wetlands (PFO)	Upper French Broad Sub-Basin
<ul> <li>Perennial Streams (R5)</li> <li>Intermittent Streams (R4)</li> <li>Culverts Locations</li> <li>Wetland Feature ID</li> </ul>	HUC 06010105 French Broad River Basin
Stream Feature ID Culvert Location Label	Feet 200 100 0 200

ided by ESRI ArcGIS C vaterways were delienated in the field by Gannett Fleming, Inc. (July 2021). Map Prepared: 07/24/2021, Updated: 09/08/2021; GF Project No. 64926



TIP Project 1-4400/1-4700         Project Study Area         Palustrine Forest Wetlands (PFO)         Perennial Streams (R4)         O       Culverts Locations         Wetland Feature ID         Wetland Feature ID         Wetland Feature ID         Stream Feature ID	<complex-block><complex-block><table-container><table-container>           Upper French Broad           Sub-Basin           HUC 06010105           French Broad River Basin           French Broad River Basin           Feet</table-container></table-container></complex-block></complex-block>

vided by ESRI ArcGIS Online. Wetlands and waterways were delienated in the field by Gannett Fleming, Inc. (July 2021). Map Prepared: 07/24/2021, Updated: 09/08/2021; GF Project No. 64926



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