

In accordance with NEPA, NCDOT published a DEIS for the I-26 Connector project in October 2015. The DEIS described the purpose of and need for the project, identified project alternatives, and evaluated them for potential environmental effects. Since the DEIS was published, a preferred alternative has been chosen based on feedback from the public and environmental regulatory and resource agencies. This FEIS is presented in the same order as the DEIS, with clarification and updates such as changes in the existing environment, updated impacts anticipated from the preferred alternative, and responses to comments received on the DEIS. Some information from the DEIS is summarized, and substantive new information is noted in italics.

CHAPTER 5. SECTION 4(F)

According to 23 U.S.C. Section 138 (Section 4(f)), USDOT:

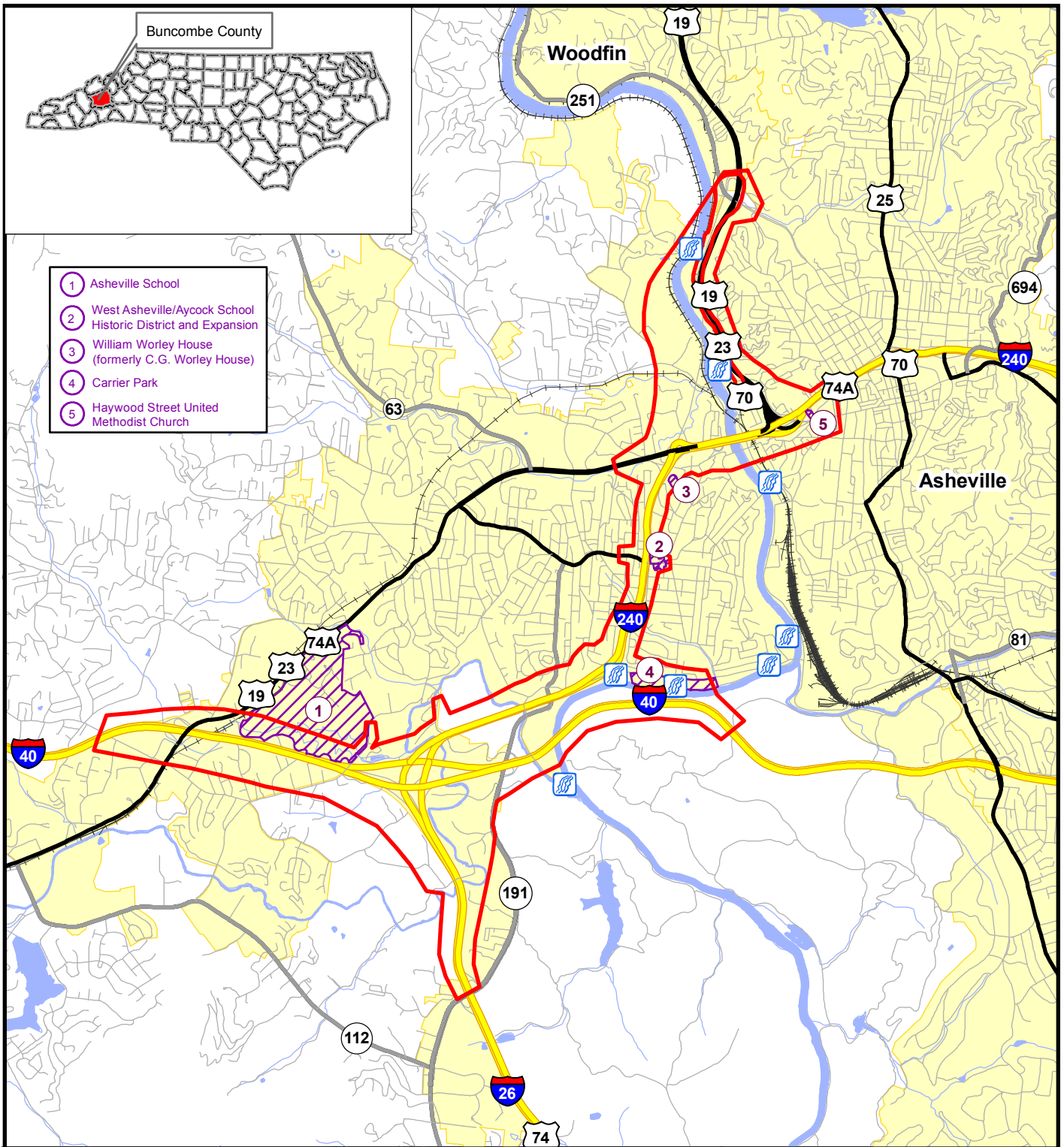
... shall not approve any program or project...which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use.

In this section, resources subject to Section 4(f) are identified, potential uses of those resources are discussed, avoidance alternatives and other measures to minimize harm to the resources are assessed, and coordination with the public official having jurisdiction over each resource is documented.

5.1 DESCRIPTION OF SECTION 4(F) RESOURCES

Three types of Section 4(f) resources would be affected by this project: historic sites, archaeological sites, and public parks/recreation areas. The DEIS evaluated the Section 4(f) applicability of resources within the project study area to determine whether the proposed project may result in the use of a Section 4(f) resource.

The Section 4(f) resources that would be affected by the preferred alternative are described in this section and shown on Figure 5-1.



North Carolina
Department of Transportation



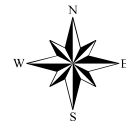
I-26 Asheville Connector
Buncombe County

STIP Project No. I-2513

Legend

- French Broad River Paddle Trail Access Points
- Interstate
- US Highway
- State Highway
- State Route
- Local Roads
- Railroad
- Streams (non-delineated)
- Project Study Area
- Section 4F Resource
- Water
- Municipal Boundary

Date: April 2018



0 0.5 1 Miles

Figure 5-1

Section 4(f) Resources

The DEIS reported that Section A – I-240 Widening Alternative was expected to require the reconstruction of approximately 316 linear feet of the French Broad River Greenway at the western end of the Carrier Park property to allow the reconnection of Old Amboy Road and provide access to several properties west of Carrier Park along the banks of the French Broad River. Since publication of the DEIS and design refinement of the preferred alternative, the configuration at Amboy Road was realigned and avoided any required reconstruction of the greenway. The DEIS reported that Section B – Alternative 4-B would require a permanent construction easement to the Montford Hills Historic District due to the retaining wall adjacent to Westover Drive. This impact has been avoided due to the refinement of the preferred alternative design. Therefore, there are no Section 4(f) impacts anticipated to either the French Broad River Greenway or the Montford Hills Historic District.

Since publication of the DEIS, the French Broad River has been designated a State Paddle Trail and is therefore subject to Section 4(f).

5.1.1 HISTORIC SITES

The following includes descriptions of the historic resources impacted by the preferred alternative. In addition to the Montford Hills Historic District, which is no longer impacted by the preferred alternative as was reported in the DEIS, the Biltmore Estate and Montford Hills/Hibriten Drive Boundary Expansion are no longer included, as they would not be impacted by the preferred alternative.

5.1.1.1 Asheville School

Size	280 acres
Location	360 Asheville School Road. East of US 19-23-74A and northwest of the SR 3412 Sand Hill Road grade separation over I-40
Ownership	Private
Type	Listed in the NRHP, 1996
Function	Education, school
Facilities	Academic buildings and surrounding grounds of athletic fields, woods, and a lake bed
Access	Private
Clauses	Fee simple right-of-way agreements were obtained for both SR 3412 (Sand Hill Road) and I-40

5.1.1.2 West Asheville/Aycock School Historic District and Expansion

Size	11.6 acres
Location	Haywood Road between Westwood Place and Michigan Avenue
Ownership	Public and private

Type	Listed in the NRHP, 2006 with an expansion in 2013
Function	Education and commercial
Facilities	Academic buildings and a commercial district
Access	Public and private
Clauses	None identified

5.1.1.3 William Worley House

Size	4.1 acres
Location	1 Worley Place in the Westwood neighborhood
Ownership	Private
Type	Determined eligible for the NRHP, 1999
Function	Private residence
Facilities	Single family home and grounds
Access	Private
Clauses	None identified

5.1.1.4 Haywood Street United Methodist Church

Size	1.26 acres
Location	297 Haywood Street bordered to the north and west by the I-240/Patton Avenue interchange
Ownership	Private
Type	Determined eligible for the NRHP, 2001
Function	Church
Facilities	Church building and grounds
Access	Public
Clauses	None identified

5.1.2 ARCHAEOLOGICAL RESOURCES

Site 31BN623, the Lower Hominy Hydroelectric Power Plant site, is recommended NRHP-eligible under Criterion A due to its association with the early hydroelectric and streetcar industries. This site has the potential to be impacted by the construction activities associated with the preferred alternative. Where impacted, the site boundaries would be identified with iron markers, covered, and buried in the proposed fill for the project.

5.1.3 PUBLIC PARKS AND RECREATION AREAS

The following public parks and recreation areas would be impacted by the preferred alternative.

5.1.3.1 Carrier Park

Size	31.2 acres
Location	219 Amboy Road in West Asheville (site of the former Asheville Motor Speedway)
Ownership	City of Asheville
Type	Public park
Function	Outdoor recreation
Facilities	Volleyball courts, playground, roller hockey rink, bicycle racing track, basketball court, multi-use track, lawn bowling court, paved trail, unpaved trail, multi-use sports field for baseball and soccer, restroom/refreshment facility, lawn bowling, pavilion, wetland interpretive site, fishing pier, and parking lots (City of Asheville 2010b)
Access	Vehicles enter the park via three driveway entrances off of Amboy Road. Pedestrian access is via the French Broad River Greenway from the east.
Use	Average of 200 visitors per day, year-round
Clauses	There is a restriction that will not allow motor vehicle racing and a conservation easement along the riverfront, as well as various utility easements across the property.
Features	This is a relatively level piece of land between Amboy Road and the French Broad River. The banks of the river are mostly steep. The site is mostly open lawn area with mature trees along the riverbank and new plantings in the open level area that has been disturbed over the years. The property is mostly in the floodway. Some of the property by the road is in the flood fringe.

5.1.3.2 French Broad River Paddle Trail

The French Broad River Paddle Trail is a recreational watercraft trail created and operated by RiverLink and MountainTrue. The paddle trail facilitates public access to and camping on over 140 miles of the French Broad River, from the headwaters in Rosman, North Carolina, to Douglas Lake in Tennessee. The French Broad River Paddle Trail is designated as a paddle trail by the North Carolina Department of Natural and Cultural Resources – Division of Parks and Recreation; therefore, it is considered a publicly owned park/trail.

5.2 USE OF SECTION 4(F) PROPERTY

According to Section 4(f), a use of land occurs when, “(1) Land from a 4(f) site is permanently incorporated into a transportation facility, (2) there is a temporary occupancy of land that is adverse in terms of the Section 4(f) statute’s preservational purposes (23 CFR 771.135(p)(2)), or (3) When there is a constructive use of land (23 CFR 771.125(p)(2))” (USDOT/FHWA 2005b, 2005c). These three types of uses of Section 4(f) properties are addressed in this section.

5.2.1 PERMANENT INCORPORATION OF PROPERTY

A summary of the property that would be permanently incorporated by the project is provided in Table 5-1 and in the following subsections.

Table 5-1: Use of Section 4(f) Properties in Acres (Right-of-way/Easement)

Property	Section C Alternative F-1	Section A I-240- Widening Alternative	Section B Alternative 4-B
Historic Sites			
Asheville School	0.51/1.48	—	—
West Asheville/Aycock School Historic District and Boundary Expansion	—	0.15/0.10	—
William Worley House	—	—	0.05/0.26
Haywood Street United Methodist Church	—	—	0.0021/ 0.0057
Archaeological Sites			
Archaeological Site 31BN623	—	0.05/0	—
Parks and Recreation Areas			
Carrier Park	—	0.22/0.60	—
<i>French Broad River Paddle Trail</i>	—	—	<i>Bridge Bents</i>

5.2.1.1 Asheville School

Section C – Alternative F-1 would include the widening of existing I-40 and the replacement of the SR 3412 (Sand Hill Road) Bridge over I-40 to accommodate the widening. Right-of-way would be required from the Asheville School property, which is adjacent to existing I-40 and SR 3412. Approximately 0.51 acre would be permanently incorporated.

5.2.1.2 West Asheville/Aycock School Historic District

The Section A – I-240 Widening Alternative would require approximately 0.15 acre of permanent incorporation of land within the boundaries of the West Asheville/Aycock School Historic District for right-of-way and construction easements.

5.2.1.3 William Worley House

Section B – Alternative 4-B would require the permanent incorporation of land within the boundaries of the William Worley House property for right-of-way. Impacts to this property

would be minimized by the construction of a retaining wall that would limit the amount of property to be disturbed. Less than 0.05 acre would be permanently incorporated from the 4.1-acre property. The alternative would also require an underground easement for anchoring the proposed retaining wall.

5.2.1.4 Haywood Street United Methodist Church

Section B – Alternative 4-B would require the permanent incorporation of land within the boundaries of the Haywood Street United Methodist Church for right of way (0.0021 acre) and construction easement (0.0057 acre) due to the construction of a sidewalk in front of the church.

5.2.1.5 Archaeological Site 31BN623

The Section A – I-240 Widening Alternative would require the permanent incorporation of less than 0.05 acre of archaeological site 31BN623.

5.2.1.6 Carrier Park

The Section A – I-240 Widening Alternative would permanently incorporate approximately 0.22 acre of the existing Amboy Road frontage of this 31-acre public park for additional right-of-way and construction easements. The Carrier Park property contains a wide paved shoulder along the existing Amboy Road frontage. This unchannelized, wide paved shoulder has provided perpendicular parking for the site since it belonged to the Asheville Motor Speedway. It remains even though the city has created additional parking areas within the park. Almost all of the 0.22 acre of additional right-of-way required from Carrier Park would be from this paved shoulder area. According to the City of Asheville Parks and Recreation officials, future plans for the park call for the removal of this parking. The required property contains no park amenities. However, since the proposed project would require the acquisition of right-of-way and construction easements within the boundaries of this public recreational facility, this resource is included in the Section 4(f) evaluation.

5.2.1.7 French Broad River Paddle Trail

Bents will be required in the French Broad River for the I-26 and I-240 new location bridges constructed as part of this project.

5.2.2 TEMPORARY OCCUPANCY OF PROPERTY

According to FHWA guidance, a temporary occupancy will not constitute a use of a Section 4(f) resource if all of the conditions set forth in 23 CFR 771.135(p)(7) are met. Those conditions are that

- (1) Duration (of the occupancy) must be temporary, i.e., less than the time needed for construction of the project, and there should be no change in ownership of the land;
- (2) Scope of the work must be minor, i.e., both the nature and the magnitude of the changes to the 4(f) resources are minimal;
- (3) There are no anticipated permanent adverse physical impacts, nor will there be interference with the activities or purpose of the resource, on either a temporary or permanent basis;

(4) The land being used must be fully restored, i.e., the resource must be returned to a condition which is at least as good as that which existed prior to the project; and, (5) There must be documented agreement of the appropriate Federal, State, or local officials having jurisdiction over the resource regarding the above conditions. (USDOT/FHWA 2005b, 2005c)

5.2.3 CONSTRUCTIVE USE OF PROPERTY

According to FHWA guidance, “Constructive use only occurs in those situations where, including mitigation, the proximity impacts of a project on the 4(f) property are so severe that the activities, features, or attributes that qualify the property or resource for protection under Section 4(f) are substantially impaired” (USDOT/FHWA 2005c). It is not anticipated that there will be a constructive use of any Section 4(f) resource(s) as a result of this project.

5.2.4 SUMMARY OF USE OF SECTION 4(F) PROPERTIES

All uses of Section 4(f) properties related to the project can be categorized as permanent incorporation of property for the project’s right-of-way or easement. A summary of the Section 4(f) resources that would be affected by the permanent incorporation of property for each alternative is provided in Table 5-2.

Table 5-2: Summary of Uses of Section 4(f) Properties

Property	Alternative(s)	Type of Use
Historic Sites		
Asheville School	Section C – Alternative F-1	Permanent Incorporation
West Asheville/Aycock School Historic District	Section A – I-240 Widening	Permanent Incorporation
William Worley House	Section B – Alternative 4-B	Permanent Incorporation
Haywood Street United Methodist Church	Section B – Alternative 4-B	Permanent Incorporation
Archaeological Resources		
Archaeological Site 31BN623	Section A – I-240 Widening	Permanent Incorporation
Parks and Recreation Areas		
Carrier Park	Section A – I-240 Widening	Permanent Incorporation
<i>French Broad River Paddle Trail</i>	<i>Section B – Alternative 4-B</i>	<i>Permanent Incorporation</i>

5.3 DE MINIMIS IMPACTS

In Section 6009(a) of the Safe, Accountable, Flexible Efficient Transportation Equity Act – A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, the existing Section 4(f) legislation, was amended to simplify the processing and approval of projects that have only *de minimis* impacts on lands protected by Section 4(f). According to USDOT, “This revision provides that once the U.S. Department of Transportation (DOT) determines that a transportation use of Section 4(f) property, after consideration of any impact avoidance, minimization, and mitigation or enhancement measures, results in a *de minimis* impact on that property, an analysis of avoidance

alternatives is not required and the Section 4(f) evaluation process is complete” (USDOT/FHWA 2005c).

5.3.1 HISTORIC SITES

According to FHWA’s question and answer document on the implementation of the *de minimis* provision, “De minimis impacts related to historic sites are defined as the determination of either “no adverse effect” or “no historic properties affected” in compliance with Section 106 of the NHPA (USDOT/FHWA 2013). In concurrence forms signed on May 21, 2015, the SHPO concurred that certain alternatives of each section would have “no effect” or “no adverse effect” on the historic resources according to Section 106 of the NHPA. The SHPO was notified in writing on October 3, 2006, of FHWA’s intention to utilize the SHPO concurrence with “no adverse effect” determinations as the basis of *de minimis* findings. Of the three historic properties listed in Table 5-2, two qualified for *de minimis* findings (the Asheville School and the William Worley House). Their *de minimis* applicability is described in the following sections.

5.3.1.1 Asheville School

The proposed right-of-way takings would not be in proximity to the complex of academic buildings and surrounding grounds of this historic property. The SHPO concurred with a Section 106 determination of “no adverse effect” for all alternatives of Section C for this historic property because there would be minimal right-of-way acquisitions and, taken as a whole, they would not significantly diminish the integrity or historic significance of this property. Therefore, the *de minimis* provision under Section 4(f) is applicable to Section C – Alternative F-1.

5.3.1.2 West Asheville/Aycock School Historic District

The SHPO concurred with a Section 106 determination of “no adverse effect” to this historic property in Section A, as NCDOT has committed to mitigate adverse effect by recouping parking spaces, preserving screening trees, and providing fencing between the greenway and school yard. Revised designs decrease the amount of right of way and easement needed compared to previous designs and would not significantly diminish the integrity or historic significance of this property. Therefore, the *de minimis* provision under Section 4(f) is applicable to Section A – I-240 widening alternative for this resource.

5.3.1.3 William Worley House

The SHPO concurred with a Section 106 determination of “no adverse effect” to this historic property for Section B because there would be minimal right-of-way acquisitions and, taken as a whole, they would not significantly diminish the integrity or historic significance of this property. Therefore, the *de minimis* provision under Section 4(f) is applicable to Section B – Alternative 4-B for this resource.

5.3.1.4 Haywood Street United Methodist Church

The SHPO concurred with a Section 106 determination of “no adverse effect” to this historic property for Section B because there would be minimal right-of-way acquisitions and, taken as a

whole, they would not significantly diminish the integrity or historic significance of this property. Therefore, the *de minimis* provision under Section 4(f) is applicable to Section B – Alternative 4-B for this resource.

5.3.2 ARCHAEOLOGICAL RESOURCES

The SHPO concurred with a Section 106 determination of “no adverse effect” to Site 31BN623, given that the site boundaries would be identified with iron markers, covered, and buried in the proposed fill for the project. The *de minimis* provision under Section 4(f) is applicable to the Section A – I-240 Widening Alternative for this resource.

5.3.3 PARKS AND RECREATION AREAS

De minimis impacts on publicly owned parks, recreation areas, and wildlife and waterfowl refuges are defined as those that do not “adversely affect the activities, features, and attributes” of the Section 4(f) resource” (USDOT/FHWA 2013).

5.3.3.1 Carrier Park

Through coordination with the City of Asheville Parks and Recreation Department, revisions were made to the project to minimize impacts to the French Broad River Greenway and Carrier Park. With these revisions, the City of Asheville agreed by letter that the project would not adversely affect the activities, features, and attributes of the French Broad River Greenway and Carrier Park. NCDOT notified the City of Asheville Parks and Recreation Department that FHWA intended to utilize their agreement that the project would not adversely affect the activities, features, and attributes of the French Broad River Greenway and Carrier Park as the basis of a *de minimis* finding.

It was noted coordination would continue with the City to minimize project impacts to these facilities throughout the design process; therefore, once the preferred alternative designs were refined, the City of Asheville agreed by letter (signed June 24, 2019) that the project would not adversely affect the activities, features, or attributes that qualify Carrier Park for Section 4(f) protection. The letter also notified the City that FHWA confirms the de minimis finding regarding the impacts to the Carrier Park. Documentation of this communication is provided in Appendix G.

5.3.3.2 French Broad River Paddle Trail

Section B – Alternative 4-B would require placing bents in the French Broad River. Paddle accesses, campgrounds, and businesses along the French Broad River will be signed and/or notified by NCDOT prior to and during construction activity. The North Carolina Department of Natural and Cultural Resources – Division of Parks and Recreation agreed by letter (dated August 14, 2018) that the project would not adversely affect the activities, features, or attributes that qualify the French Broad River for Section 4(f) protection, and notified the City that based on this concurrence the FHWA will make a de minimis finding regarding the impacts to the French Broad River. Documentation of this communication is provided in Appendix G.