APPENDIX H APPROVED PRELIMINARY JURISDICTIONAL DETERMINATION AND STREAM DETERMINATION LETTER

Electronically Transmitted and Revised U.S. ARMY CORPS OF ENGINEERS

WILMINGTON DISTRICT

Action Id. SAW-2004-00168 County: New Hanover U.S.G.S. Quad: Castle Hayne

NOTIFICATION OF JURISDICTIONAL DETERMINATION

Property Owner: NCDOT-Division 3

attn: Mr. Mason Herndon

Address: <u>5501 Barbados Blvd</u>

Castle Hayne, NC 28429

Size (acres)+/- 632Nearest TownWilmingtonNearest WaterwaySmith CreekRiver BasinCape FearUSGS HUC3030007CoordinatesLatitude: 34.2378

Longitude: <u>-77,90661</u>

Location description: The project (U-4434)study area extends from Independence Blvd(SR 1209) from the intersection with Randall Parkway and Mercer Ave. to Martin Luther King Jr. Blvd (SR 2649), New Hanover County.

Indicate Which of the Following Apply:

A. Preliminary Determination

X Based on preliminary information, there may be wetlands on the above described property. We strongly suggest you have this property inspected to determine the extent of Department of the Army (DA) jurisdiction. To be considered final, a jurisdictional determination must be verified by the Corps. This preliminary determination is not an appealable action under the Regulatory Program Administrative Appeal Process (Reference 33 CFR Part 331). If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also, you may provide new information for further consideration by the Corps to reevaluate the JD.

B. Approved Determination

- There are Navigable Waters of the United States within the above described property subject to the permit requirements of Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. 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 waters of the U.S. including wetlands on the above described property 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 strongly suggest you have the wetlands on your property delineated. Due to the size of your property and/or our present workload, the Corps may not be able to accomplish this wetland delineation in a timely manner. For a more timely delineation, you may wish to obtain a consultant. To be considered final, any delineation must be verified by the Corps.
 - _ The waters of the U.S. including wetlands on your 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 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 and/or wetlands without a Department of the Army permit may constitute a violation of Section 301 of the Clean Water Act (33 USC § 1311). If you have any questions regarding this determination and/or the Corps regulatory program, please contact Brad Shaver at 910-251-4611 or Brad E.Shaver ausace.army.mil.

C. Basis For Determination: A final jurisdictional determination has not been completed.

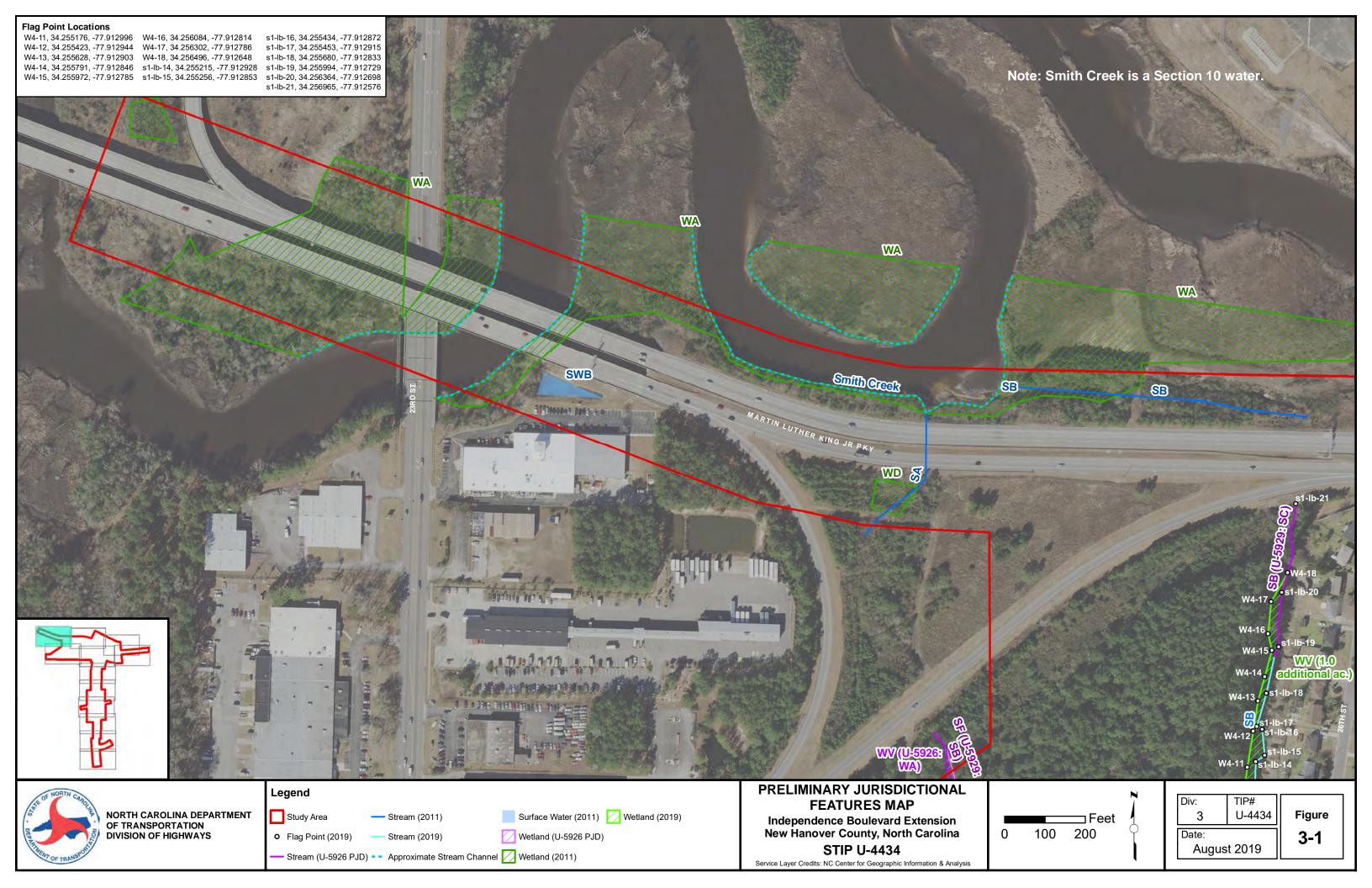
	This updated prelim JD covers an updated PJD effort and is accurately depicted on the attached field			
sketch.	Monte Date: 2019.09.11 Matthews 15:01:54 -04'00'			
Corps Regulatory	y Official:			

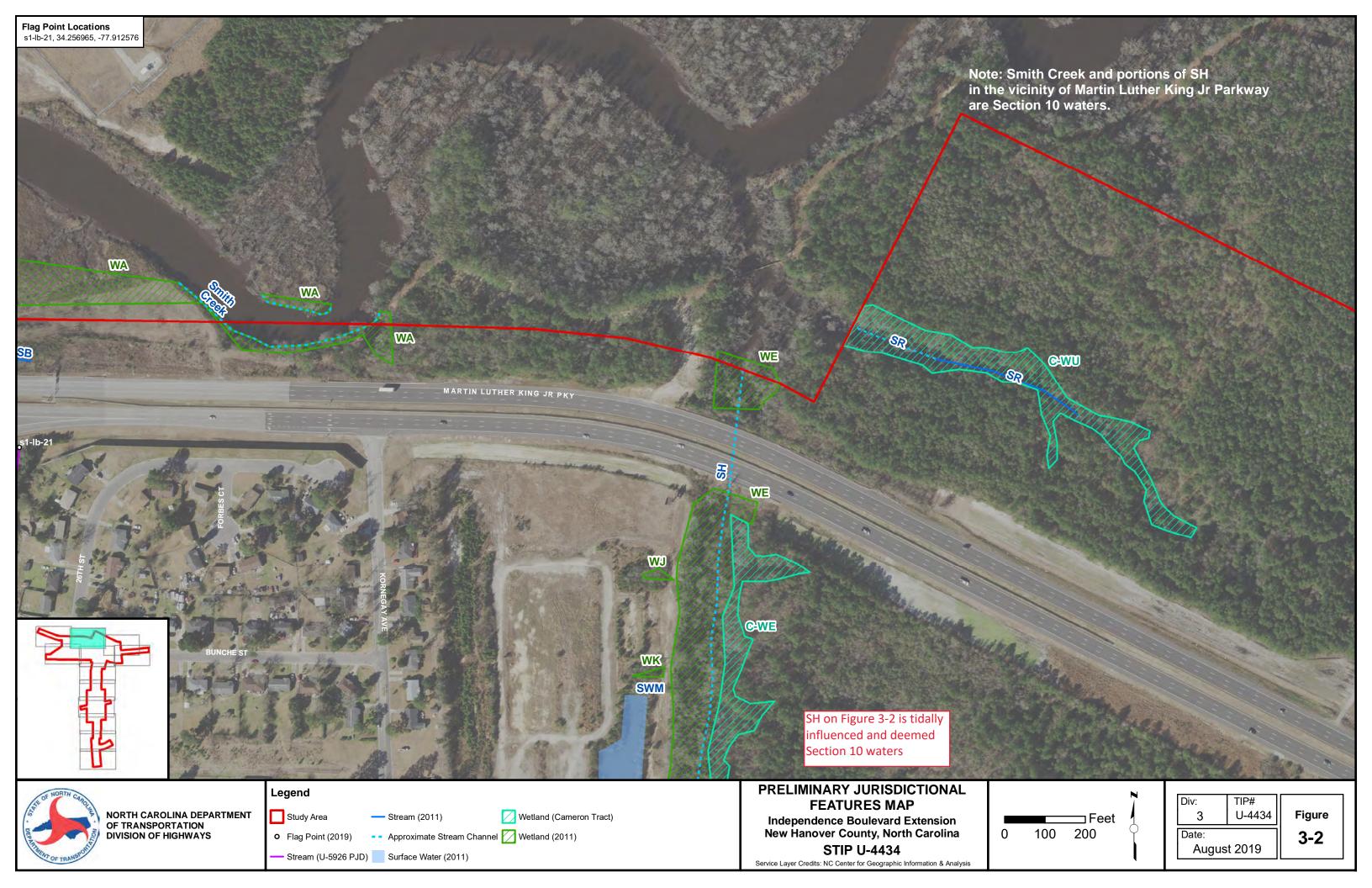
Date: September 11, 2019 Expiration Date: N/A

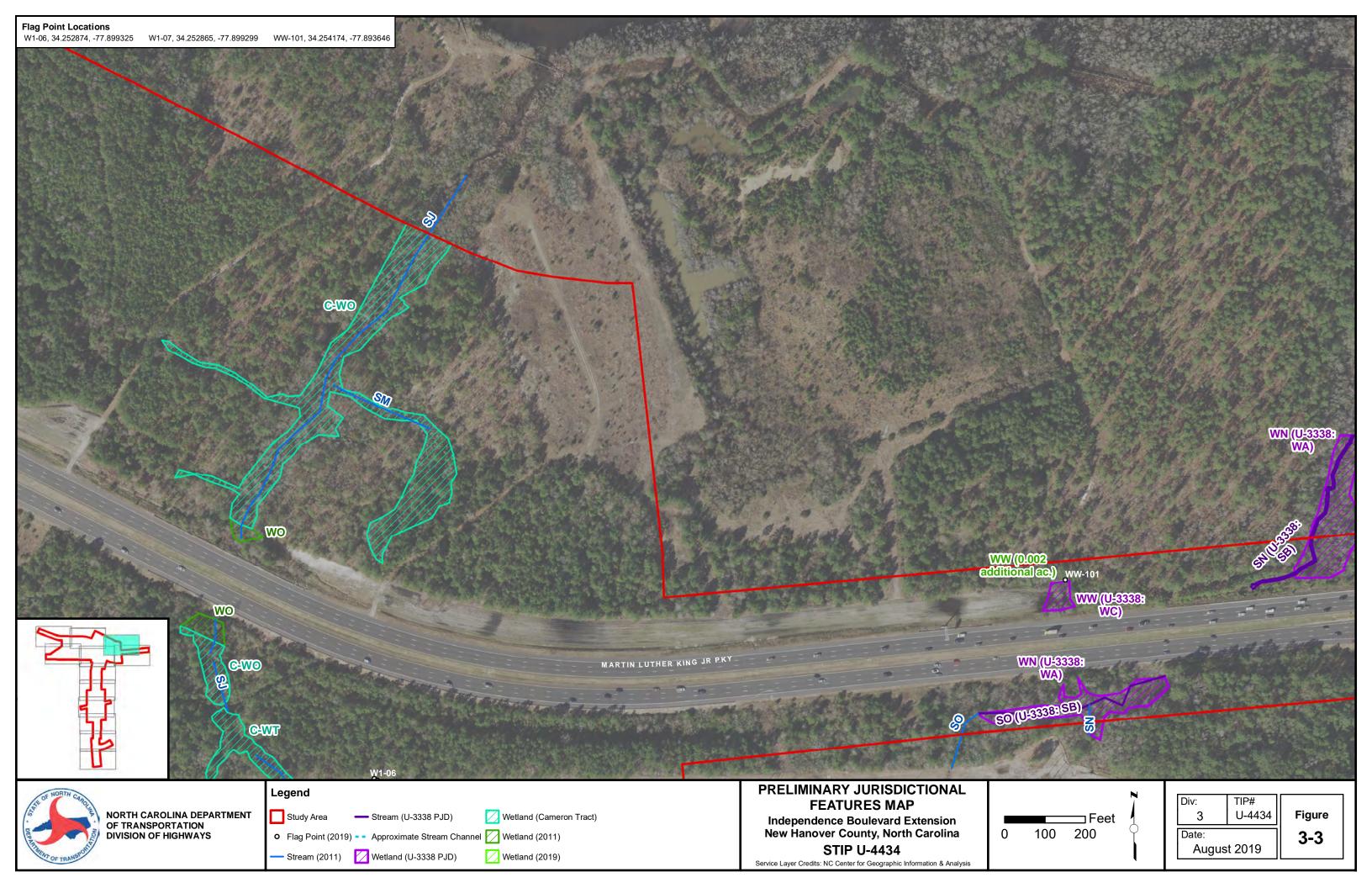
The Wilmington District is committed to providing the highest level of support to the public. To help us ensure we continue to do so, please complete our Customer Satisfaction Survey, located online at http://regulatory.usacesurvey.com/.

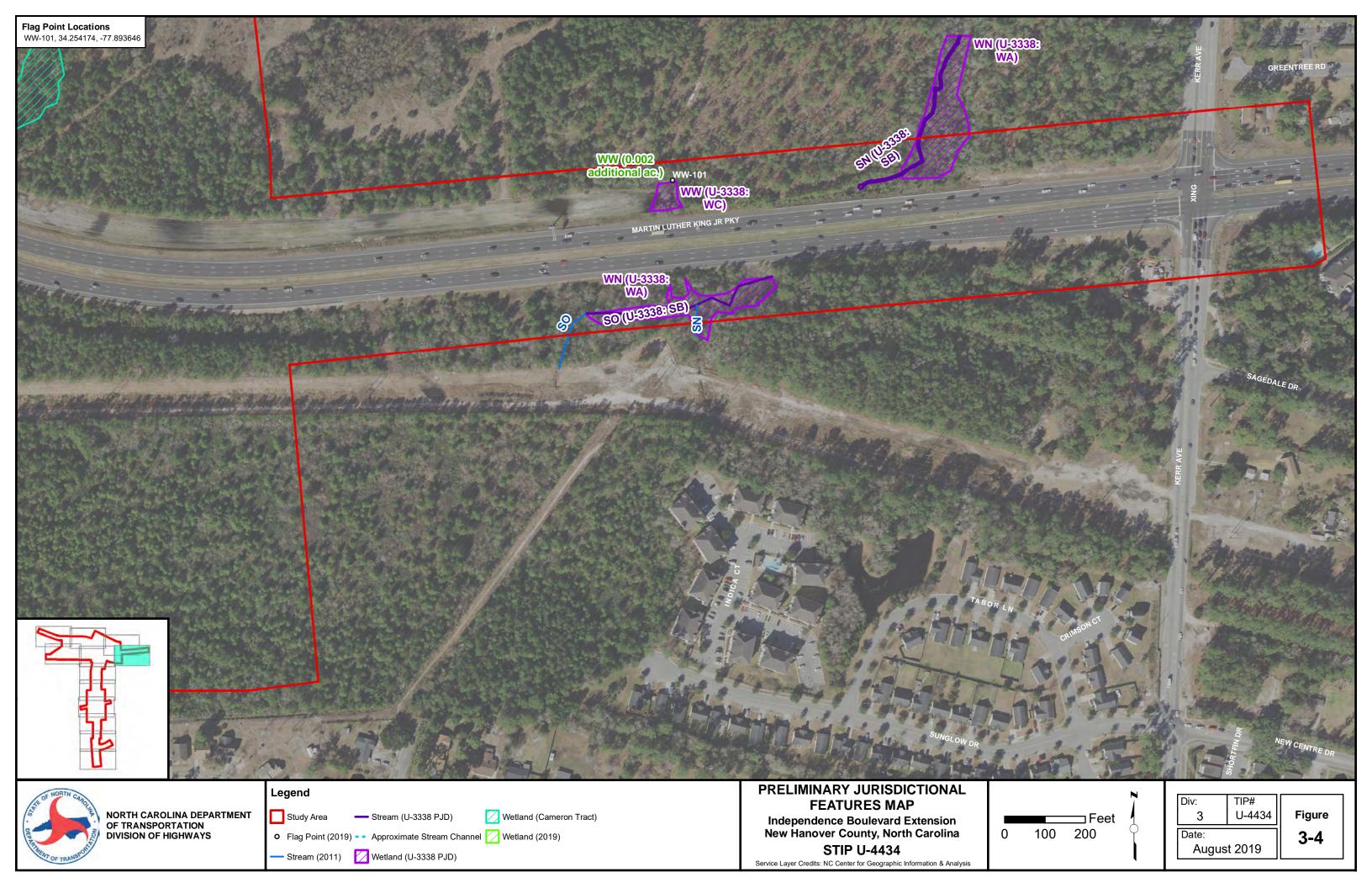
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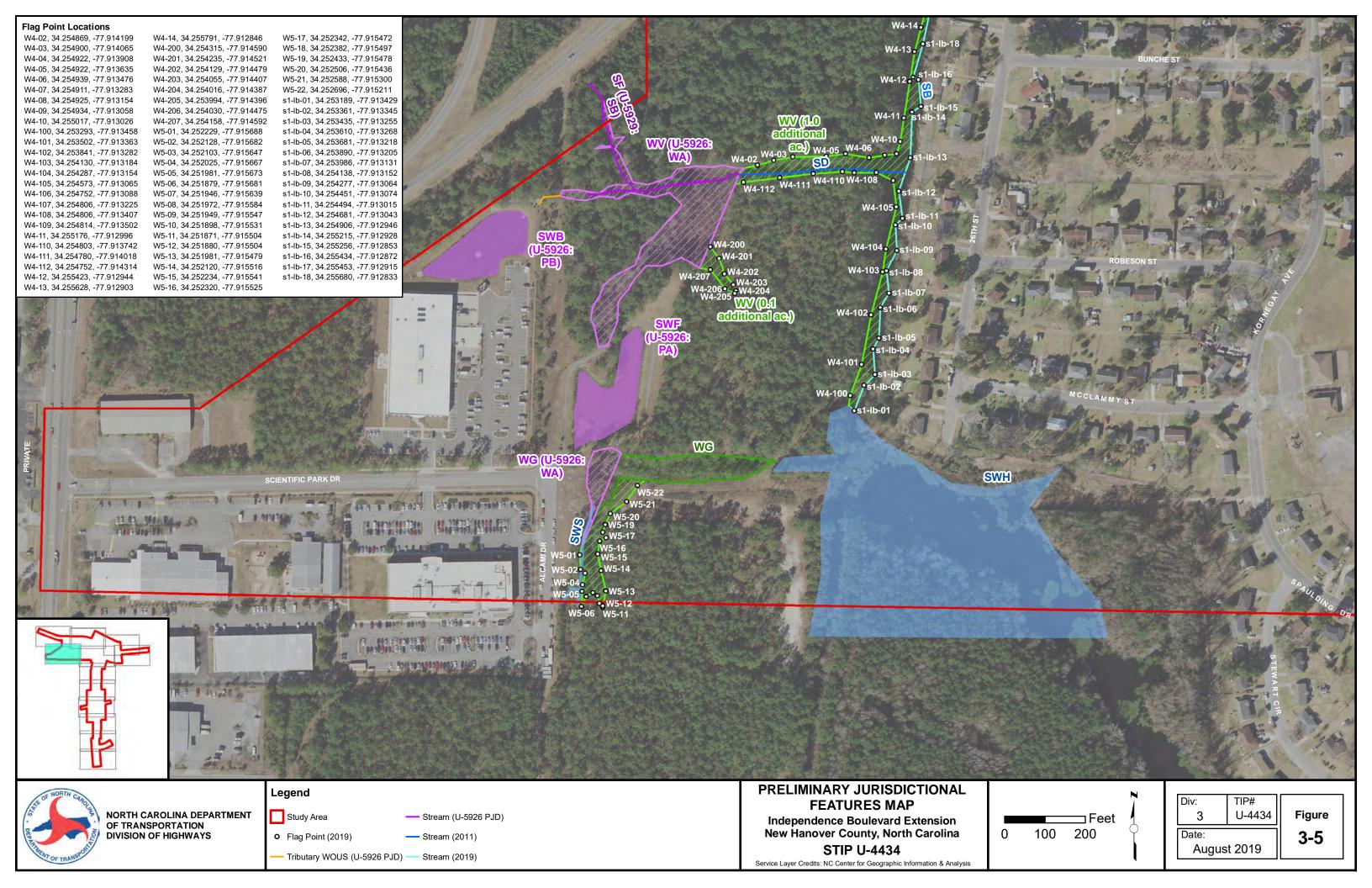
NCDEQ-DWR attn: Ms. Joanne Steenhuis

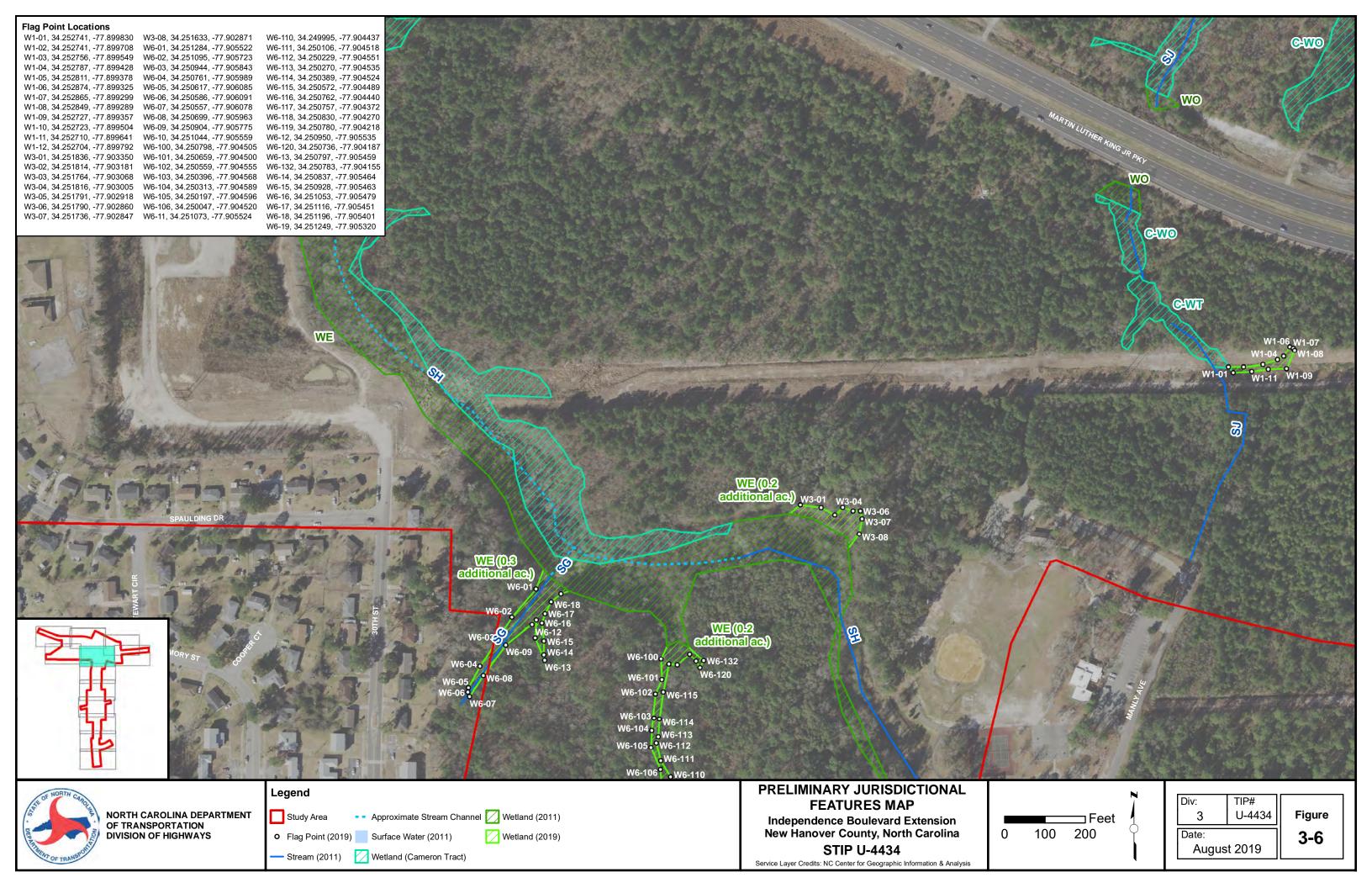


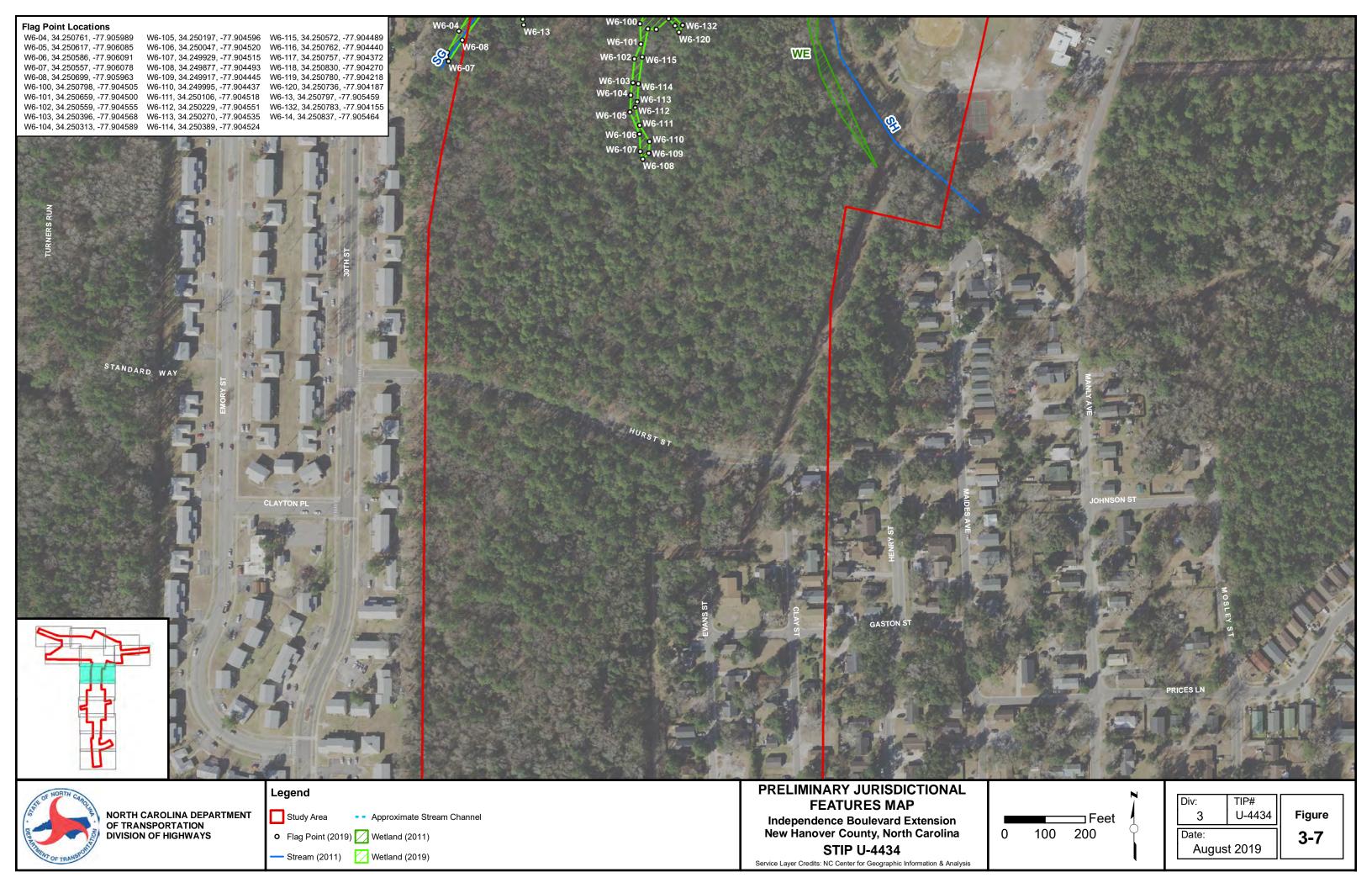


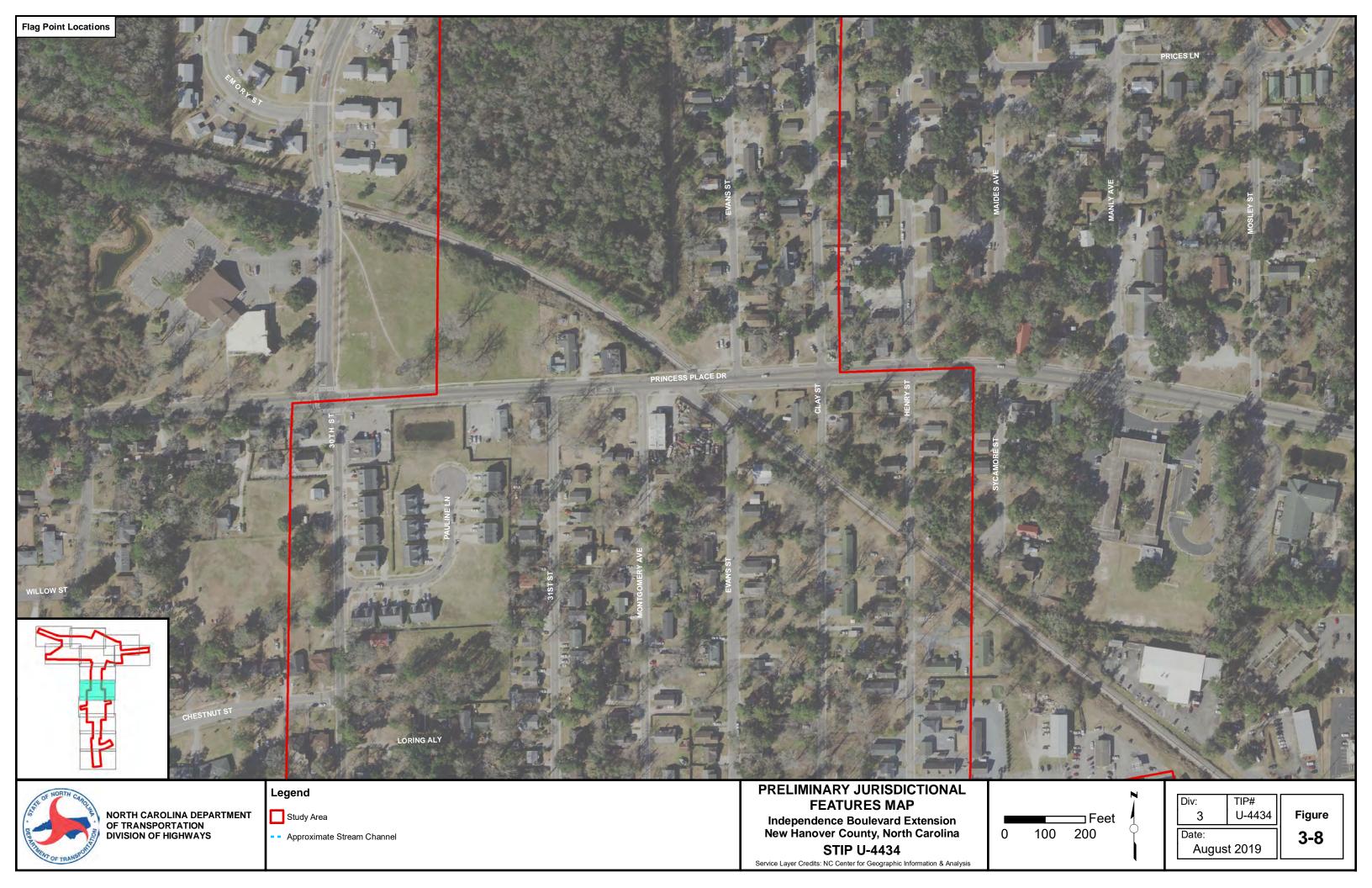


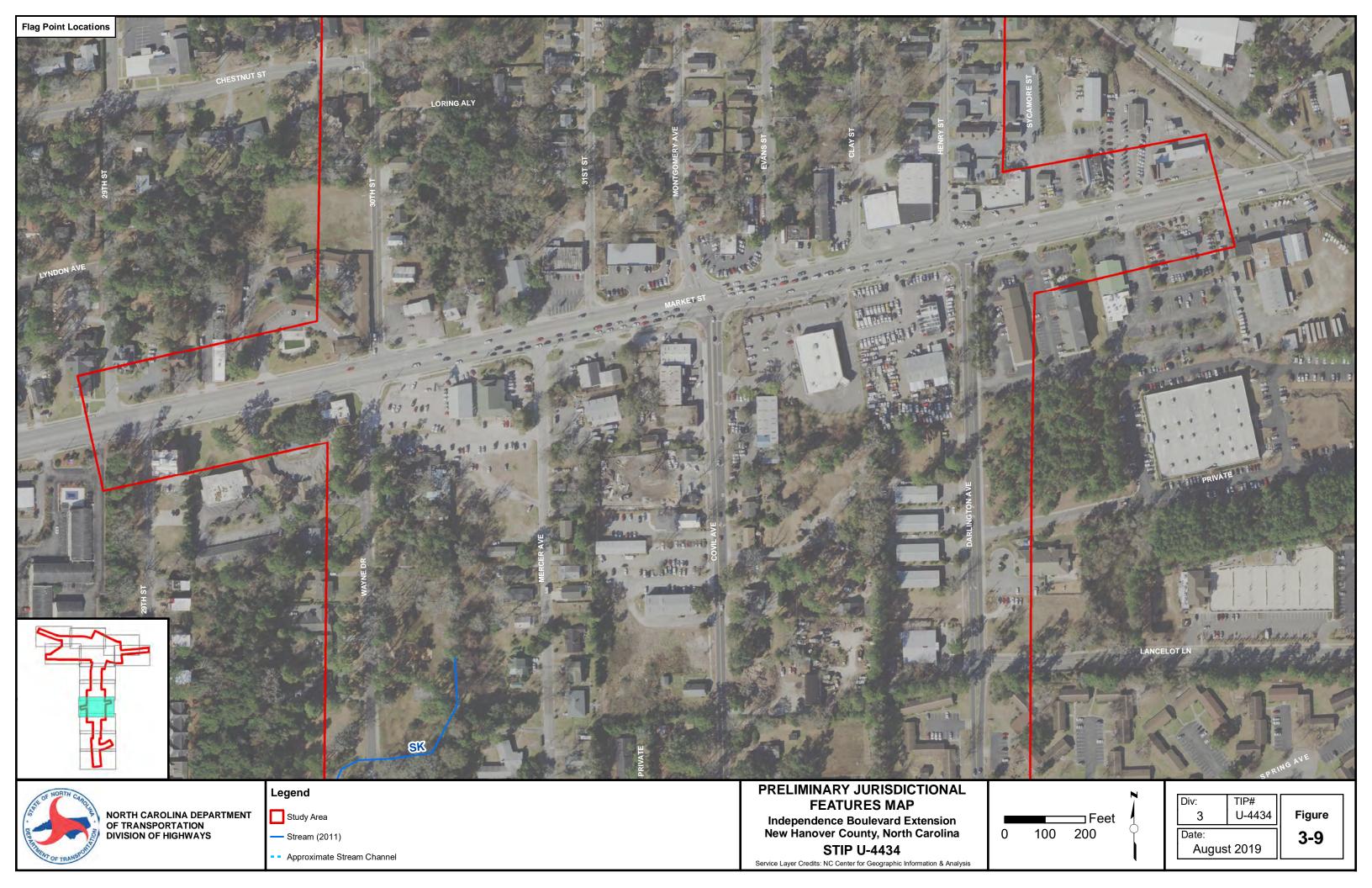


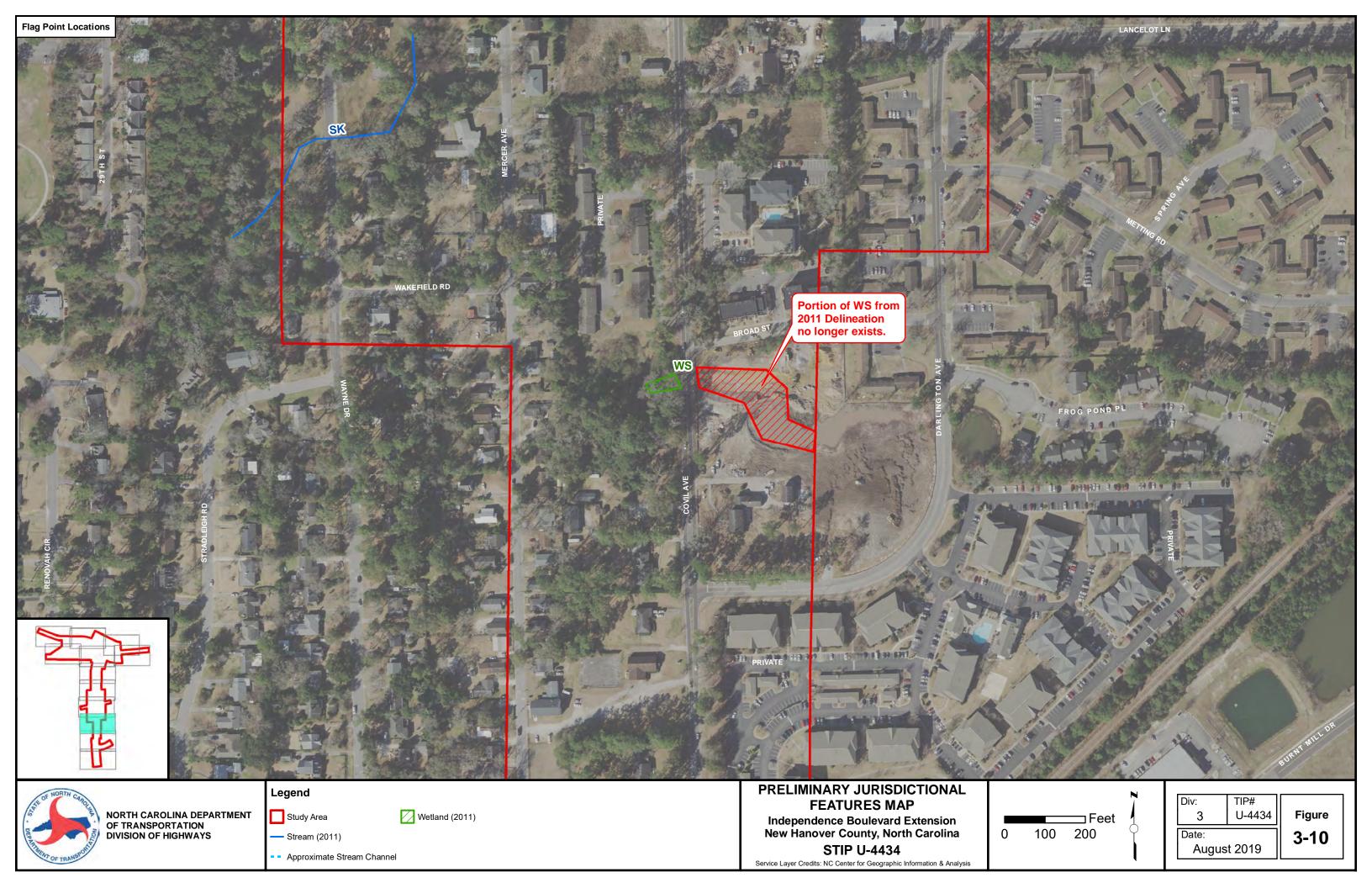


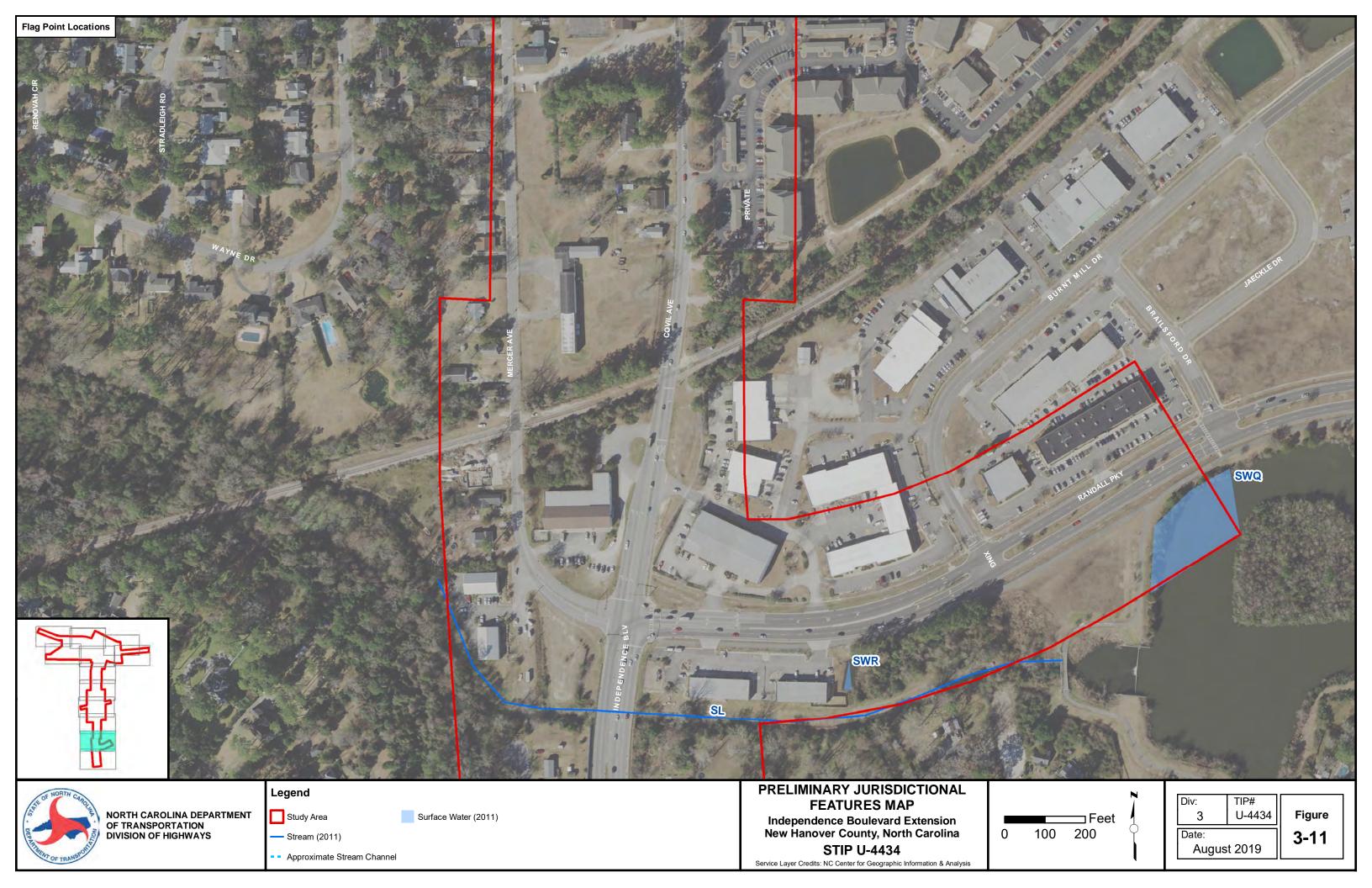


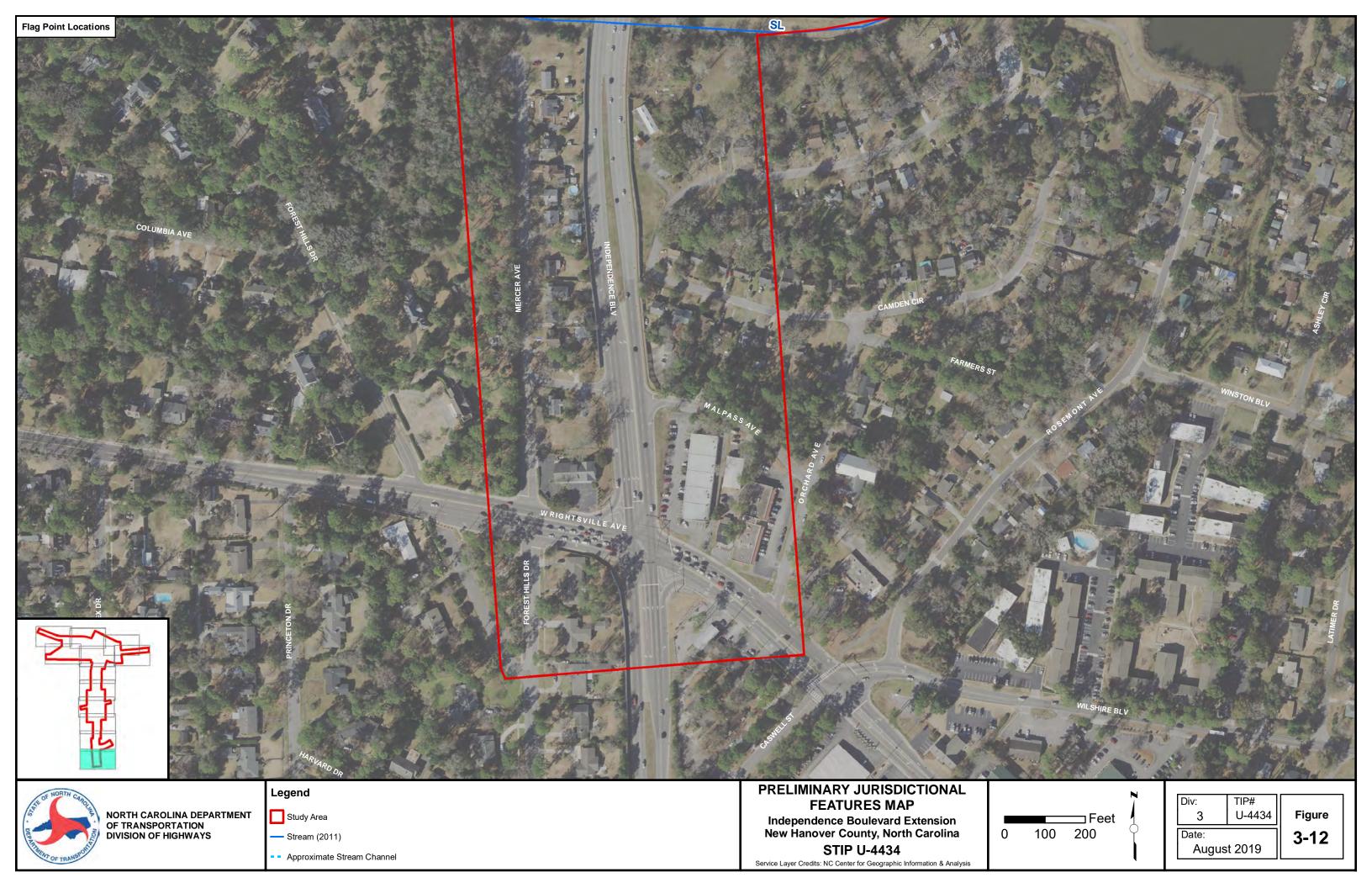












ROY COOPER Governor MICHAEL S. REGAN Secretary LINDA CULPEPPER Director



October 30, 2019

Mason Herndon, Environmental Program Supervisor NC DOT Division 3 5501 Barbados Blvd. Castle Hayne, NC 28429

Subject: NCDOT STIP U-4434, New Hanover County

Smith Creek and Burnt Mill Creek in the Cape Fear River Basin

Revised On-Site Determination for Applicability to the Mitigation Rules (15A NCAC 2H .0506[h])

Dear Mason:

On June 27, 2019, at your request and in your attendance, Joanne Steenhuis, NC Division of Water Resource (NCDWR) staff, conducted an on-site determination to review drainage features located within the addendum area for the Independence Boulevard Extension from the end of the existing Independence Boulevard at Randall Parkway to MLK Parkway, for applicability to the mitigation rules (15A NCAC 2H .0506[h]). Additional site visits were also conducted on August 12, 2019 and August 21, 2019. This letter also references previous stream calls conducted on the original determination for U-4434 in 2011 and 2012, and additional stream call letters written on January 23, 2012 for U-3338 and October 2, 2017 for U-5926. Additional site visits were conducted on October 25, 2019 and October 30, 2019 in order to identify and reconfirm the stream types for the 2011 and 2012 stream call letters. The drainage features are approximated on the attached maps signed and dated September 11, 2019.

Stream Name	River Basin	Stream Type	Stream Classifi- cation	Stream Index Number
UT to Smith Creek (SA)	Cape Fear	Intermittent	C;Sw	18-74-63
UT to Smith Creek (SB)** (SC in U-5926)	Cape Fear	Perennial	C;Sw	18-74-63
UT to Smith Creek (SD)**(SA in U 5926)	Cape Fear	Intermittent/Perennial from the Beaver Dam	C;Sw	18-74-63
UT to Smith Creek (SF)**	Cape Fear	Intermittent	C;Sw	18-74-63
UT to Smith Creek (SG)	Cape Fear	Perennial	C;Sw	18-74-63
UT to Smith Creek (SH)	Cape Fear	Perennial	C;Sw	18-74-63
UT to Smith Creek (SJ)	Cape Fear	Perennial	C;Sw	18-74-63
UT to Burnt Mill Creek (SK)	Cape Fear	Intermittent	C;Sw	18-74-63-2
UT to Burnt Mill Creek (SL)	Cape Fear	Perennial	C;Sw	18-74-63-2
UT to Smith Creek (SM)	Cape Fear	Intermittent	C;Sw	18-74-63
UT to Smith Creek (SN)	Cape Fear	Perennial	C;Sw	18-74-63
UT to Smith Creek (SO)***	Cape Fear	Perennial	C;Sw	18-74-63
UT to Smith Creek (SR)	Cape Fear	Intermittent/Perennial from the wetland finger	C;Sw	18-74-63

^{**} SB, SD and SF reference the stream call letter for U-5926 dated October 2, 2017

^{***} SO reference the stream call letter for U-3338 dated January 23, 2012



Please note that other sites identified in the jurisdictional determination in previous determinations will be considered accurate as presented. This letter only addresses the applicability to the mitigation rules, the Waters of the United States, or Waters of the State. Any impacts to wetlands and/or streams must comply with the 404/401 regulations, water supply regulations (15A NCAC 2B .0216), and any other required federal, state and local regulations. Please be aware that the USACE may require mitigation for impacts to intermittent and perennial streams, NCDWR limits mitigation to perennial streams with impacts greater than 300 linear feet.

The owner (or future owners) or permittee should notify NCDWR (and other relevant agencies) of this determination in any future correspondences concerning this property and/or project. This on-site determination shall expire five (5) years from the date of this letter.

Landowners or affected parties that dispute a determination made by NCDWR or Delegated Local Authority that a surface water exists and that it is subject to the mitigation rules may request a determination by the Director. A request for a determination by the Director shall be referred to the Director in writing c/o Amy Chapman, NCDWR Wetlands/401 Unit, 1617 Mail Service Center, Raleigh, NC 27699-1617.

Individuals that dispute a determination by NCDWR or Delegated Local Authority that "exempts" a surface water from the mitigation rules may ask for an adjudicatory hearing. You may obtain the petition form from the office of Administrative hearings. You must file the petition with the office of Administrative Hearings within sixty (60) days of receipt of this notice and the date the affected party (including downstream and adjacent landowners) is notified of this decision. A petition is considered filed when it is received in the office of Administrative Hearings during normal office hours. The Office of Administrative Hearings accepts filings Monday through Friday between the hours of 8:00am and 5:00pm, except for official state holidays. The original and one (1) copy of the petition must be filed with the Office of Administrative Hearings.

The petition may be faxed-provided the original and one copy of the document is received by the Office of Administrative Hearings within five (5) business days following the faxed transmission. The mailing address for the Office of Administrative Hearings is:

Office of Administrative Hearings 6714 Mail Service Center Raleigh, NC 27699-6714

Telephone: (919) 431-3000, Facsimile: (919) 431-3100

A copy of the petition must also be served on DEQ as follows:

Mr. Sam M. Hayes, General Counsel Department of Environmental Quality 1601 Mail Service Center Raleigh, NC 27600-1601

This determination is final and binding unless you ask for a hearing within 60 days.

If you have any additional questions or require additional information, please contact me at (910) 796-7306 or joanne.steenhuis@ncdenr.gov.

Sincerely.

Joanne Steenhuis, Environmental Specialist II

Division of Water Resources

Attachments: Figure 3 (Figures 1 – 12) (12 pages)

Electronic copy only distribution:

Brad Shaver, US Army Corps of Engineers, Wilmington Field Office

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