



**US Army Corps  
Of Engineers**  
Wilmington District

# PUBLIC NOTICE

Issue Date: October 14, 2015  
Comment Deadline: November 13, 2015  
Corps Action ID Number: SAW-2013-01159

The Wilmington District, Corps of Engineers (Corps) received an application from Mr. Marcus Jones, Director of Engineering for Henderson County seeking Department of the Army authorization for 1,792 linear feet (lf) of stream impacts (1,600 lf of existing, unauthorized stream impacts and 192 lf of new stream impacts) and 0.01 acres of new impacts to jurisdictional wetlands, associated with the completion of subdivision road infrastructure and permitting of existing, unauthorized stream impacts in the 302-acre bonded phases at the residential development known as Seven Falls in Etowah, Henderson County, North Carolina.

Specific plans and location information are described below and shown on the attached plans. This Public Notice and all attached plans are also available on the Wilmington District Web Site at <http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram.aspx>

**Applicant:** Mr. Marcus Jones, Director of Engineering  
Henderson County  
1 Historic Courthouse Square  
Hendersonville, North Carolina 28792

**AGENT:** Mr. Clement Riddle  
ClearWater Environmental Consultants, Inc. (CEC)  
32 Clayton Road  
Asheville, North Carolina 28801

## Authority

The Corps evaluates this application and decides whether to issue, conditionally issue, or deny the proposed work pursuant to applicable procedures of the following Statutory Authorities:

- Section 404 of the Clean Water Act (33 U.S.C. 1344)
- Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403)
- Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413)

## **Location**

From U.S. Highway 64 in Etowah, turn south onto Etowah Park Road. Travel approximately 0.2 mile and turn left onto Etowah School Road. Travel approximately 1.5 miles and turn right onto Pleasant Grove Road. Travel approximately 0.8 miles, the project site is south of Pleasant Grove Road.

In general, the site is bordered to the north by the Pleasant Grove Road, to the south by unnamed tributaries to Little Willow Creek and Folly Creek, to the east by Judd Wilson Mountain and Folly Road, and to the west by Pleasant Grove Church Road.

Project Area (acres): 302  
Nearest Town: Etowah  
Nearest Waterway: UTs Folly Creek, Folly Creek, UTs Little Willow Creek, and  
Little Willow Creek  
River Basin: Upper French Broad (06010105)  
Latitude and Longitude: 35.28378 N, -82.58937 W

## **Existing Site Conditions**

The proposed Seven Falls Bonded Phases project is a 302-acre area site included in bonded phases that were originally a part of the 1,400-acre Seven Falls Golf and River Club residential development. The area of the bonded phases includes residential lots platted and recorded with Henderson County. Property outside of the designated bonded phases is not included in the proposed project. Approximately 1,667 linear feet of existing stream impacts where measured in the bonded phases. Existing stream impacts were associated with partial development of the Seven Falls Golf and River Club. The original permit authorization for the Seven Falls Golf and River Club was revoked by the Corps in April of 2010; therefore, existing impacts to jurisdictional streams and wetlands at the property are unauthorized.

In 2007, the Corps, NC Division of Water Resources (DWR), and Henderson County received applications on behalf of Mountain Development Company, LLC (later renamed Seven Falls, LLC) for the Seven Falls Golf and River Club development. This development included 40 different parcels of land totaling approximately 1,400 acres. The applicant originally proposed a total of 900 residential units which included 700 single-family lots, 164 town homes, and 36 condominiums. Amenities included a golf course, a river club, and hiking trails.

In July of 2007, Henderson County and the developer entered into a performance guarantee agreement which provides financial security to complete proposed infrastructure improvements and allow the developer to record and sell lots before all the required infrastructure is complete. The improvement guarantee included roads, water, and sewer infrastructure, but did not include the golf course, club house and other amenities. The purpose of an improvement guarantee is to ensure that the bonded infrastructure is completed in case of default by the developer. Approximately 125 residential lots were sold between July of 2007 and December of 2008.

The DWR issued a Water Quality Certification for the project in January of 2008, and the Corps issued a Department of the Army Permit in August of 2008. The Corps permit was revoked in April of 2010 due to on-going non-compliance. The Corps cited impacts to over 2,500 linear feet of stream and failure to provide the permit required compensatory mitigation.

In June of 2010, Henderson County declared that the Seven Falls Golf and River Club development was in default of the performance guarantee and the developer failed to complete the required infrastructure improvements. Since June of 2010, Henderson County has actively pursued all legal avenues available in order to obtain the bond money designated to complete the infrastructure improvements within the Seven Falls bonded phases boundary.

In October of 2012, Henderson County reached a settlement with Lexon Insurance Company regarding the bond provided by Lexon for development work within the bonded phases of the Seven Falls Golf and River Club property. Henderson County received 6 million dollars in bond funds. At that time, Henderson County did not believe that the bond money would cover the cost of all bonded improvements.

The Henderson County Board of Commissioners, at its meeting in January of 2013, directed the County Attorney to send a letter on behalf of the Board to all entities with a property interest in the Seven Falls Golf and River Club development. The purpose of the letter was to invite all stakeholders to a meeting with the purpose of attempting to set up a method of negotiating an agreement on how to allocate bond funds. In March 2013, after failure to reach an agreement, a law suit was filed by Henderson County against all interested parties in the Seven Falls Golf and River Club development which asked the Court for guidance as how the bond funds should be spent. Included in this suit was a motion for "Partial Summary Judgment for Emergency Relief." This motion requested the Court release monies from bond funds for remediation, site stabilization, fixing or adding to current soil erosion measures, and seeding. This motion was granted by the Court in May of 2013 and stabilization activities were completed in the summer of 2013.

In February of 2015, the Superior Court Judge ordered a continuance in the Seven Falls matter to allow Henderson County to obtain permits from the Corps and DWR. A hearing was held in May of 2015 and the Court approved monies from bond funds could be spent on activities associated with acquiring permits for improvements to road infrastructure (all permits, not just 401 and 404) and obtaining bids for construction. Bid requests would be made only after all permits are secured. Bids would be presented to the Court and the Court would order allocation of bond funds for construction of the roads. Construction activities cannot proceed until a Court motion is granted which dictates the allocation of funds.

The Seven Falls bonded phases area is almost entirely forested with exception of an extensive abandoned road network in various stages of completion. There are also remnants of old agricultural fields on site. The site is mountainous with elevations ranging from 2,080 above mean sea level (MSL) near Pleasant Grove Road to 2,520 feet above MSL at the southern boundary.

Six natural community types were identified within the bonded phases boundary: riparian forest, red oak-hickory forest, old fields, wetlands, streams, and open water. The following is a summary of each of the six habitat types identified on site.

Riparian forest community type is located in sheltered areas at low to moderate elevations. They are primarily narrow, rocky gorges, steep ravines, and low gentle ridges within coves. Soils are generally rocky and acidic. On site, this community type is scattered throughout the central and southern portions of the property. They are located adjacent to stream channels and within the stream channels' associated valleys. In general, these areas have a dense forest canopy with a limited number of mesophytic trees. Dominant tree species observed include white pine (*Pinus strobus*), Canadian hemlock (*Tsuga canadensis*), yellow birch (*Betula lutea*), black gum (*Nyssa sylvatica*), red oak (*Quercus rubra*), and white oak (*Quercus alba*). The shrub layer is well developed and often forms dense thickets. Shrub species observed include great rosebay rhododendron (*Rhododendron maximum*), mountain laurel (*Kalmia latifolia*), dog hobble (*Leucothoe axillaris*), American holly (*Ilex opaca*), and red maple (*Acer rubrum*). Less common shrub species observed include blueberry (*Vaccinium pallidum*), deerberry (*Vaccinium stamineum*), and sassafras (*Sassafras albidum*). The herbaceous layer is generally not well developed in these communities but some common species observed on site include Christmas fern (*Polystichum acrostichoids*), galax (*Galax aphylla*), and Indian cucumber root (*Medeola virginiana*).

The red oak-hickory forest type is located on dry slopes and ridge tops. On site, this community type is scattered throughout the central and southern portions of the property. Dominant tree species include Virginia pine (*Pinus virginiana*), white oak, southern red oak (*Quercus falcata*), sweet pignut hickory (*Carya glabra* var. *odorata*), mockernut hickory (*Carya tomentosa*), and shagbark hickory (*Carya ovata*). Other trees observed were sourwood (*Oxydendron arboreum*), black gum, and yellow poplar (*Liriodendron tulipifera*). Conifers such as red cedar (*Juniperus virginiana*), white pine, Virginia pine, and Canadian hemlock were observed but rare in this habitat. Species observed in the midstory include sassafras, flowering dogwood (*Cornus florida*), and American holly. Shrubs observed in this habitat include mountain laurel, great rosebay rhododendron, huckleberry (*Gaylussacia baccata*), American hazelnut (*Corylus americana*), maple leaf viburnum (*Viburnum acerifolium*), blueberry, and deerberry. Vines such as common greenbriar (*Smilax rotundifolia*) and saw tooth greenbriar (*Smilax bona-nox*) were observed, as well. The herbaceous layer is sparse and patchy. Common species observed in this layer include false Solomon's seal (*Maianthemum racemosum*), false yellow foxglove (*Aureolaria flava*), goldenrod (*Solidago* spp.), whorled coreopsis (*Coreopsis major*), spotted wintergreen (*Chimaphila maculatum*), woodland sedge (*Carex rosea*), and panic grasses (*Panicum* spp.).

An anthropogenic community (old field) is a direct result of prior dairy farming activities and ongoing agricultural practices. On site, this community is located north of the old trout farm and on the property adjacent to Pleasant Grove Church Road. These areas are devoid of a canopy and lack substantial woody vegetation. Plant species identified in this area include pokeberry (*Phytolacca americana*), blackberry (*Rubus* spp.), lanceleaf plantain (*Plantago lanceolata*), Queen Anne's lace (*Daucus carota*), dock (*Rumex crispus*), evening primrose (*Oenothera biennis*), horsenettle (*Solanum americanum*), buttercup (*Ranunculus* spp.), thin leaf mountain mint (*Pycnanthemum tenuifolium*), mountain mint (*Pycnanthemum* spp.), and butterfly weed



(*Asclepias tuberosa*). Composites observed in the herbaceous layer include alternate leaf wing stem (*Verbesina alternifolia*), crownbeard (*Verbesina occidentalis*), ironweed (*Vernonia noveboracensis*), whorled coreopsis, beggars ticks (*Bidens cernua*), fleabane (*Erigeron philadelphicus*), sunflower (*Helianthus spp.*), Indian pliantain (*Cacalia muhlenbergii*), round leaf eupatorium (*Eupatorium rotundifolium*), goldenrod, and aster (*Aster spp.*). Grasses observed include corn (*Zea mays*), foxtail millet (*Setaria italica*), barnyard grass (*Echinochloa crusgalii*), fescue (*Festuca spp.*), panic grass, and velvet grass (*Holcus lanatus*).

There is 0.79 acre of wetlands on site. These areas exhibit the presence of hydric soil, hydrophytic vegetation, and evidence of wetland hydrology and connectivity. The wetlands on this site are composed of stream head seeps and wetlands resulting from the neglect and failure of sediment and erosion control measures. Dominant trees observed were red maple and black willow (*Salix nigra*). Shrub species observed included Chinese privet (*Ligustrum sinense*), elderberry (*Sambucus canadensis*), silky willow (*Salix sericea*), tag alder (*Alnus serrulata*), swamp haw (*Viburnum nudum*), pepper bush (*Clethera acuminata*), dog hobble, and yellow root (*Xanthorhiza simplicissima*). Dominant species in the herbaceous layer include microstegium (*Microstegium vimineum*), downy lobelia (*Lobelia pubera*), jewelweed (*Impatiens capensis*), stinging nettle (*Urtica dioica*), ironweed, and green coneflower (*Rudbeckia lacinata*). Grasses and sedges were common and included soft rush (*Juncus effusus*), marginal rush (*Juncus marginatus*), American bur reed (*Sparganium americanum*), shallow sedge (*Carex lurida*), fringed sedge (*Carex crinita*), fox tail sedge (*Carex vulpinoidea*), yellow flatsedge (*Cyperus flavescens*), straw-color flatsedge (*Cyperus strigosus*), soft stem bulrush (*Scirpus validus*), and woolgrass bulrush (*Scirpus cyperinus*). Ferns observed include cinnamon fern (*Osmunda cinnamomea*), royal fern (*Osmunda regalis*), and netted chain fern (*Woodwardia areolata*).

Freshwater habitats include the streambeds and banks of Little Willow Creek and Folly Creek, and their unnamed tributaries. There are approximately 3.5 miles of stream channels within the bonded phases boundary. In general, these tributaries flow south to north and eventually into the French Broad River. Streams within the central and southern portion of the property are bordered by mature riparian forest. Stream channels north of the old trout farms and flowing through the old fields lack any significant riparian buffer. Despite a large influx of sediment during construction of roads in 2008, stream channels are recovering and are in good to fair condition.

Three small on-line impoundments exist in succession adjacent to Folly Creek. This system impounds approximately 0.31 acre (collectively) of an unnamed tributary to Folly Creek.

The Seven Falls bonded phases project site is located within the Blue Ridge Mountain physiographic region of North Carolina and more specifically the Broad Basin and Southern Crystalline Ridges and Mountains Ecoregions. Two soil associations are present on site; they are the Codorus-Toxaway-Rosman association and the Evard-Edneyville-Ashe association. The Corodus-Toxaway-Rosman association is classified as nearly level, well drained to very poorly drained soils that have a loamy and sandy subsoil and underlying layer. This association is found on floodplains. The Evard-Edneyville-Ashe association is classified as sloping to very steep, well drained, and somewhat excessively drained soils that have a loamy subsoil. This soil association is found on mountain ridgetops and side slopes. Soil series present on site include: Ashe, Bradson, Brevard, Edneyville, Evard, Hayesville, Tate, Toxaway, and Tusquitee.

Wildlife species inhabiting the site include those typically found in the forest types of the region previously described. Although site-specific studies and inventories documenting species utilization of the Seven Falls bond phases project area have not been conducted, general observations of fish and wildlife use were recorded during the stream and wetland delineation, and on-site meetings.

A file review of records maintained by the U.S. Fish and Wildlife Service (FWS) and North Carolina Natural Heritage Program (NHP) was conducted. The FWS lists 8 species as occurring in Henderson County that are subject to consultation under Section 7 of the Endangered Species Act. The NHP database identifies 11 element occurrences (EO) within a 2-mile radius of the project site; 7 EOs, comprised of 3 species, hold a Federal status and are subject to Section 7 consultation. The Federally listed species identified by the FWS and NHP are listed below.

<b>Common Name</b>	<b>Scientific Name</b>	<b>Status</b>
bog turtle	<i>Glyptemys muhlenbergii</i>	T(S/A)
Carolina northern flying squirrel	<i>Glaucomys sabrinus coloratus</i>	E
northern long-eared bat (NLEB)	<i>Myotis septentrionalis</i>	T
Appalachian elktoe**	<i>Alasmidonta raveneliana</i>	E
bunched arrowhead	<i>Sagittaria fasciculata</i>	E
mountain sweet pitcher plant**	<i>Sarracenia rubra ssp. jonesii</i>	E
small whorled pogonia	<i>Isotria medeoloides</i>	T
swamp pink**	<i>Helonias bullata</i>	T
white Irisette	<i>Sisyrinchium dichotomum</i>	E

\*\*Species with a Federal status subject to Section 7 consultation and within 2 miles of the project site.

Habitat assessments for Seven Falls Golf and River Club, including the bonded phases area, were conducted in April and May of 2007. Potential fauna were identified to the taxonomic unit level necessary to determine if the observed specimen was a protected species. A “Threatened and Endangered Species Assessment” was included in the original Seven Falls Golf and River Club permit application. Changes to site conditions since the time of the original assessment include clearing of land and installation of roads, and clearing/under-brushing riparian areas. Because site conditions have remained relatively unchanged, with exception of those changes listed above, the Corps’ opinion is the previous threatened and endangered species report is still valid. The Corps, CEC, nor FWS have not observed listed species during 2007, 2008, or during multiple site visits in 2014 and 2015.

Summer habitat for NLEB is present on site. Most tree clearing associated with road infrastructure has already occurred. Minor tree clearing will be needed in the vicinity of the proposed access road near Gore Lake. This tree clearing will occur outside of the May 15-August 15 moratorium. In the event that additional tree clearing is needed during the May 15-August 15 moratorium, the applicant would consult with the FWS prior to tree cutting activities.

A survey for Appalachian elktoe in the French Broad River was conducted in April of 2008. No live or dead native mussels were found in the survey area. The French Broad River adjacent to the Seven Falls Golf and River Club was reported to have been significantly affected by

sedimentation from upstream sources, and a heavy bed load of coarse, shifting sand was found in all depositional areas and in many erosional habitats. Riparian areas adjacent to the French Broad River were selectively cleared during construction activities associated with development of the Seven Falls Golf and River Club, and river conditions have likely not improved since the original survey. Because site conditions have remained relatively unchanged, with exception of those changes listed above, the Corps' opinion is the previous Appalachian elktoe survey is still valid. Additionally, the proposed bonded phases project no longer abuts the French Broad River and the nearest developable lot in the bonded phases is greater than 1,400 feet from the river.

The FWS will be notified via Public Notice about the project and will be given the opportunity to comment on the project and its potential effects on Federally listed species and their habitat.

In November of 2007, the Corps notified the NC State Historic Preservation Office (SHPO) and Tribal Historic Preservation Office (THPO) via Public Notice of the site development at the proposed Seven Falls Golf and River Club. In December of 2007, the THPO commented on the project indicating that cultural resources important to the Cherokee people may be threatened due to proposed ground disturbance at the site. In January of 2008, the SHPO recommended a comprehensive survey of the Seven Falls Golf and River Club project site (which includes the Seven Falls bonded phases). In February of 2007, an intensive archaeological survey at the proposed Seven Falls Golf and River Club project site was conducted. During the survey, 34 sites and 16 isolated finds were located within the Seven Falls Golf and River Club project boundary. Six sites were recommended eligible for listing in the National Register of Historic Places; all other sites were recommended ineligible. Of the 6 eligible sites, 1 site (31HN220) is located within the Seven Falls bonded phases project boundary.

In May of 2008, the Corps determined that proposed activities at the Seven Falls Golf and River Club may adversely affect the 6 eligible historic and cultural sites. The Corps developed a Memorandum of Agreement (MOA) to mitigate potential adverse effects to the sites. The MOA was signed by interested parties in July and August of 2008. The MOA included data recovery excavations at all 6 eligible sites, including 31HN220; however, data recovery was never completed. Site 31HN220 was partially impacted by road construction (vegetation clearing and grading) associated with development of the Seven Falls Golf and River Club. Currently, site 31HN220 is contained within the road right-of-way and a platted residential lot. At present, development is not proposed at this lot. However, road construction would be completed in accordance with the performance bond. The MOA was nullified when the Corps' 404 permit was revoked. Henderson County has not been granted development rights for individual lots. As such, Henderson County cannot pursue data recovery for 31HN220 at this time.

The SHPO will be notified via Public Notice about the project and will be given the opportunity to comment on the project and its potential effects on archaeological and cultural resources.

A delineation of jurisdictional waters of the U.S. within the Seven Falls Golf and River Club property was conducted from November of 2006 to January of 2007 by CEC. The jurisdictional determination was field verified by the Corps in March and April 2007. However, a "Notice of Jurisdictional Determination" was never issued due to the *Rapanos v. United States* court case [547 US 715 (2006)] that was pending at the time.

The area within the Seven Falls bonded phases boundary was re-delineated in June of 2015. A “Request for Jurisdictional Determination” was submitted to the Corps on July 30, 2015 and a subsequent site field verification was conducted by the Corps on August 11, 2015. Jurisdictional streams on site include Little Willow Creek and unnamed tributaries (UTs) of Little Willow Creek, and Folly Creek and UTs of Folly Creek. All of the streams within the bonded phases boundary are tributaries to the French Broad River. The French Broad River north of the site is a navigable-in-fact water. Little Willow Creek and Folly Creek are classified by the NC Division of Water Resources (DWR) as class “C” waters.

There are wetlands located within the bonded phases boundary. The majority of these wetlands have been identified as wetland seeps and are contiguous with their associated stream channel. Additional wetlands resulting from the neglect and failure of sediment and erosion measures have also been included in the updated delineation. The site also contains three open-water ponds associated with an abandoned trout farm.

A “Notification of Jurisdictional Determination” for the Seven Falls bonded phases area was issued on August 24, 2015 under Action ID SAW-2013-01159. A summary of jurisdictional waters of the U.S. located within the bonded phases project boundary is shown below:

On-site Totals

Feature	Amount	Unit
Stream	18,335	linear feet
Wetlands	0.79	acres
Open Water	0.31	acres

**Applicant’s Stated Purpose**

The basic project purpose of the proposed project is to provide road access to residential lots. More specifically, the overall project purpose of the proposed project is to complete road infrastructure that would provide access to 206 residential lots within the bonded phases of the abandon Seven Falls Golf and River Club development. Lot owners currently have no access to their property. Road infrastructure would facilitate the development of a viable, residential community in Henderson County, North Carolina.

**Project Description**

The proposed Seven Falls Bonded Phases project includes new impacts to jurisdictional streams and wetlands for the completion of residential subdivision road infrastructure and permitting of existing unauthorized stream impacts. The 302-acre area represents property included in bonded phases that were originally a part of the 1,400-acre Seven Falls Golf and River Club residential development. The area of the bonded phases includes residential lots platted and recorded with Henderson County. Property outside of the designated bonded phases is not included in the project. Approximately 1,667 linear feet of existing stream impacts were measured in the bonded phases. Existing stream impacts were associated with partial development of the Seven Falls Golf and River Club. The original permit authorization for the Seven Falls Golf and River Club

was revoked by the Corps in April of 2010; therefore, existing impacts to jurisdictional streams and wetlands at the property are unauthorized.

The proposed road network in the bonded phases area is mostly consistent with the original plan for the Seven Falls Golf and River Club. Several road sections would not be completed as originally planned and access from Pleasant Grove Church Road has been added. As proposed, the project includes 11 existing stream crossings, installation of 1 new stream crossing, and lengthening of 2 existing stream crossings in order to provide sufficient road widths. Permanent road impacts are identified in the table below.

Stream Impacts		
Impact #	Linear Feet	Notes
1*	104	No existing culvert, new impact
2	93	
3	113	
4	43	
5	62	
6	245	
7	106	
9*	115	57 LF of unauthorized impacts, increase to 115 LF
10	147	
11	101	
12	168	
13	375	
14*	30	67 LF existing (pre-Seven Falls) impacts, increase to 97 LF
15	90	
<b>Totals</b>	<b>1,792</b>	

\*New impacts.

Wetland Impacts	
Impact #	Acres
8*	0.01
<b>Totals</b>	<b>0.01</b>

\*New impacts.

### Avoidance and Minimization

The applicant provided the following information in support of efforts to avoid and/or minimize impacts to the aquatic environment:

The Seven Falls Golf and River Club residential development was started in 2007 and more than 125 lots were sold at the onset of development. In June of 2010, Henderson County declared that the Seven Falls Golf and River Club development was in default of the performance guarantee and the developer failed to complete the required infrastructure improvements. Approximately 70 lot owners (in good tax standing with the County) cannot build on their property due to lack of infrastructure and lack of access to the residential lots they purchased. Additionally, approximately 50 foreclosed lots are unlikely to be sold without infrastructure in place.

Because the bond money is site specific and because platted and recorded lots have already been sold, alternative site locations and alternative site plans are not feasible. Henderson County received \$6 million in bond funds. At this time, Henderson County does not believe that the bond money will cover the cost of all bonded improvements. Henderson County is striving to construct roads in an economical manner which provides access to the most lots, and leaves money remaining for additional infrastructure (water and sewer).

Several road sections from the original development plan will not be completed, and access from Pleasant Grove Church Road has been added. In doing so, eight stream crossings have been avoided. Three crossings have been added to provide access from Pleasant Grove Church Road; however, two crossings will be bridge replacements (no steam impact) and one crossing is in the location of an existing crossing.

The original development plan road layout was designed to avoid impacts to streams and wetlands to the maximum extent practicable. Because the site is covered in long linear stream segments, it would be impossible to avoid all of the streams while continuing to maintain a rational project design and the flexibility needed to construct a large scale master planned residential community. The property contains an extensive road network in varying stages of completion. Henderson County would utilize the existing roads to complete road infrastructure at the site. And, as mentioned above, several road sections from the original plan would not be completed.

Avoidance and minimization has taken place on site through elimination of several road sections and general adherence to the original road layout. The table below summarizes the total avoidance and minimization that has taken place within the Seven Falls bonded phases project site.

Feature	Total On-Site	Proposed Impacts	Total Avoided	Percentage
Streams	18,335 LF	1,792 LF	16,543 LF	90%
Wetlands	0.79 AC	0.01 AC	0.78 AC	99%

### **Compensatory Mitigation**

The applicant offered the following compensatory mitigation plan to offset unavoidable functional loss to the aquatic environment:

Upon completion and implementation of practical avoidance and minimization efforts, a total of 1,792 linear feet of stream impacts and 0.01 acres of wetland impacts associated with the development within the Seven Falls bonded phases project area are unavoidable. Unavoidable stream impacts will be mitigated for at a proposed compensatory mitigation ratio of 1:1.

The applicant is proposing to mitigate stream impacts at a 1:1 ratio through North Carolina Department of Mitigation Services (DMS). By letter dated September 29, 2015, DMS has indicated they are willing to accept payment for impacts up to 1,792 linear feet associated with development of the Seven Falls bonded phases.

Mitigation as a whole consists of avoidance, minimization, and compensation. Through avoidance and minimization, 90% of streams and 99% of wetlands will remain unimpacted at the site. Several crossings on site have been completely eliminated, greatly reducing impacts when compared to the originally proposed development. The applicant, Henderson County, is proposing a 1:1 mitigation ratio for unavoidable impacts in an effort to “stretch” limited funding and provide the most benefit to public, including property owners with the Seven Falls bonded phases project area and residents of Henderson County.

Lot owners within the Seven Falls bonded phases project area have no access to the property they own and no utilities to make lots viable. Therefore, the property as a whole has remained abandoned since approximately 2008. Henderson County received \$6 million in bond funds. Because of minimal funds, Henderson County must prioritize work, and use funds cautiously and efficiently. As an example, Henderson County will contract the completion of roads to provide access; however, the roads will not be paved. This will provide additional funds for the next phases of the project which includes installation of utilities. The funds saved by completing compensatory mitigation at a 1:1 ratio would be enough to connect the Seven Falls development to the existing municipal water supply. Paying for compensatory mitigation at a 2:1 ratio may jeopardize utility construction that can be funded using bond money. Minimizing project cost in completion of the proposed residential subdivision road infrastructure may provide additional funds for future phases which may include installation of water and sewer utilities. In the event utilities could not be constructed, remaining bond funds could be placed into an escrow account to be used at a later date when a third party could defray the remaining costs of development. Lack of utilities would cause existing lots to remain undevelopable. Proposing mitigation at a 2:1 ratio is not in the best interest of the lot owners with the Seven Falls bonded phases area or residence of Henderson County because it compounds funding constraints that already make the project difficult to complete.

Abandoned and vacant properties, such as those at Seven Falls, are a public nuisance. They are associated with tax delinquency and denying local governments of desperately needed tax revenues. Instead, abandoned and vacant properties consume tax dollars and decrease neighboring property values. A smaller number of county residents must bear a greater portion of the county tax burden. Henderson County is protecting the public interest by enforcing bond requirements which includes development of infrastructure. By supporting Henderson County’s efforts to make the most efficient use of bond funds, including supporting a 1:1 compensatory mitigation ratio, the tax burden of Henderson County residents would be lessened by transforming abandoned land into a viable residential development.

## Essential Fish Habitat

Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, this Public Notice initiates the Essential Fish Habitat (EFH) consultation requirements. The Corps' initial determination is that the proposed project would not effect EFH or associated fisheries managed by the South Atlantic or Mid Atlantic Fishery Management Councils or the National Marine Fisheries Service.

## Cultural Resources

Pursuant to Section 106 of the National Historic Preservation Act of 1966, Appendix C of 33 CFR Part 325, and the 2005 Revised Interim Guidance for Implementing Appendix C, the District Engineer consulted district files and records and the latest published version of the National Register of Historic Places and initially determines that:

- Should historic properties, or properties eligible for inclusion in the National Register, be present within the Corps' permit area; the proposed activity requiring the DA permit (the undertaking) is a type of activity that will have no potential to cause an effect to an historic properties.
- No historic properties, nor properties eligible for inclusion in the National Register, are present within the Corps' permit area; therefore, there will be no historic properties affected. The Corps subsequently requests concurrence from the SHPO (or THPO).
- Properties ineligible for inclusion in the National Register are present within the Corps' permit area; there will be no historic properties affected by the proposed work. The Corps subsequently requests concurrence from the SHPO (or THPO).
- Historic properties, or properties eligible for inclusion in the National Register, are present within the Corps' permit area; however, the undertaking will have no adverse effect on these historic properties. The Corps subsequently requests concurrence from the SHPO (or THPO).
- Historic properties, or properties eligible for inclusion in the National Register, are present within the Corps' permit area; moreover, the undertaking may have an adverse effect on these historic properties. The Corps subsequently initiates consultation with the SHPO (or THPO).
- The proposed work takes place in an area known to have the potential for the presence of prehistoric and historic cultural resources; however, the area has not been formally surveyed for the presence of cultural resources. No sites eligible for inclusion in the National Register of Historic Places are known to be present in the vicinity of the proposed work. Additional work may be necessary to identify and assess any historic or prehistoric resources that may be present.



Site 31HN220 was partially impacted (vegetation clearing and grading) by road construction associated with development of the Seven Falls Golf and River Club. This site is contained within the road right-of-way and a platted residential lot within the bonded phases area. At present, development is not proposed at this lot. However, under the proposed action road construction would be complete in accordance with the performance bond. The previous MOA was nullified when the Corps' 404 permit was revoked. Henderson County has not been granted development rights for individual lots. As such, Henderson County cannot pursue data recovery for 31HN220 at this time. Further clearing and grading activities proposed in the bonded phases at Site 31HN220, may affect the integrity of this historic or culturally significant site.

The District Engineer's final eligibility and effect determination will be based upon coordination with the SHPO and/or THPO, as appropriate and required, and with full consideration given to the proposed undertaking's potential direct and indirect effects on historic properties within the Corps-identified permit area.

### Endangered Species

Pursuant to the Endangered Species Act of 1973, the Corps reviewed the project area, examined all information provided by the applicant and consulted the latest North Carolina Natural Heritage Database. Based on available information:

- The Corps determines that the proposed project would not affect federally listed endangered or threatened species or their formally designated critical habitat.
- The Corps determines that the proposed project may affect, not likely to adversely affect federally listed endangered or threatened species or their formally designated critical habitat. The Corps initiates consultation under Section 7 of the ESA and will not make a permit decision until the consultation process is complete.
- The Corps is not aware of the presence of species listed as threatened or endangered or their critical habitat formally designated pursuant to the Endangered Species Act of 1973 (ESA) within the project area. The Corps will make a final determination on the effects of the proposed project upon additional review of the project and completion of any necessary biological assessment and/or consultation with the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service.

The following federally listed threatened species may occur at the project site.

Common Name	Scientific Name
Northern Long-Eared Bat (NLEB)	<i>Myotis septentrionalis</i>

Summer habitat for NLEB is present on site. Most tree clearing associated with road infrastructure has already occurred. Minor tree clearing will be needed in the vicinity of the proposed access road near Gore Lake. The applicant proposes to avoid clearing trees at this location trees during the moratorium for the NLEB (May 15-August 15). In the event that additional tree clearing is needed during the May 15-August 15 moratorium, the applicant would consult with the FWS prior to tree

cutting activities. The Corps concludes a federally protected species may be present within the Seven Falls bonded phases boundary. As noted above, summer habitat for NLEB is present on site and development at the site may affect, not likely to adversely affect NLEB.

The Corps initiates informal consultation with FWS under Section 7 of the ESA and will not make a permit decision until the consultation process is complete.

### **Other Required Authorizations**

The Corps forwards this notice and all applicable application materials to the appropriate State agencies for review.

**North Carolina Division of Water Resources (NCDWR):** The Corps will generally not make a final permit decision until the NCDWR issues, denies, or waives the state Certification as required by Section 401 of the Clean Water Act (PL 92-500). The receipt of the application and this public notice, combined with the appropriate application fee, at the NCDWR Central Office in Raleigh constitutes initial receipt of an application for a 401 Certification. A waiver will be deemed to occur if the NCDWR fails to act on this request for certification within sixty days of receipt of a complete application. Additional information regarding the 401 Certification may be reviewed at the NCDWR Central Office, 401 and Buffer Permitting Unit, 512 North Salisbury Street, Raleigh, North Carolina 27604-2260. All persons desiring to make comments regarding the application for a 401 Certification should do so, in writing, by November 13, 2015 to:

NCDWR Central Office  
Attention: Ms. Karen Higgins, 401 and Buffer Permitting Unit  
(USPS mailing address): 1617 Mail Service Center, Raleigh, NC 27699-1617

Or,

(physical address): 512 North Salisbury Street, Raleigh, North Carolina 27604

### **North Carolina Division of Coastal Management (NCDCM):**

Based upon all available information, the Corps determines that this application for a Department of Army (DA) permit does not involve an activity which would affect the coastal zone, which is defined by the Coastal Zone Management (CZM) Act (16 U.S.C. § 1453).

### **Evaluation**

The decision whether to issue a permit will be based on an evaluation of the probable impacts including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife

values, flood hazards, flood plain values (in accordance with Executive Order 11988), land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people. For activities involving the discharge of dredged or fill materials in waters of the United States, the evaluation of the impact of the activity on the public interest will include application of the Environmental Protection Agency's 404(b)(1) guidelines.

### **Commenting Information**

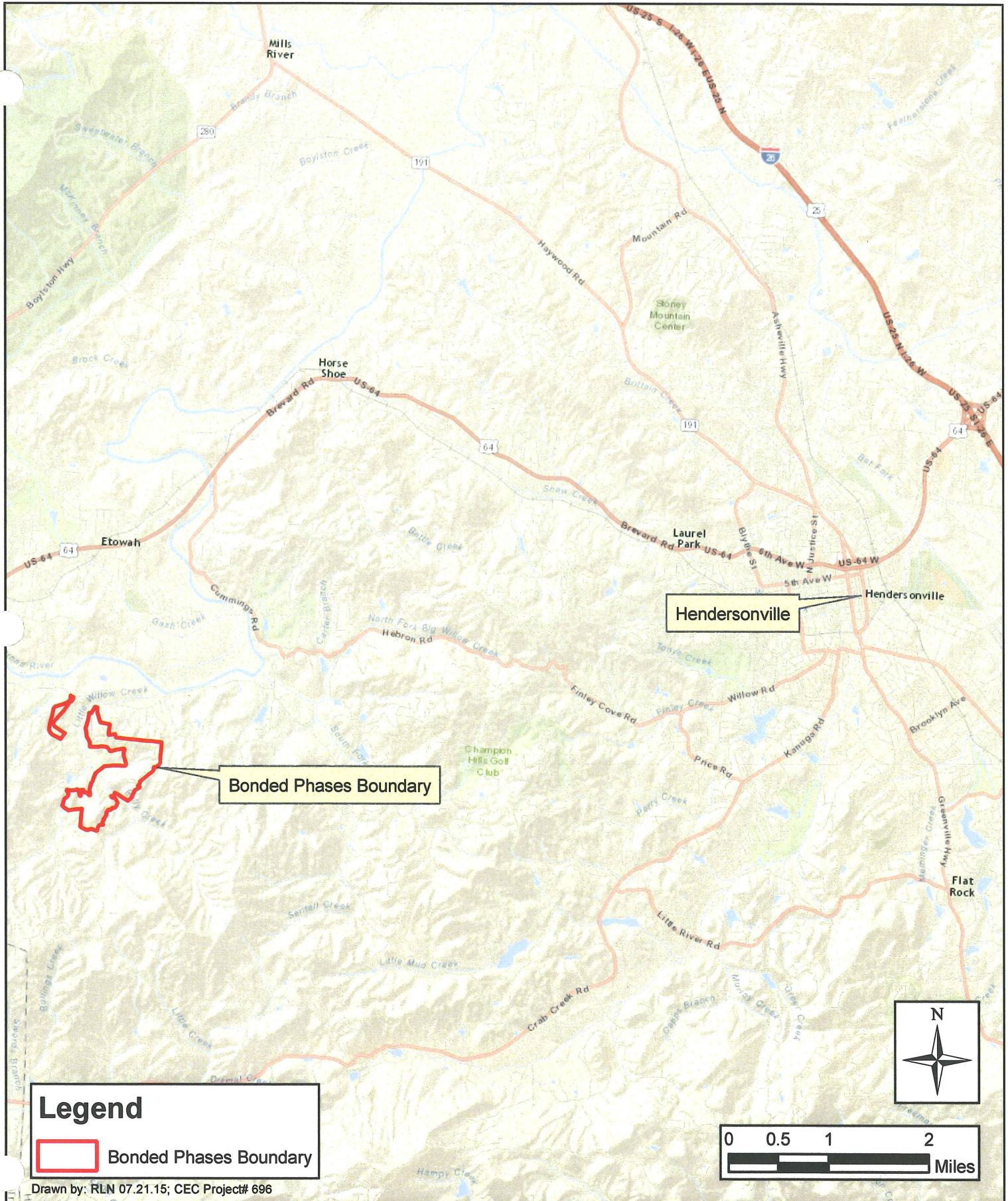
The Corps of Engineers is soliciting comments from the public; Federal, State and local agencies and officials, including any consolidated State Viewpoint or written position of the Governor; Indian Tribes and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment (EA) and/or an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA). Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider the application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing. Requests for a public hearing shall be granted, unless the District Engineer determines that the issues raised are insubstantial or there is otherwise no valid interest to be served by a hearing.


The Corps of Engineers, Wilmington District will receive written comments pertinent to the proposed work, as outlined above, until 5pm, November 13, 2015. Comments should be submitted to Mr. David Brown, Asheville Regulatory Field Office, 151 Patton Avenue, Room 208, Asheville, North Carolina 28801, at (828) 271-7980, ext. 232.

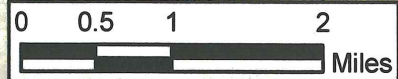


# Seven Falls Bonded Phases (+/- 302 AC)



**Legend**

 Bonded Phases Boundary



Drawn by: RLN 07.21.15; CEC Project# 696

Henderson County,  
North Carolina

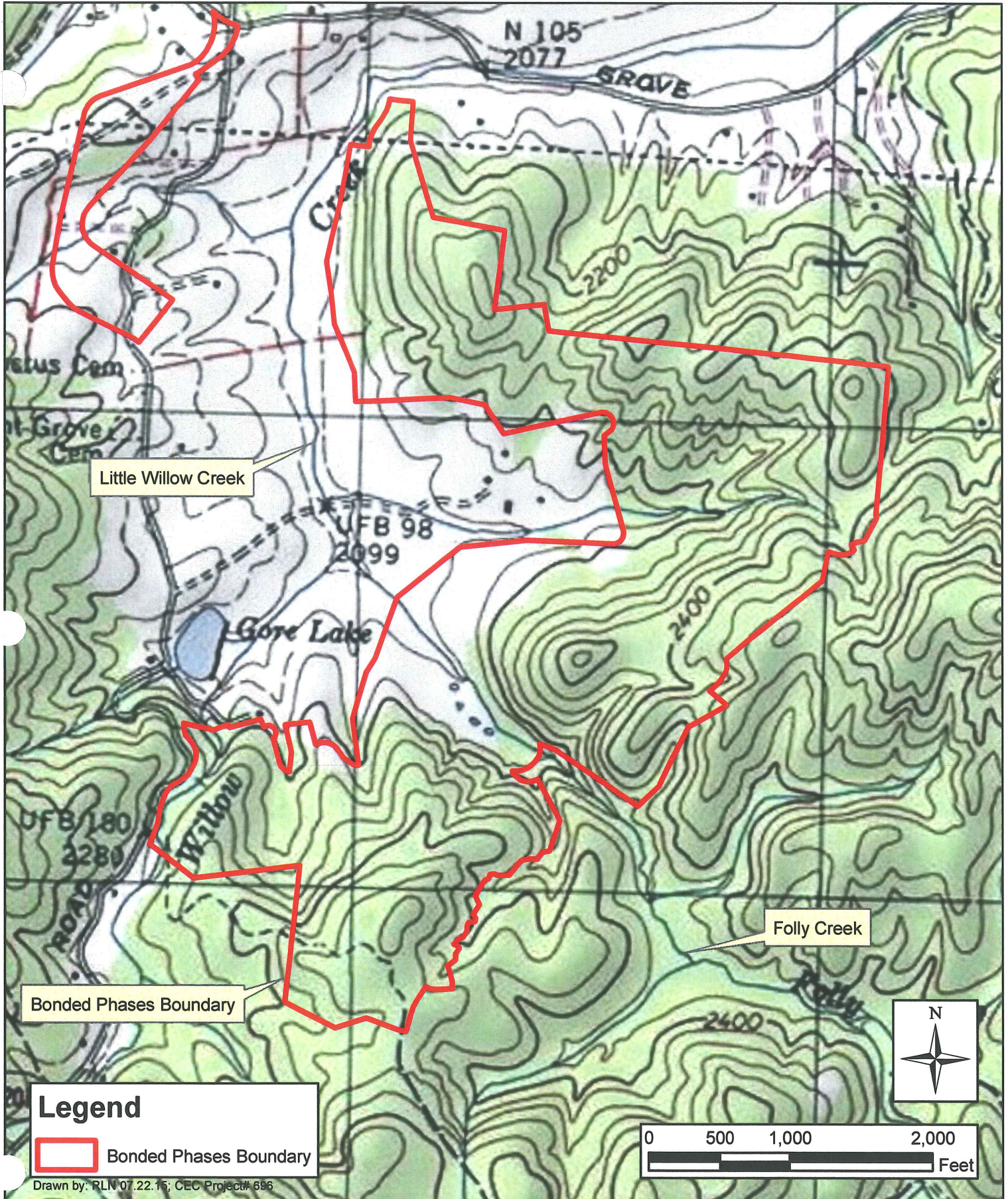


32 Clayton Street  
Asheville, North Carolina 28801

Site Vicinity  
Figure 2



# Seven Falls Bonded Phases (+/- 302 AC)



## Legend

 Bonded Phases Boundary

Drawn by: RLN 07.22.15; CEC Project# 696

Henderson County,  
North Carolina

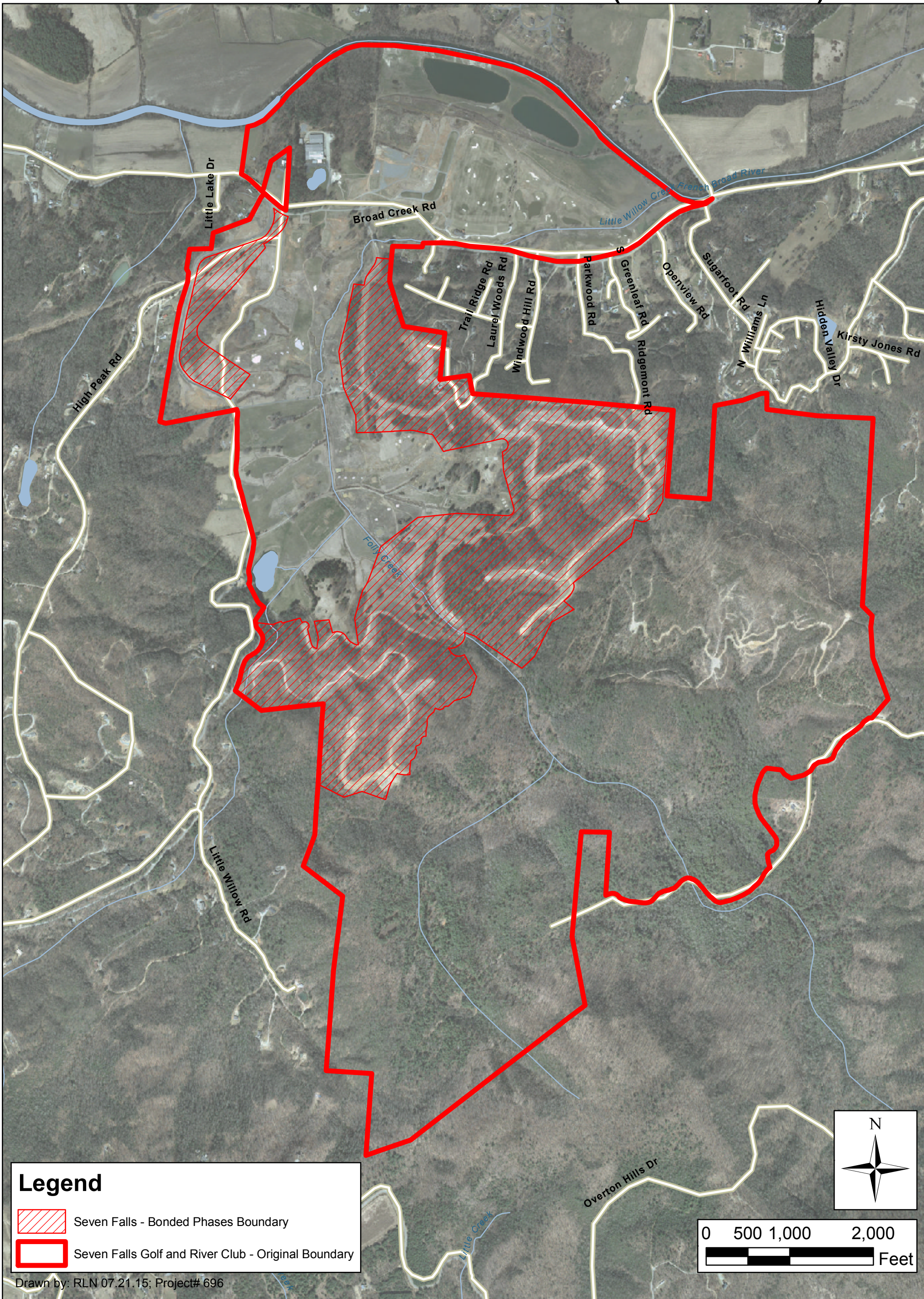
**ClearWater**

32 Clayton Street  
Asheville, North Carolina 28801

USGS Topographic Map  
Horse Shoe Quad  
Figure 3



# Seven Falls Bonded Phases ( +/- 302 AC)



Henderson County,  
North Carolina

**ClearWater**  
32 Clayton Street  
Asheville, North Carolina 28801

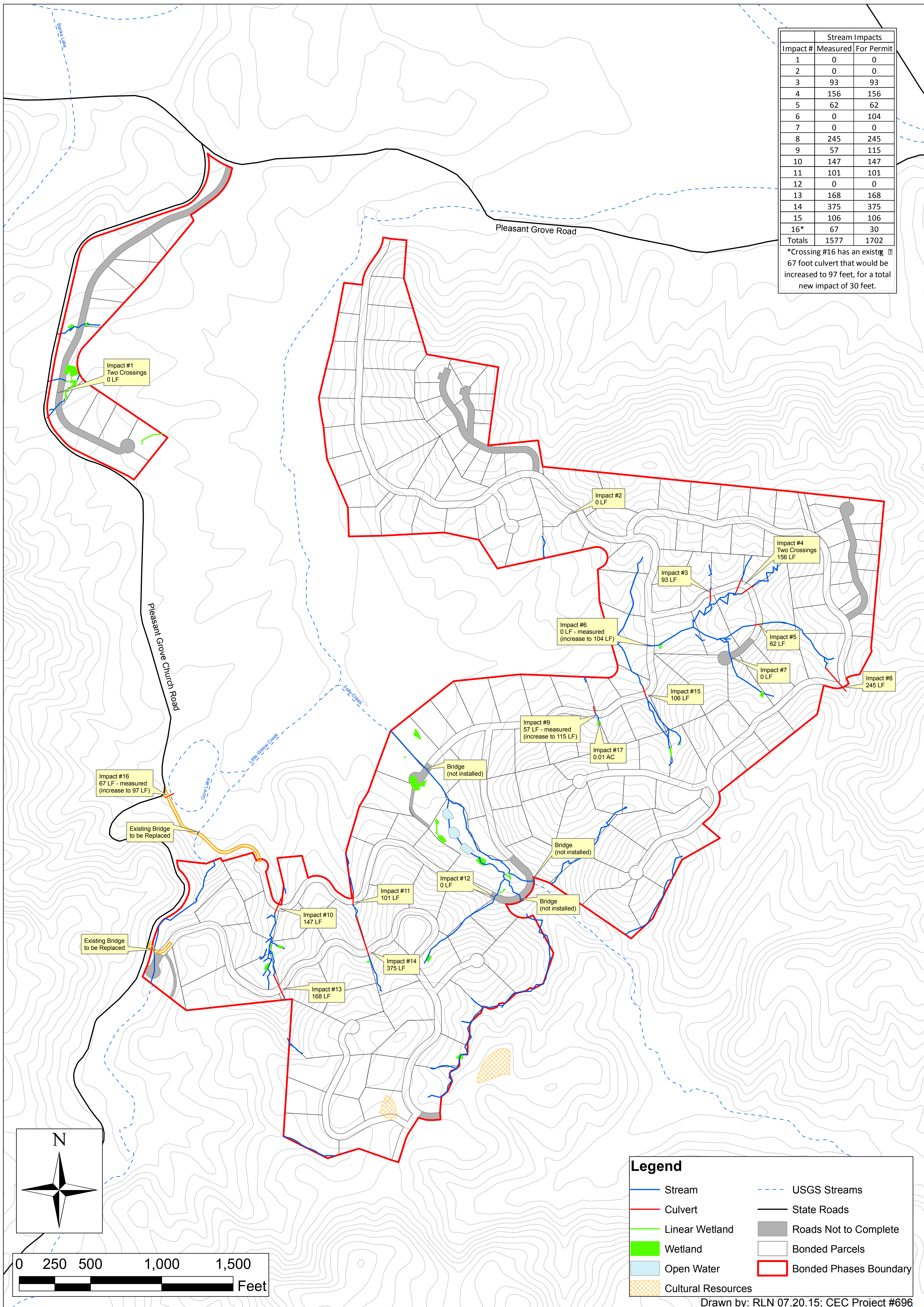
Boundary Comparison  
Figure 1



# Seven Falls Bonded Phases (+/- 302 AC)

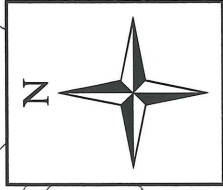
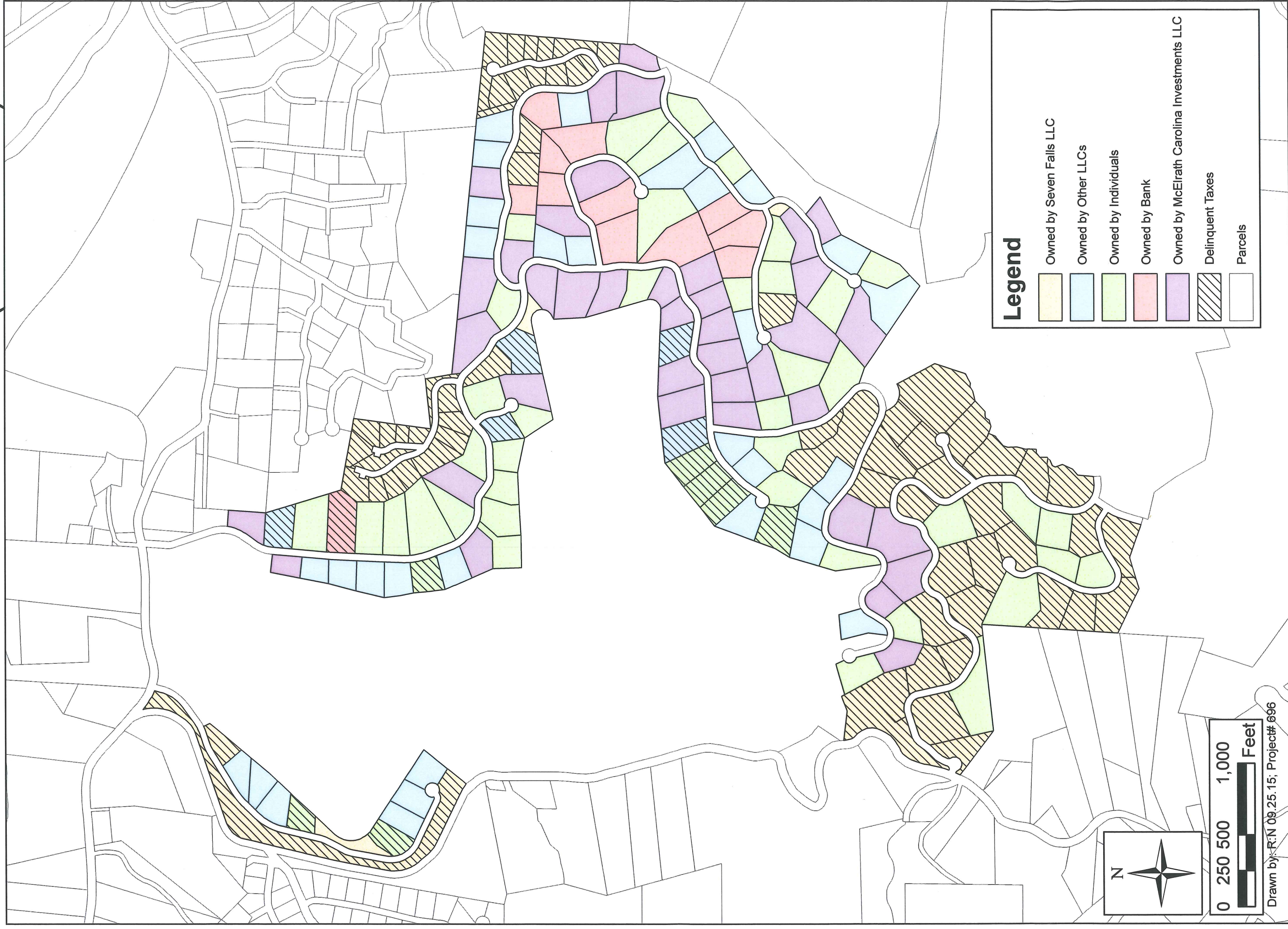
Stream Impacts		
Impact #	Measured	For Permit
1	0	0
2	0	0
3	93	93
4	156	156
5	62	62
6	0	104
7	0	0
8	245	245
9	57	115
10	147	147
11	101	101
12	0	0
13	168	168
14	375	375
15	106	106
16*	67	30
<b>Totals</b>	<b>1577</b>	<b>1702</b>

\*Crossing #16 has an existing 67 foot culvert that would be increased to 97 feet, for a total new impact of 30 feet.





# Seven Falls Bonded Phases (+/- 302 AC)



Drawn by: R:N 09.25.15; Project# 696



32 Clayton Street  
Asheville, North Carolina 28801

Henderson County,  
North Carolina

Parcel Ownership  
Henderson County Parcel Data  
Figure 6