



STATE OF NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION

MICHAEL F. EASLEY  
GOVERNOR

LYNDO TIPPETT  
SECRETARY

January 4, 2008

MEMORANDUM TO: Mr. Jay Swain, Jr., PE  
Division 13 Engineer

FROM: Philip S. Harris, III, P.E., Unit Head *P.S. Harris*  
Natural Environment Unit  
Project Development and Environmental Analysis Branch

SUBJECT: Mitchell & Yancey Counties, Replace Bridge No.143 on SR  
1304 over North Toe River; T.I.P. Number B-2848; Federal Aid  
Project No. BRZ-1304(4); State Project 8.2880401

Attached are the U.S. Army Corps of Engineers Section 404 Nationwide Permit Numbers 23 & 33 and the, N.C. Division of Water Quality Section 401 General Water Quality Certification for the above referenced project. All environmental permits have been received for the construction of this project.

PSH/gyb

Attachment

Cc:

Mr. Majed Alghandour, P. E., Programming and TIP  
Mr. Jay Bennett, P.E., Roadway Design  
Dr. David Chang, P.E., Hydraulics  
Mr. Randy Garris, P.E. State Contract Officer  
Mr. Art McMillan, P.E., Highway Design  
Mr. Greg Perfetti, P.E., Structure Design  
Mr. Mark Staley, Roadside Environmental  
Mr. John F. Sullivan, FHWA  
Ms. Beth Harmon, EEP  
Ms. Teresa Hart, P.E., PDEA Western Region Unit Head  
Mr., Roger Bryan, Division Environmental Officer  
Mr. Harold Draper, TVA

## PROJECT COMMITMENTS

Mitchell & Yancey Counties  
Bridge No. 143 on SR 1304 over the North Toe River  
Federal-aid Project No. BRZ-1304(4),  
State Project No. 8.2880401  
WBS 32728.1.1  
T.I.P. No. B-2848

In addition to the Nationwide Permit 23 and 33 Conditions, the General Nationwide Permit Conditions, Section 404 Only Conditions, Regional Conditions, State Consistency Conditions, NCDOT's Guidelines for Best Management Practices for Bridge Demolition and Removal, Design Standards in Sensitive Watersheds, NCDOT's Best Management Practices for Protection of Surface Waters, General Certification Conditions, and Section 401 Conditions of Certification, the following special commitments have been agreed to by NCDOT:

### COMMITMENTS DEVELOPED THROUGH PROJECT DEVELOPMENT

#### **Highway Division 13, Hydraulics Unit, Structure Design Unit**

In order to avoid and minimize environmental impacts associated with the replacement of Bridge No. 143, all standard procedures and measures, including NCDOT's Best Management Practices for Protection of Surface Waters and the Tennessee Valley Authority's (TVA) Water Management Standard Conditions will be strictly enforced during the construction stage of the project. Provisions to preclude contamination by toxic substances during the construction interval will also be strictly enforced.

1. In addition to NC DOT Best Management Practices, the contractor must submit a bridge demolition plan for approval by the Resident Engineer and the Bridge Construction Engineer prior to beginning bridge removal. Since some bridge debris may enter the water, the contractor must submit a work plan sealed by a PE registered in North Carolina and that *follows the guidelines provided in the Plan for Removal of Existing Structures that is included in the Biological Assessment for this project, attached to this Consultation*. The contractor's work plan will detail the maximum amount of the bridge that can be safely removed dropping minimal portions into the water. Also, this plan will not allow the use of explosives and will detail the methods to be used to retrieve and dispose of any components of the existing bridge dropped into the water. The volume of structural material to be retrieved from the existing bridge will be approximately 150 cubic yards (114.61 cubic meters).
2. Construction will be accomplished so wet concrete does not contact water entering or flowing in the river. Demolition of the existing structure will be completed such that minimal debris from the existing deck enters the river. Any debris or construction material that falls into the river will be removed immediately.
3. No deck drainage will be allowed to enter into the water, and every effort will be made to minimize the overall footprint of bents, any scour problems, and any debris accumulation associated with the project.

**Roadway Design Unit, Project Development and Environmental Analysis Branch, Roadside Environmental Unit, Highway Division 13, Structure Design Unit**

1. Upon completion of the project the existing approach fill will be removed to natural grade and the area will be planted with native grasses and tree species such as Bluegrass or as recommended by Roadside Environmental landscape plans. Should the contract for such plantings expire during the summer, landscaping should extend into the planting season, which continues through December.
2. Activities in the flood plain will be limited to those needed to construct the proposed bridge and remove the existing bridge. Areas used for borrow or construction by-products will not be located in floodplains.
3. Work pads in the flood plain will be minimized.

**Highway Division 13, Hydraulics, PD&EA, Structure Design Unit**

1. NCDOT will coordinate with the U.S. Fish and Wildlife Service to incorporate sufficient measures and monitoring, as required, in addition to those listed below, to avoid impacts to the endangered Appalachian Elktoe mussel (*Alasmidonta raveneliana*).
2. All Elktoe mussel species found during the relocation may be removed prior to construction with approval from the US Fish and Wildlife Service. In water construction may be subject to a moratorium. A Consultation in compliance with **Section (7a)** of the Endangered Species Act of 1973 will be completed and reviewed according to US Fish and Wildlife policy prior to beginning construction activities.
3. The NCDOT Project Development and Environmental Analysis Branch and the U.S. Fish and Wildlife Service will be invited to the pre-construction conference to discuss with the contractor the provisions of the Endangered Species Act of 1973 and penalties for violation of the Act.
4. Stringent erosion control measures included in the Division of Water Quality's High Quality Waters Erosion Control Guidelines will be implemented during all construction activities.
5. Riparian vegetation will be maintained wherever possible, especially large trees.
6. If riparian areas are disturbed, they will be revegetated with native species as soon as possible after construction.
7. Prior to construction the contractor will be required to give notification of the construction initiation date to the U.S. Fish and Wildlife Service, N.C. Wildlife Resources Commission, and the Tennessee Valley Authority.
8. Pre-let surveys will be performed at the bridge for occurrence of the Appalachian Elktoe (*Alasmidonta raveneliana*).
9. The North Toe River contains a significant small mouth bass fishery in the area of the project; North Carolina regulations entitled Design Standards in Sensitive Watersheds shall be implemented during the design and construction of this project, as applicable. A letter of notification, with reference to impacts to small mouth bass water habitat, will be provided to

the U.S. Army Corps of Engineers - Asheville Regulatory Field Office and the N.C. Wildlife Resources Commission (WRC) office prior to construction of the project. An in water work moratorium will be enforced from May 1<sup>st</sup> to June 1<sup>st</sup> in order to protect this small mouth bass fishery.

10. Due to the presence of the migratory birds in the vicinity of the existing bridge, construction should be planned to occur after the nesting season. Alternatively, netting to prevent swallows from nesting prior to the beginning of construction activities may be utilized in accordance with the Migratory Bird Treaty Act and after PDEA/ONE coordination with the US Fish and Wildlife Service.
11. The NCDOT will provide or contract with biologists with experience in mussel relocation techniques to remove Appalachian elktoe from the impact site and relocate them to the approved relocation site on the North Toe River between Penland and Boonford at about River Mile 25.5, according to the procedures on the approved relocation plan within the BA. The plan details appropriate collection methods, tagging and recapture, handling and transportation of individuals, and monitoring protocols, which includes the monitoring of the relocation sites for recovery, survival (of recovered mussels) movement and growth of mussels for a period of 5 years.
12. The NCDOT shall monitor the river channel and banks at sites upstream, at the construction sites and downstream to determine changes in habitat resulting from activities at these sites. If any problems with regards to stream stability are detected during the monitoring, the NCDOT will attempt to correct the problems.
13. NCDOT will protect and/or restore 100 foot riparian buffers for at least 3,000 linear feet of stream within the action area.
14. NCDOT will ensure that contractor understands and follows the measures listed in the section of the greensheets, and included in the Biological Opinion issued for the project by the (US Fish and Wildlife) Service.
15. Containment systems shall be developed for particular stages of the demolition and construction of the bridges to minimize impacts to the Appalachian elktoe and its habitat.
16. Demolition activities and the relocation of mussels will be conducted during time periods that reduce impacts to the Appalachian elktoe.
17. The NCDOT will send the Service, Asheville field office, copies of the monitoring reports for the relocated mussels every year for the 5 year monitoring time period.
18. During the relocation of mussels the Service may alter, if needed methods and plans for moving mussels.
19. The NCDOT will notify the Service if their monitoring of the river channel and river banks reveals changes in habitat resulting from project activities.
20. All appropriate NCDOT BMP's for bridge maintenance, construction, and demolition will be followed or exceeded for these projects and any additional BMP's listed in these greensheets shall be followed.

21. A Service biologist will be notified of and present at the preconstruction meeting to cover permit conditions and discuss any questions the contractor has regarding implementation of this project. After the contractor submits plans for various stages of the projects a Service biologist will review and provide comments on the plans, as well as, attend any meetings to discuss implementation of the plans.
22. The NCDOT will ensure that a qualified aquatic biologist is present at critical times to monitor certain phases of construction, including but not limited to, initial clearing for construction, at the time causeways are installed, when demolition begins, and when causeways are removed. The individual will be present to ensure that the procedures listed in the "Conservation Measures" section of the US FWS Biological Opinion, the reasonable and prudent measures, and terms and conditions are being implemented and that all project plans are being implemented in a manner to ensure that the conditions of the Biological Opinion are met.
23. Due to the severely deteriorated condition of the bridge decks, a containment system shall be installed prior to the removal of the concrete deck for bridge B-2848. This system may be supported from the existing girders or substructure (such as tarps) or could be independent of the existing bridge, such as floating devices that catch any debris that may fall during deck removal. The containment system will only be used to catch debris that inadvertently falls due to the condition of the deck.
24. A containment system shall be developed and installed prior to the removal of the piers. The conservation measures proposed by the NCDOT recommend placing turbidity curtains, if the water depth is sufficient, around each of the bents. The USFWS recommends that the design include a system that uses a containment system such as Jersey barriers around each bent.
25. When constructing the drilled shafts a containment system will be developed so that material does not enter the river. Any material by-product will be pumped out of the shaft and onto uplands and to an off-site disposal area or will be treated through a proper stilling basin or silt bag.
26. The NCDOT will not relocate mussels between May 1 and June 30, the time at which the Appalachian elktoe are releasing glochidia. The NCDOT will relocate the mussels during low flow, low turbidity, and relatively cool weather, the most appropriate time to accomplish these factors will be the fall.
27. Bridge demolition will occur during low flow (typically late summer) to reduce the likelihood that sediment will leave the project area and potentially impact downstream resources.
28. NCDOT proposed in the BA to relocate all native mussels, including the Appalachian elktoe, from the project footprints, extending downstream 80 meters and upstream 20 meters of the two bridge replacements. Representatives of the Service, Asheville field office, may determine during the relocation of the mussels to reduce the area that the mussels are moved from.
29. A Service biologist will review and provide comments on plans proposed to correct problems that may be revealed in the monitoring of the river channel and banks within the project area.
30. The erosion control plan will be in place prior to any ground disturbance.

31. Any work pads that must be placed within the floodplain to complete the project construction will be constructed by placing down fabric matting prior to placing the stone work pad. All of the stone and matting will be removed and disposed off-site after project completion.
32. Unconsolidated material will not be placed on the causeways given that the material could be washed off of the causeways or settle into the causeways and enter the river. If unconsolidated material must be placed on the causeways, a solid barrier will be placed on the causeway prior to the placement of the material. The barrier and unconsolidated material will be removed at the end of each work day or anytime through out a work day that the water level rises to a point that could wash the material off of the causeway. Any consolidated material or equipment that is placed on the causeways will also be removed at the end of each work day or anytime through out a work day that he water level rises to a point where the material or equipment could be flooded.
33. All construction equipment should be refueled outside the 100 year floodplain or at least 200 feet from all water bodies (whichever distance is greater) and be protected with secondary containment. Hazardous materials, fuel, lubricating oils, or other chemicals will be stored outside the 100 year floodplain or at least 200 feet from all water bodies (whichever distance is greater), preferably at an upland site. Areas used for borrow or construction by-products will not be located in wetlands or the 100-year floodplain.
34. Where opportunities exist, NCDOT will work with landowners, the general public, and other agencies to promote education and information about the Appalachian elktoe and their conservation.
35. NCDOT will pursue additional buffers and conservation opportunities along the main stem of the Cane River, North Toe River and Toe Rivers tributaries, either individually or in concert with other conservation programs.
36. NCDOT will explore opportunities to work with local and state water quality officials in order to minimize or eliminate wastewater and storm-water discharges into the Cane River, North Toe River and Toe Rivers.
37. NCDOT will consult with the US FWS on projects affecting aquatic habitat in the Toe River drainage, regardless of funding source, to ensure compliance with all provisions of the Act.
38. NCDOT will notify the USFWS of the implementation of any of the above stated conservation recommendations.

### **COMMITMENTS DEVELOPED THROUGH PERMITTING**

#### **Division 13 Construction, NEU, and REU**

1. All work must be performed in strict compliance with the plans received by this office, which is a part of this permit. Any modification to the permit plans must be approved by the USACE prior to implementation.
2. Failure to institute and carry out the details of these special conditions will result in a directive to cease all ongoing and permitted work within waters and/or wetlands associated with the permitted project, or such other remedies and/or fines as the District Engineer or his authorized representatives may seek.

3. The permittee shall require its contractors and/or agents to comply with the terms and conditions of this permit in the construction and maintenance of this project, and shall provide each of its contractors and/or agents associated with the construction or maintenance of this project with a copy of this permit, and any authorized modifications. A copy of this permit, and any authorized modifications, including all conditions, shall be available at the project site during construction and maintenance of this project.
4. This permit does not authorize temporary placement or double handling of excavated or fill material within waters or wetlands outside the permitted area.
5. All Conditions of the attached North Carolina Wildlife Resources Commission letter of October 13, 2006 are hereby incorporated as special condition of this permit.
6. The permittee will report any violation of these conditions or violations of Section 2020 Clean Water Act or Section 10 of the Rivers and Harbors Act in writing to the Wilmington District, U.S. Army Corps of Engineers, within 24 hours of the permittee's discovery of the violation.
7. All Reasonable and Prudent Measures and Terms and Conditions contained in the July 6, 2006 US Fish and Wildlife Service's Biological Opinion on the effects of the subject bridge demolition and replacement on the federally endangered Appalachian elktoe and its Designated Critical Habitat are hereby incorporated as conditions of this permit. Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory Reasonable and Prudent Measures and Terms and Conditions in the Biological Opinion.

Reasonable and Prudent Measures from USFWS Biological Opinion

1. The NCDOT will ensure that the contractor understands and follows the measures listed in the "Conservation Measures," "Reasonable and Prudent Measures," and "Terms and Conditions" sections of this Opinion.
2. Containment systems will be developed for particular stages of the demolition and construction of the bridges to minimize impacts to the Appalachian elktoe and its habitat.
3. Demolition activities and the relocation of mussels will be conducted during time periods that will result in fewer impacts to the Appalachian elktoe.
4. The NCDOT will send copies of the monitoring reports for the relocated mussels to the Service's Asheville Field Office every year for the 5-year monitoring time period.
5. During the relocation of mussels, the Service may alter, if needed, methods and plans for moving the mussels.
6. The NCDOT will notify the Service if their monitoring of the river channel and riverbanks reveals changes in habitat resulting from project activities.
7. All appropriate NCDOT BMP for bridge maintenance, construction, and demolition will be followed or exceeded for these projects, and any additional BMP listed in the "Terms and Conditions" section of this Opinion will be followed.

### Terms and Conditions from USFWS Biological Opinion

1. A Service biologist will be present at the pre-construction meeting to cover permit conditions and discuss any questions the contractor has regarding implementation of these projects. After the contractor submits plans for various stages of the project, a Service biologist will review and provide comments on the plans and will attend any meetings to discuss implementation of the plans.
2. The NCDOT will ensure that a qualified aquatic biologist is present at critical times to monitor certain phases of construction, including, but not limited to, initial clearing for construction, when the causeways are installed, when demolition begins, and when the causeways are removed. The individual will be present to ensure that the procedures listed in the "Conservation Measures," "Reasonable and Prudent Measures," and "Terms and Conditions" sections of the Biological Opinion are being implemented and that all project plans are being implemented in a manner to ensure that the conditions of the Opinion are met.
3. A containment system shall be developed and installed prior to the removal of the piers. The conservation measures proposed by the NCDOT recommend placing turbidity curtains, if the water depth is sufficient, around each of the bents. We are concerned that turbidity curtains will not be of sufficient strength to capture material that may enter the river; therefore, we recommend that the design include a containment system such as the Jersey barriers (with fabric) around each bent.
4. When constructing the drilled shafts a containment system will be developed so that material does not enter the river. Any material by-product will be pumped out of the shaft and onto uplands and to an off-site disposal area or will be treated through a proper stilling basin or silt bag.
5. The conservation measures proposed by the NCDOT state that the saw slurry used during the demolition process will be contained by approved vacuum methods. Given that a wet saw will be used, the vacuum methods should include a provision for pumping and treating the saw slurry outside the project area.
6. The NCDOT will not relocate mussels between May 1 and June 30, the time at which Appalachian elktoes release glochidia. The NCDOT will relocate the mussels during low flow, low turbidity, and relatively cool weather; the most appropriate time to accomplish this would be in the fall.
7. Demolition of the bridge substructure will occur during low flow in order to reduce the likelihood that sediment will leave the project area and potentially impact downstream resources.
8. In the BA, the NCDOT proposed to relocate all native mussels, including the Appalachian elktoe, from the project "footprints," extending downstream 262 ft (80 m) and upstream 66 ft (20 m) of the two bridge replacements. Representatives of the Service's Asheville Field Office may determine during relocation of the mussels that the area the mussels are moved from should be reduced.
9. A Service biologist will review and provide comments on plans proposed to correct problems that may be revealed in the monitoring of the river channel and banks within the project area.

10. The erosion-control plan will be in place prior to any ground disturbance. When needed, combinations of erosion-control measures (such as silt bags in combination with a stilling basin) will be used to ensure that the most protective measures are being implemented.
11. Activities in the floodplain will be limited to those needed to construct the proposed bridge and remove the existing bridge.
12. Work pads will be used when equipment must be staged in the floodplain to complete the project construction. The work pads will be constructed by placing fabric matting down prior to placing the stone work pad. All of the stone and matting will be removed and disposed of off-site or the stone can be used in areas that require permanent stone protection after project completion.
13. Access roads and construction staging areas will be minimized to the maximum extent practicable. The access roads and construction staging areas should be established from the start of the project and designed with erosion-control measures. The placement of the access roads and staging areas will be discussed with the Service and determined at the pre-construction meetings.
14. Riparian vegetation, especially large trees, will be maintained wherever possible. If riparian areas are disturbed, they will be re-vegetated with native species as soon as possible after construction.
15. Upon completion of the project the existing approach fills will be removed to natural grade, and the area will be planted with native grasses and tree species.
16. Construction will be accomplished in a manner that prevents wet concrete from coming into contact with water entering or flowing in the river.
17. Unconsolidated material (such as sand and dirt) will not be placed directly on the causeways since the material could be washed off of the causeways or settle into the causeways and enter the river. If unconsolidated material must be placed on the causeways, a solid barrier will be placed on the causeways prior to the placement of the material. The barrier and unconsolidated material will be removed anytime throughout a work day when the water level rises to a point, or is expected to rise over night to a point, where material could wash off the causeway or during periods of inactivity (two or more consecutive days). Any equipment that is placed on the causeways will also be removed anytime throughout a work day when the water level rises to a point, or is expected to rise over night to a point, where the equipment could be flooded or during periods of inactivity (two or more consecutive days). The only exception to this measure is that the drill rig may be left in place for periods of inactivity; however, it must also be removed if the water rises or is expected to rise to a point where the drill rig could be flooded.
18. All construction equipment should be refueled outside the 100-year floodplain or at least 200 ft from all water bodies (whichever distance is greater) and be protected with secondary containment. During crucial periods of construction and demolition when the drill rig and crane cannot be moved, the drill rig and crane can be refueled while inside the 100-year floodplain provided that spill response materials (such as spill blankets and fueling diapers) are used during the refueling. Hazardous materials, fuel, lubricating oils, or other chemicals will be stored outside the 100-year floodplain or at least 200 ft from all water bodies

(whichever distance is greater), preferably at an upland site. Areas used for borrow or construction by-products will not be located in wetlands or the 100-year floodplain.

Conditions from NCWRC letter dated November 27, 2006

1. Sediment and erosion control measures should, at a minimum, adhere to the design standards for sensitive watersheds and be strictly maintained until project completion to avoid impacts to downstream aquatic resources.
2. Temporary or permanent herbaceous vegetation should be planted on all bare soil as soon as possible and within 10 calendar days of ground disturbing activities to provide long-term erosion control.
3. Tall fescue should not be used in riparian areas. We encourage NCDOT to utilize onsite vegetation and materials for riverbank stabilization when practicable. Erosion control matting should be used in riparian areas, instead of straw mulch and well anchored with 12" staples or 12" wooden survey stakes.
4. Only clean, sediment-free rock should be used as temporary fill (causeways), and should be removed without excessive disturbance of the natural stream bottom when construction is completed.
5. Discharge of materials into the river from demolition of the old bridge should be avoided as much as practicable. Any materials that inadvertently reach the water should be removed.
6. The natural dimension, pattern, and profile of the river above and below the crossing should not be modified by widening the channel or changing the depth of the river.
7. Removal of vegetation in riparian areas should be minimized. Native trees and shrubs should be planted along the banks to reestablish the riparian zone and to provide long-term erosion control.
8. Grading and backfilling should be minimized, and tree and shrub growth should be retained if possible to ensure long term availability of shoreline cover for fish and wildlife. Backfill materials should be obtained from upland sites.
9. Riprap placed for bank stabilization should be limited to the riverbank below the high water mark, and vegetation should be used for stabilization above the high water elevation.
10. Stormwater, including deck drainage, should be directed to buffer areas or retention basins and should not be routed directly into the river.
11. If concrete will be used during construction, work must be accomplished so that wet (uncured) concrete does not contact surface waters. This will lessen the chance of altering the water chemistry and causing a fish kill.
12. Discharging hydroseeding mixtures and washing out hydroseeders and other equipment in or adjacent to surface waters is strictly prohibited.
13. Heavy equipment should be operated from the bank rather than in the river channel whenever possible in order to minimize sedimentation and reduce the likelihood of introducing other

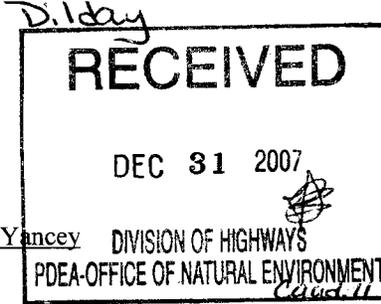
pollutants into the stream. All mechanized equipment operated near surface waters should be inspected and maintained regularly to prevent contamination of surface waters from fuels, lubricants, hydraulic fluids or other toxic materials.

14. The existing roadway that is to be eliminated should be removed back to original ground elevations and the natural floodplain elevations and functions should be restored. Disturbed areas should be seeded or mulched to stabilize the soil and native tree species should be planted with a spacing of not more than 10'x10'.

U.S. ARMY CORPS OF ENGINEERS  
WILMINGTON DISTRICT

Action ID: SAW-2006-41203-300 (Renewal and modification)  
USGS Quad: Huntdale

County: Mitchell and Yancey DIVISION OF HIGHWAYS  
PDEA-OFFICE OF NATURAL ENVIRONMENT  
*Clad II*



**GENERAL PERMIT (REGIONAL AND NATIONWIDE) VERIFICATION**

Property Owner / Authorized Agent: NCDOT, Gregory J. Thorpe, Ph.D, Environmental Management Director  
Address: 1598 Mail Service Center  
Raleigh, NC 27699-1598  
Telephone No.: 919-733-3141

Size and location of property (water body, road name/number, town, etc.): Bridge Number 143 on SR 1304 (Tipton Hill Road/Ray Road) over the North Toe River near Burnsville in Mitchell and Yancey Counties, NC. (TIP B-2848).

Description of projects area and activity: to replace Bridge No. 143 on SR 1304 over the North Toe River. The new bridge will be on new alignment northwest, approximately 50-feet downstream, of the existing bridge. Temporary rock causeways, using pipes to maintain the linear flow of the river, will be required for the new bridge construction and for the demolition of the old bridge. A 10-foot square temporary bent, to assemble the beams for the new bridge structure, will be constructed in the center of the channel using precast concrete barrier walls. One new pier will be located within the river channel to support the new structure. The project will result in less than 0.01 acre of permanent impact and 0.30 acre of temporary impacts to the North Toe River.

Applicable Law:  Section 404 (Clean Water Act, 33 USC 1344)  
 Section 10 (Rivers and Harbors Act, 33 USC 403)  
Authorization: Regional General Permit Number:  
Nationwide Permit Number: 23 and 33

**Special Conditions**

1. All work must be performed in strict compliance with the original plans received by this office on October 6, 2006 and revised plans received on December 19, 2007, which are a part of this permit. Any further modification to the permit plans must be approved by the USACE prior to implementation
2. Failure to institute and carry out the details of these special conditions will result in a directive to cease all ongoing and permitted work within waters and/or wetlands associated with the permitted project, or such other remedies and/or fines as the District Engineer or his authorized representatives may seek.
3. The permittee shall require its contractors and/or agents to comply with the terms and conditions of this permit in the construction and maintenance of this project, and shall provide each of its contractors and/or agents associated with the construction or maintenance of this project with a copy of this permit, and any authorized modifications. A copy of this permit, and any authorized modifications, including all conditions, shall be available at the project site during construction and maintenance of this project.
4. This permit does not authorize temporary placement or double handling of excavated or fill material within waters or wetlands outside the permitted area.
5. All conditions of the attached North Carolina Wildlife Resources Commission letter of November 27, 2006 are hereby incorporated as special conditions of this permit.
6. The permittee will report any violation of these conditions or violations of Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act in writing to the Wilmington District, U. S Army Corps of Engineers, within 24 hours of the permittee's discovery of the violation.
7. All Reasonable and Prudent Measures and Terms and Conditions contained in the July 6, 2006 US Fish and Wildlife Service's Biological Opinion on the effects of the subject bridge demolition and replacement on the federally endangered Appalachian elktoe and it's Designated Critical Habitat are hereby incorporated as conditions of this permit. Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory Reasonable and Prudent Measures and Terms and Conditions contained in the Biological Opinion.

This verification will remain valid until the expiration date identified below unless the nationwide authorization is modified, suspended or revoked. If, prior to the expiration date identified below, the nationwide permit authorization is reissued and/or modified, this verification will remain valid until the expiration date identified below, provided it complies with all requirements of the modified nationwide permit. If the nationwide permit authorization expires or is suspended, revoked, or is modified, such that the activity would no longer comply with the terms and conditions of the nationwide permit, activities which have commenced (i.e., are under construction) or are under contract to commence in reliance upon the nationwide permit, will remain authorized provided the activity is completed within twelve months of the date of the nationwide permit's expiration, modification or revocation, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend or revoke the authorization.

Activities subject to Section 404 (as indicated above) may also require an individual Section 401 Water Quality Certification. You should contact the NC Division of Water Quality (telephone (919) 733-1786) to determine Section 401 requirements.

For activities occurring within the twenty coastal counties subject to regulation under the Coastal Area Management Act (CAMA), prior to beginning work you must contact the N.C. Division of Coastal Management.

This Department of the Army verification does not relieve the permittee of the responsibility to obtain any other required Federal, State or local approvals/permits.

If there are any questions regarding this verification, any of the conditions of the Permit, or the Corps of Engineers regulatory program, please contact David Baker at 828-271-7980.

Corps Regulatory Official David Baker Date: **December 19, 2007**

Expiration Date of Verification: **December 19, 2009**

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 the attached customer Satisfaction Survey or visit <http://regulatory.usacesurvey.com/> to complete the survey online.

**NATIONWIDE PERMIT 23  
DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS  
FINAL NOTICE OF ISSUANCE AND MODIFICATION OF NATIONWIDE PERMITS  
FEDERAL REGISTER  
AUTHORIZED MARCH 19, 2007**

**Approved Categorical Exclusions.** Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where:

(a) That agency or department has determined, pursuant to the Council on Environmental Quality's implementing regulations for the National Environmental Policy Act (40 CFR part 1500 et seq.), that the activity is categorically excluded from environmental documentation, because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment; and

(b) The Office of the Chief of Engineers (Attn: CECW-CO) has concurred with that agency's or department's determination that the activity is categorically excluded and approved the activity for authorization under NWP 23.

The Office of the Chief of Engineers may require additional conditions, including pre-construction notification, for authorization of an agency's categorical exclusions under this NWP.

**Notification:** Certain categorical exclusions approved for authorization under this NWP require the permittee to submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27). The activities that require pre-construction notification are listed in the appropriate Regulatory Guidance Letters. (Sections 10 and 404)

**Note:** The agency or department may submit an application for an activity believed to be categorically excluded to the Office of the Chief of Engineers (Attn: CECW-CO). Prior to approval for authorization under this NWP of any agency's activity, the Office of the Chief of Engineers will solicit public comment. As of the date of issuance of this NWP, agencies with approved categorical exclusions are the: Bureau of Reclamation, Federal Highway Administration, and U.S. Coast Guard. Activities approved for authorization under this NWP as of the date of this notice are found in Corps Regulatory Guidance Letter 05-07, which is available at:

<http://www.usace.army.mil/inet/functions/cw/cecwo/reg/rglsindx.htm> . Any future approved categorical exclusions will be announced in Regulatory Guidance Letters and posted on this same web site.

**NATIONWIDE PERMIT 33  
DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS  
FINAL NOTICE OF ISSUANCE AND MODIFICATION OF NATIONWIDE PERMITS  
FEDERAL REGISTER  
AUTHORIZED MARCH 19, 2007**

**Temporary Construction, Access, and Dewatering.** Temporary structures, work, and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites, provided that the associated primary activity is authorized by the Corps of Engineers or the U.S. Coast Guard. This NWP also authorizes temporary structures, work, and discharges, including cofferdams, necessary for construction activities not otherwise subject to the Corps or U.S. Coast Guard permit requirements. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if the district engineer determines that it will not cause more than minimal adverse effects on aquatic resources. Following completion of construction, temporary fill must be entirely removed to upland areas, dredged material must be returned to its original location, and the affected areas must be restored to pre-construction elevations. The affected areas must also be revegetated, as appropriate. This permit does not authorize the use of cofferdams to dewater wetlands or other aquatic areas to change their use. Structures left in place after construction is completed require a section 10 permit if located in navigable waters of the United States. (See 33 CFR part 322.)

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27). The pre-construction notification must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. (Sections 10 and 404)

## NATIONWIDE PERMIT CONDITIONS

The following General Conditions must be followed in order for any authorization by a NWP to be valid:

1. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.

3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48.

6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

13. Removal of Temporary Fills. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety.

15. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

16. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

17. Endangered Species. (a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. No activity is authorized

under any NWP which “may affect” a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees shall notify the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps’ determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have “no effect” on listed species or critical habitat, or until Section 7 consultation has been completed.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWPs.

(e) Authorization of an activity by a NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the U.S. FWS or the NMFS, both lethal and non-lethal “takes” of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide Web pages at <http://www.fws.gov/> and <http://www.noaa.gov/fisheries.html> respectively.

18. Historic Properties. (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State

Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

19. Designated Critical Resource Waters. Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the district engineer after notice and opportunity for public comment. The district engineer may also designate additional critical resource waters after notice and opportunity for comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, and 50 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 27, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

20. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10 acre and require pre-construction notification, unless the district engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. For wetland losses of 1/10 acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream restoration, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWP. For example, if an NWP has an acreage limit of 1/2 acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2 acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWP.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

21. Water Quality. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

22. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

23. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

24. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

25. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:  
“When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate

the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

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(Transferee)

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(Date)

26. Compliance Certification. Each permittee who received an NWP verification from the Corps must submit a signed certification regarding the completed work and any required mitigation. The certification form must be forwarded by the Corps with the NWP verification letter and will include:

- (a) A statement that the authorized work was done in accordance with the NWP authorization, including any general or specific conditions;
- (b) A statement that any required mitigation was completed in accordance with the permit conditions; and
- (c) The signature of the permittee certifying the completion of the work and mitigation.

27. Pre-Construction Notification. (a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, as a general rule, will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

- (1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or
- (2) Forty-five calendar days have passed from the district engineer’s receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 17 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 18 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that is “no effect” on listed species or “no potential to cause effects” on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) is completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee cannot begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained.

Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided result in a quicker decision.);

(4) The PCN must include a delineation of special aquatic sites and other waters of the United States on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters of the United States, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, where appropriate;

(5) If the proposed activity will result in the loss of greater than 1/10 acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(d) Agency Coordination: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP 48 activities requiring pre-construction notification and for other NWP activities requiring pre-construction notification to the district engineer that result in the loss of greater than 1/2-acre of waters of the United States, the district engineer will immediately provide (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy of the PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) Applicants are encouraged to provide the Corps multiple copies of pre-construction notifications to expedite agency coordination.

(5) For NWP 48 activities that require reporting, the district engineer will provide a copy of each report within 10 calendar days of receipt to the appropriate regional office of the NMFS.

(e) District Engineer's Decision: In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If the proposed activity requires a PCN and will result in a loss of greater than 1/10 acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any conditions the district engineer deems necessary. The district engineer must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment

(after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP.

If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either: (1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period. The authorization will include the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan.

28. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

### **FURTHER INFORMATION**

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project.

### **DEFINITIONS**

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration, establishment (creation), enhancement, or preservation of aquatic resources for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Discharge: The term "discharge" means any discharge of dredged or fill material.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a

decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

*Ephemeral stream:* An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

*Establishment (creation):* The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

*Historic Property:* Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

*Independent utility:* A test to determine what constitutes a single and complete project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

*Intermittent stream:* An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

*Loss of waters of the United States:* Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities eligible for exemptions under Section 404(f) of the Clean Water Act are not considered when calculating the loss of waters of the United States.

*Non-tidal wetland:* A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

*Open water:* For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of standing or

flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of “open waters” include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)).

Perennial stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas: Riparian areas are lands adjacent to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through

which surface and subsurface hydrology connects waterbodies with their adjacent uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 20.)

*Shellfish seeding:* The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

*Single and complete project:* The term “single and complete project” is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete project must have independent utility (see definition). For linear projects, a “single and complete project” is all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single waterbody several times at separate and distant locations, each crossing is considered a single and complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

*Stormwater management:* Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

*Stormwater management facilities:* Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

*Stream bed:* The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

*Stream channelization:* The manipulation of a stream’s course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized stream remains a water of the United States.

*Structure:* An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

*Tidal wetland:* A tidal wetland is a wetland (i.e., water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line, which is defined at 33 CFR 328.3(d).

*Vegetated shallows:* Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

*Waterbody:* For purposes of the NWP, a waterbody is a jurisdictional water of the United States that, during a year with normal patterns of precipitation, has water flowing or standing above ground to the extent that an ordinary high water mark (OHWM) or other indicators of jurisdiction can be determined, as well as any wetland area (see 33 CFR 328.3(b)). If a jurisdictional wetland is adjacent--meaning bordering, contiguous, or neighboring--to a jurisdictional waterbody displaying an OHWM or other indicators of jurisdiction, that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of "waterbodies" include streams, rivers, lakes, ponds, and wetlands.

## **REGIONAL CONDITIONS FOR NATIONWIDE PERMITS IN THE WILMINGTON DISTRICT**

### **1.0 Excluded Waters**

The Corps has identified waters that will be excluded from the use of all NWP's during certain timeframes. These waters are:

#### **1.1. Anadromous Fish Spawning Areas**

Waters of the United States identified by either the North Carolina Division of Marine Fisheries (NCDMF) or the North Carolina Wildlife Resources Commission (NCWRC) as anadromous fish spawning areas are excluded during the period between February 15 and June 30, without prior written approval from NCDMF or NCWRC and the Corps.

#### **1.2. Trout Waters Moratorium**

Waters of the United States in the twenty-five designated trout counties of North Carolina are excluded during the period between October 15 and April 15 without prior written approval from the NCWRC. (see Section I. b. 7. for a list of the twenty-five trout counties).

#### **1.3. Sturgeon Spawning Areas**

Waters of the United States designated as sturgeon spawning areas are excluded during the period between February 1 and June 30, without prior written approval from the National Marine Fisheries Service (NMFS).

### **2.0 Waters Requiring Additional Notification**

The Corps has identified waters that will be subject to additional notification requirements for activities authorized by all NWP's. These waters are:

#### **2.1. Western NC Counties that Drain to Designated Critical Habitat**

Waters of the U.S. that requires a Pre-Construction Notification pursuant to General Condition 27 (PCN) and located in the sixteen counties listed below, applicants must provide a copy of the PCN to the US Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28805. This PCN must be sent concurrently to the US Fish and Wildlife Service and the Corps Asheville Regulatory Field Office. Please see General Condition 17 for specific notification requirements related to Federally Endangered Species and the following website for information on the location of designated critical habitat.

Counties with tributaries that drain to designated critical habitat that require notification to the Asheville US Fish and Wildlife Service: Avery, Cherokee, Forsyth, Graham, Haywood,

Henderson, Jackson, Macon Mecklenburg, Mitchell, Stokes, Surry, Swain, Transylvania, Union and Yancey.

Website and office addresses for Endangered Species Act Information:

The Wilmington District has developed the following website for applicants which provide guidelines on how to review linked websites and maps in order to fulfill NWP general condition 17 requirements.

<http://www.saw.usace.army.mil/wetlands/ESA>

Applicants who do not have internet access may contact the appropriate US Fish and Wildlife Service offices or the US Army Corps of Engineers office listed below.

US Fish and Wildlife Service  
Asheville Field Office  
160 Zillicoa Street  
Asheville, NC 28801  
Telephone: (828) 258-3939

Asheville US Fish and Wildlife Service Office counties: All counties west of and including Anson, Stanly, Davidson, Forsyth and Stokes Counties

US Fish and Wildlife Service  
Raleigh Field Office  
Post Office Box 33726  
Raleigh, NC 27636-3726  
Telephone: (919) 856-4520

Raleigh US Fish and Wildlife Service Office counties: all counties east of and including Richmond, Montgomery, Randolph, Guilford, and Rockingham Counties.

**2.2. Special Designation Waters**

Prior to the use of any NWP in any of the following North Carolina identified waters and contiguous wetlands, applicants must comply with Nationwide Permit General Condition 27 (PCN). The North Carolina waters and contiguous wetlands that require additional notification requirements are:

“Outstanding Resource Waters” (ORW) and “High Quality Waters” (HQW) (as designated by the North Carolina Environmental Management Commission), or “Inland Primary Nursery Areas” (IPNA) (as designated by the North Carolina Wildlife Resources Commission), or “Contiguous Wetlands” (as defined by the North Carolina Environmental Management Commission), or “Primary Nursery Areas” (PNA) (as designated by the North Carolina Marine Fisheries Commission).

### **2.3. Coastal Area Management Act (CAMA) Areas of Environmental Concern**

Non-Federal applicants for any NWP in a designated “Area of Environmental Concern” (AEC) in the twenty (20) counties of Eastern North Carolina covered by the North Carolina Coastal Area Management Act (CAMA), must also obtain the required CAMA permit. Construction activities for non-Federal projects may not commence until a copy of the approved CAMA permit is furnished to the appropriate Wilmington District Regulatory Field Office (Wilmington Field Office – P.O. Box 1890, Wilmington, NC 28402 or Washington Field Office – P.O. Box 1000, Washington, NC 27889).

### **2.4. Barrier Islands**

Prior to the use of any NWP on a barrier island of North Carolina, applicants must comply with Nationwide Permit General Condition 27 (PCN).

### **2.5. Mountain or Piedmont Bogs**

Prior to the use of any NWP in a “Mountain or Piedmont Bog” of North Carolina, applicants shall comply with Nationwide Permit General Condition 27 (PCN).

Note: The following wetland community types identified in the N.C. Natural Heritage Program document, “Classification of Natural communities of North Carolina (Michael P. Schafale and Alan S. Weakley, 1990), are subject to this regional condition.

Mountain Bogs	Piedmont Bogs
Swamp Forest-Bog Complex	Upland depression Swamp Forest
Swamp Forest-Bog Complex (Spruce Subtype)	
Southern Appalachian Bog (Northern Subtype)	
Southern Appalachian Bog (Southern Subtype)	
Southern Appalachian Fen	

### **2.6. Animal Waste Facilities**

Prior to use of any NWP for construction of animal waste facilities in waters of the US, including wetlands, applicants shall comply with Nationwide Permit General Condition 27 (PCN).

### **2.7. Trout Waters**

Prior to any discharge of dredge or fill material into streams or waterbodies within the twenty-five (25) designated trout counties of North Carolina, the applicant shall comply with

Nationwide Permit General Condition 27 (PCN). The applicant shall also provide a copy of the notification to the appropriate NCWRC office to facilitate the determination of any potential impacts to designated Trout Waters. Notification to the Corps of Engineers will include a statement with the name of the NCWRC biologist contacted, the date of the notification, the location of work, a delineation of wetlands, a discussion of alternatives to working in the mountain trout waters, why alternatives were not selected, and a plan to provide compensatory mitigation for all unavoidable adverse impacts to mountain trout waters.

#### NCWRC and NC Trout Counties

Mr. Ron Linville			
Western Piedmont Region Coordinator	Alleghany	Caldwell	Watauga
3855 Idlewild Road	Ashe	Mitchell	Wilkes
Kernersville, NC 27284-9180	Avery	Stokes	
Telephone: (336) 769-9453	Burke	Surry	

Mr. Dave McHenry			
Mountain Region Coordinator	Buncombe	Henderson	Polk
20830 Great Smoky Mtn. Expressway	Cherokee	Jackson	Rutherford
Waynesville, NC 28786	Clay	Macon	Swain
Telephone: (828) 452-2546	Graham	Madison	Transylvania
Fax: (828) 452-7772	Haywood	McDowell	Yancey

### 3.0 List of Corps Regional Conditions for All Nationwide Permits

The following conditions apply to all Nationwide Permits in the Wilmington District:

#### 3.1. Limitation of Loss of Perennial Stream Bed

NWPs may not be used for activities that may result in the loss or degradation of greater than 300 total linear feet of perennial streams. The NWPs may not be used for activities that may result in the loss or degradation of greater than 300 total linear feet of ephemeral and intermittent streams that exhibit important aquatic function(s)\* Loss of stream includes the linear feet of stream bed that is filled, excavated, or flooded by the proposed activity. The District Commander can waive the 300 linear foot limit for ephemeral and intermittent streams on a case-by-case basis if he determines that the proposed activity will result in minimal individual and cumulative adverse impacts to the aquatic environment. Waivers for the loss of ephemeral and intermittent streams must be in writing. This waiver only applies to the 300 linear feet threshold for NWPs. Mitigation may still be required for impacts to ephemeral and intermittent streams, on a case-by-case basis, depending on the impacts to the aquatic environment of the proposed project. [\*Note: The Corps uses the Stream Quality Assessment Worksheet, located with Permit Information on the Regulatory Program Web Site, to aid in the determination of aquatic function within the intermittent stream channel.]

### **3.2. Mitigation for Loss of Stream Bed Exceeding 150 Feet.**

For any NWP that results in a loss of more than 150 linear feet of perennial and/or ephemeral/intermittent stream, the applicant shall provide a mitigation proposal to compensate for the loss of aquatic function associated with the proposed activity. For stream losses less than 150 linear feet, that require a PCN, the District Commander may determine, on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effect on the aquatic environment.

### **3.3. Pre-construction Notification for Loss of Streambed Exceeding 150 Feet.**

Prior to use of any NWP for any activity which impacts more than 150 total linear feet of perennial stream or ephemeral/ intermittent stream, the applicant must comply with Nationwide Permit General Condition 27 (PCN). This applies to NWPs that do not have specific notification requirements. If a NWP has specific notification requirements, the requirements of the NWP should be followed.

### **3.4. Restriction on Use of Live Concrete**

For all NWPs which allow the use of concrete as a building material, measures will be taken to prevent live or fresh concrete, including bags of uncured concrete, from coming into contact with waters of the state until the concrete has hardened.

### **3.5. Requirements for Using Riprap for Bank Stabilization**

For all NWPs that allow for the use of riprap material for bank stabilization, the following measures shall be applied:

**3.5.1.** Filter cloth must be placed underneath the riprap as an additional requirement of its use in North Carolina waters.

**3.5.2.** The placement of riprap shall be limited to the areas depicted on submitted work plan drawings.

**3.5.3.** The riprap material shall be clean and free from loose dirt or any pollutant except in trace quantities that would not have an adverse environmental effect.

**3.5.4.** It shall be of a size sufficient to prevent its movement from the authorized alignment by natural forces under normal conditions.

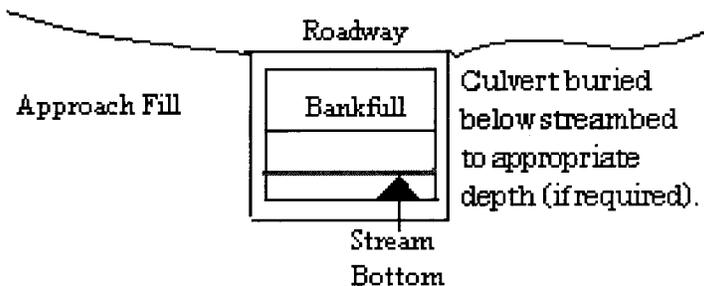
**3.5.5.** The riprap material shall consist of clean rock or masonry material such as, but not limited to, granite, marl, or broken concrete.

**3.5.6.** A waiver from the specifications in this Regional Condition may be requested in writing. The waiver will only be issued if it can be demonstrated that the impacts of complying with this Regional condition would result in greater adverse impacts to the aquatic environment.

### **3.6. Safe Passage Requirements for Culvert Placement**

For all NWP's that involve the construction/installation of culverts, measures will be included in the construction/installation that will promote the safe passage of fish and other aquatic organisms. The dimension, pattern, and profile of the stream above and below a pipe or culvert should not be modified by widening the stream channel or by reducing the depth of the stream in connection with the construction activity. The width, height, and gradient of a proposed opening should be such as to pass the average historical low flow and spring flow without adversely altering flow velocity. Spring flow should be determined from gage data, if available. In the absence of such data, bankfull flow can be used as a comparable level.

In the twenty (20) counties of North Carolina designated as coastal counties by the Coastal Area Management Act (CAMA): All pipe and culvert bottoms shall be buried at least one foot below normal bed elevation when they are placed within the Public Trust Area of Environmental Concern (AEC) and/or the Estuarine Waters AEC as designated by CAMA, and/or all streams appearing as blue lines on United States Geological Survey (USGS) quad sheets.



In all other counties: Culverts greater than 48 inches in diameter will be buried at least one foot below the bed of the stream. Culverts 48 inches in diameter or less shall be buried or placed on the stream bed as practicable and appropriate to maintain aquatic passage, and every effort shall be made to maintain the existing channel slope. The bottom of the culvert must be placed at a depth below the natural stream bottom to provide for passage during drought or low flow conditions.

Destabilizing the channel and head cutting upstream should be considered in the placement of the culvert.

A waiver from the depth specifications in this condition may be requested in writing. The waiver will be issued if it can be demonstrated that the proposal would result in the least impacts to the aquatic environment.

All counties: Culverts placed in wetlands do not have to be buried.

### **3.7. Notification to NCDENR Shellfish Sanitation Section**

Applicants shall notify the NCDENR Shellfish Sanitation Section prior to dredging in or removing sediment from an area closed to shell fishing where the effluent may be released to an area open for shell fishing or swimming in order to avoid contamination from the disposal area and cause a temporary shellfish closure to be made. Such notification shall also be provided to the appropriate Corps of Engineers Regulatory Field Office. Any disposal of sand to the ocean beach should occur between November 1 and April 30 when recreational usage is low. Only clean sand should be used and no dredged sand from closed shell fishing areas may be used. If beach disposal were to occur at times other than stated above or if sand from a closed shell fishing area is to be used, a swimming advisory shall be posted, and a press release shall be issued.

### **3.8. Preservation of Submerged Aquatic Vegetation**

Adverse impacts to Submerged Aquatic Vegetation (SAV) are not authorized by any NWP within any of the twenty coastal counties defined by North Carolina's Coastal Area Management Act of 1974 (CAMA).

### **4.0 Additional Regional Conditions Applicable to Specific Nationwide Permits**

The following regional conditions are required for NWP #33 – Temporary Construction, Access and Dewatering:

**4.1.** The required restoration plan must include a timetable for restoration activities.

## **NC DIVISION OF WATER QUALITY - GENERAL CERTIFICATION CONDITIONS**

For the most recent General Certification conditions, call the NC Division of Water Quality, Wetlands/401 Certification Unit at (919) 733-1786 or access the following website:

<http://h2o.enr.state.nc.us/ncwetlands/certs.html>

## **NC DIVISION OF COASTAL MANAGEMENT - STATE CONSISTENCY**

In a letter dated May 7, 2007, the North Carolina Division of Coastal Management found this NWP consistent with the North Carolina Coastal Zone Management Program. Updates on CAMA Consistency for NC can be found on the NC DCM web site at:

<http://dcm2.enr.state.nc.us/Permits/consist.htm>

## **EASTERN BAND OF THE CHEROKEE INDIANS TRIBAL WATER QUALITY CERTIFICATIONS**

In a letter dated May 8, 2007, US EPA, on behalf of the Eastern Band of Cherokee Indians, provided Tribal General Conditions for Nationwide Permits on Cherokee Indian Reservation. These Tribal General Conditions are located on the Corps website at:

<http://www.saw.usace.army.mil/WETLANDS/NWP2007/EBCI-certs.html>

### **Citations:**

2007 Nationwide Permits Public Notice for Final Issue Date: March 15, 2007

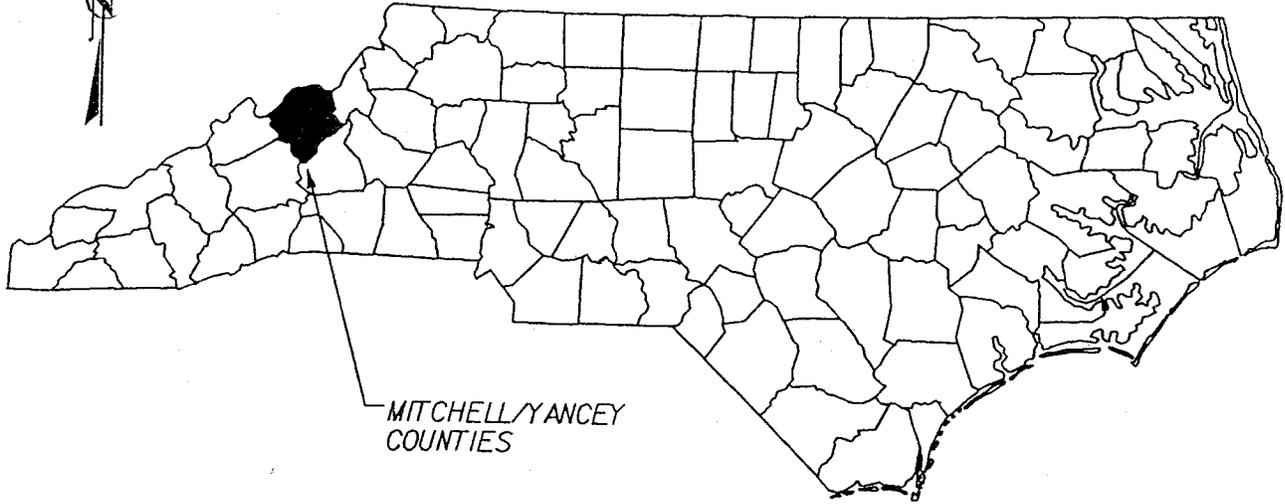
Correction Notice for Nationwide Permits, Federal Register / Vol. 72, No. 88 / Tuesday, May 8, 2007 / Notices p.26082

2007 SAW Regional Conditions – Authorized June 1, 2007

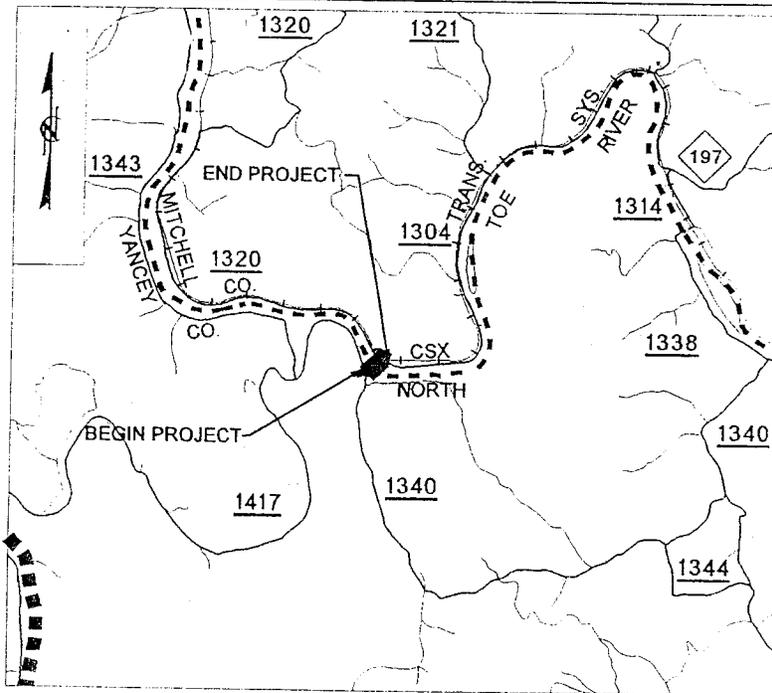
This and other information can be found on the Corps web site at:

<http://www.saw.usace.army.mil/WETLANDS/NWP2007/nationwide-permits.html>

# NORTH CAROLINA



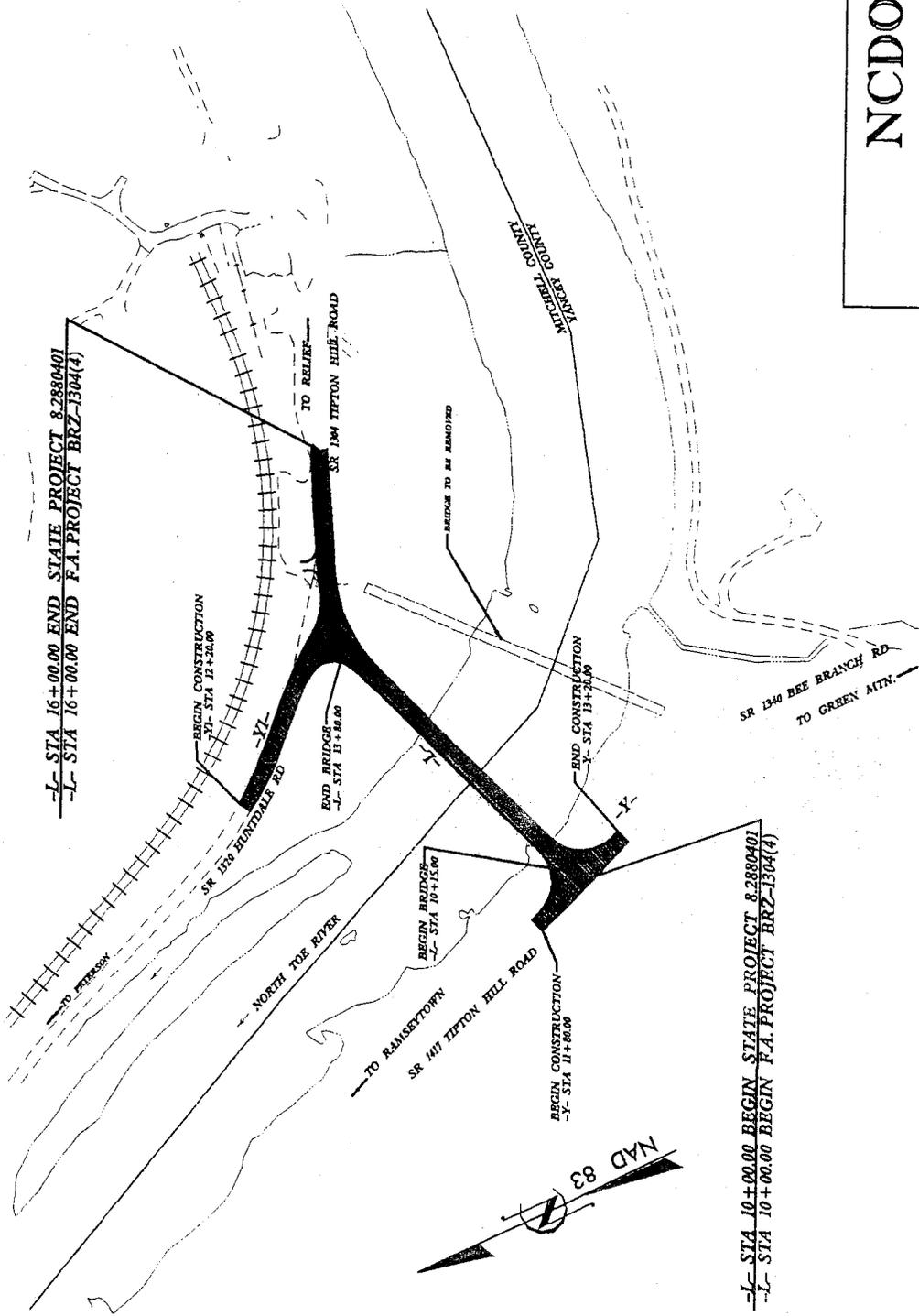
MITCHELL/YANCEY  
COUNTIES



VICINITY MAP

## VICINITY MAPS

**NCDOT**  
DIVISION OF HIGHWAYS  
MITCHELL/YANCEY COUNTY  
PROJECT: 8.2880401 (B-2848)  
BRIDGE #143 ON SR 1304  
OVER NORTH TOE RIVER



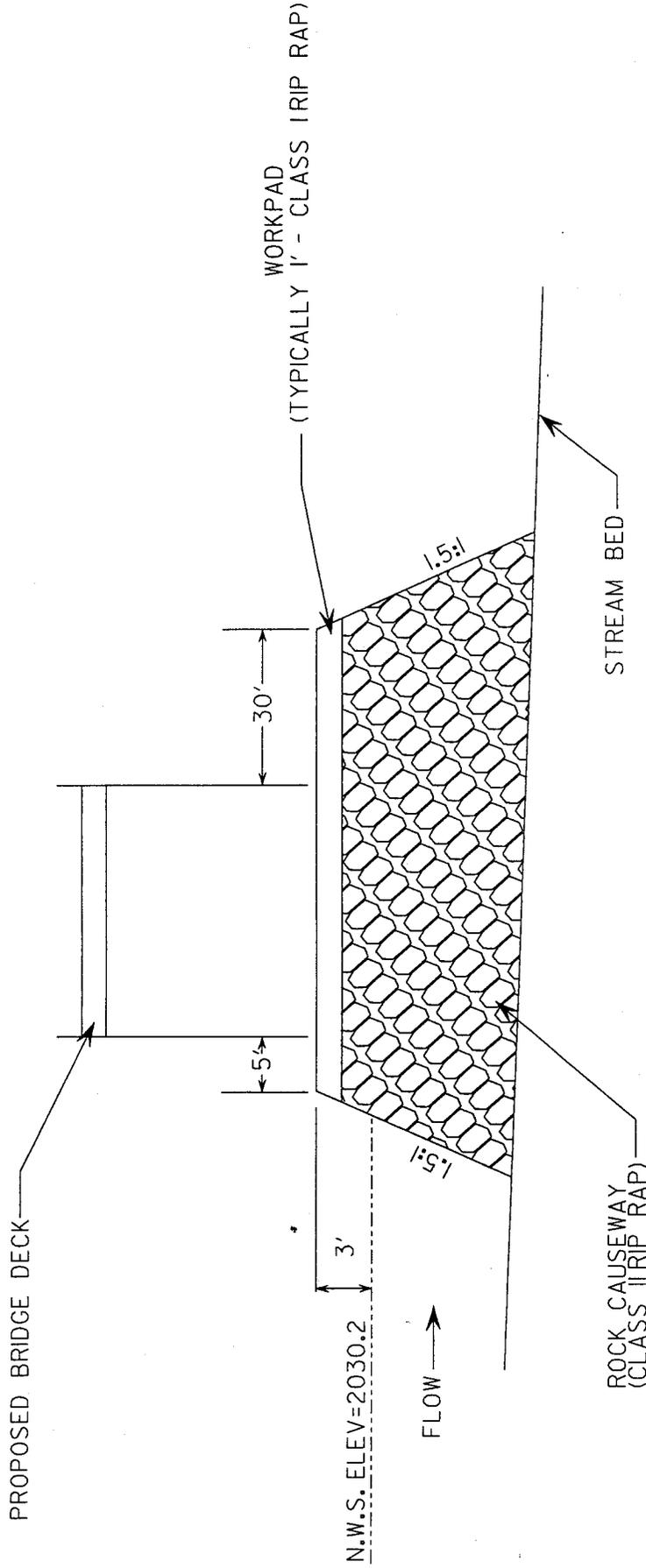
-L- STA 16+00.00 END STATE PROJECT 8.2880401  
 -L- STA 16+00.00 END F.A. PROJECT BRZ-1304(A)

-L- STA 10+00.00 BEGIN STATE PROJECT 8.2880401  
 -L- STA 10+00.00 BEGIN F.A. PROJECT BRZ-1304(A)

**NCDOT**  
 DIVISION OF HIGHWAYS  
 MITCHELL/YANCEY COUNTY  
 PROJECT: 8.2880401 (B-2848)  
 BRIDGE #143 ON SR 1304  
 OVER NORTH TOE RIVER

**SITE MAP**

# WORKPAD DETAIL (NOT TO SCALE)



**NC**DOT

DIVISION OF HIGHWAYS  
MITCHELL/YANCEY COUNTY  
PROJECT: 8.2880401 (B-2848)  
BRIDGE #143 ON SR 1304  
OVER NORTH TOE RIVER

## QUANTITIES OF ESTIMATES

VOLUME OF CLASS IIRIP RAP= 2175 yds<sup>3</sup>  
AREA OF CLASS IIRIP RAP= 0.398 ac  
Estimate 2480 Tons Class IIRip Rap

# PROPERTY OWNERS

## NAMES AND ADDRESSES

NAMES	ADDRESSES
ANNA LEE HUGHES	41 PETERSON LANE GREEN MOUNTAIN, NC 28740
TROY HUGHES	41 PETERSON LANE GREEN MOUNTAIN, NC 28740
PHIN PETERSON	GREEN MOUNTAIN, NC 28740
STANLEY & IRENE TIPTON	RT 1 BOX 298 GREEN MOUNTAIN, NC 28740
BARBARA MILLER	RT 4 BOX 405 BURNSVILLE, NC 28714
CSX RAILROAD	LOCUST ST. SPRUCE PINE, NC 28777

NCDOT

DIVISION OF HIGHWAYS  
MITCHELL/YANCEY COUNTY

PROJECT: 8.2880401 (B-2848)

BRIDGE #143 ON SR 1304  
OVER NORTH TOE RIVER

**WETLAND PERMIT IMPACT SUMMARY**

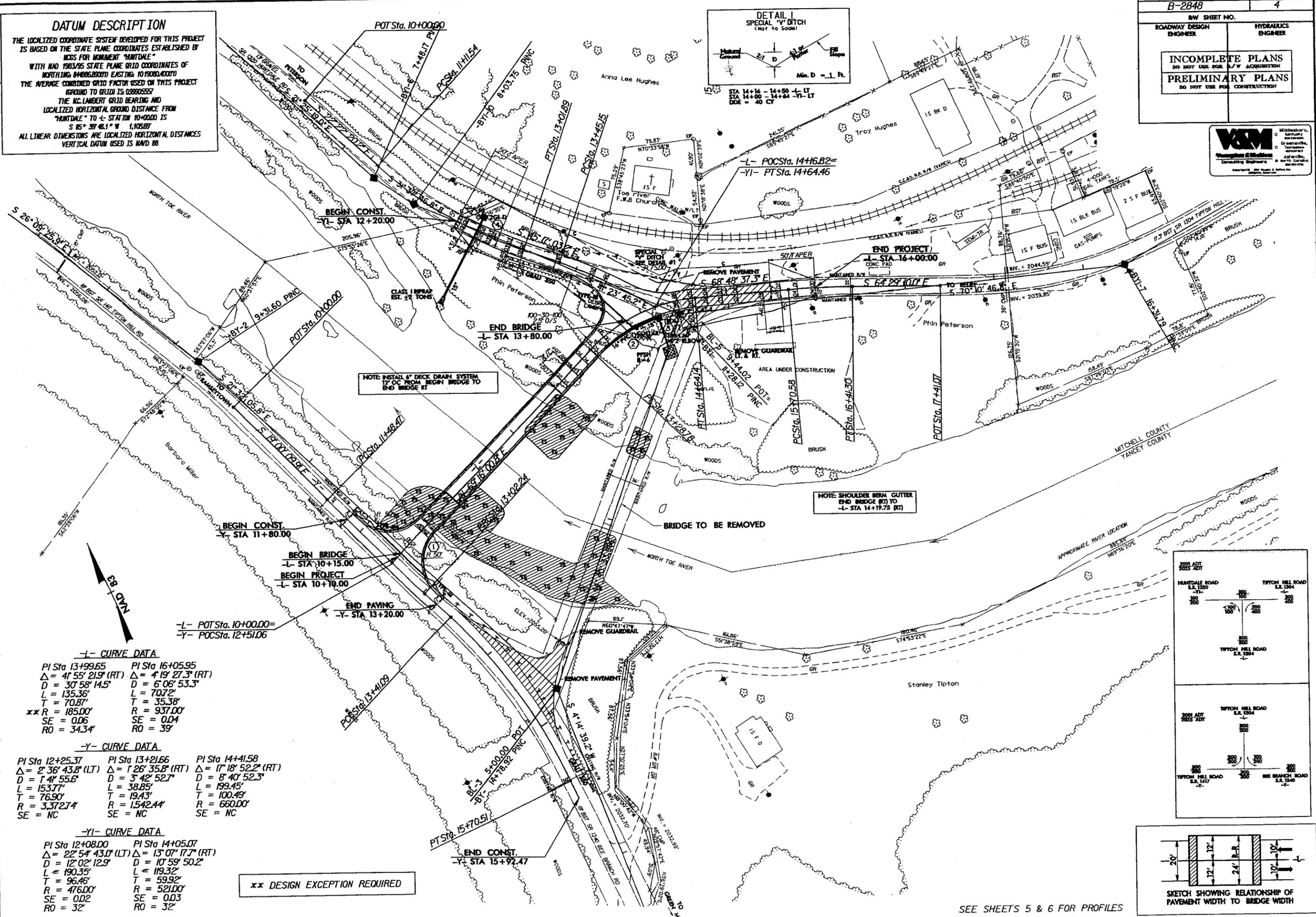
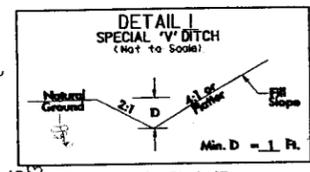
		WETLAND IMPACTS					SURFACE WATER IMPACTS				
Site No.	Station (From/To)	Structure Size / Type	Fill In Wetlands (ac)	Temp. Fill In Wetlands (ac)	Excavation In Wetlands (ac)	Mechanized Clearing (Method III) (ac)	Fill In SW (Natural) (ac)	Fill In SW (Pond) (ac)	Temp. Fill In SW (ac)	Existing Channel Impacted (ft)	Natural Stream Design (ft)
1	11+97.50 -L-	TEMP BRIDGE WORKPAD							0.398		
<b>TOTALS:</b>			0	0	0	0	0	0	0.398	0	0

**NC DEPARTMENT OF TRANSPORTATION**  
**DIVISION OF HIGHWAYS**  
 YANCEY/MITCHELL COUNTY  
 PROJECT 8-2880401 B-2848  
 SHEET 5 OF 7  
 REV 4/7/2004

PROJECT REFERENCE NO. B-2848	SHEET NO. 4
ROADWAY DESIGN ENGINEER	HYDRAULICS ENGINEER
<b>INCOMPLETE PLANS</b> DO NOT USE FOR A/W ACQUISITION <b>PRELIMINARY PLANS</b> DO NOT USE FOR CONSTRUCTION	



**DATUM DESCRIPTION**  
 THE LOCALIZED COORDINATE SYSTEM DEVELOPED FOR THIS PROJECT IS BASED ON THE STATE PLANE COORDINATES ESTABLISHED BY WGS FOR MONUMENT "MANTOLE" WITH NAD 1983/95 STATE PLANE GRID COORDINATES OF NORTHING 0486629000 EASTING 1019000000 THE AVERAGE COMBINED GRID FACTOR USED ON THIS PROJECT (GROUND TO GRID) IS 0.9995557 THE N.C. LAMBERT GRID BEARING AND LOCALIZED HORIZONTAL GROUND DISTANCE FROM "MANTOLE" TO + STATION 10+00.00 IS S 85° 39' 48.1" W 1,105.89' ALL LINEAR DIMENSIONS ARE LOCALIZED HORIZONTAL DISTANCES VERTICAL DATUM USED IS MVD 88



**-L- CURVE DATA**

PI Sta 13+99.65	PI Sta 16+05.95
$\Delta = 41^{\circ} 55' 21.9"$ (RT)	$\Delta = 4^{\circ} 19' 27.3"$ (RT)
$D = 30^{\circ} 58' 14.5"$	$D = 6^{\circ} 06' 53.3"$
$L = 135.36'$	$L = 70.72'$
$T = 70.87'$	$T = 35.38'$
** $R = 185.00'$	$R = 937.00'$
$SE = 0.06$	$SE = 0.04$
$RO = 34.34'$	$RO = 39'$

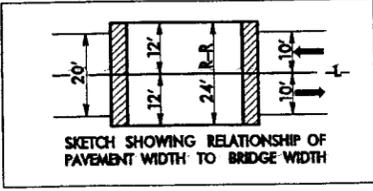
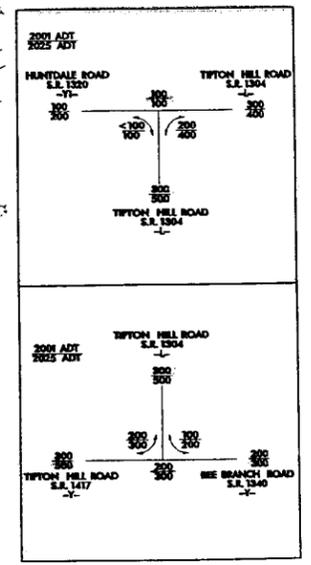
**-Y- CURVE DATA**

PI Sta 12+25.37	PI Sta 13+21.66	PI Sta 14+41.58
$\Delta = 2^{\circ} 36' 43.8"$ (LT)	$\Delta = 1^{\circ} 26' 35.8"$ (RT)	$\Delta = 17^{\circ} 18' 52.2"$ (RT)
$D = 1^{\circ} 41' 55.8"$	$D = 3^{\circ} 42' 52.7"$	$D = 8^{\circ} 40' 52.3"$
$L = 153.77'$	$L = 38.85'$	$L = 199.45'$
$T = 76.90'$	$T = 19.43'$	$T = 100.49'$
$R = 3,372.74'$	$R = 1,542.44'$	$R = 660.00'$
$SE = NC$	$SE = NC$	$SE = NC$

**-YI- CURVE DATA**

PI Sta 12+08.00	PI Sta 14+05.07
$\Delta = 22^{\circ} 54' 43.0"$ (LT)	$\Delta = 13^{\circ} 07' 17.7"$ (RT)
$D = 12^{\circ} 02' 12.9"$	$D = 10^{\circ} 59' 50.2"$
$L = 190.35'$	$L = 119.32'$
$T = 96.46'$	$T = 59.92'$
$R = 476.00'$	$R = 521.00'$
$SE = 0.02$	$SE = 0.03$
$RO = 32'$	$RO = 32'$

\*\* DESIGN EXCEPTION REQUIRED



SEE SHEETS 5 & 6 FOR PROFILES

**DATUM DESCRIPTION**

THE LOCALIZED COORDINATE SYSTEM DEVELOPED FOR THIS PROJECT IS BASED ON THE STATE PLANE COORDINATES ESTABLISHED BY NCSS FOR MONUMENT TERRITORY WITH NAD 1983/85 STATE PLANE GRID COORDINATES OF NORTHING: 848668300.00 EASTING: 1040000.00. THE AVERAGE COMBINED GRID FACTOR USED ON THIS PROJECT (GROUND TO GRID) IS: 0.9999557. THE N.C. LAMBERT GRID BEARING AND LOCALIZED HORIZONTAL GROUND DISTANCE FROM "MOUNTAIN" TO ± STATION 10+00.00 IS: S 85° 39' 48.1" W 1.10589'. ALL LINEAR DIMENSIONS ARE LOCALIZED HORIZONTAL DISTANCES. VERTICAL DATUM USED IS NAVD 88.

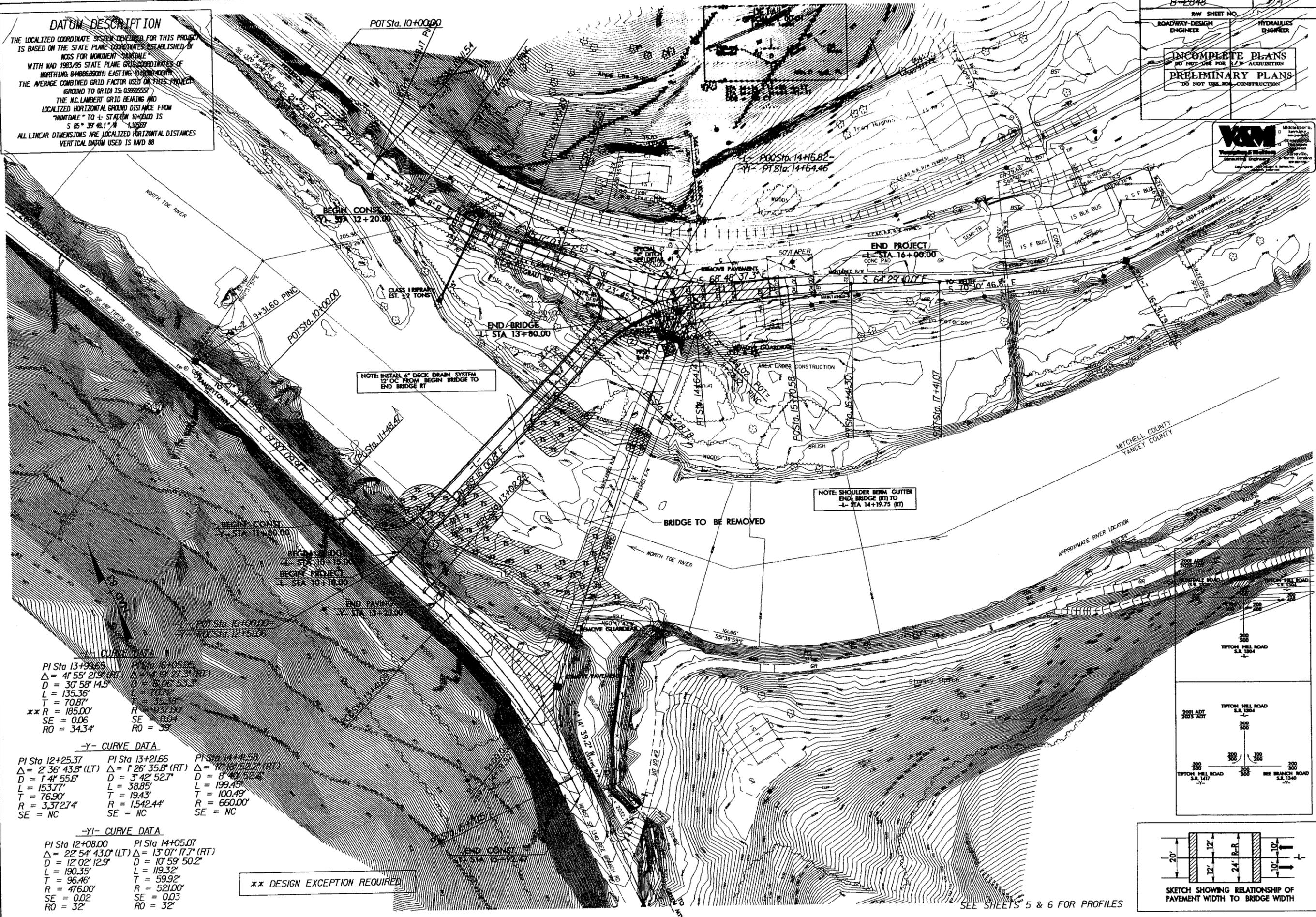
PROJECT REFERENCE NO. B-2848 SHEET NO. 7

ROADWAY DESIGN ENGINEER HYDRAULICS ENGINEER

**INCOMPLETE PLANS**  
DO NOT USE FOR R/W ACQUISITION

**PRELIMINARY PLANS**  
DO NOT USE FOR CONSTRUCTION

**VEM**  
Vannoy Engineering & Mapping, Inc.  
1000 S. W. 10th St., Suite 100  
Troy, AL 36060  
Phone: (205) 336-1111  
Fax: (205) 336-1112  
www.vem.com



NOTE: INSTALL 4" DECK DRAIN SYSTEM 12" OC FROM BEGIN BRIDGE TO END BRIDGE RT

NOTE: SHOULDER BERM GUTTER END BRIDGE (RT) TO ± STA 14+19.75 (RT)

BRIDGE TO BE REMOVED

**-X- CURVE DATA**

PI Sta 13+99.85	PI Sta 16+05.55
$\Delta = 41' 55" 21.9" (RT)$	$\Delta = 41' 52" 21.3" (RT)$
$D = 30' 58" 14.5"$	$D = 31' 06" 53.3"$
$L = 135.36'$	$L = 135.79'$
$T = 70.87'$	$T = 70.87'$
$**R = 185.00'$	$R = 185.71'$
$SE = 0.06$	$SE = 0.04$
$RO = 34.34'$	$RO = 39'$

**-Y- CURVE DATA**

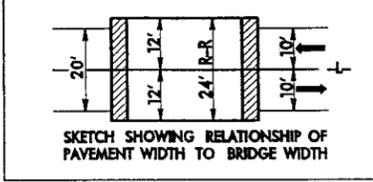
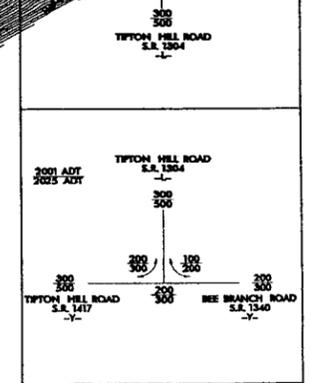
PI Sta 12+25.37	PI Sta 13+21.66	PI Sta 14+10.58
$\Delta = 2' 36" 43.8" (LT)$	$\Delta = 1' 26" 35.8" (RT)$	$\Delta = 17' 18" 22.2" (RT)$
$D = 1' 4" 55.6"$	$D = 3' 42" 52.7"$	$D = 8' 47" 52.2"$
$L = 153.77'$	$L = 38.85'$	$L = 199.45'$
$T = 76.90'$	$T = 19.43'$	$T = 100.49'$
$R = 3,372.74'$	$R = 1,542.44'$	$R = 660.00'$
$SE = NC$	$SE = NC$	$SE = NC$

**-YI- CURVE DATA**

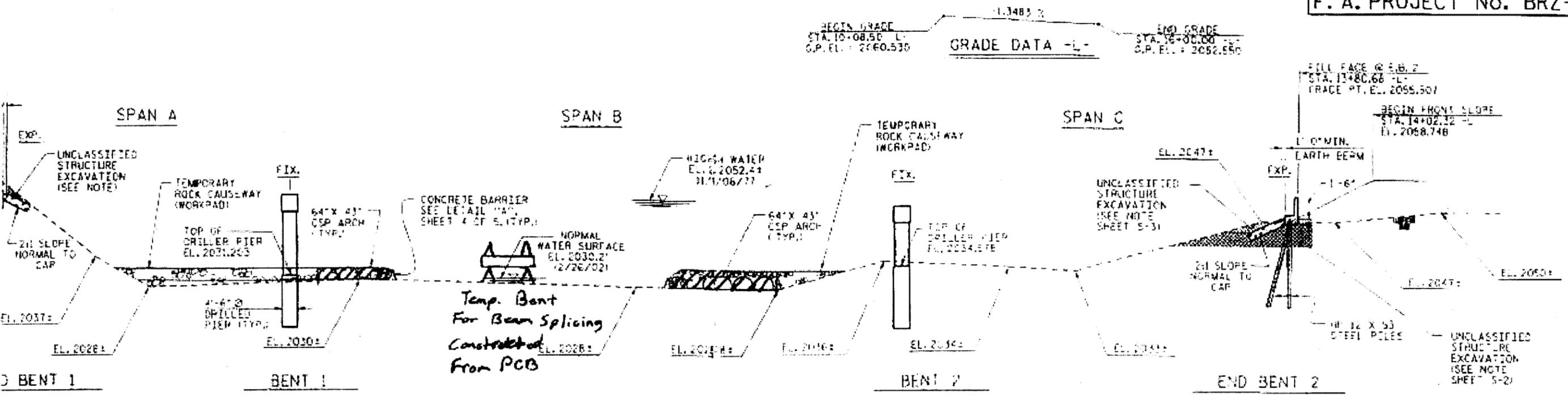
PI Sta 12+08.00	PI Sta 14+05.07
$\Delta = 22' 54" 43.0" (LT)$	$\Delta = 13' 07" 17.7" (RT)$
$D = 12' 02" 12.9"$	$D = 10' 59" 50.2"$
$L = 190.35'$	$L = 119.32'$
$T = 96.46'$	$T = 59.92'$
$R = 476.00'$	$R = 521.00'$
$SE = 0.02$	$SE = 0.03$
$RO = 32'$	$RO = 32'$

**\*\* DESIGN EXCEPTION REQUIRED**

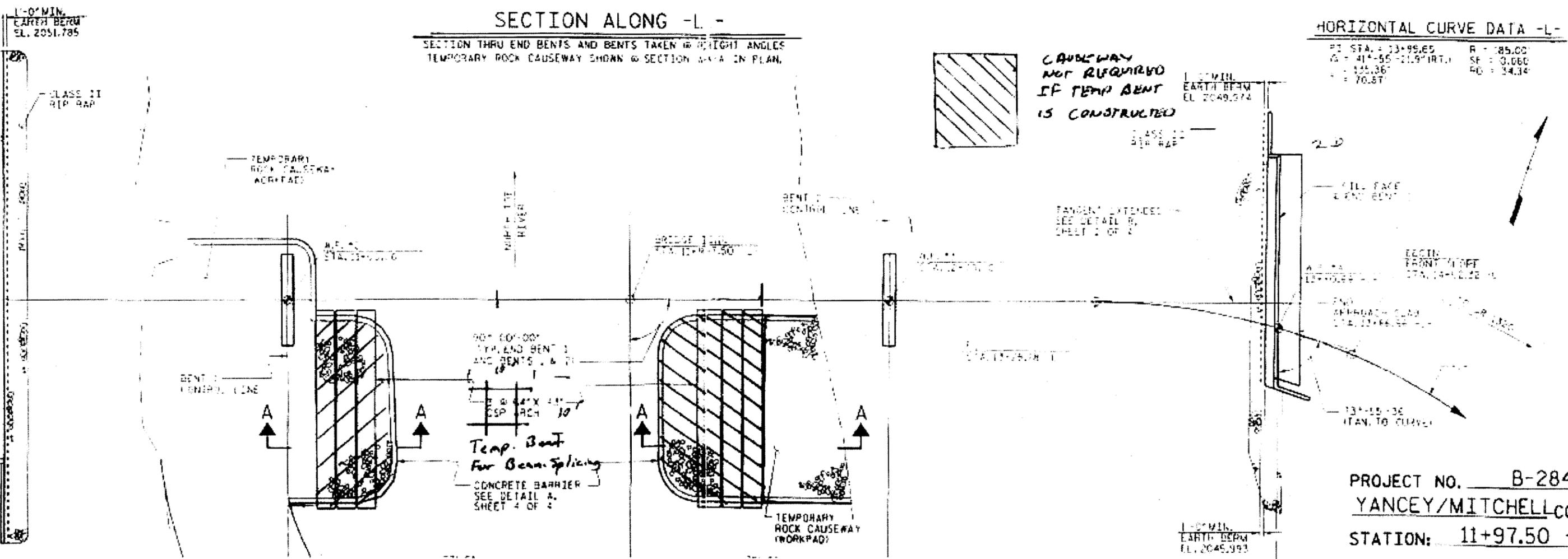
SEE SHEETS 5 & 6 FOR PROFILES



F. A. PROJECT No. BRZ-1304(9)



**SECTION ALONG -L-**  
 SECTION THRU END BENTS AND BENTS TAKEN @ RIGHT ANGLES  
 TEMPORARY ROCK CAUSEWAY SHOWN @ SECTION WITH AN IN PLAN.



PROJECT NO. B-2848  
 YANCEY/MITCHELL COUNTY  
 STATION: 11+97.50 -L-