



DEPARTMENT OF THE ARMY
WILMINGTON DISTRICT, CORPS OF ENGINEERS
69 DARLINGTON AVENUE
WILMINGTON, NORTH CAROLINA 28403-1343

June 11, 2020

Regulatory Division

SUBJECT: DA# SAW-2009-00556; I-40; TIPs I-5111/I-5739

North Carolina Department of Transportation (NCDOT)
Environmental Analysis Unit
Attn: Philip S. Harris, III, P.E., C.P.M.
1548 Mail Service Center
Raleigh, NC 27699-1548

Dear Mr. Harris:

Reference the Department of the Army permit issued to the North Carolina Department of Transportation (NCDOT) on December 23, 2019, and subsequently modified on February 11, 2020. The permit authorizes the discharge of fill material into waters of the United States, for construction of the I-40 improvements, TIPs I-4111 and I-4739, from I-440/US 64 in Raleigh, to SR 1010 (Cleveland Road) in Clayton, Wake and Johnston Counties, North Carolina.

Also, please reference your May 28, 2020 letter, requesting modification of the permit to authorize design revisions for Permit Site 2, as shown on the submitted revised permit drawings 11, 12, 122, and 125, attached. NCDOT requires a field revision at Site 2 to accommodate the construction of the proposed noise wall. Stream SAA at Site 2 was realigned within the footprint of the original permit. However, NCDOT predicts that the new realignment will not remain stable, and requests a modification to the stream realignment such that it has a direct flow pattern into the culvert. Therefore, this modification request is to change the impact determination on 29 linear feet of stream impact from temporary to permanent impact.

We have reviewed the requested modification, and determined that it is appropriate and reasonable. We have also determined that no public notice is required for this modification since the revised impacts are minor. Therefore, the permit is hereby modified to include the change requested in the May 28, 2020 revision submittal.

The revised total impacts are as follows: permanent impacts to 1.01 acres of wetlands, 7,665 linear feet of stream, and 0.58 acre of ponds, and temporary impacts to .0.05 acre of wetlands, and 1,582 linear feet of stream. The net change to total permanent stream impacts with more than minimal aquatic function is an additional 29 linear feet of impact; therefore, additional compensatory mitigation of 58 linear stream credits is required as reflected in the attached Mitigation Responsibility Transfer Form, referenced in Special Condition 14.

Special Conditions 1 and 14 are modified as follows:

- 1. Work Limits:** All work authorized by this permit shall be performed in strict compliance with the original and revised permit drawings (original submitted on May 7, 2019, and mod drawings last revised on December 12, 2019, and May 28, 2020), which are a part of this permit. The Permittee shall ensure that the construction design plans for this project do not deviate from the permit plans attached to this authorization. Any modification to the attached permit plans must be approved by the U.S. Army Corps of Engineers (Corps) prior to any active construction in waters or wetlands.

- 14.** In order to compensate for impacts associated with this permit, mitigation shall be provided in accordance with the provisions outlined on the most recent version of the attached Compensatory Mitigation Responsibility Transfer Forms. The requirements of these forms, including any special conditions listed on this form, are hereby incorporated as special conditions of this permit.

All other conditions of the permit, including the permit expiration date of December 31, 2024, remain applicable. Should you have any questions, please call Mr. Eric Alsmeyer at (919) 554-4884, extension 23.

FOR THE COMMANDER

 Date: 2020.06.11
07:50:59 -04'00'

Monte Matthews
Lead Project Manager
Wilmington District

Enclosures

Copies Furnished (by email):

Ms. Amy Chapman
Division of Water Quality
North Carolina Department of
Environment and Natural Resources
1650 Mail Service Center
Raleigh, NC 27699-1650

Mr. Clarence Coleman
Federal Highway Administration
310 New Bern Ave., Rm 410
Raleigh, North Carolina 27601-1442

Mr. Chris Rivenbark
North Carolina Department of Transportation
Division of Highways
1598 Mail Service Center
Raleigh, North Carolina 27699-1598

U.S. ARMY CORPS OF ENGINEERS
Wilmington District
Compensatory Mitigation Responsibility Transfer Form

Permittee: NCDOT
Project Name: I-40 Improvements; TIPS I-5111 and I-4739

Action ID: SAW-2009-00556
County: Johnston

Instructions to Permittee: The Permittee must provide a copy of this form to the Mitigation Sponsor, either an approved Mitigation Bank or the North Carolina Division of Mitigation Services (NCDMS), who will then sign the form to verify the transfer of the mitigation responsibility. Once the Sponsor has signed this form, it is the Permittee's responsibility to ensure that to the U.S. Army Corps of Engineers (USACE) Project Manager identified on page two is in receipt of a signed copy of this form before conducting authorized impacts, unless otherwise specified below. If more than one mitigation Sponsor will be used to provide the mitigation associated with the permit, or if the impacts and/or the mitigation will occur in more than one 8-digit Hydrologic Unit Code (HUC), multiple forms will be attached to the permit, and the separate forms for each Sponsor and/or HUC must be provided to the appropriate mitigation Sponsors.

Instructions to Sponsor: The Sponsor must verify that the mitigation requirements (credits) shown below are available at the identified site. By signing below, the Sponsor is accepting full responsibility for the identified mitigation, regardless of whether or not they have received payment from the Permittee. Once the form is signed, the Sponsor must update the bank ledger and provide a copy of the signed form and the updated bank ledger to the Permittee, the USACE Project Manager, and the Wilmington District Mitigation Office (see contact information on page 2). The Sponsor must also comply with all reporting requirements established in their authorizing instrument.

Permitted Impacts and Compensatory Mitigation Requirements

Permitted Impacts Requiring Mitigation*: **8-digit HUC and Basin:** 03020201, Neuse River Basin

Stream Impacts (linear feet)			Wetland Impacts (acres)			
Warm	Cool	Cold	Riparian Riverine	Riparian Non-Riverine	Non-Riparian	Coastal
29						

*If more than one mitigation sponsor will be used for the permit, only include impacts to be mitigated by this sponsor.

Compensatory Mitigation Requirements: **8-digit HUC and Basin:** 03020201, Neuse River Basin

Stream Mitigation (credits)			Wetland Mitigation (credits)			
Warm	Cool	Cold	Riparian Riverine	Riparian Non-Riverine	Non-Riparian	Coastal
58						

Mitigation Site Debited: NCDMS

(List the name of the bank to be debited. For umbrella banks, also list the specific site. For NCDMS, list NCDMS. If the NCDMS acceptance letter identifies a specific site, also list the specific site to be debited).

Section to be completed by the Mitigation Sponsor

Statement of Mitigation Liability Acceptance: I, the undersigned, verify that I am authorized to approve mitigation transactions for the Mitigation Sponsor shown below, and I certify that the Sponsor agrees to accept full responsibility for providing the mitigation identified in this document (see the table above), associated with the USACE Permittee and Action ID number shown. I also verify that released credits (and/or advance credits for NCDMS), as approved by the USACE, are currently available at the mitigation site identified above. Further, I understand that if the Sponsor fails to provide the required compensatory mitigation, the USACE Wilmington District Engineer may pursue measures against the Sponsor to ensure compliance associated with the mitigation requirements.

Mitigation Sponsor Name: NCDEQ DMS

Name of Sponsor's Authorized Representative: Beth Harmon

Elizabeth Harmon

Signature of Sponsor's Authorized Representative

06/15/2020

Date of Signature

**USACE Wilmington District
Compensatory Mitigation Responsibility Transfer Form, Page 2**

Conditions for Transfer of Compensatory Mitigation Credit:

- Once this document has been signed by the Mitigation Sponsor and the USACE is in receipt of the signed form, the Permittee is no longer responsible for providing the mitigation identified in this form, though the Permittee remains responsible for any other mitigation requirements stated in the permit conditions.
- Construction within jurisdictional areas authorized by the permit identified on page one of this form can begin only after the USACE is in receipt of a copy of this document signed by the Sponsor, confirming that the Sponsor has accepted responsibility for providing the mitigation requirements listed herein. For authorized impacts conducted by the North Carolina Department of Transportation (NCDOT), construction within jurisdictional areas may proceed upon permit issuance; however, a copy of this form signed by the Sponsor must be provided to the USACE within 30 days of permit issuance. NCDOT remains fully responsible for the mitigation until the USACE has received this form, confirming that the Sponsor has accepted responsibility for providing the mitigation requirements listed herein.
- Signed copies of this document must be retained by the Permittee, Mitigation Sponsor, and in the USACE administrative records for both the permit and the Bank/ILF Instrument. It is the Permittee's responsibility to ensure that the USACE Project Manager (address below) is provided with a signed copy of this form.
- If changes are proposed to the type, amount, or location of mitigation after this form has been signed and returned to the USACE, the Sponsor must obtain case-by-case approval from the USACE Project Manager and/or North Carolina Interagency Review Team (NCIRT). If approved, higher mitigation ratios may be applied, as per current District guidance and a new version of this form must be completed and included in the USACE administrative records for both the permit and the Bank/ILF Instrument.

Comments/Additional Conditions: This additional mitigation responsibility, beyond the mitigation responsibility in the original permit for this project, is related to additional permanent stream loss described in the permittee's May 28, 2020 permit modification request.

This form is not valid unless signed below by the USACE Project Manager and by the Mitigation Sponsor on Page 1. **Once signed, the Sponsor should provide copies of this form along with an updated bank ledger to: 1) the Permittee, 2) the USACE Project Manager at the address below, and 3) the Wilmington District Mitigation Office, Attn: Todd Tugwell, 3331 Heritage Trade Drive, Suite 105, Wake Forest, NC 27587 (email: todd.tugwell@usace.army.mil).** Questions regarding this form or any of the permit conditions may be directed to the USACE Project Manager below.

USACE Project Manager: Eric Alsmeyer
USACE Field Office: Raleigh Regulatory Field Office
US Army Corps of Engineers
3331 Heritage Trade Drive, Suite 105
Wake Forest, NC 27587
Email: eric.c.alsmeyer@usacearmy.mil

 Eric C. Alsmeyer 2020.06.10 13:34:58 -04'00'

USACE Project Manager Signature

June 10, 2020

Date of Signature

Current Wilmington District mitigation guidance, including information on mitigation ratios, functional assessments, and mitigation bank location and availability, and credit classifications (including stream temperature and wetland groupings) is available at <http://ribits.usace.army.mil>.



ROY COOPER

Governor

MICHAEL S. REGAN

Secretary

S. DANIEL SMITH

Director

June 3, 2020

Mr. Philip S. Harris, III, P.E., CPM
Natural Environment Section Head
Project Development and Environmental Analysis
North Carolina Department of Transportation
1598 Mail Service Center
Raleigh, North Carolina, 27699-1598

Subject: MODIFICATION of 401 Water Quality Certification Pursuant to Section 401 of the Federal Clean Water Act (NEUSE BUFFER RULES, with ADDITIONAL CONDITIONS for Proposed widening of I-40 from I-440 to SR 1525 plus improvements to NC 42 and SR 1010 in Wake and Johnston Counties; Federal Aid Project No. IMNHF-040-4(139)301; State Project No. 42346.3.1; TIP Nos. I-5111 & I-4739. NCDWR Project No. 20190593 ver 4.

Dear Mr. Harris:

Attached hereto is a copy of Certification No. 4196 issued to The North Carolina Department of Transportation (NCDOT) originally dated July 10, 2019 and modified September 4, 2019, January 22, 2020, and June 3, 2020.

If we can be of further assistance, do not hesitate to contact us.

Sincerely,

DocuSigned by:

Amy Chapman

9C9886312DCD474
S. Daniel Smith, Director

Division of Water Resources

Attachments

Electronic copy only distribution:

Eric Alsmeyer, US Army Corps of Engineers, Raleigh Field Office
Heather Montague, Division 5 Environmental Officer
Chris Rivenbark, NC Department of Transportation
Nikki Thomson, NCDOT Division 5
File Copy



MODIFICATION of 401 Water Quality Certification Pursuant to Section 401 of the Federal Clean Water Act and NEUSE BUFFER RULES, with ADDITIONAL CONDITIONS

THIS CERTIFICATION is issued in conformity with the requirements of Section 401 Public Laws 92-500 and 95-217 of the United States and subject to the North Carolina Division of Water Resources (NCDWR) Regulations in 15 NCAC 2H .0500 and 15A NCAC 2B.0233. This certification authorizes the NCDOT to impact 1.15 acres of jurisdictional wetlands, 9248 linear feet of jurisdictional streams and 644091 square feet of protected riparian buffers in Wake & Johnston Counties. The project shall be constructed pursuant to the modification request dated May 28, 2020. The authorized additional impacts are as described below:

Additional Site 2 Stream Impacts in the Neuse River Basin

Site	Permanent Fill in Perennial Stream (linear ft)	Temporary Fill in Perennial Stream (linear ft)
Site 2	29 (Increase)	-29 (Decrease)

The application provides adequate assurance that the discharge of fill material into the waters of the Neuse River Basin in conjunction with the proposed development will not result in a violation of applicable Water Quality Standards and discharge guidelines. Therefore, the State of North Carolina certifies that this activity will not violate the applicable portions of Sections 301, 302, 303, 306, 307 of PL 92-500 and PL 95-217 if conducted in accordance with the application and conditions hereinafter set forth.

This approval is only valid for the purpose and design that you submitted in your modification dated May 28, 2020. Should your project change, you are required to notify the NCDWR and submit a new application. If the property is sold, the new owner must be given a copy of this Certification and approval letter, and is thereby responsible for complying with all the conditions. If any additional wetland impacts, or stream impacts, for this project (now or in the future) exceed one acre or 150 linear feet, respectively, additional compensatory mitigation may be required as described in 15A NCAC 2H .0506 (h) (6) and (7). Additional buffer impacts may require compensatory mitigation as described in 15A NCAC 2B.0233. For this approval to remain valid, you are required to comply with all the conditions listed below. In addition, you should obtain all other federal, state or local permits before proceeding with your project including (but not limited to) Sediment and Erosion control, Coastal Stormwater, Non-discharge and Water Supply watershed regulations. This Certification shall expire on the same day as the expiration date of the corresponding Corps of Engineers Permit.

Condition of Certification:

1. All conditions in previous versions of this Certification dated July 10, 2019, September 4, 2019, and January 22, 2020 still apply.

Violations of any condition herein set forth may result in revocation of this Certification and may result in criminal and/or civil penalties. This Certification shall become null and void unless the above conditions are made conditions of the Federal 404 and/or Coastal Area Management Act Permit. This Certification shall expire upon the expiration of the 404 or CAMA permit.

If you wish to contest any statement in the attached Certification you must file a petition for an administrative hearing. You may obtain the petition form from the office of Administrative hearings. You must file the petition with the office of Administrative Hearings within sixty (60) days of receipt of this notice. A petition is considered filed when it is received in the office of Administrative Hearings during normal office hours. The Office of Administrative Hearings accepts filings Monday through Friday between the hours of 8:00am and 5:00pm, except for official state holidays. The original and one (1) copy of the petition must be filed with the Office of Administrative Hearings.

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


Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714
Telephone: (919) 431-3000, Facsimile: (919) 431-3100

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

Mr. Bill F. Lane, General Counsel
Department of Environmental Quality
1601 Mail Service Center

This the 3rd day of June 2020

DIVISION OF WATER RESOURCES

DocuSigned by:

9C9886312DCD474...

S. Daniel Smith, Director

WQC No. 4196



ROY COOPER

Governor

MICHAEL S. REGAN

Secretary

S. DANIEL SMITH

Director

NCDWR Project No.: _____ County: _____

Applicant: _____

Project Name: _____

Date of Issuance of 401 Water Quality Certification: _____

Certificate of Completion

Upon completion of all work approved within the 401 Water Quality Certification or applicable Buffer Rules, and any subsequent modifications, the applicant is required to return this certificate to the 401 Transportation Permitting Unit, North Carolina Division of Water Resources, 1617 Mail Service Center, Raleigh, NC, 27699-1617. This form may be returned to NCDWR by the applicant, the applicant's authorized agent, or the project engineer. It is not necessary to send certificates from all of these.

Applicant's Certification

I, _____, hereby state that, to the best of my abilities, due care and diligence was used in the observation of the construction such that the construction was observed to be built within substantial compliance and intent of the 401 Water Quality Certification and Buffer Rules, the approved plans and specifications, and other supporting materials.

Signature: _____ Date: _____

Agent's Certification

I, _____, hereby state that, to the best of my abilities, due care and diligence was used in the observation of the construction such that the construction was observed to be built within substantial compliance and intent of the 401 Water Quality Certification and Buffer Rules, the approved plans and specifications, and other supporting materials.

Signature: _____ Date: _____

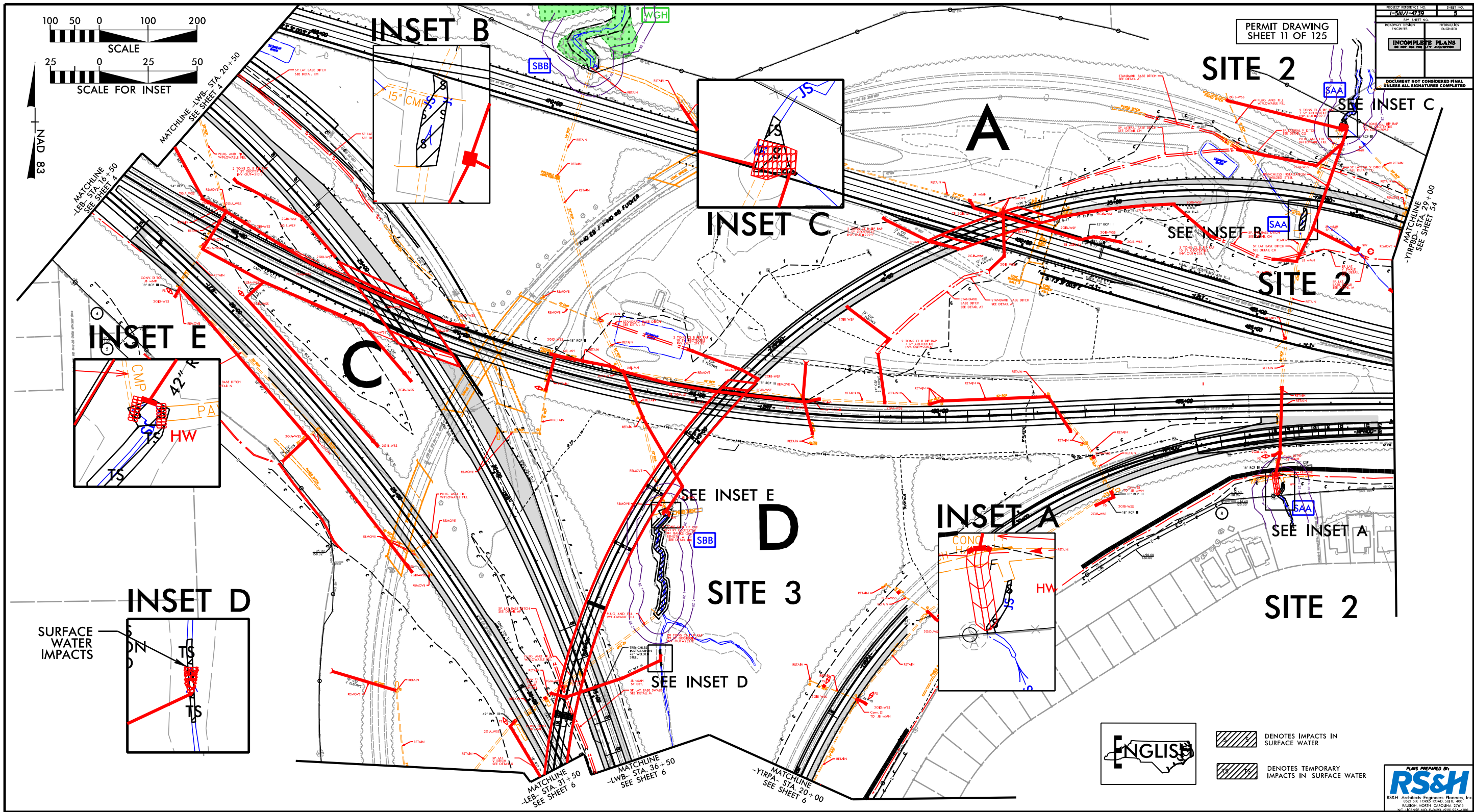
Engineer's Certification

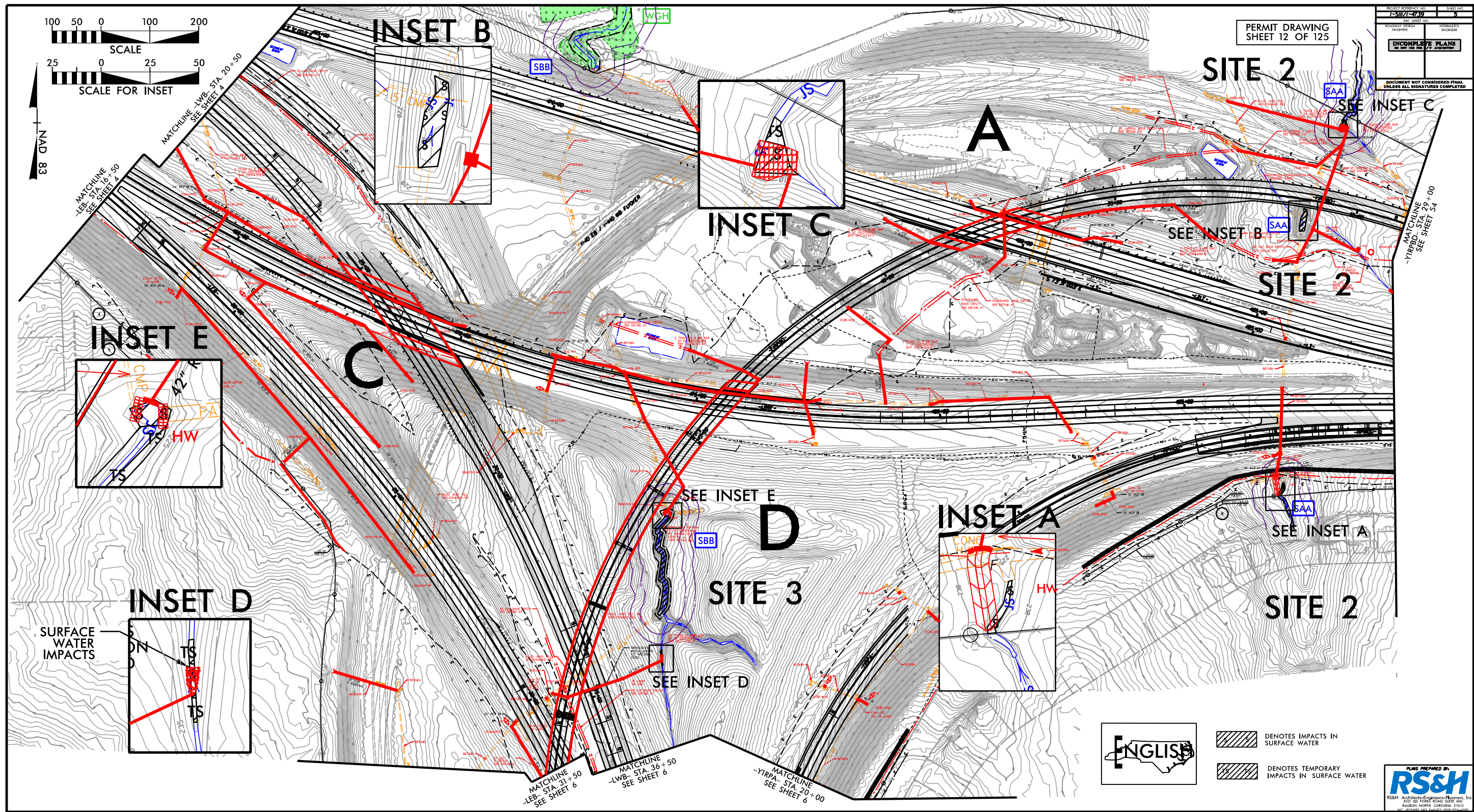
_____ Partial _____ Final

I, _____, as a duly registered Professional Engineer in the State of North Carolina, having been authorized to observe (periodically, weekly, full time) the construction of the project for the Permittee hereby state that, to the best of my abilities, due care and diligence was used in the observation of the construction such that the construction was observed to be built within substantial compliance and intent of the 401 Water Quality Certification and Buffer Rules, the approved plans and specifications, and other supporting materials.

Signature _____ Registration No. _____
Date _____

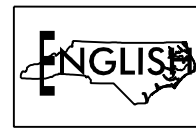






PERMIT DRAWING
SHEET 12 OF 125

PROJECT NUMBER	15012-1739
DATE	5/28/2020
PROJECT ENGINEER	[Signature]
CHECKED BY	[Signature]
DESIGNED BY	[Signature]
DRAWN BY	[Signature]
SCALE	AS SHOWN
SHEET NO.	12
TOTAL SHEETS	125



- [Hatched Box] DENOTES IMPACTS IN SURFACE WATER
- [Blue Hatched Box] DENOTES TEMPORARY IMPACTS IN SURFACE WATER

PLANS PREPARED BY
RS&H
Architect-Engineers-Planners, Inc.
8311 E. FORT ROAD SUITE 600
RALEIGH, NORTH CAROLINA 27615
PHONE: 919-489-4400 FAX: 919-489-4401

WETLAND AND SURFACE WATER IMPACTS SUMMARY												
Site No.	Station (From/To)	Structure Size / Type	WETLAND IMPACTS					SURFACE WATER IMPACTS				
			Permanent Fill In Wetlands (ac)	Temp. Fill In Wetlands (ac)	Excavation in Wetlands (ac)	Mechanized Clearing in Wetlands (ac)	Hand Clearing in Wetlands (ac)	Permanent SW impacts (ac)	Temp. SW impacts (ac)	Existing Channel Impacts Permanent (ft)	Existing Channel Impacts Temp. (ft)	Natural Stream Design (ft)
1	-LEB- 12+14 RT	HW Replacement - SZ						< 0.01	< 0.01	13	14	
1	-LWB- 18+77 LT	Rip Rap Outlet Pad - SZ						< 0.01	< 0.01	20	20	
2	-Y1RPA- 32+52 RT	Channel Work at 48" CSP Inlet - SAA						< 0.01		29		
2	-Y1RPBD- 31+06 RT	Prop Rdwy Fill - SAA						0.01		45		
2	-Y1RPBD- 30+62 LT	Rip Rap Outlet Pads - SAA						< 0.01	< 0.01	12	10	
3	-Y1RPBD- 46+74 to 48+93 LT	Prop Pipes & Bridge Construction - SBB						< 0.01	0.05	24	240	
4	-L- 39+21 LT	Rip Rap Outlet Pad - SB						< 0.01	< 0.01	13	10	
4	-L- 40+19 LT	Ditch Outfall - SB						< 0.01	< 0.01	18	27	
5	-L- 59+13 to 62+63 LT	Channel Change - SC						0.03	< 0.01	352	12	
6	-L- 64+53 RT	Channel work at 8'x8' RCBC inlet - SD						0.02	< 0.01	78	11	
6	-L- 65+38 LT	Channel work at 8'x8' RCBC outlet - SD						0.01	< 0.01	51	30	
7	-L- 90+96 RT	Channel work at 10'x9' RCBC inlet - WC, SF	< 0.01	0.04				0.06	0.02	85	90	
7	-L- 91+39 LT	Channel work at 10'x9' RCBC outlet - WD, SF		0.01				0.08	< 0.01	80	10	
8	-Y3RPA- 23+91 LT	Prop Rdwy Fill and Rip Rap Pad - SNN						< 0.01		59		
8	-Y3RPA- 23+45 RT	Channel Change - SNN						< 0.01	< 0.01	12	4	
9	-Y3RPA- 17+58 RT	Rip Rap at pipe outfalls - SOO						< 0.01	< 0.01	23	8	
TOTALS*:			< 0.01	0.05				0.24	0.11	914	486	0

*Rounded totals are sum of actual impacts

NC DEPARTMENT OF TRANSPORTATION
 DIVISION OF HIGHWAYS
 April 2019
 Wake County
 I-5111 / I-4739
 42346.3.1

WETLAND AND SURFACE WATER IMPACTS SUMMARY

Site No.	Station (From/To)	Structure Size / Type	WETLAND IMPACTS					SURFACE WATER IMPACTS				
			Permanent Fill In Wetlands (ac)	Temp. Fill In Wetlands (ac)	Excavation in Wetlands (ac)	Mechanized Clearing in Wetlands (ac)	Hand Clearing in Wetlands (ac)	Permanent SW impacts (ac)	Temp. SW impacts (ac)	Existing Channel Impacts Permanent (ft)	Existing Channel Impacts Temp. (ft)	Natural Stream Design (ft)
54	-L- 232+69-233+35 LT	54" WSP - SJ, WI	0.06					< 0.01		82		
	-L- 233+33-233+44 LT	BANK STABILIZATION - SJ						< 0.01	< 0.01	45	10	
55	-L- 233+94-234+19 LT	48" RCP - SK, WJ	< 0.01					< 0.01		78		
	-L- 234+02-234+11 LT	BANK STABILIZATION - SK						< 0.01	< 0.01	40	10	
56	-L- 246+22-246+77 RT	CHANNEL CHANGE - SEE						< 0.01	< 0.01	102	10	
57	-L- 246+73-247+65	60" WSP - SDD, WFF	0.01					0.02	< 0.01	238	10	
	-L- 247+59-247+78 LT	BANK STABILIZATION - SDD						< 0.01	< 0.01	55	9	
58	-L- 269+75-270+63 LT	36" WSP - SQ						< 0.01		100		
	-L- 270+58-270+85 LT	BANK STABILIZATION - SQ						< 0.01	< 0.01	33	27	
TOTALS*:			0.09					0.06	< 0.01	773	76	0

PROJECT TOTALS*:	0.74	0.14	0.11	0.16		1.55	0.22	7665	1582	
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REVISED 08/28/2019, 12/12/19, 4/22/20

NOTES:
*Rounded totals are sum of actual impacts

NC DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS
APRIL 2019
WAKE AND JOHNSTON
I-5111_I-4739
SHEET 125 OF 125