



DEPARTMENT OF THE ARMY
US ARMY CORPS OF ENGINEERS
NEW ENGLAND DISTRICT
696 VIRGINIA ROAD
CONCORD MA 01742-2751

April 16, 2019

Regulatory Division
File Number: NAE-2018-01219

Town of Natick School Department
Anna Nolin
13 East Central Street
Natick, Massachusetts 01760

Dear Ms. Nolin:

We have reviewed your application to place 9,632 square feet (0.22 acre) of permanent fill in palustrine forested wetlands and to place 1,535 square feet (0.04 acre) of temporary fill in palustrine forested wetlands associated with the construction of a new J. F. Kennedy Middle School. This project is located in waters and wetlands associated with Beaver Brook at 165 Mill Street in Natick, Massachusetts. The work is shown on the enclosed plans entitled "TOWN OF NATICK KENNEDY MIDDLE SCHOOL 165 MILL STREET NATICK MASSACHUSETTS PERMITTING DOCUMENTS Submitted to the: Department of Environmental Protection", on 66 sheets, and with a revised date of "February 6, 2019" and the mitigation area to be preserved is shown on the enclosed plan entitled "POTENTIAL CONSERVATION EASEMENT NAE-2018-01219 12-13-2018."

Based on the information you have provided, we have determined that the proposed activity, which includes work and/or a discharge of dredged or fill material into waters of the United States, including wetlands, will have only minimal individual or cumulative environmental impacts. Therefore, this work is authorized under the enclosed April 2018 Massachusetts General Permits (MA GPs), specifically GP 8 and GP10, under the pre-construction notification process. This work must be performed in accordance with the terms and conditions of the GPs and also in compliance with the following special conditions:

1. In order to mitigate for the unavoidable permanent impacts to 0.22 acre of palustrine forested wetlands, the permittee shall preserve 5.28 acres of land on the western side of the project vicinity. The area to be preserved contains vernal pools, wetlands, and uplands and is shown in red hatching on the enclosed plan entitled "POTENTIAL CONSERVATION EASEMENT NAE-2018-01219 12-13-2018."
2. The 5.28 acres of land shall be placed under the protections of Article 97 of the Amendments to the Massachusetts Constitution as described in the enclosed letter submitted by Karis North of Murphy Hesse Toomey & Lehan LLP on March 15, 2019. A two-step process will be involved. First the land shall be transferred to the care, custody and control of the Natick Conservation Commission for conservation purposes and subject to the strictures of Article 97 by the affirmative vote of the Natick Town Meeting. This step shall occur at Natick's 2019 Fall

Town Meeting. The second step shall be recording the affirmative Town Meeting vote with the existing deeds- and subject to certain restrictions on the use of the property- at the Middlesex South Registry of Deeds.

3. Restrictions on the use of the 5.28 acre mitigation area shall be recorded with the affirmative meeting vote and existing deeds and are enumerated in the enclosed document entitled "NAE-2018-01219 Restrictions to be placed over the 5.28 acre Mitigation Site." Any use of the mitigation area that conflicts with these restrictions must obtain any needed approvals subject to Article 97 but will also require prior written consent from the Army Corps of Engineers. Note that any future approved use of the mitigation site that conflicts with the conservation goals and restrictions may be considered a loss of mitigation and therefore may result in a requirement for alternative replacement mitigation.

4. Within 60 days of an affirmative town meeting vote, the town shall submit documentation of recordation along with the list of restrictions to this office.

5. Should the 2019 Fall Town Meeting vote to subject the 5.28 acres of mitigation to the strictures of Article 97 fail, alternative mitigation will be required to offset the project impacts and may consist of an in-lieu fee payment of \$132,247.36. The town shall contact this office within 30 days of a failed vote with an alternative mitigation proposal.

6. The 5.28 acre preservation area shall be marked by permanent signs or by an equivalent, permanent marking system designating the area a protected area.

7. In order to attempt to deter vernal pool species from entering the new parking lot, a series of logs will be placed end to end along a portion of the edge of the wooded boundary of the preservation parcel. The proposed work is shown on sheets C2.2 and C6.7 of the plan set referenced above.

8. All wetlands that are not proposed to be impacted but that occur within 50 feet of proposed site work should be clearly marked with wetland flagging before site work begins.

9. The 0.04 acre of wetlands temporarily impacted for the temporary access parking in Phase 1 will be restored as soon as the temporary access parking is no longer needed. Wetland restoration will consist of removing the fill and restoring the wetland to pre-existing grades, seeding the wetland with an approved wetland seed mix, and installing plantings. **The proposed wetland seed mix and planting plan shall be submitted for Corps approval within 60 days of permit issuance.**

10. You must complete and return the enclosed Work Start Notification Form to this office at least two weeks before the anticipated starting date.

11. You must complete and return the enclosed Compliance Certification Form to this office within one month of completion of all authorized work.

You are responsible for complying with all of the GPs' requirements. Please review the enclosed GPs carefully, in particular the general conditions beginning on Page 19, to be sure that you understand its requirements. You should ensure that whoever does the work fully understands the requirements and that a copy of the GPs and this authorization letter are at the project site throughout the time the work is underway.

This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law. Performing work not specifically authorized by this determination or failing to comply with any special condition(s) provided above or all the terms and conditions of the GPs may subject you to the enforcement provisions of our regulations.

This authorization becomes valid only after the Massachusetts Department of Environmental Protection (MassDEP) issues or waives Water Quality Certification (WQC) as required under Section 401 of the Clean Water Act. In the event the MassDEP denies the 401 WQC, this determination becomes null and void.

This authorization expires on April 5, 2023, unless it is modified, suspended, or revoked before then. You must commence or have under contract to commence the work authorized herein by April 5, 2023 and complete the work by April 5, 2024. If not, you must contact this office to determine the need for further authorization before beginning or continuing the activity. We recommend that you contact us *before* this authorization expires to discuss a time extension or permit reissuance. Please contact us immediately to discuss modification of this authorization if you change the plans or construction methods for work within our jurisdiction. This office must approve any changes before you undertake them.

We continually strive to improve our customer service. In order for us to better serve you, we would appreciate your completing our Customer Service Survey located at http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey.

Please contact Ruthann Brien of my staff at ruthann.a.brien@usace.army.mil or at (978) 318-8054 if you have any questions.

Sincerely,



Barbara Newman
Chief, Permits & Enforcement Branch A
Regulatory Division

Enclosures

cc:

Briscoe Lang, Pare Corporation, Lincoln, RI; blang@parecorp.com

Ed Reiner, U.S. EPA, Region 1, Boston, MA; reiner.ed@epa.gov

David Simmons, USFWS; david_simmons@fws.gov

Pam Merrill, DEP NERO, Wetland and Waterways, Wilmington, MA;
pamela.merrill@state.ma.us

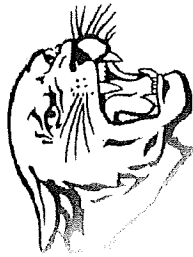
Natick Conservation Commission; vparkers@natickma.org

VERTEXENG.COM

TOWN OF NATICK

KENNEDY MIDDLE SCHOOL

165 MILL STREET - NATICK MASSACHUSETTS



PERMITTING DOCUMENTS

Submitted to the: Department of Environmental Protection

Revised February 6, 2019

NOTE: THIS PLANT SITE INFORMATION REMAINS MADE AS A RESULT OF ON GOING COORDINATION WITH THE NATION CONSERVATION COMMISSION, MASSDOT AND THE US ARMY CORPS OF ENGINEERS AND SUPERVISES THE PLANS SUBMITTED TO THE CONSERVATION COMMISSION ON JUNE 28, 2018 AND TO MASSDOT AND THE ARMY CORPS OF ENGINEERS ON JULY 13, 2018, OCTOBER 10, 2018, AND ON JANUARY 20, 2019.

SHEET INDEX

[illegible]

**MECH., ELEC., PLUMBING &
FIRE PROTECTION ENGINEERS**
GRIFFITH & VARY, INC.
2400 15th St.
Warrenton, VA 20781
Tel. (502) 295-4722
Fax (502) 295-4720

LANDSCAPE ARCHITECT
TRAVERSE LANDSCAPE ARCHITECTS
750 Ordway Street
4th Floor - Doran Building
Portland, ME 02801
Tel. 407.314-9501

STRUCTURAL ENGINEER
ENGINEERS DESIGN GROUP, INC.
350 Union St. #25
Woburn, MA 02458
Tel: (617) 265-2177
Fax: (617) 265-4500

OWNER
NATICK PUBLIC SCHOOLS
11 EAST CENTRAL STREET
NATICK, MA 02446

ARCHITECT
A13 ARCHITECTS, LLC
526 Boston Post Road
Weymouth, MA 01978
Tel: (508) 338-0750
Fax: (508) 338-0771

CIVIL ENGINEERS
THE VERTEX COMPANIES INC.
400 Long Parkway
Weymouth, MA 02188
Tel. (781) 963-9630
964-4326 (Ext.) 252

AI3 PROJECT NO.1605.00

NATICK PUBLIC SCHOOLS

FEBRUARY 6, 2019

NAE-2018-01219 Restrictions to be placed over the 5.28 acre Mitigation Site:

1. In reference to the 5.28 acre mitigation area for NAE-2018-1219 Kennedy Middle School:
 - a. there shall be no placement of fill material or installation of temporary or permanent roads;
 - b. there shall be no placing, storing, or dumping of soil, refuse, trash, or debris
 - c. there shall be no commercial, industrial, agricultural, residential developments, buildings, or structures, including but not limited to: signs, billboards, other advertising material, or other structures placed on the mitigation site;
 - d. there shall be no removal or destruction of trees or plants, mowing, draining, plowing, mining, removal of topsoil, sand, rock, gravel, minerals or other material except with the exception of managing vegetation to control invasive species or to prune dead limbs for safety purposes;
 - e. there shall be no operation of snowmobiles, dune buggies, motorcycles, all-terrain vehicles or any other types of motorized vehicles, except as necessary to manage vegetation to control invasive species;
 - f. there shall be no application of insecticides or herbicides except to control invasive species;
 - g. there shall be no grazing or keeping of cattle, sheep, horses or other livestock;
 - h. there shall be no hunting or trapping;
 - i. there shall be no utility line structures placed, including but not limited to: telephone or other communication line structures, electrical line structures, or gas, water or sewer lines;

Karis L. North
knorth@mhtl.com

March 15, 2019

VIA EMAIL ONLY

kiersten.e.haugen@usace.army.mil

Kiersten Haugen, Esq.
USACE New England District
696 Virginia Road
Concord, MA 01742

Re: Town of Natick – Kennedy School

Dear Attorney Haugen:

Per our discussion last week concerning the Town of Natick's Kennedy School Building project, I am providing the following information concerning the Article 97 protection of the vernal pools, which is on two parcels adjacent to the building site, currently owned by the Town of Natick ("the vernal pool parcels").

Article 97 of the Amendments to the Massachusetts Constitution provides in part:

"The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose...Land and easements taken or acquired for such purposes shall not be used for other purposes or otherwise disposed of except by laws enacted by a two thirds vote, taken by yeas and nays, of each branch of the general court."

Land which is subject to the protections of Article 97 is subject to an EOEA Article 97 Land Disposition Policy, dated February 19, 1998 ("the Policy"). The Policy states: "Accordingly, as a general rule, EOEA and its agencies shall not sell, transfer, lease, relinquish, release, alienate, or change the control or use of any right or interest of the Commonwealth in and to Article 97 land. The goal of this policy is to ensure no net loss of Article 97 lands under the ownership and control of the Commonwealth and its political subdivisions."

Kiersten Haugen, Esq.
March 15, 2019
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The Policy defines an Article 97 land disposition is defined as:

a) any transfer or conveyance of ownership or other interests; b) any change in physical or legal control; and c) any change in use, in and to Article 97 land or interests in Article 97 land owned or held by the Commonwealth or its political subdivisions, whether by deed, easement, lease or any other instrument effectuating such transfer, conveyance or change. A revocable permit or license is not considered a disposition as long as no interest in real property is transferred to the permittee or licensee, and no change in control or use that is in conflict with the controlling agency's mission, as determined by the controlling agency, occurs thereby.

Where municipal land subject to Article 97 is to be disposed of, in order to effectuate any disposition, the municipality must seek unanimous approval of the Conservation Commission, 2/3 approval of Town Meeting, 2/3 approval of the Legislature, and comply with the Policy, which includes notification to EOEA.

Thus, in order to subject the land to Article 97 protections, which disposition would require compliance with the Policy, "[f]or land to be subject to the two-thirds vote requirement on disposition or use for other purposes, it must be 'taken or acquired for (the) purpose' of protecting interests covered by art. 97." Mahajan v. Department of Environmental Protection, 464 Mass 604, 615, 616 (2013).

Where land is held by a town, to make it subject to the Policy and the restrictions of Article 97, a two-step process is required. First, the land must be transferred to the care, custody, and control of the Natick Conservation Commission for conservation purposes and explicitly subject to the strictures of Article 97, by a vote of the Natick Town Meeting. The vote of Town Meeting would explicitly state that the transfer to the Natick Conservation Commission was to subject the land to the restrictions of Article 97.

In addition, that restriction would have to be recorded, so that it becomes "specifically designated for conservation purposes in the first instance" and is held by the Conservation Commission for the specific purposes of coming within Article 97. Recording the Town Meeting vote with the already existing deeds is sufficient recording to meet the requirement of Article 97, as set forth by the SJC in Mahajan.

Therefore, in order to protect the two parcels, Natick recommends that the ACOE approve this above-explained approach, and as a condition of the Army Corps of Engineers ("ACOE") permit for the Kennedy School project, require that such parcels be put into conservation, at the next scheduled annual town meeting, which would be Natick's 2019 Fall Town meeting. Following an affirmative Town Meeting vote, those votes would be recorded at the Middlesex South Registry of Deeds. These two actions would meet the requirement in Mahajan, and would protect the Parcels in accord with the permitting requirements of the ACOE.

Kiersten Haugen, Esq.
March 15, 2019
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Please contact me with any questions or concerns.

Sincerely,

/s/ KLN

Karis L. North



**US Army Corps
of Engineers®**
New England District

WORK-START NOTIFICATION FORM
(Minimum Notice: Two weeks before work begins)

* EMAIL TO: cenae-r@usace.army.mil; or *
* * * * *
* MAIL TO: Tina Chaisson *
* U.S. Army Corps of Engineers, New England District *
* Permits and Enforcement Branch A *
* Regulatory Division *
* 696 Virginia Road *
* Concord, Massachusetts 01742-2751 *

Corps of Engineers Permit No. NAE-2018-01219 was issued to the Town of Natick School Department. This work authorized 9,632 square feet of permanent fill and 1,535 square feet of temporary fill in conjunction with the building of a new Kennedy Middle School on property at 165 Mill Street in Natick, MA

The people (e.g., contractor) listed below will do the work, and they understand the permit's conditions and limitations.

PLEASE PRINT OR TYPE

Name of Person/Firm: _____

Business Address: _____

Telephone Numbers: () _____ () _____

Proposed Work Dates: Start: _____ Finish: _____

Permittee/Agent Signature: _____ **Date:** _____

Printed Name: _____ **Title:** _____

Date Permit Issued: April 16, 2019 **Date Permit Expires:** April 5, 2023

FOR USE BY THE CORPS OF ENGINEERS

PM: Ruthann Brien **Submittals Required:** _____

Inspection Recommendation: _____



**US Army Corps
of Engineers®**
New England District

COMPLIANCE CERTIFICATION FORM
(Minimum Notice: Permittee must sign and return notification
within one month of the completion of work.)

Permit Number: NAE-2018-01219

Project Manager: Ruthann Brien

Name of Permittee: Town of Natick School Department

Permit Issuance Date: April 16, 2019

Please sign this certification and return it to our office upon completion of the activity and any mitigation required by the permit. You must submit this after the mitigation is complete, but not the mitigation monitoring, which requires separate submittals.

* E-MAIL TO: cenae-r@usace.army.mil; or *
* *
* MAIL TO: Permits and Enforcement Branch A *
* U.S. Army Corps of Engineers, New England District *
* Regulatory Division *
* 696 Virginia Road *
* Concord, Massachusetts 01742-2751 *

Please note that your permitted activity is subject to a compliance inspection by an U.S. Army Corps of Engineers representative. If you fail to comply with this permit you are subject to permit suspension, modification, or revocation.

I hereby certify that the work authorized by the above referenced permit was completed in accordance with the terms and conditions of the above referenced permit, and any required mitigation was completed in accordance with the permit conditions.

Signature of Permittee

Date

Printed Name

Date of Work Completion

() _____
Telephone Number

() _____
Telephone Number



526 Boston Post Rd
508.355.0750
Wayland, MA
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VERTEX
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Main: 781.952.6000
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KENNEDY MIDDLE SCHOOL
165 MILL STREET
NATICK, MA 01760

KEYNOTE LEGEND:

NOT FOR CONSTRUCTION

NORTH ARROW

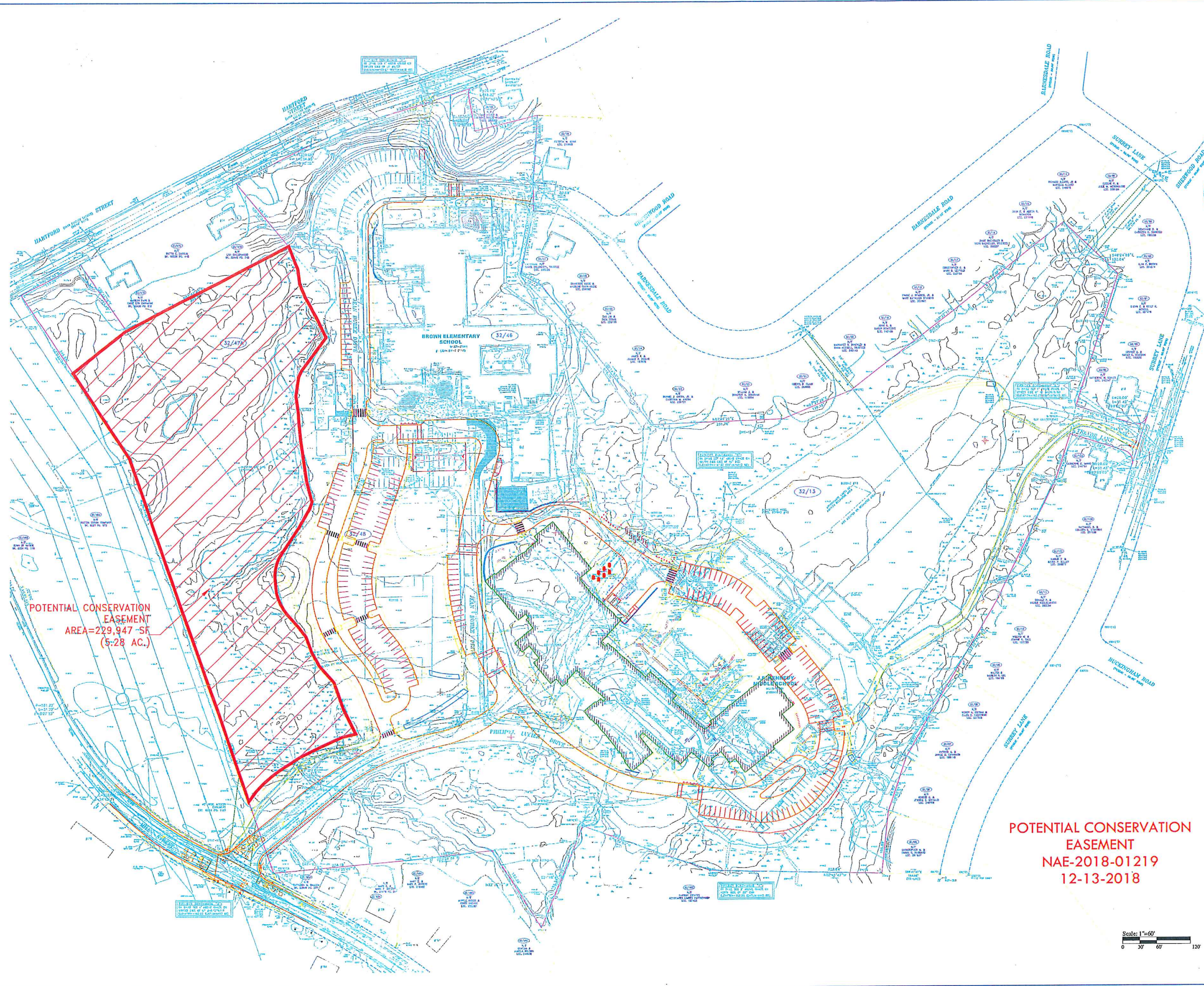


KEYPLAN

DRAWING NAME:

DRAWN BY: AWB
REVIEWED BY: BL
SCALE: AS NOTED
JOB NO: 1605.00
DATE: DEC. 13, 2018

FIG.1



POTENTIAL CONSERVATION
EASEMENT
NAE-2018-01219
12-13-2018

Scale: 1"=60'
0 30 60 120