



Donna Donovan <ddonovan@natickma.org>

Fwd: Postpone Consideration of Article 23

1 message

Donna Donovan <ddonovan@natickma.org>
To: Donna Donovan <ddonovan@natickma.org>

Wed, Oct 16, 2019 at 10:09 AM

Begin forwarded message:

From: PAUL GRIESMER <pgriesmer@comcast.net>
Date: September 11, 2019 at 12:16:17 AM GMT+2
To: Patrick Hayes <phayes.fincom@natickma.org>, Bruce Evans <bevans.fincom@natickma.org>
Cc: Paul Griesmer <pgriesmer@comcast.net>, Moderator Natick <moderator@natickma.org>
Subject: Postpone Consideration of Article 23
Reply-To: PAUL GRIESMER <pgriesmer@comcast.net>

I am writing to request that the Finance Committee postpone consideration of Article 23 for Route 27 until some very serious legal questions can be answered.

The action sought under article 23 may very well be illegal because it seeks to convert Article 97 land to public road use. It may very well compound an error under the consent agenda last spring.

Spring town meeting voted article 17 under the consent agenda. This action dedicated Camp Mary Bunker as article 97 land. However, it first sought to take a widened public sidewalk from camp Mary bunker.

The motion was:

"Move that the Town vote to dedicate property, commonly known as Camp Mary Bunker, as described in a deed recorded with the Middlesex South Registry of Deeds at Book 15706, Page 22, subject to the terms and conditions set forth in an Agreement recorded with said Registry of Deeds at Book 15706, Page 26, and modified to include a sidewalk to be constructed thereon as part of the North Main Street (Route 27) improvement project, to Article 97 of the Articles of Amendment to the Massachusetts Constitution."

The Finance Committee heard Article 17 on February 26, 2019.

The Finance Committee writeup said"

"The town believes that Camp Mary Bunker is already Article 97 land. MassDOT and the Mass. Department of Conservation and Recreation (Mass DCR) requested that the town confirm that this land is Article 97 land, prior to the commencement of the Route 27 roadway improvement project, so this article aims to do that. • Land under Article 97 is structured as conservation land or park land. It is restricted to only those uses. Any change of use would require a two-thirds vote from the state legislature. • This motion recognizes the addition of the sidewalk to the deed, and in doing so improves the access to this land for handicapped individuals. • Camp Mary Bunker is dedicated as an open-space park owned by the Town of Natick and is open to the public. It has one pavilion type structure, but it is not a camp."

Under the 2017 SJC Smith vs. Westfield decision, Camp Mary Bunker was undoubtedly Article 97 protected land. This SJC decision indicates that formal Article 97 votes are not necessary for land to become article 97 protected. Any prior use, public designation or public dedication or restriction can suffice.

The Board of Selectmen and Open space committee of the Town listed Camp Mary Bunker in its 2012 Open space report as article 97 land. The deed and the agreement incorporated into that deed restricts it as park and open space land for passive recreation. That agreement and deed were signed and accepted in 1984 by the then selectmen. Camp Mary Bunker was article 97 land before last spring's town meeting – as admitted by the administration.

The plans for Rt 27 show a 7 foot wide strip of frontage of camp mary bunker being "taken" or used for sidewalk and road use. Camp mary Bunker's current frontage already has a 4-5 foot wide sidewalk.

Six days before appearing before FinCom on article 17 of spring TM, the administration filed a required Environmental Notification Form for the rt. 27 project. That ENF was published in 2/20/19. That ENF makes NO mention of any changes to article 97., That oversight or omission is illegal regardless of whether it was inadvertent or deliberate. Article 97 is part of the Mass Constitution which is the highest law in the state.

The ENF REQUIRES disclosure of any article 97 lands being altered. The ENF is the basis for the state permit on Rt 27.

No Article 97 land can be converted to other use without a 2/3's vote of both houses of the legislature. Lacking that vote, town Meeting does not have the authority to include camp mary Bunker land in the revised street acceptance.

CMR 11.03 1 b 3 requires notification of any change to article 97 land under review thresholds. The Town's ENF did not disclose this.

The ENR, ENF publication date, camp mary Bunker deed, Camp mary Bunker agreement (incorporated into the deed, the Rt. 327 plan (see sheet #9), 301 CMR 11a, the 1907 recorded plan for camp Mary bunker and the 2012 open space plan are all attached. Also attached is the smith vs. westfield decision and a write-up about it from KP Law.

It's very concerning that six days after filing the ENF the town admitted the land is Article 97 land. The nature of this matter is that it requires full clarification with MEPA. Otherwise the Rt. 27 project could be impacted.

Further the Camp Mary Bunker deed contains a restriction against conversion to other uses and a right of first refusal for the girl scouts to buy it back if the use is changed.

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Melissa A. Malone
Town Administrator
13 East Central Street
Natick, MA 01760
508-647-6410



9 attachments

-  **301 CMR 11.pdf**
1660K
-  **1907 Recorded Plan of Camp Mary Bunker.pdf**
328K
-  **2017-sjc-12243.pdf**
181K
-  **Agreement included in Deed.pdf**
199K
-  **Deed.pdf**

124K

 **MEPA Project Details.pdf**
85K

 **Rt 27 Plan.pdf**
3874K

 **Rt. 27 ENF.pdf**
1340K

 **The-Evolving-Interpretation-of-Article-97-Smith-v-Westfield.pdf**
227K



The Leader in Public Sector Law

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September 16, 2019

ARTICLE 23
Alteration of Layout of
North Main Street (Route
27) and Adjacent Streets
(Board of Selectmen)

Katharine Lord Klein
kklein@k-plaw.com

**BY ELECTRONIC TRANSMISSION
AND FIRST CLASS MAIL**

Ms. Melissa Malone
Town Administrator
Natick Town Hall
2nd Floor
13 East Central Street
Natick, MA 01760

Re: Camp Mary Bunker – Article 97

Dear Ms. Malone:

You requested an opinion regarding whether, prior to the vote taken under Article 17 of the 2019 Spring Annual Town Meeting (the “2019 Vote”), Camp Mary Bunker (the “Camp”) was subject to Article 97 of the Articles of Amendment to the Massachusetts Constitution (“Article 97”), and, accordingly, special legislation was required for the installation of a sidewalk on the Camp property in connection with the North Main Street (Route 27) improvement project. In my opinion, the Camp was not subject to Article 97 until the 2019 Vote expressly dedicated the Camp to Article 97, and the construction of a sidewalk at the Camp property is permissible.

Camp Mary Bunker was purchased pursuant to a vote taken under Article 27 of the 1983 Spring Annual Town Meeting, which did not specify the purpose for which the Camp was acquired. The care, custody and maintenance of the Camp was, and continues to be, with the Board of Selectmen. The Camp was conveyed to the Town by a Quitclaim Deed from the Patriot’s Trail Girl Scout Council, Inc., dated July 26, 1984, recorded with the Middlesex South Registry of Deeds in Book 15706, Page 22, subject to an Agreement, dated January 24, 1984, recorded with the Registry of Deeds in Book 15706, Page 26. While the Agreement states that the Camp shall remain in a permanent natural, open, and park-like state, this language, alone, is not dispositive of whether the Camp is subject to Article 97. As discussed below, a number of other factors must be considered to make this determination. In this case, these factors support a finding that Article 97 did not apply to the property prior to the 2019 Vote.

Article 97

Article 97, approved on November 7, 1972, states in relevant part that: “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

Ms. Melissa Malone
Town Administrator
September 16, 2019
Page 2

and other natural resources is hereby declared to be a public purpose.” Article 97 further provides: “Lands 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” (emphasis added). As quoted above, Article 97 applies to land originally acquired (by purchase, taking, or gift) by a municipality or other governmental body for a purpose protected under Article 97, such as park, conservation, open space, and/or water supply protection (which I refer to as “an Article 97 Purpose”), and prohibits the municipality or other body from disposing of such land or interests in such land (such as leases, easements, and restrictions) and from changing the use of Article 97 land to a different purpose without, in each instance, a two-thirds roll call vote of each house of the state Legislature, in addition to other approvals.

In Mahajan v. Department of Environmental Protection, 464 Mass. 604 (2013), the Supreme Judicial Court held that, for land to be protected under Article 97, the primary purpose for which the land was acquired must be a purpose that serves “the stated goals of art. 97” - that is, an Article 97 Purpose. Id. at 615. Thus, if land is originally taken or acquired for multiple purposes, some of which are protected by Article 97 and some that are not protected under Article 97, such land would not be subject to Article 97. See also Mirkovic v. Guercio, 2017 WL 4681972 (Land Court 2017).

Note that Article 97 can also apply to land that was not originally acquired or taken by the Town for an Article 97 Purpose. In Hanson v. Lindsay, 444 Mass. 502 (2005), a case involving unique facts, the Court indicated that if land owned by a municipality is bound by a permanent deed restriction or conservation restriction, limiting the use of the land to an Article 97 Purpose, such land could be deemed to be subject to Article 97. In addition, in Mahajan v. Department of Environmental Protection, 464 Mass. 604 (2013), the Supreme Judicial Court held that Article 97 could apply to property not originally acquired or taken for an Article 97 Purpose if such property, “subsequent to the taking [is]...designated for those purposes in a manner sufficient to invoke the protection of art. 97.” Id. at 615 (emphasis added).

In Smith v. City of Westfield, 478 Mass. 49 (2017), the Supreme Judicial Court addressed what it means to “designate” or dedicate property to Article 97. At issue was whether Article 97 applied to a parcel of land that, though originally acquired by the City of Westfield by tax title foreclosure, was used as a public park for several decades. The Court held that if, based on a review of the totality of the circumstances, the property owner expresses a “clear and unequivocal intent to dedicate the land permanently”... for an Article 97 Purpose “...and where the public accepts such use by actually using the land...” for that Article 97 Purpose, the land may be deemed to be protected by Article 97 (emphasis added). While recording a permanent deed restriction may be evidence of such intent, the Court indicated it was not the only means of protecting land under Article 97. In Westfield, there was no conservation or deed restriction on record.

Ms. Melissa Malone
Town Administrator
September 16, 2019
Page 3

In Westfield, the Court considered whether the following actions taken by the City demonstrated such clear and unequivocal intent: (i) the property was used as a public park and playground by the public for more than sixty years, (ii) the City Council voted to transfer the “full charge and control of the property to the playground commission,” (iii) the City transferred funds to the playground commission to improve the playground, (iv) the City passed an ordinance, formally naming the property as a playground, and (v) the City accepted federal funds under the Land and Water Conservation Fund Act of 1965 (the “Act”) to rehabilitate the property. To obtain such funds, the City entered into a grant agreement in which it agreed to develop an outdoor recreation plan and comply with the provisions of the Act. The Act states that land developed using funds under the Act cannot be converted “to other than public outdoor recreation uses without the approval of the United States Secretary of the Interior.” Id. at 52. The Court concluded that the property in Westfield was subject to Article 97, stating that while it had reviewed the totality of the circumstances (discussed above), “the determinative factor here was the acceptance by the city of Federal conservation funds under the act to rehabilitate the playground with the statutory proviso that, by doing so, the city surrendered all ability to convert the playground to a use other than public outdoor recreation without the approval of the Secretary.” Id. at 64.

Under the case law as it stands today, to determine if Article 97 applies to any particular parcel of land, one must examine if the Town originally acquired the land for an Article 97 Purpose. Often, the deed or order of taking by which the Town acquired the land in question will state the purpose of the acquisition. It is also important to review the Town Meeting vote that authorized the acquisition of the land to determine if it refers to an Article 97 Purpose. If land was not originally acquired for an Article 97 Purpose, we need to examine whether the Town clearly and unequivocally expressed its intention to protect the land permanently under Article 97. Such an examination requires an investigation of various actions, including a review of Town Meeting votes since the original acquisition of the land, the purposes for which the land has been used, and whether there are any restrictions on the use of the land, among other factors. As stated in Westfield, the determination of whether property is subject to Article 97 must be gleaned from the “totality of the circumstances.”

Camp Mary Bunker

In my opinion, the Camp Mary Bunker was not dedicated to Article 97 purposes prior to the 2019 Vote. There is no statement, in the original acquisition vote, that it was acquired for Article 97 purposes. The property is under the care, custody and control of the Board of Selectmen – which is not the board or commission ordinarily charged with the care of Article 97 property. Moreover, there are several uses expressly permitted at the Camp which are not consistent with Article 97, e.g., buildings or other development, including a sanitary facility, a storage facility for outdoor program equipment or firewood storage, a small indoor activity center for camp programs, a rustic, open-roofed pavilion and a caretaker’s facility or home. See Agreement, Article III, Section B.

Ms. Melissa Malone
Town Administrator
September 16, 2019
Page 4

There is no evidence, as in Westfield, that the Town passed a by-law formally naming the Camp as a park, or that the Town accepted funds from the federal government or the state. Indeed, the determinative factor in Westfield is not present here. There is no evidence of funding that required the Town to subject the property to the provisions of Article 97.

In my opinion, the most compelling factor against the application of Article 97 to the property is that the Division of Conservation and Services (DCR), when this issue was raised in the early months of 2019, did not take the position that the Camp had already been dedicated to Article 97. DCR, in my experience, is vigilant in protecting Article 97 properties from any change in use, however *de minimis* or non-intrusive. DCR requested that the Town dedicate the property to Article 97 purposes going forward, and expressly sanctioned the installation of the sidewalk. Had DCR believed the Camp was already subject to Article 97, it would not have condoned the Town action. Instead DCR would have advised that the property was, in its estimation, already subject to Article 97, and any dedication vote would have been redundant as the land was already protected.

Conclusion

It is not the case that all property owned by a municipality that is in a natural and protected state is subject to Article 97. In order to determine if Article 97 applies, an assessment must be made that the property has been dedicated to Article 97, which analysis requires a review of a totality of the circumstances. The facts surrounding the Camp Mary Bunker did not, prior to the 2019 Vote, satisfy the standards set forth in the case law, and, in particular, the Westfield decision, where far more indicia of dedication were present. Accordingly, in my opinion, Camp Mary Bunker was not subject to Article 97 prior to the 2019 Vote, and the installation of the sidewalk in connection with the North Main Street improvements project is permissible.

Please do not hesitate to contact me with any questions.

Very truly yours,



Katharine Lord Klein

KLK/jsh



Donna Donovan <ddonovan@natickma.org>

Fwd: All of Camp Mary Bunker Appears Subject to Federal and State Protection Since 1990

1 message

Melissa Malone <mmalone@natickma.org>
To: Donna Donovan <ddonovan@natickma.org>

Tue, Oct 15, 2019 at 1:46 PM

On Wed, Oct 2, 2019, 4:41 PM Paul Griesmer <pgriesmer@comcast.net> wrote:
For your information please see new information below and attached

From: Paul Griesmer <pgriesmer@comcast.net>
Date: October 2, 2019 at 4:34:20 PM EDT
To: phayes.fincom@natickma.org, Linda Wollschlager <linda@webreply.com>, bevans.fincom@natickma.org
Cc: Moderator <moderator@natickma.org>
Subject: All of Camp Mary Bunker Appears Subject to Federal and State Protection Since 1990

This email request the Finance Committee to consider reconsidering Article 23 based on the information below and the information attached. The Selectmen are also requested to hold off on any vote on the Rt. 27 layout until matters are clarified and necessary federal and or state approvals are obtained. The Rt. 27 layout includes land that is part of Camp Mary Bunker.

All of Camp Mary Bunker appears to have been federally protected and restricted since the early 1990's and protected under Article 97 since at least 2006.

A few weeks ago, I emailed the Finance Committee with concerns over the inclusion of a portion of Camp Mary Bunker within the revised planned layout for Route 27. The request was to postpone consideration of the Rt. 27 warrant article until questions could be answered. The concerns were based on the terms of the LOI referenced in the Town Meeting vote to acquire Camp Mary Bunker and upon the subsequent vote of the Board of Selectmen to sign the deed restriction agreement and the actual signatures on that deed restriction agreement back in 1984. The purpose was to seek a delay in consideration of the revised layout for Rt. 27 until thorough research could be performed regarding Camp Mary Bunker's Article 97 status prior to any Town Meeting vote in 2019.

Subsequently, an opinion from Katherine Lord Klein of KP Law was obtained by the Town Administrator arguing that Camp Mary Bunker did not become protected by Article 97 until after a 2019 Spring town Meeting

vote which purported to apply Article 97 protection to Camp Mary Bunker after removing a 7 foot wide section along the front of Camp Mary Bunker adjacent to Rt. 27. (That opinion presents reasoning which can be disputed. However, that is not the point.)

The KP Law opinion summarizes parts of a lengthy SJC decision in 2017 regarding Smith et al vs. Westfield. After citing a need to consider the totality of the circumstances regarding any Article 97 status of land, the SJC was able to reach a simplified conclusion in the Westfield circumstance. The SJC found one factor was so decisive and determinative that they did not need to consider all the other various factors. That factor was the receipt of federally restricted funds under the provisions of the Land and Water Conservation Act of 1965 (Public Law 88-578, 78 Stat 900 (1964)) (the Act). The Act is administered by the U.S. Secretary of the Interior providing federal funds to a state government which then administers the funds to communities within that state.

The Act requires and states "No property acquired or developed with assistance under this section shall, without the approval of the Secretary, be converted to other than public outdoor recreation uses. The Secretary shall approve such conversion only if he finds it to be in accord with the then existing comprehensive statewide outdoor recreation plan and only upon such conditions as he deems necessary to assure the substitution of other recreation properties of at least equal fair market value and reasonably equivalent usefulness and location."

The SJC opinion in Smith vs. Westfield states "Therefore, by accepting the Federal monies under the act, the city forfeited the ability to convert any part of the Cross Street Playground to a use other than public outdoor recreation unilaterally; such a conversion could only proceed with the Secretary."

Per the SJC, conversion of ANY part of land developed with a LWCF funds needs federal permission.

Natick received restricted Land and Water Conservation Funds (LWCF Funds) for Camp Mary Bunker in the early 1990's. The grant agreement specifies and requires compliance with the Act.

The SJC Smith vs. Westfield decision went on to state that " The 2006 Massachusetts SCORP states explicitly that "land acquired or developed with LWCF funds becomes protected under the Massachusetts Constitution Article 97 and federal regulations – and cannot be converted from intended use without permission."

The KP Law opinion states "There is no evidence of funding that required the Town to subject the property (Camp May Bunker) to the provisions of Article 97."

The evidence is attached.

The actual grant agreement for Camp Mary Bunker is attached was provided by the state after a 15 minute phone call on Monday. Someone in town hall should have done this simple due diligence months ago.

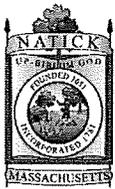
Camp Mary Bunker has been federally protected since the early 1990's and protected under Article 97 since at least 2006.

Including parts of the protected Camp Mary Bunker from outdoor recreation to a public roadway or right of way would seem to require both the permission of the US Secretary of the Interior and a 2/3's vote of both houses of the Massachusetts legislature – unless such permission and votes were previously obtained.

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Melissa A. Malone

Melissa A. Malone
Town Administrator
13 East Central Street
Natick, MA 01760
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The Leader in Public Sector Law

October 8, 2019

ARTICLE 23

Alteration of Layout of North Main
Street (Route 27) And Adjacent
Streets
(Board of Selectmen)

101 Arch Street, Boston, MA 02110

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Katharine Lord Klein
kklein@k-plaw.com

**BY ELECTRONIC TRANSMISSION
AND FIRST CLASS MAIL**

Ms. Melissa Malone
Town Administrator
Natick Town Hall
2nd Floor
13 East Central Street
Natick, MA 01760

Re: Camp Mary Bunker

Dear Ms. Malone:

You have requested a supplemental opinion as to whether the installation of a sidewalk providing access to Camp Mary Bunker (the "Camp"), which is an integral part of the North Main Street (Route 27) connectivity improvement project, is permissible. By letter dated September 16, 2019, I gave the opinion that the Camp was not, until a Town Meeting vote of 2019, subject to Article 97 of the Articles of Amendment of the Massachusetts Constitution ("Article 97"). At that time, I was not aware that the United States Department of the Interior granted funds for the "Lake Cochituate Waterfront" project, through a Land and Water Conservation Fund Project Agreement (Project Number 25-00411) (the "LWCF Grant"). The LWCF Grant funded, in part, improvements to the Camp.

For the reasons set forth below, although the LWCF Grant does subject the Camp to the provisions of the Land and Water Conservation Fund Act (the "LWCFA") and, arguably, to the provisions of Article 97, it remains my opinion that the proposed sidewalk does not require approval of the Legislature under Article 97 or approval of the United States Secretary of the Interior under the LWCFA.

A. Applicability of the LWCFA and Article 97

The Town acquired the Camp subject to an Agreement, dated January 24, 1984, recorded with the Middlesex South Registry of Deeds in Book 15706, Page 26, which expressly permitted a number of uses not consistent with Article 97, e.g., buildings and other structures, including a sanitary facility, a storage facility for outdoor program equipment or firewood storage, a small indoor activity center for camp programs, a rustic, open-roofed pavilion and a caretaker's facility or home. See Agreement, Article III, Section B. The LWCF Grant, in its Project Scope, rehabilitated and expanded these improvements, stating that the project "shall consist of the design, construction and construction supervision to include erosion control work and the development of restrooms,

Ms. Melissa Malone
Town Administrator
October 8, 2019
Page 2

trails, a picnic shelter, a fishing pier and a platform tent camping area... and development of a parking area and maintenance road,” among other improvements.

1. The LWCFA

By its terms, the LWCF Grant clearly renders the Camp subject to the provisions of the LWCFA. Specifically, as the Supreme Judicial Court has noted, the LWCFA mandates that “[n]o property acquired or developed with assistance under this section shall be converted to other than public outdoor recreation uses’ without the approval of the United States Secretary of the Interior.” Smith v. Westfield, 478 Mass. 49, 52 (2017). The LWCFA Grant also incorporates by reference the provisions of the LWCF Grants Manual (“LWCF Grants Manual”).

2. Article 97

The question of whether the Camp is subject to Article 97 is separate and distinct from whether it is subject to the LWCFA, by virtue of the LWCF Grant. Article 97 states, in relevant 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.

In my opinion, Article 97 is intended to protect land in its natural state. Camp Mary Bunker has been significantly developed, containing multiple manmade structures. It is an urban playground, distinguishable from the properties Article 97 is designed to preserve.

Massachusetts law makes a distinction between park land, governed by G.L. c. 45, §3, and playgrounds, governed by G.L. c. 45, §14. Parks are intended to be pristine, undeveloped land expanses, retained in their natural condition. Indeed, G.L. c. 45, §7 states that, in general, buildings in excess of 600 square feet shall not be erected except without the approval of the General Court – in sharp contrast to the condition of the Camp property. In contrast, G.L. c. 45, §14 governs land acquired for playground purposes, and expressly states that cities and towns may acquire property by eminent domain:

for the purpose of a public playground or recreation center, and may conduct and promote recreation, play sport and physical education on such land...and may construct buildings on land owned or leased by it and may provide equipment for such purposes. Land and buildings so acquired...may be used for town

Ms. Melissa Malone
Town Administrator
October 8, 2019
Page 3

meetings,... [and] for such other public, recreational, social or educational purposes.... The foregoing shall apply to land acquired for playground purposes, or for park and playground purposes, but shall not apply to land and buildings acquired solely for park purposes.” [Emphasis added].

This distinction was recognized by the Land Court in Curley v. Town of Billerica, 21 LCR 442 (Aug. 8, 2013). In Curley, the Land Court considered whether the Town of Billerica was required under Article 97 to obtain the approval of the Legislature to lease land to a telecommunications company that it had acquired for playground purposes and had used as soccer fields. The Land Court reasoned that “municipal land acquired for open space or conservation purposes is subject to art. 97” and that a park falls within the category of public open space. However, the Court proceeded to identify a sharp distinction between parkland and playgrounds. According to the Land Court, a playground is “a space for active recreation and is improved with equipment or structures, including playing fields,” whereas a park is “public open space that, for the most part, remains open and unimproved.” Curley, 21 LCR at 446 [emphasis added]. The Land Court decided that while parks are intended to remain open to protect “the people in their right to the conservation, development and utilization of the...natural resources,” the primary intent of playground land is to promote active recreation, and not to protect the public’s interest in the environment and thus does not fall within the scope of Article 97.”

I recognize that Curley was decided by the Land Court prior to the Supreme Judicial Court’s decision in Smith v. Westfield, in which the SJC held that a playground in Westfield was rendered subject to Article 97 by virtue of a similar LWCF Grant to the one that Natick received for the Camp. However, the SJC explicitly noted in that case that the City of Westfield “did not challenge the plaintiffs’ assertion below that the use of [the playground] fell within the range of environmental purposes contemplated by art. 97.” Smith, 478 Mass. at 56, n.11. Moreover, the SJC’s conclusion that the LWCF Grant rendered the playground subject to Article 97 was largely informed by a Statewide Comprehensive Outdoor Recreation Plan adopted by the Executive Office of Energy and Environmental Affairs in 2006, stating that land developed with LWCF funds becomes subject to Article 97. Id. at 64. It does not appear that the City of Westfield argued that it should not be subject to a 2006 policy by having accepted a grant decades before that Plan was adopted.

In summary, where parks are intended to remain as largely undisturbed open space to protect “the people in their right to the conservation, development and utilization of the...natural resources,” the primary intent of playground land, in my opinion, is to promote active recreation, and not to protect the public’s interest in the natural environment. Therefore, it is my opinion that land developed and utilized for active recreation, such as the Camp, does not fall within the scope of Article 97.

Ms. Melissa Malone
Town Administrator
October 8, 2019
Page 4

B. Public Sidewalk

In my opinion, the proposed public sidewalk, which will improve pedestrian and handicap access to the Camp, is consistent with the requirements of the LWCF Grant. Moreover, even were the Camp found to be subject to the provisions of Article 97, it is my opinion that the sidewalk project would be consistent with such provisions and would not constitute a conversion of use requiring legislative approval. The public sidewalk at issue extends approximately 6-7 feet into the Camp property, running parallel to North Main Street. It provides safe access to the Camp facilities, which does not currently exist. The Route 27 Project will replace the small shoulder which presently borders the front of the Camp, and which makes it difficult for persons, especially those with disabilities, to access and use the property.

The LWCF Act prohibits a conversion of property “to other than [a] public outdoor recreation [use].” In my opinion, the public sidewalk is fully consistent with both the use of the Camp, and the objective of the LWCF Grant, which specifically contemplated and authorized an access road, parking area, trails and other improvements clearly intended to allow such access. Moreover, the current LWCF Grants Manual (the link to the LWCF Grants Manual is <https://www.nps.gov/subjects/lwcf/lwcf-manual.htm>) clearly contemplates such improvements to be within the allowed scope of the LWCF Act. That Manual contains the following provision regarding eligible projects under the LWCF Act (at pages 3-7):

- a. Definition of eligible project scope. A development project may consist of one improvement or a group of related improvements designed to provide basic facilities for outdoor recreation, including facilities for access, safety, health, and protection of the area, as well as those required for the outdoor recreation use of the area. Furthermore, a project may consist of the complete or partial development of one area, such as a state park or a city playground, or it may consist of multiple sites such as a series of developments on a number of geographically separated areas under the same project sponsor such as picnic facilities in a number of parks, or the construction of fishing piers on a number of lakes in the State. In all cases, the project must be a logical unit of work to be accomplished within a specific time frame. [Emphasis added].

The LWCF Grants Manual further provides (at pages 3-8) that all facilities receiving grants should be handicap accessible in accordance with the Architectural Barriers Act of 1968 and the Americans with Disabilities Act. Indeed, improvements to make recreation facilities “accessible to the general public” are contemplated and encouraged throughout the LWCF Grants Manual for all types of funded recreational facilities, from camping facilities to sports facilities. Although “[r]oads constructed outside the boundaries of the recreation area or park are not eligible” for funding, except in certain circumstances (page 3-14), the use of a small portion of the Camp property that borders the roadway to provide interconnected access to the Camp cannot rationally be argued to be “inconsistent” with the use of the Camp as an outdoor recreational facility.

Ms. Melissa Malone
Town Administrator
October 8, 2019
Page 5

This is not a situation, such as in Smith, in which the Town seeks to use a protected property as a school, which would essentially nullify the use of land as a publicly accessible outdoor recreation facility. As the Court noted in Smith, “[t]he purpose of the act is to assure ‘outdoor recreation resources’ for ‘all American people of present and future generations...’” A sidewalk, whose very purpose is to enable people to access such property, clearly furthers this objective. Moreover, as discussed above, the Camp is already significantly developed. A sidewalk is not different in nature than the structures, roadways, parking areas and other improvements that already exist at the property.

The alternative, were the sidewalk deemed an impermissible conversion, would be to build sidewalk to the north and south boundaries of the Camp property – leaving a gap in pedestrian access along the Camp’s frontage. This would not only create an unsafe situation, but it would be an absurd result and would undermine (rather than promote) the purposes of the LWCFA. Accordingly, in my opinion, construction of a sidewalk along the Camp’s frontage does not constitute a use of land inconsistent with outdoor recreation, and approval of the Secretary of the Interior is not required.

Similarly, even were the Camp found to be subject to Article 97, a public sidewalk, in the context of this property, would not, in my opinion, be a conversion from its current use that would require legislative approval. In Mahajan v. Department of Env’tl. Protection, 464 Mass. 604, 614-615 (2013), the Supreme Judicial Court wrote that the language of Article 97 is “relatively imprecise” and that its provisions must be interpreted “in light of the practical consequences that would result from ... an expansive application, as well as the ability of a narrower interpretation to serve adequately the stated goals of art. 97.” Construing Article 97 as prohibiting a safe means to access Article 97 property is illogical, and ignores the practical consequences the Supreme Judicial Court held must be considered in any such analysis. Article 97 does not prohibit all modifications to protected property, only those uses inconsistent with the purpose for which the land is held. Safe and secure access by the public, including those with disabilities, to an otherwise protected property clearly promotes the rights of the public protected by Article 97.

Conclusion

In my opinion, a public sidewalk, connecting the North Main Street neighborhood to Camp Mary Bunker, is not inconsistent with the LWCF Grant, and furthers the objective of Article 97 by providing access to the property and the active recreational facilities located thereon. For this reason, it is my opinion that the sidewalk project may proceed without the need for legislative approval under Article 97 or approval of the Secretary of the Interior under the LWCFA.

KP | LAW

Ms. Melissa Malone
Town Administrator
October 8, 2019
Page 6

Please do not hesitate to contact me with any questions.

Very truly yours,

A handwritten signature in black ink that reads "Katharine Lord Klein". The signature is written in a cursive, flowing style.

Katharine Lord Klein

KLK/jsh

700971/NATICK/0006

301 CMR 11.00: MEPA REGULATIONS

Section

- 11.01: General Provisions
- 11.02: Definitions
- 11.03: Review Thresholds
- 11.04: Fail-Safe Review
- 11.05: ENF Preparation and Filing
- 11.06: ENF Review and Decision
- 11.07: EIR Preparation and Filing
- 11.08: EIR Review and Decision
- 11.09: Special Review Procedures
- 11.10: Project Changes and Lapses of Time
- 11.11: Waivers
- 11.12: Agency Responsibilities and Section 61 Findings
- 11.13: Emergency Action
- 11.14: Legal Challenges
- 11.15: Public Notice and the *Environmental Monitor*
- 11.16: Filing and Circulation
- 11.17: Transition Rules

11.01: General Provisions

(1) Authority and Purpose.

(a) General. 301 CMR 11.00 is promulgated to create a uniform system for compliance with the Massachusetts Environmental Policy Act, M.G.L. c. 30, §§ 61 through 62I (MEPA). The purpose of MEPA and 301 CMR 11.00 is to provide meaningful opportunities for public review of the potential environmental impacts of Projects for which Agency Action is required, and to assist each Agency in using (in addition to applying any other applicable statutory and regulatory standards and requirements) all feasible means to avoid Damage to the Environment or, to the extent Damage to the Environment cannot be avoided, to minimize and mitigate Damage to the Environment to the maximum extent practicable.

(b) MEPA Review. MEPA review is an informal administrative process that is intended to involve any interested Agency or Person as well as the Proponent and each Participating Agency. The Secretary conducts MEPA review in response to one or more review documents prepared and filed by a Proponent. The Secretary's decision that a review document is adequate or that there has been other due compliance with MEPA and 301 CMR 11.00 means that the Proponent has adequately described and analyzed the Project and its alternatives, and assessed its potential environmental impacts and mitigation measures. A Participating Agency retains authority to fulfill its statutory and regulatory obligations in permitting or reviewing a Project that is subject to MEPA review, which does not itself result in any formal adjudicative decision approving or disapproving a Project.

(c) MEPA and Agency Actions. MEPA review is intended to inform the Proponent and each Participating Agency, to maximize consistency between Agency Actions, and to facilitate coordination of all environmental and development review and permitting processes of the Commonwealth. It provides an opportunity in one or more review documents for the Proponent to identify required Agency Actions and describe and analyze how the Project complies with applicable regulatory standards and requirements. Each Participating Agency shall review the MEPA submittals and specify any aspects of the Project or issues regarding its Agency Action that require additional description or analysis (beyond that already provided in the review documents or any application for a Permit, Financial Assistance, or a Land Transfer) to enable it to take Agency Action on the Project or fulfill its obligations in accordance with M.G.L. c. 30, § 61. The Secretary may specify in the certificate on a review document any appropriate consultation by and between the Proponent and each Participating Agency and may hold informational meetings prior to or during MEPA review to ensure appropriate consultation.

11.01: continued

(d) MEPA and Environmental Planning. MEPA review is intended to facilitate environmental planning for Projects requiring Agency Action, including an Agency's programs, regulations, or policies. It enables the Proponent and each Participating Agency to consider the positive and negative, short-term and long-term potential environmental impacts for all phases of a Project, and the cumulative impacts of the Project and any other Project or other work or activity in the immediate surroundings and region. It also enables an Agency to consider the cumulative impacts of Projects requiring individual Agency Actions taken in accordance with each of its programs, regulations and policies that may not otherwise be subject to adequate MEPA review or that may have similar environmental impacts such that a common assessment may be necessary or appropriate. MEPA review can influence the planning and design of a program, regulations, policy, or other Project to enable an Agency to achieve these goals, provided that MEPA review is initiated sufficiently early and in any event prior to the Proponent finalizing or otherwise irreversibly committing to the program, regulations, policy, or other Project.

(2) Applicability.(a) Jurisdiction.

1. MEPA establishes jurisdiction over: a Project undertaken by an Agency; those aspects of a Project within the subject matter of any required Permit; a Project involving Financial Assistance; and those aspects of a Project within the area of any Land Transfer. MEPA jurisdiction determines the Scope, if an EIR is required.
2. MEPA jurisdiction is broad when a Project is undertaken by an Agency or involves Financial Assistance. Broad, or full scope, jurisdiction means that the Scope, if an EIR is required, shall extend to all aspects of a Project that are likely, directly or indirectly, to cause Damage to the Environment.
3. MEPA jurisdiction is limited when a Project is undertaken by a Person and requires one or more Permits or involves a Land Transfer but does not involve Financial Assistance. Limited, or subject matter, jurisdiction means that the Scope, if an EIR is required, shall be limited to those aspects of the Project within the subject matter of any required Permit or within the area subject to a Land Transfer that are likely, directly or indirectly, to cause Damage to the Environment. Subject matter jurisdiction may be functionally equivalent to full scope jurisdiction in the case of a Project, for example, requiring a Chapter 91 License or involving a Land Transfer of the entire Project site. Subject matter jurisdiction may be limited to a particular structure, facility or activity and its direct and indirect environmental impacts in the case of a Project, for example, requiring a Sewer Extension/Connection Permit or involving a Land Transfer of a discrete portion of the Project site on which the access roadway is proposed.

(b) Review Thresholds.

1. 301 CMR 11.00 establishes review thresholds that identify categories of Projects or aspects thereof, of a nature, size or location that are likely, directly or indirectly, to cause Damage to the Environment. Except when the Secretary requires fail-safe review, the review thresholds determine whether MEPA review is required.
2. MEPA review is required when one or more review thresholds are met or exceeded and the subject matter of at least one review threshold is within MEPA jurisdiction. A review threshold that is met or exceeded specifies whether MEPA review shall consist of an ENF and a mandatory EIR or of an ENF and other MEPA review if the Secretary so requires. The subject matter of a review threshold is within MEPA jurisdiction when there is full-scope jurisdiction (*i.e.*, the Project is undertaken by an Agency or involves Financial Assistance) or when the subject matter of the review threshold is conceptually or physically related to the subject matter of one or more required Permits (provided that the review thresholds for Land and Areas of Critical Environmental Concern shall be considered to be related to the subject matter of any required Permit) or the area subject to a Land Transfer.
3. The review thresholds do not apply to: a lawfully existing structure, facility or activity; Routine Maintenance; a Replacement Project; or a Project that is consistent with a Special Review Procedure review document, or other plan or document that has been prepared with the express purpose of assessing the potential environmental impacts from future Projects, has been reviewed as such in accordance with MEPA and 301 CMR 11.00, and has been allowed or approved by any Participating Agency, unless the filing of an ENF and an EIR was required by a decision of the Secretary on any such review document, plan or document.

11.01: continued

(c) Segmentation In determining whether a Project is subject to MEPA jurisdiction or meets or exceeds any review thresholds, and during MEPA review, the Proponent, any Participating Agency, and the Secretary shall consider the entirety of the Project, including any likely future Expansion, and not separate phases or segments thereof. The Proponent may not phase or segment a Project to evade, defer or curtail MEPA review. The Proponent, any Participating Agency, and the Secretary shall consider all circumstances as to whether various work or activities constitute one Project, including but not limited to: whether the work or activities, taken together, comprise a common plan or independent undertakings, regardless of whether there is more than one Proponent; any time interval between the work or activities; and whether the environmental impacts caused by the work or activities are separable or cumulative. Examples of work or activities that constitute one Project include work or activities that:

1. meet or exceed one or more review thresholds on an area previously subject to a Land Transfer, provided that not more than five years have elapsed between the Land Transfer and the work or activities; and
2. construct more than one structure (such as more than one single family dwelling) and appurtenant structures, facilities, and other improvements on a site, unless a plan for the subdivision or other legal division creating or allowing separate lots or parcels was definitively approved or endorsed in accordance with applicable statutes and regulations prior to the effective date of 301 CMR 11.00.

(3) Relation to Other Authority.

(a) Information Regarding Other Authority. The Secretary may require a Proponent to provide information regarding a Project's consistency or compliance with any applicable Federal, municipal, or regional statutes and regulations. MEPA and 301 CMR 11.00 do not give the Secretary authority to make any formal determination regarding such consistency or compliance.

(b) Applicability of Other Authority MEPA and 301 CMR 11.00 do not alter the review or permitting authority of any Agency or any Federal, municipal, or regional governmental entity over, or otherwise alter the applicability of any statutes and regulations to, a Project.

(4) General Procedure.

(a) ENF. If a Project is subject to MEPA jurisdiction and either it meets or exceeds one or more review thresholds or the Secretary requires fail-safe review, the Proponent begins MEPA review by preparing and filing an ENF with the Secretary. The Secretary publishes the appropriate pages of the ENF in the next *Environmental Monitor*. A 30-Day review period follows, during the first 20 Days of which Agencies, Persons, the MEPA Office (which ordinarily conducts a site visit and public consultation session), and the Secretary review and/or comment on the ENF. At the close of the review period for an ENF, the Secretary decides whether to require an EIR. If the Secretary does not require an EIR, an Agency may take Agency Action on the Project (*see* 301 CMR 11.05 and 11.06).

(b) EIR. If the Secretary requires an EIR, the Proponent prepares and files it with the Secretary. The Secretary shall ordinarily require a draft and final EIR but may allow a single EIR. The Secretary publishes notice of the availability of the EIR in the next *Environmental Monitor*. A 37-Day review period follows, during the first 30 Days of which Agencies, Persons, the MEPA Office, and the Secretary review and/or comment on the EIR. At the close of the review period, the Secretary decides whether the EIR is adequate. An Agency may take Agency Action on the Project, provided that the Secretary has determined that the single or final EIR is adequate and 60 Days have elapsed following the publication of the notice of the availability of the single or final EIR in the *Environmental Monitor* (*see* 301 CMR 11.07 and 11.08).

(c) Section 61 Findings. An Agency that takes Agency Action on a Project for which the Secretary required an EIR:

1. issues Section 61 Findings that specify, based on the EIR, all feasible means to be used to avoid Damage to the Environment, or, to the extent Damage to the Environment cannot be avoided, to minimize and mitigate Damage to the Environment to the maximum extent practicable;
2. makes its Section 61 Findings part of the Permit or other document allowing or approving the Agency Action; and

11.01: continued

3. files a copy of its Section 61 Findings with the MEPA Office (*see* 301 CMR 11.12(5)).

(5) Administration.

(a) Authority of Assistant Secretary. The staff of the Secretary that carries out day-to-day administration of MEPA and 301 CMR 11.00 is organized as the MEPA Office, under the direction of the Assistant Secretary of Energy and Environmental Affairs, who is also known as the MEPA Director. The Secretary may delegate to the Assistant Secretary any of the Secretary's authority in accordance with MEPA and 301 CMR 11.00 that the Secretary deems appropriate. Any certificate, determination, or other document executed by the Assistant Secretary in accordance with the delegation shall be deemed the valid and duly authorized certificate, determination, or other document of the Secretary.

(b) Responsibilities of MEPA Office. The MEPA Office is responsible for: responding to inquiries from Proponents and other Agencies and Persons; reviewing documents filed in accordance with MEPA and 301 CMR 11.00; conducting site visits and public consultation sessions; ensuring adequate prior public notice of site visits, public consultation sessions, and comment periods, and meaningful opportunities for public review of review documents; coordinating with any Agency that expects to take Agency Action on a Project; preparing drafts of certificates, determinations, and other documents for the Secretary; and maintaining publicly accessible files that contain the complete administrative record on which the Secretary's decisions in certificates, determinations, and other documents are based.

(6) Advisory Opinion.

(a) Request for Advisory Opinion. In case of doubt as to the meaning or applicability of any provision or requirement in MEPA or 301 CMR 11.00 (including whether an entity is an Agency, whether a decision or action is Agency Action, whether a Project is subject to MEPA jurisdiction, or whether a Project meets or exceeds one or more review thresholds) an Agency or Person may request an advisory opinion of the Secretary in accordance with M.G.L. c. 30, § 8 and 301 CMR 11.00.

(b) Decision on Advisory Opinion. The Secretary shall respond within 20 Days of receiving a request for an advisory opinion either with a request for further information or with the advisory opinion, unless the Secretary publishes notice of the request in accordance with 301 CMR 11.01(6)(c). If the Secretary requests further information, the Secretary shall provide the advisory opinion 20 Days of receiving the requested information.

(c) Public Comment on a Request for an Advisory Opinion. In the case of a request for an advisory opinion concerning Routine Maintenance or a Replacement Project, the Secretary shall, and in all other cases, the Secretary may: publish notice of the request in the next *Environmental Monitor* and receive into the record, within 20 Days following publication of the notice of the request (unless extended by the Secretary with the consent of the Proponent), written comments from any Agency or Person concerning the request. The Secretary shall provide the advisory opinion within 20 Days after the close of the comment period.

11.02: Definitions

(1) Undefined Terms. As used in 301 CMR 11.00, any term not defined in accordance with 301 CMR 11.02(2) shall have the meaning given to the term by any statutes, regulations, executive orders or policy directives governing the subject matter of the term. Examples include a term pertaining to:

(a) wetlands, which is defined by the Wetlands Protection Act, M.G.L. c. 131 § 40, and its implementing regulations, 310 CMR 10.00, and 33 USC 1341 and 314 CMR 9.00 regarding Water Quality Certification, as well as other statutes, regulations, executive orders, or policy directives that govern wetlands issues;

(b) roadways or traffic, which is defined by the Massachusetts Department of Transportation Highway Division at 720 CMR 13.00: *Approval of Access to State Highways.*

11.02: continued

(2) Defined Terms. As used in 301 CMR 11.00, the following terms shall have the following meanings:

Agency.

- (a) Any agency, department, board, commission, or authority of the Commonwealth.
- (b) Agency shall not be considered to include a Federal, municipal, or regional agency, department, board, commission or authority, unless it is:
 - 1. a municipal redevelopment agency created or acting in accordance with M.G.L. c. 121A or c. 121B; or
 - 2. any other authority of any political subdivision of the Commonwealth that is created or acting specifically as an authority in accordance with applicable statutes.

Agency Action.

- (a) In the case of a Project undertaken by an Agency, any formal and final authorization, appropriation, execution of a contract or other decision by the Agency to proceed to Commencement of a Project.
- (b) In the case of a Project undertaken by a Person, any formal and final action taken by an Agency in accordance with applicable statutes and regulations that grants a Permit, provides Financial Assistance, or closes a Land Transfer.
- (c) Agency Action is not final if the Permit, contract or other relevant document approving or allowing the Agency Action contains terms such as a condition or restriction that provides that such Agency Action shall be deemed not to have taken place unless and until the Secretary has determined that:
 - 1. no EIR is required; or
 - 2. a single or final EIR is adequate and 60 Days have elapsed following publication of notice of the availability of the single or final EIR in the *Environmental Monitor* in accordance with 301 CMR 11.15(2),provided that the Agency shall reconsider and confirm or modify the Agency Action and any conditions thereof following completion of MEPA review.
- (d) Agency Action is final even if subject to subsequent judicial or administrative appeal.

Archaeological Site. Any location of a significant event, prehistoric or historic occupation or activity, or building or structure, whether standing, ruined, or vanished, where the location itself maintains historical or archaeological value regardless of the value of any existing building or structure.

Capacity.

- (a) Design capacity, *i.e.*, the maximum capacity for which a facility or system is designed and at which a facility or system can operate, regardless of statutory, regulatory, contractual or other conditions or restrictions.
- (b) Daily Capacity shall be considered maximum Capacity on any given Day of operation and not an annual average.

Carbon Dioxide (CO₂) Equivalent. The amount of carbon dioxide by weight that would produce the same amount of global warming impact as a given weight of another greenhouse gas, based on the best available science, including information from the Intergovernmental Panel on Climate Change.

Commonwealth. The Commonwealth of Massachusetts.

Commencement of Construction.

- (a) Initiation of on-site physical or construction work or activity.
- (b) Research, design, or other work or activity necessary to evaluate a Project for purposes of MEPA and 301 CMR 11.00 and other environmental statutes or regulations shall not be considered Commencement of Construction.

Commencement of a Project.

- (a) The earliest of:
 - 1. initiation of the operational phase of the Project;
 - 2. Commencement of Construction; or

11.02: continued

3. initiation of any preparatory phase of the Project, including any action or expenditure of funds on the financing, marketing, or development of the Project.
- (b) Research, design, or other work or activity necessary to evaluate a Project for purposes of MEPA and 301 CMR 11.00 and other environmental statutes or regulations shall not be considered Commencement of a Project.

Damage to the Environment. Any destruction or impairment (not including insignificant damage or impairment), actual or probable, to any of the natural resources of the Commonwealth including, but not limited to, air pollution, GHG emissions, water pollution, improper sewage disposal, pesticide pollution, excessive noise, improper operation of dumping grounds, reduction of groundwater levels, impairment of water quality, increases in flooding or storm water flows, impairment and eutrophication of rivers, streams, flood plains, lakes, ponds or other surface or subsurface water resources, destruction of seashores, dunes, marine resources, underwater archaeological resources, wetlands, open spaces, natural areas, parks, or historic districts or sites.

Day.

- (a) Calendar day.
- (b) If the deadline for the Secretary to issue a certificate, determination, or other document, or for an Agency to take Agency Action, or for any Agency or Person to file comments, notices, or review documents in accordance with MEPA and 301 CMR 11.00 falls on a Saturday, Sunday or legal holiday, the deadline shall be considered to fall on the next business day.

Expansion. Any material increase in Capacity, demand on infrastructure, or physical dimensions of a Project or frequency of activity associated with the Project.

Financial Assistance.

- (a) Any direct or indirect financial aid to any Person provided by any Agency including, but not limited to, mortgage assistance, special taxing arrangements, grants, issuance of bonds, loans, loan guarantees, debt or equity assistance, and the allocation of Commonwealth or Federal funds.
- (b) Financial Assistance shall not be considered to include:
 1. the grant of aid for medical services or personal support, such as welfare or unemployment funds, to an individual or third party on behalf of an individual;
 2. pass-through of Federal funds or issuance of bonds solely on behalf of a local economic development or financing agency, without allocation by an Agency; or
 3. routine staff assistance.

Greenhouse Gas (GHG). Includes all of the following gases: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

Historic Structure or District. Any historic property, landmark, building, structure, or district that is significant to the history or prehistory of the Commonwealth, its counties, or municipalities.

Land Transfer.

- (a) The execution and delivery by an Agency of any deed, lease, license or other document that transfers real property or an interest in real property.
- (b) For purposes of review thresholds, Land Transfer shall not be considered to include the execution and delivery of a deed, lease or license to continue a preexisting lawful use on a Project site, or amendments or extensions thereof.

MEPA Office. The Secretary's staff that carries out day-to-day administration of MEPA and 301 CMR 11.00.

New. Any work or activity that is not:

- (a) existing;
- (b) being carried out currently as part of, used by, or generated by a previous, actual or permitted use of the Project site; or
- (c) being carried out within three years since the later of discontinuance of the previous use or issuance of the relevant Permit.

11.02: continued

Participating Agency. Any Agency to which the Proponent has made or will make an application for a Permit, Financial Assistance, or a Land Transfer.

Permit.

- (a) Any permit, license, certificate, variance, approval, or other entitlement for use, granted by an Agency for or by reason of a Project.
- (b) Permit shall be considered to include an entitlement for use granted by an Agency in accordance with delegated authority in accordance with Federal environmental statutes or regulations (including certification of compliance with the statutes and regulations).
- (c) Permit shall not be considered to include a general entitlement to a Person to carry on a trade or profession, or to operate mechanical equipment which does not depend upon the location of such trade or operation.
- (d) For purposes of review thresholds, Permit shall not be considered to include:
 1. a consent order or agreement to the extent it addresses noncompliance with applicable statutes and regulations and does not allow or approve a New Project or an Expansion of a Project;
 2. a general or programmatic permit, license, certificate, variance or approval applying to a category of Projects rather than to each individual Project;
 3. a permit, license, certificate, variance or approval by rule or by self-certification of compliance; and
 4. a permit, license, certificate, variance, or approval to continue a preexisting lawful use on a Project site, or amendments or extensions thereof.

Person. Any individual, corporation, partnership, trust, association, or other business or non-profit organization, or any Federal, municipal, or regional governmental, intergovernmental or other entity that is not an Agency.

Project. Any work or activity that is undertaken by:

- (a) an Agency; or
- (b) a Person and requires a Permit or involves Financial Assistance or a Land Transfer.

Proponent. Any Agency or Person, including a designee or successor in interest, that undertakes, or has a significant role in undertaking, a Project.

Replacement Project. Any Project to repair, replace, or reconstruct a previous use of or Project on a Project site that does not:

- (a) increase potential environmental impacts or need additional or changed environmental Permits; or
- (b) result in any substantial (10% or more) Expansion of the use or Project, provided that the previous use or Project has not been discontinued for more than three years and that the Expansion does not meet or exceed any review thresholds.

Routine Maintenance. Any maintenance work or activity carried out on a regular or periodic basis in a manner that has no potential for Damage to the Environment or for which performance standards have been developed that avoid, minimize, or mitigate potential environmental impacts to the maximum extent practicable.

Scope. The written certificate issued by the Secretary in accordance with 301 CMR 11.06(7) that specifies the form, content, level of detail, and alternatives required for an EIR.

Secretary. The Secretary of Energy and Environmental Affairs.

Section 61 Findings. The determinations and findings that an Agency shall make in accordance with M.G.L. c. 30, § 61 and 301 CMR 11.12(5) prior to or when taking Agency Action on a Project for which the Secretary required an EIR.

Stationary Source. Any individual stationary piece of equipment from which any air pollutant or greenhouse gas is emitted to the ambient air, or any other stationary emission point.

11.02: continued

(3) Abbreviations and Acronyms. As used in 301 CMR 11.00, the following abbreviations and acronyms shall have the following meanings:

adt	Average Daily Trips.
ACEC	Area of Critical Environmental Concern.
CAC	Citizens Advisory Committee.
CO ₂	Carbon dioxide.
cy	Cubic yards.
ENF	Environmental Notification Form.
EIR	Environmental Impact Report.
GHG	Greenhouse Gas.
gpd	Gallons per day.
HAP	Hazardous Air Pollutant.
kv	Kilovolts.
MEPA	The Massachusetts Environmental Policy Act, M.G.L. c. 30, §§ 61 through 62I.
MW	Megawatts.
No _x	Oxides of Nitrogen.
PM10	Particulate matter less than or equal to 10 microns in diameter.
PM 2.5	Particulate matter less than or equal to 2.5 microns in diameter.
sf	Square feet.
SO ₂	Sulfur Dioxide.
tpd	Tons per day.
tpy	Tons per year.
VOC	Volatile Organic Compound.

11.03: Review Thresholds

The review thresholds identify categories of Projects or aspects thereof of a nature, size or location that are likely, directly or indirectly, to cause Damage to the Environment. Except when the Secretary requires fail-safe review, the review thresholds determine whether MEPA review is required. MEPA review is required when one or more review thresholds are met or exceeded and the subject matter of at least one review threshold is within MEPA jurisdiction. A review threshold that is met or exceeded specifies whether MEPA review shall consist of an ENF and a mandatory EIR or of an ENF and other MEPA review if the Secretary so requires. The subject matter of a review threshold is within MEPA jurisdiction when there is full-scope jurisdiction (*i.e.*, the Project is undertaken by an Agency or involves Financial Assistance) or when the subject matter of the review threshold is conceptually or physically related to the subject matter of one or more required Permits (provided that the review thresholds for Land and Areas of Critical Environmental Concern shall be considered to be related to the subject matter of any required Permit) or the area subject to a Land Transfer. The review thresholds do not apply to: a lawfully existing structure, facility or activity; Routine Maintenance; a Replacement Project; or a Project that is consistent with a Special Review Procedure review document, or other plan or document that has been prepared with the express purpose of assessing the potential environmental impacts from future Projects, has been reviewed as such in accordance with MEPA and 301 CMR 11.00, and has been allowed or approved by any Participating Agency, unless the filing of an ENF and an EIR was required by a decision of the Secretary on any such review document, plan or document. The review thresholds are the following:

(1) Land.(a) ENF and Mandatory EIR.

1. Direct alteration of 50 or more acres of land, unless the Project is consistent with an approved conservation farm plan or forest cutting plan or other similar generally accepted agricultural or forestry practices.
2. Creation of ten or more acres of impervious area.

(b) ENF and Other MEPA Review if the Secretary So Requires.

1. Direct alteration of 25 or more acres of land, unless the Project is consistent with an approved conservation farm plan or forest cutting plan or other similar generally accepted agricultural or forestry practices.
2. Creation of five or more acres of impervious area.

11.03: continued

3. Conversion of land held for natural resources purposes in accordance with Article 97 of the Amendments to the Constitution of the Commonwealth to any purpose not in accordance with Article 97.
4. Conversion of land in active agricultural use to nonagricultural use, provided the land includes soils classified as prime, state-important or unique by the United States Department of Agriculture, unless the Project is accessory to active agricultural use or consists solely of one single family dwelling.
5. Release of an interest in land held for conservation, preservation or agricultural or watershed preservation purposes.
6. Approval in accordance with M.G.L. c. 121A of a New urban redevelopment project or a fundamental change in an approved urban redevelopment project, provided that the Project consists of 100 or more dwelling units or 50,000 or more sf of non-residential space.
7. Approval in accordance with M.G.L. c. 121B of a New urban renewal plan or a major modification of an existing urban renewal plan.

NON-TEXT PAGE

11.03: continued

- (2) State-listed Species under M.G.L. c. 131A (Massachusetts Endangered Species Act).
 - (a) ENF and Mandatory EIR. None.
 - (b) ENF and Other MEPA Review if the Secretary So Requires.
 - 1. Alteration of designated significant habitat.
 - 2. Greater than two acres of disturbance of designated priority habitat, as defined in 321 CMR 10.02, that results in a take of a state-listed endangered or threatened species or species of special concern.

- (3) Wetlands, Waterways and Tidelands.
 - (a) ENF and Mandatory EIR.
 - 1. Provided that a Permit is required:
 - a. alteration of one or more acres of salt marsh or bordering vegetating wetlands; or
 - b. alteration of ten or more acres of any other wetlands.
 - 2. Alteration requiring a variance in accordance with the Wetlands Protection Act.
 - 3. Construction of a New dam.
 - 4. Structural alteration of an existing dam that causes an Expansion of 20% or any decrease in impoundment Capacity.
 - 5. Provided that a Chapter 91 License is required, New non-water dependent use or Expansion of an existing non-water dependent structure, provided the use or structure occupies one or more acres of waterways or tidelands.
 - (b) ENF and Other MEPA Review if the Secretary So Requires.
 - 1. Provided that a Permit is required:
 - a. alteration of coastal dune, barrier beach or coastal bank;
 - b. alteration of 500 or more linear feet of bank along a fish run or inland bank;
 - c. alteration of 1,000 or more sf of salt marsh or outstanding resource waters;
 - d. alteration of 5,000 or more sf of bordering or isolated vegetated wetlands;
 - e. New fill or structure or Expansion of existing fill or structure, except a pile-supported structure, in a velocity zone or regulatory floodway; or
 - f. alteration of ½ or more acres of any other wetlands.
 - 2. Construction of a New roadway or bridge providing access to a barrier beach or a New utility line providing service to a structure on a barrier beach.
 - 3. Dredging of 10,000 or more cy of material.
 - 4. Disposal of 10,000 or more cy of dredged material, unless at a designated in-water disposal site.
 - 5. Provided that a Chapter 91 License is required, New or existing unlicensed non-water dependent use of waterways or tidelands, unless the Project is an overhead utility line, a structure of 1,000 or less sf base area accessory to a single family dwelling, a temporary use in a designated port area, or an existing unlicensed structure in use prior to January 1, 1984.
 - 6. Construction, reconstruction or Expansion of an existing solid fill structure of 1,000 or more sf base area or of a pile-supported or bottom-anchored structure of 2,000 or more sf base area, except a seasonal, pile-held or bottom-anchored float, provided the structure occupies flowed tidelands or other waterways.

- (4) Water.
 - (a) ENF and Mandatory EIR.
 - 1. New withdrawal or Expansion in withdrawal of:
 - a. 2,500,000 or more gpd from a surface water source; or
 - b. 1,500,000 or more gpd from a groundwater source.
 - 2. New interbasin transfer of water of 1,000,000 or more gpd or any amount determined significant by the Water Resources Commission.
 - 3. Construction of one or more New water mains ten or more miles in length.
 - 4. Provided that the Project is undertaken by an Agency, New water service to a municipality or water district across a municipal boundary through New or existing pipelines, unless a disruption of service emergency is declared in accordance with applicable statutes and regulations.

11.03: continued

- (b) ENF and Other MEPA Review if the Secretary So Requires.
 1. New withdrawal or Expansion in withdrawal of 100,000 or more gpd from a water source that requires New construction for the withdrawal.
 2. New withdrawal or Expansion in withdrawal of 500,000 or more gpd from a water supply system above the lesser of current system-wide authorized withdrawal volume or three-years' average system-wide actual withdrawal volume.
 3. Construction of one or more New water mains five or more miles in length.
 4. Construction of a New drinking water treatment plant with a Capacity of 1,000,000 or more gpd.
 5. Expansion of an existing drinking water treatment plant by the greater of 1,000,000 gpd or 10% of existing Capacity.
 6. Alteration requiring a variance in accordance with the Watershed Protection Act, unless the Project consists solely of one single family dwelling.
 7. Non-bridged stream crossing 1,000 or less feet upstream of a public surface drinking water supply for purpose of forest harvesting activities.

- (5) Wastewater.
 - (a) ENF and Mandatory EIR.
 1. Construction of a New wastewater treatment and/or disposal facility with a Capacity of 2,500,000 or more gpd.
 2. New interbasin transfer of wastewater of 1,000,000 or more gpd or any amount determined significant by the Water Resource Commission.
 3. Construction of one or more New sewer mains ten or more miles in length.
 4. Provided that the Project is undertaken by an Agency, New sewer service to a municipality or sewer district across a municipal boundary through New or existing pipelines, unless an emergency is declared in accordance with applicable statutes and regulations.
 5. New discharge or Expansion in discharge of any amount of sewage, industrial waste water or untreated stormwater directly to an outstanding resource water.
 6. New Capacity or Expansion in Capacity for storage, treatment, processing, combustion or disposal of 150 or more wet tpd of sewage sludge, sludge ash, grit, screenings, or other sewage sludge residual materials, unless the Project is an Expansion of an existing facility within an area that has already been sited for the proposed use in accordance with M.G.L. c. 21 or M.G.L. c. 83, § 6.
 - (b) ENF and Other MEPA Review if the Secretary So Requires.
 1. Construction of a New wastewater treatment and/or disposal facility with a Capacity of 100,000 or more gpd.
 2. Expansion of an existing wastewater treatment and/or disposal facility by the greater of 100,000 gpd or 10% of existing Capacity.
 3. Construction of one or more New sewer mains:
 - a. that will result in an Expansion in the flow to a wastewater treatment and/or disposal facility by 10% of existing Capacity;
 - b. five or more miles in length; or
 - c. ½ or more miles in length, provided the sewer mains are not located in the right of way of existing roadways.
 4. New discharge or Expansion in discharge:
 - a. to a sewer system of 100,000 or more gpd of sewage, industrial waste water or untreated stormwater;
 - b. to a surface water of:
 - i. 100,000 or more gpd of sewage;
 - ii. 20,000 or more gpd of industrial waste water; or
 - iii. any amount of sewage, industrial waste water or untreated stormwater requiring a variance from applicable water quality regulations; or
 - c. to groundwater of:
 - i. 10,000 or more gpd of sewage within an area, zone or district established, delineated or identified as necessary or appropriate to protect a public drinking water supply, an area established to protect a nitrogen sensitive embayment, an area within 200 feet of a tributary to a public surface drinking water supply, or an area within 400 feet of a public surface drinking water supply;

11.03: continued

- ii. 50,000 or more gpd of sewage within any other area;
 - iii. 20,000 or more gpd of industrial waste water; or
 - iv. any amount of sewage, industrial waste water or untreated stormwater requiring approval by the Department of Environmental Protection of a variance from Title 5 of the State Environmental Code for New construction.
5. New Capacity or Expansion in Capacity for:
- a. combustion or disposal of any amount of sewage sludge, sludge ash, grit, screenings, or other sewage sludge residual materials; or
 - b. storage, treatment, or processing of 50 or more wet tpd of sewage sludge or sewage sludge residual materials.

(6) Transportation.

(a) ENF and Mandatory EIR.

- 1. Unless the Project consists solely of an internal or on-site roadway or is located entirely on the site of a non-roadway Project:
 - a. construction of a New roadway two or more miles in length; or
 - b. widening of an existing roadway by one or more travel lanes for two or more miles.
- 2. New interchange on a completed limited access highway.
- 3. Construction of a New airport.
- 4. Construction of a New runway or terminal at an existing airport.
- 5. Construction of a New rail or rapid transit line along a New, unused or abandoned right-of-way for transportation of passengers or freight (not including sidings, spurs or other lines not leading to an ultimate destination).
- 6. Generation of 3,000 or more New adt on roadways providing access to a single location.
- 7. Construction of 1,000 or more New parking spaces at a single location.

(b) ENF and Other MEPA Review if the Secretary So Requires.

- 1. Unless the Project consists solely of an internal or on-site roadway or is located entirely on the site of a non-roadway Project:
 - a. construction of a New roadway one-quarter or more miles in length; or
 - b. widening of an existing roadway by four or more feet for one-half or more miles.
- 2. Construction, widening or maintenance of a roadway or its right-of-way that will:
 - a. alter the bank or terrain located ten more feet from the existing roadway for one-half or more miles, unless necessary to install a structure or equipment;
 - b. cut five or more living public shade trees of 14 or more inches in diameter at breast height; or
 - c. eliminate 300 or more feet of stone wall.
- 3. Expansion of an existing runway at an airport.
- 4. Construction of a New taxiway at an airport.
- 5. Expansion of an existing taxiway at Logan Airport.
- 6. Expansion of an existing terminal at Logan Airport by 100,000 or more sf.
- 7. Expansion of an existing terminal at any other airport by 25,000 or more sf.
- 8. Construction of New or Expansion of existing air cargo buildings at an airport by 100,000 or more sf.
- 9. Conversion of a military airport to a non-military airport.
- 10. Construction of a New rail or rapid transit line for transportation of passengers or freight.
- 11. Discontinuation of passenger or freight service along a rail or rapid transit line.
- 12. Abandonment of a substantially intact rail or rapid transit right-of-way.
- 13. Generation of 2,000 or more New adt on roadways providing access to a single location.
- 14. Generation of 1,000 or more New adt on roadways providing access to a single location and construction of 150 or more New parking spaces at a single location.
- 15. Construction of 300 or more New parking spaces at a single location.

11.03: continued

(7) Energy.

(a) ENF and Mandatory EIR.

1. Construction of a New electric generating facility with a Capacity of 100 or more MW.
2. Expansion of an existing electric generating facility by 100 or more MW.
3. Construction of a New fuel pipeline ten or more miles in length.
4. Construction of electric transmission lines with a Capacity of 230 or more kv, provided the transmission lines are five or more miles in length along New, unused or abandoned right of way.

(b) ENF and Other MEPA Review if the Secretary So Requires.

1. Construction of a New electric generating facility with a Capacity of 25 or more MW.
2. Expansion of an existing electric generating facility by 25 or more MW.
3. Construction of a New fuel pipeline five or more miles in length.
4. Construction of electric transmission lines with a Capacity of 69 or more kv, provided the transmission lines are one or more miles in length along New, unused or abandoned right of way.

(8) Air.

(a) ENF and Mandatory EIR.

1. Construction of a New Stationary Source with federal potential emissions, after construction and the imposition of required controls, of: 250 tpy of any criteria air pollutant; 40 tpy of any HAP; 100 tpy of any combination of HAPs; or 100,000 tpy of GHGs based on CO₂ Equivalent.
2. Modification of an existing Stationary Source with federal potential emissions that collectively will result, after construction and the imposition of required controls, of 75,000 tpy of GHGs based on CO₂ Equivalent.

(b) ENF and Other MEPA Review if the Secretary So Requires.

1. Construction of a New Stationary Source with federal potential emissions, after construction and the imposition of required controls, of: 100 tpy of PM₁₀, PM_{2.5}, CO, lead or SO₂; 50 tpy of VOC or NO_x; 10 tpy of any HAP; or 25 tpy of any combination of HAPs.
2. Modification of an existing Stationary Source resulting in a "significant net increase" in actual emissions, provided that the stationary source or facility is major for the pollutant. For purposes of this threshold, a "significant net increase" in actual emissions shall mean an increase in emissions of: 15 tpy of PM₁₀; 10 tpy of PM_{2.5}; 100 tpy of CO; 40 tpy of SO₂; 25 tpy of VOC or NO_x; 0.6 tpy of lead.

(9) Solid and Hazardous Waste.

(a) ENF and Mandatory EIR. New Capacity or Expansion in Capacity of 150 or more tpd for storage, treatment, processing, combustion or disposal of solid waste, unless the Project is a transfer station, is an Expansion of an existing facility within a validly site assigned area for the proposed use, or is exempt from site assignment requirements.

(b) ENF and Other MEPA Review if the Secretary So Requires.

1. New Capacity or Expansion in Capacity for combustion or disposal of any quantity of solid waste, or storage, treatment or processing of 50 or more tpd of solid waste, unless the Project is exempt from site assignment requirements.
2. Provided that a Permit is required in accordance with M.G.L. c. 21D, New Capacity or Expansion in Capacity for the storage, recycling, treatment or disposal of hazardous waste.

(10) Historical and Archaeological Resources.

(a) ENF and Mandatory EIR. None.

(b) ENF and Other MEPA Review if the Secretary So Requires. Unless the Project is subject to a Determination of No Adverse Effect by the Massachusetts Historical Commission or is consistent with a Memorandum of Agreement with the Massachusetts Historical Commission that has been the subject of public notice and comment:

1. demolition of all or any exterior part of any Historic Structure listed in or located in any Historic District listed in the State Register of Historic Places or the Inventory of Historic and Archaeological Assets of the Commonwealth; or
2. destruction of all or any part of any Archaeological Site listed in the State Register of Historic Places or the Inventory of Historic and Archaeological Assets of the Commonwealth.

11.03: continued

- (11) Areas of Critical Environmental Concern.
- (a) ENF and Mandatory EIR. None.
 - (b) ENF and Other MEPA Review if the Secretary So Requires. Any Project within a designated ACEC, unless the Project consists solely of one single family dwelling.
- (12) Regulations.
- (a) ENF and Mandatory EIR. None.
 - (b) ENF and Other MEPA Review if the Secretary So Requires. Promulgation of New or revised regulations, of which a primary purpose is protecting against Damage to the Environment, that significantly reduce:
 - 1. standards for environmental protection;
 - 2. opportunities for public participation in permitting or other review processes; or
 - 3. public access to information generated or provided in accordance with the regulations.

11.04: Fail-Safe Review

(1) Petition or Secretary's Initiative. Upon written petition by one or more Agencies or ten or more Persons, or at the initiative of the Secretary, the Secretary may require a Proponent to file an ENF or undergo other MEPA review for a proposed program, regulations, policy, or other Project that does not meet or exceed any review thresholds unless all Agency Actions for the Project have been taken, provided that the Secretary finds in the decision on the petition or initiative that:

- (a) the Project is subject to MEPA jurisdiction;
- (b) the Project has the potential to cause Damage to the Environment and the potential Damage to the Environment either:
 - 1. could not reasonably have been foreseen prior to or when 301 CMR 11.00 was promulgated; or
 - 2. would be caused by a circumstance or combination of circumstances that individually would not ordinarily cause Damage to the Environment; and
- (c) requiring the filing of an ENF and other compliance with MEPA and 301 CMR 11.00:
 - 1. is essential to avoid or minimize Damage to the Environment; and
 - 2. will not result in an undue hardship for the Proponent.

A written petition for fail-safe review shall state with specificity the Project-related facts that the petitioners believe support the Secretary's required findings.

(2) Notice and Effect of Petition or Secretary's Initiative. Within ten Days of receiving of a petition, or immediately when the Secretary initiates fail-safe review, the Secretary shall notify the Proponent and any Participating Agency of the petition or initiative and may request further information from the Proponent. Following such notice, a Participating Agency shall not take Agency Action on the Project unless and until the Secretary has issued a decision that the Project does not require the filing of an ENF or, if the Secretary requires an ENF, the Secretary has determined that an EIR is not required or the Secretary has determined that the single or final EIR is adequate and 60 Days have elapsed following the publication of the notice of the availability of the single or final EIR in the *Environmental Monitor* in accordance with 301 CMR 11.15(2).

(3) Secretary's Decision. The Secretary shall issue a written decision stating whether the Proponent shall file an ENF or undergo other MEPA review within 20 Days of the latest of receiving a petition for fail-safe review, notifying the Proponent of the petition or initiative, or receiving any requested further information. The Secretary shall send notice of any fail-safe review decision to the Proponent and any Participating Agency and shall publish notice of the decision in the next *Environmental Monitor* in accordance with 301 CMR 11.15(2). The Secretary's failure to issue a decision within the 20 Day period shall have the effect of a determination that no ENF or any other MEPA review is required.

(4) Effect of Secretary's Decision. The Secretary's decision to require fail-safe review shall not in itself invalidate any Agency Action previously taken by an Agency or any conditions thereof.

11.05: ENF Preparation and Filing

(1) Filing and Circulation Requirements. If a Project requires MEPA review in accordance with 301 CMR 11.01(2), the Proponent shall complete an ENF and file it with the Secretary. Prior to or when filing the ENF with the Secretary, the Proponent shall circulate copies of the ENF in accordance with 301 CMR 11.16(2) and publish a Public Notice of Environmental Review in accordance with 301 CMR 11.15(1). The Proponent's failure to circulate the ENF or publish the Public Notice properly shall allow the Secretary to require an extension or repetition of the ENF review. The Secretary may reject an incomplete ENF, in which case the Secretary shall notify the Proponent, who shall file and circulate a new ENF and publish a new Public Notice.

(2) Timely Filing. In all cases, the Proponent shall file the ENF sufficiently prior to Commencement of the Project and any required Agency Action to allow timely compliance with MEPA and 301 CMR 11.00 including analysis of alternatives, consideration of cumulative environmental impacts, and providing meaningful opportunities for public review. In the case of a Project undertaken by an Agency, the Proponent shall ordinarily file the ENF not less than one year prior to the expected Commencement of the Project, and in any event prior to the Agency's finalizing the design or making an irreversible commitment of financial resources to the Project. In the case of a Project that is undertaken by a Person and requires one or more Permits or involves Financial Assistance but does not involve a Land Transfer, the Proponent shall file the ENF at any time prior to but no later than ten Days after filing the first application for a Permit or Financial Assistance. In the case of a Project that is undertaken by a Person and involves a Land Transfer, the Proponent shall file the ENF prior to closing the Land Transfer unless the Land Transfer is not final Agency Action in accordance with 301 CMR 11.02(2). The Proponent may consult with the Secretary for specific advice as to when to file the ENF.

(3) Consultation. Prior to filing the ENF, the Proponent may consult with the Secretary and any Participating Agency to determine any review thresholds the Project may meet or exceed and any Agency Action it may require, and to avoid unnecessary MEPA review if the Project may not be eligible for the required Agency Action.

(4) (a) Description of the Project and Potential Impacts. The ENF shall include a concise but accurate description of the Project and its alternatives, identify any review thresholds the Project may meet or exceed and any Agency Action it may require, present the Proponent's initial assessment of potential environmental impacts, propose mitigation measures, and may include a proposed Scope. The ENF shall indicate whether the Proponent is requesting that the Secretary allow a single EIR in accordance with 301 CMR 11.06(8), establish a Special Review Procedure in accordance with 301 CMR 11.09, or grant a waiver in accordance with 301 CMR 11.11. The Proponent shall not limit description of the Project or assessment of its potential environmental impacts on account of any jurisdictional or other limitation that may apply to the Scope, if an EIR is required. The ENF shall separately assess potential environmental impacts and proposed mitigation. The ENF shall identify the sources on which the assessments are based.

(b) If the Project is located in landlocked tidelands as defined in 310 CMR 9.02, the ENF shall include an explanation of the Project's impact on the public's right to access, use, and enjoy tidelands that are protected by chapter 91 and shall identify measures to avoid, minimize, or mitigate any adverse impact on those rights. If the Project is located in landlocked tidelands and an area where low groundwater levels have been identified by a municipality or by a state or federal agency as a threat to building foundations, the ENF shall also include an explanation of the Project's impact on groundwater levels and identify and commit to taking measures to avoid, minimize, or mitigate any adverse impact on groundwater levels. The ENF shall also describe the Project's compliance with any municipal regulations designed to protect groundwater levels. The Proponent may combine the information provided under 301 CMR 11.05(4)(b) with the information provided under 301 CMR 13.03.

(c) For Projects in tidelands other than landlocked tidelands, follow 310 CMR 13.00.

11.05: continued

(d) The information provided in the ENF shall be designed to facilitate consultation and elicit comments identifying any relevant and significant issues. The Proponent's submission of a proposed Scope with the ENF shall not mean that the Proponent believes an EIR is required or that the Secretary will require an EIR. The Proponent's assessment of potential environmental impacts or proposed Scope shall not limit the Secretary's discretion in determining the Scope.

(5) The ENF. The Secretary shall prescribe the form and content of the ENF, which shall be available from the MEPA Office. The Proponent shall complete the ENF in accordance with 301 CMR 11.00 and any instructions provided on or with the ENF, and shall use an original or full-sized photocopy or other version of the ENF expressly approved by the Secretary. The Secretary may from time to time modify the ENF or instructions, provided that the Secretary shall first publish the modified form or instructions in the *Environmental Monitor* and shall at the same time specify the effective date of the modified ENF or instructions.

(6) Required ENF Attachments. The Proponent shall attach to the ENF an original United States Geologic Survey Map or other location map expressly approved by the Secretary that includes and indicates the Project site, a site plan at an appropriate scale and level of detail, and a list of all Agencies and Persons to whom the Proponent circulated the ENF in accordance with 301 CMR 11.16(2).

NON-TEXT PAGE

11.05: continued

(7) Expanded ENF. In addition to filing a completed ENF and the required attachments, the Proponent may file more extensive and detailed information describing and analyzing the Project and its alternatives, and assessing its potential environmental impacts and mitigation measures. The Proponent may provide this additional information whenever it is available. The Proponent shall provide this additional information when the Proponent is requesting that the Secretary allow a single EIR in accordance with 301 CMR 11.06(8), establish a Special Review Procedure in accordance with 301 CMR 11.09, or grant a waiver in accordance with 301 CMR 11.11. The Proponent may refer to 301 CMR 11.07(6) for guidance and may consult with the Secretary for specific advice as to the form and content of this additional information. The Secretary shall duly consider this additional information in the ENF, although it shall not limit the Secretary's discretion to determine the Scope. A Proponent who files an expanded ENF requesting a single EIR or Special Review Procedure shall be deemed to consent to an extension of the ENF review period in accordance with 301 CMR 11.06(1) and of the ENF public comment period in accordance with 301 CMR 11.06(3).

(8) Voluntarily Filed ENF. The Proponent may voluntarily file an ENF and, with the Secretary's consent, undergo MEPA review for a Project that does not meet or exceed any review thresholds. Once the Secretary publishes the ENF in the *Environmental Monitor* in accordance with 301 CMR 11.15(2), the Proponent may withdraw the ENF only with the Secretary's consent.

(9) Enforcement Actions. If an Agency's ability to undertake an action enforcing its statutory or regulatory obligations is impeded by the failure of a Proponent to file an ENF, the Agency may, with the consent of the Secretary and after 30 Days prior written notice to the Proponent, file an ENF on behalf of the Proponent.

11.06: ENF Review and Decision

(1) Publication and Review Period. Upon receiving and accepting the ENF, the Secretary shall publish the appropriate pages of the ENF in the next *Environmental Monitor* in accordance with 301 CMR 11.15(2), which begins the ENF review period. The ENF review period lasts for 30 Days, unless extended by the Secretary on account of the Proponent's failure to meet circulation or Public Notice requirements or with the consent of the Proponent. The review period for an expanded ENF requesting a single EIR or Special Review Procedure lasts for 37 Days, unless extended by the Secretary on account of the Proponent's failure to meet circulation or Public Notice requirements or with the consent of the Proponent.

(2) Consultation and Investigation. After receiving and accepting an ENF, the Secretary shall review the ENF and may review relevant information from any other source to determine whether to require an EIR, and, if so, what to require in the Scope. The Secretary shall ordinarily schedule with the Proponent a site visit and public consultation session to review the Project and discuss its alternatives, its potential environmental impacts and mitigation measures. The Proponent shall be required to provide accompanied public access to the Project site during the site visit and public consultation session unless such access is infeasible for public safety reasons or protection of proprietary information. Any Agency or Person may inquire of the MEPA Office as to the date, time, and location of the consultation session.

(3) Public Comment Period, Extensions, Late Comments. After receiving and accepting an ENF, the Secretary shall receive into the record written comments from any Agency or Person, concerning the Project, its alternatives, its potential environmental impacts, mitigation measures, and whether to require an EIR and, if so, what to require in the Scope. Comments shall be filed with the Secretary within 20 Days following publication of the ENF in the *Environmental Monitor*, unless the public comment period is extended by the Secretary on account of the Proponent's failure to meet circulation or Public Notice requirements or with the consent of the Proponent. If the Proponent has filed an expanded ENF requesting a single EIR or a Special Review Procedure in accordance with 301 CMR 11.05(7), comments shall be filed within 30 Days following publication of the ENF in the *Environmental Monitor*, unless the comment period is extended by the Secretary on account of the Proponent's failure to meet circulation or Public Notice requirements or with the consent of the Proponent. An extension shall not ordinarily exceed 30 Days. The Secretary may accept a late comment, provided it is received prior to the Secretary's decision on the ENF.

11.06: continued

(4) Agency Review An Agency shall review an ENF circulated to it by the Proponent. If it appears that the Project requires Agency Action by the Agency or may significantly affect any interest of the Agency or any statutes or regulations administered by the Agency, the Agency shall:

- (a) participate in the consultation session scheduled by the Secretary in accordance with 301 CMR 11.06(2) and file comments with the Secretary in accordance with 301 CMR 11.06(3); and
- (b) specify in its comments: any Agency Action required to be taken by the Agency for the Project; any aspect of the Project or issue requiring additional description or analysis in an EIR; and any opportunity to maximize consistency and facilitate coordination between the Agency Action and MEPA review or any other Agency Actions.

A Participating Agency's failure to specify an aspect of the Project or issue requiring additional description or analysis in an EIR shall have the effect of a determination that the information presented in the ENF, together with information already provided in any application for a Permit, Financial Assistance or a Land Transfer, sufficiently defines the nature and general elements (but not necessarily the technical details) of the Agency Action on the Project, such that the Participating Agency recommends that the Secretary require no further MEPA review or that the Scope not include any requirements relating to the aspect or issue.

(5) Secretary's Request for Copy of Application or Other Information. Upon request of the Secretary during the review period for an ENF, the Proponent shall file with the Secretary a copy of any application for a Permit, Financial Assistance, or a Land Transfer and any other information relevant to the Secretary's review of the Project, its alternatives, its potential environmental impacts and mitigation measures. Upon request of the Secretary, the Proponent shall make available a copy of any application for a Permit, Financial Assistance, or Land Transfer when the application is filed with a Participating Agency subsequent to the Secretary's decision on the ENF.

(6) Effect of Proponent's Failure to Cooperate. The Secretary and any Participating Agency may consider the Proponent's failure to participate in the ENF consultation session to be withdrawal of the ENF. The Proponent's failure to provide requested information may result in the Secretary requiring the Proponent to consider in an EIR the aspect of the Project or the issue about which information was requested, provided that the aspect or issue is within any applicable jurisdictional limitations in accordance with 301 CMR 11.06(9)(b).

(7) Decision on ENF and Scope. After the close of the public comment period and on or prior to the last Day of the ENF review period, the Secretary shall issue a written certificate stating whether or not an EIR is required and, if so, what to require in the Scope in accordance with 301 CMR 11.06(9). The Secretary's failure to issue a timely certificate shall have the effect of a determination that no EIR is required, unless the Project meets or exceeds one or more mandatory EIR review thresholds, in which case such failure shall have the effect of a determination that an EIR is required, and that it shall address all aspects of the Project that are likely, directly or indirectly, to cause Damage to the Environment, provided that such aspects are within any applicable jurisdictional limitations in accordance with 301 CMR 11.06(9)(b). The Secretary's decision on the ENF shall be subject to the legal challenge periods in accordance with 301 CMR 11.14.

(8) Decision Allowing Single EIR. When issuing a Scope in accordance with 301 CMR 11.06(7), the Secretary shall ordinarily require a draft and final EIR but may allow a single EIR, provided that the Secretary finds that the expanded ENF requesting a single EIR in accordance with 301 CMR 11.05(7):

- (a) describes and analyzes all aspects of the Project and all feasible alternatives, regardless of any jurisdictional or other limitation that may apply to the Scope;
- (b) provides a detailed baseline in relation to which potential environmental impacts and mitigation measures can be assessed; and
- (c) demonstrates that the planning and design of the Project use all feasible means to avoid potential environmental impacts.

11.06: continued

(9) Limits on Scope.

(a) Potential Environmental Impacts. The Secretary shall limit the Scope to those aspects of the Project that are likely, directly or indirectly, to cause Damage to the Environment.

(b) Subject Matter Jurisdiction. In the case of a Project undertaken by a Person that requires one or more Permits or involves a Land Transfer but does not involve Financial Assistance, the Scope shall be limited to the direct and indirect potential environmental impacts from those aspects of the Project that are within the subject matter of any required Permit or within the area subject to a Land Transfer, regardless of whether or not those aspects met or exceeded any review thresholds.

(c) Elements of Scope The Secretary shall determine the form, content, level of detail, and alternatives required for the EIR and may establish guidelines as to page length and time necessary for preparation. The Secretary may direct the Proponent to consult with any Participating Agency and describe in the EIR any opportunity to maximize consistency and facilitate coordination between any Agency Action and MEPA review or any other Agency Action.

(10) Environmental Mediation. The Proponent, an Agency, or a Person may conclude that environmental mediation, either alone or in addition to the preparation of an EIR, may be helpful in settling unresolved issues. The Secretary may assist parties in identifying the need for and sources of such services. This assistance shall not alter any of the review periods, deadlines, or other provisions or requirements of MEPA or 301 CMR 11.00, except with the consent of the Proponent.

(11) Suspended, Abandoned, or Changed Project. If a Proponent does not proceed with a Project or changes a Project after filing an ENF, the Proponent shall file a Notice of Project Change in accordance with 301 CMR 11.10.

(12) Notification to Department of Environmental Protection for Projects Located in Landlocked Tidelands. If the Project is located in landlocked tidelands as defined in 310 CMR 9.02, then within 30 days after a certificate is issued determining that an ENF is adequate and no EIR is required or within 30 days after the Secretary issues a decision waiving the requirement to file an EIR, the Proponent shall file with the Department of Environmental Protection a completed form notifying the Department of Environmental Protection that work will be conducted within landlocked tidelands. The Proponent shall attach the certificate to the form. The Proponent shall comply with all obligations set forth in the certificate and the Department of Environmental Protection shall enforce such conditions consistent with M.G.L. c. 30, § 62I.

11.07: EIR Preparation and Filing

(1) Filing and Circulation Requirements. If the Secretary requires an EIR in accordance with 301 CMR 11.06(7), the Proponent shall prepare the EIR and file it with the Secretary. Prior to or when filing the EIR with the Secretary, the Proponent shall circulate copies of the EIR in accordance with 301 CMR 11.16(3) and the Scope. The Proponent's failure to circulate the EIR properly shall allow the Secretary to require an extension or repetition of the EIR review.

(2) Timely Filing. The Proponent shall file the EIR as soon after the Secretary issues the Scope as is reasonably possible given the status of Project planning and design, the type and size of the Project, and the Scope. The Proponent may consult with the Secretary for specific advice as to when to file the EIR.

(3) Draft EIR. If the Secretary requires an EIR in accordance with 301 CMR 11.06(7), the Proponent shall first prepare a draft EIR, unless otherwise indicated in the Scope. The draft EIR shall present in accordance with 301 CMR 11.07(6) and the Scope a reasonably complete and stand-alone description and analysis of the Project and its alternatives, and an assessment of its potential environmental impacts and mitigation measures. The Proponent shall ordinarily use the review and comments by any Person or Agency on the draft EIR as an additional opportunity to improve the planning and design of the Project.

11.07: continued

(4) Final EIR. If the Secretary determines that the draft EIR is adequate in accordance with 301 CMR 11.08(8)(b), the Proponent shall prepare a final EIR, unless otherwise indicated in the Scope. The Secretary may limit the Scope of the final EIR to aspects of the Project or issues that require further description or analysis and a response to comments, instead of requiring a stand-alone document that meets all of the form and content requirements for an EIR in accordance with 301 CMR 11.07(6), provided that the draft and final EIRs shall present a complete and definitive description and analysis of the Project and its alternatives, and assessment of its potential environmental impacts and mitigation measures sufficient to allow a Participating Agency to fulfill its obligations in accordance with M.G.L. c. 30, § 61 and 301 CMR 11.12(5).

(5) Single EIR. If the Secretary allows a single EIR in accordance with 301 CMR 11.06(8), the Proponent shall prepare a single EIR. The single EIR shall build on the information in the expanded ENF and shall present in accordance with 301 CMR 11.07(6) and the Scope a complete, stand-alone and definitive description and analysis of the Project and its alternatives, and assessment of its potential environmental impacts and mitigation measures sufficient to allow a Participating Agency to fulfill its obligations in accordance with M.G.L. c. 30, § 61 and 301 CMR 11.12(5).

(6) Form and Content of EIR. Unless the Secretary has indicated otherwise in the Scope or as part of a Special Review Procedure, the depth and level of description and analysis in the EIR shall reflect the status of Project planning and design, the type and size of the Project, the requirements of any Agency Action, the availability of reasonable alternatives and methods to avoid or minimize potential environmental impacts, and the opportunity to assess environmental impacts and to identify appropriate mitigation measures. The EIR shall ordinarily contain the following sections (unless the Secretary indicates in the Scope or as a part of a Special Review Procedure that specific issues shall be described or analyzed in additional sections in the EIR or that any of these sections shall not be included in the EIR):

(a) Title Page. The name and location of the Project, the EEA File Number, the type of EIR, the name of the Proponent, the name of the preparer, and the date of filing;

(b) Table of Contents. The title and page number of all sections, maps, plans, tables, figures, and appendices of the EIR;

(c) Secretary's Certificates. A copy of each Secretary's certificate for the Project, including on the ENF, a draft EIR, or a Notice of Project Change, and any other determination or document issued by the Secretary for the Project.

(d) Summary. A brief description in clear, nontechnical language including:

1. the name and location of the Project, and the EEA File Number;
2. a brief Project description listing in particular any changes made to the Project since the review of the previous review document;
3. a list of any Permit, Financial Assistance, or Land Transfer, and any required Federal environmental, or land-use permit, license, certificate, variance, or approval with a summary of the current status of each application;
4. a summary of alternatives to the Project;
5. a summary of potential environmental impacts of the Project; and
6. a list of mitigation measures for the Project.

(e) Project Description. A detailed description and analysis of the nature and location of the Project including:

1. the type, size, and proposed use of the Project;
2. the objectives and anticipated benefits of the Project;
3. a description of the physical characteristics of the Project and its surroundings, illustrated with a location map and site plan at an appropriate scale and level of detail; and
4. a timetable, approximate cost, and the methods and timing of construction of the Project.

(f) Alternatives to the Project. A description and analysis of alternatives to the Project including:

1. all feasible alternatives, including but not limited to those indicated in the Scope;

11.07: continued

2. the alternative of not undertaking the Project (*i.e.*, the no-build alternative) for the purpose of establishing a future baseline in relation to which the Project and its alternatives can be described and analyzed and its potential environmental impacts and mitigation measures can be assessed;
 3. an analysis of the feasible alternatives in light of the objectives of the Proponent and the mission of any Participating Agency, including relevant statutes, regulations, executive orders and other policy directives, and any applicable Federal, municipal, or regional plan formally adopted by an Agency or any Federal, municipal, or regional governmental entity;
 4. an analysis of the principal differences among the feasible alternatives under consideration, particularly regarding potential environmental impacts;
 5. a brief discussion of any alternatives no longer under consideration including the reasons for no longer considering these alternatives.
- (g) **Existing Environment.** A description and analysis of the physical, biological, chemical, economic, and social conditions of the Project site, its immediate surroundings, and the region (in sufficient detail to provide a baseline in relation to which the Project and its alternatives can be described and analyzed and its potential environmental impacts and mitigation measures can be assessed) including:
1. topography, geology, and soils;
 2. surface and groundwater hydrology and quality;
 3. air quality, GHG emissions and noise;
 4. plant and animal species and habitat;
 5. traffic, transit, and pedestrian and bicycle transportation;
 6. scenic qualities, open space and recreational resources;
 7. Historic Structures or Districts, and Archaeological Sites;
 8. the built environment and human use of the Project site, its immediate surroundings and the region, including existing infrastructure (*i.e.*, water supply, wastewater treatment and/or disposal, transportation, waste management, *etc.*), zoning districts and other relevant land-use designations or plans (*i.e.*, local or regional capital improvement plans or infrastructure investments, economic development, growth planning and open space plans, *etc.*), business districts, industrial parks, housing stock, and vacancy rates; and
 9. rare or unique features (including environmental and social conditions) of the Project site and its immediate surroundings such that any increase in environmental impacts, however small or gradual, may result in an unusual or disproportionate effect on environmental resources or quality or public health.
 10. if the Project is located in landlocked tidelands as defined in 310 CMR 9.02, an explanation of the Project's impact on the public's right to access, use, and enjoy tidelands that are protected by chapter 91 and measures to avoid, minimize, or mitigate any adverse impact on those rights. If the Project is located in landlocked tidelands and an area where low groundwater levels have been identified by a municipality or by a state or federal agency as a threat to building foundations, an explanation of the Project's impact on groundwater levels and identification and commitment to taking measures to avoid, minimize, or mitigate any adverse impact on groundwater levels. The EIR shall also describe the Project's compliance with any municipal regulations designed to protect groundwater levels. The Proponent may combine the information provided under 301 CMR 11.07(6)(g)10. with the information provided under 301 CMR 13.03.
 11. For Projects in tidelands other than landlocked tidelands, follow 310 CMR 13.00.
- (h) **Assessment of Impacts.** A detailed description and assessment of the negative and positive potential environmental impacts of the Project and its alternatives. The EIR shall assess (in quantitative terms, to the maximum extent practicable) the direct and indirect potential environmental impacts from all aspects of the Project that are within the Scope. The assessment shall include both short-term and long-term impacts for all phases of the Project (*e.g.*, acquisition, development, and operation) and cumulative impacts of the Project, any other Projects, and other work or activity in the immediate surroundings and region.
- (i) **Statutory and Regulatory Standards and Requirements.** A list of any Permit, Financial Assistance, or Land Transfer that is or may be required, and a brief description and analysis of the applicable statutory and regulatory standards and requirements thereof and the measures to be taken to ensure due compliance therewith.

11.07: continued

(j) Mitigation Measures. A description and assessment of physical, biological and chemical measures and management techniques designed to limit negative environmental impacts or to cause positive environmental impacts during development and operation of a Project. The EIR shall specify in detail: the measures to be taken by the Proponent or any other Agency or Person to avoid, minimize, and mitigate potential environmental impacts; an Agency or Person responsible for funding and implementing mitigation measures, if not the Proponent; and the anticipated implementation schedule that shall ensure that mitigation measures shall be implemented prior to or when appropriate in relation to environmental impacts. The EIR shall also discuss alternatives to the proposed mitigation measures considered by the Proponent or suggested in comments by any Agency or Person, noting the relative benefits and costs of these alternative mitigation measures.

(k) Proposed Section 61 Findings. Proposed findings in accordance with M.G.L. c. 30, § 61 for each Agency for each Agency Action to be taken on the Project. These Proposed Section 61 Findings shall specify in detail: all feasible measures to be taken by the Proponent or any other Agency or Person to avoid Damage to the Environment or, to the extent Damage to the Environment cannot be avoided, to minimize and mitigate Damage to the Environment to the maximum extent practicable; an Agency or Person responsible for funding and implementing mitigation measures, if not the Proponent; and the anticipated implementation schedule that will ensure that mitigation measures shall be implemented prior to or when appropriate in relation to environmental impacts.

(l) Response to Comments. A response to the certificate of the Secretary on the previous review document and each comment received on the previous review document, provided that the subject matter of the comment is within the Scope. Unless the Secretary has indicated otherwise in the certificate on the previous review document, the EIR shall contain a copy of each comment either in this section or in a separate appendix, provided that this section clearly explains the location of each comment and the response to each comment.

(m) Appendices. A presentation of detailed technical data (*e.g.*, traffic analyses, hydrologic calculations, modeling data), to the extent necessary to keep the main text of the EIR clear and readable. The main text of the EIR shall refer to and summarize any information contained in any appendix. Unless the Secretary has indicated otherwise in the Scope or as a part of a Special Review Procedure, the Proponent shall circulate appendices with the main text of the EIR in accordance with 301 CMR 11.16(3).

The Proponent may vary the outline of ordinary EIR sections (*e.g.*, by combining 301 CMR 11.07(6)(g) through (l) to address one aspect of the Project or issue at a time), provided that the EIR addresses the substance of each section. The EIR shall ordinarily be printed on both sides of each page, be paginated, clearly reference maps, plans, tables and figures, and contain an index and a circulation list.

11.08: EIR Review and Decision

(1) Publication and Review Period. Upon receiving the EIR, the Secretary shall publish notice of the availability of the EIR in the next *Environmental Monitor* in accordance with 301 CMR 11.15(2), which begins the EIR review period. The EIR review period lasts for 37 Days, unless extended by the Secretary on account of the Proponent's failure to meet circulation or Public Notice requirements, with the consent of the Proponent for a draft EIR or as part of a Special Review Procedure.

(2) Investigation. After receiving the EIR, the Secretary shall review the EIR and may review any relevant information from any other source to determine whether the EIR is adequate.

(3) Informal and Informational Public Consultation. An Agency undertaking a Project may hold public hearings, informal workshops, or public meetings at appropriate times prior to and during preparation of an EIR. The Agency shall provide at least seven Days notice of any hearing, workshop, or meeting to allow any other Agency or Person to prepare adequately and to make informed comments at the hearing, workshop, or meeting. The Secretary may hold an informational meeting prior to or during review of the EIR, and may, in the Scope, require the Proponent to hold an informational meeting.

11.08: continued

(4) Public Comment Period, Extensions, Late Comments. After receiving the EIR, the Secretary shall receive into the record written comments from any Agency or Person, concerning the Project, its alternatives, its potential environmental impacts, mitigation measures and the adequacy of the EIR, provided that the subject matter of the comment is within the Scope. Comments on the EIR shall be filed with the Secretary within 30 Days of the publication of the notice of the availability of the EIR in the *Environmental Monitor*, unless the public comment period is extended by the Secretary on account of the Proponent's failure to meet circulation or Public Notice requirements, with the consent of the Proponent for a draft EIR or as a part of a Special Review Procedure. An extension shall not ordinarily exceed 30 Days. The Secretary may accept a late comment, provided that it is received prior to the Secretary's decision on the EIR.

(5) Withdrawal and Refiling of Single or Final EIR. With the consent of the Secretary, the Proponent may withdraw a single or final EIR prior to the Secretary's decision on the single or final EIR to provide further opportunity for public review. After such withdrawal, the Proponent may refile the single or final EIR, with or without changes, additions, or deletions, which shall be clearly identified in the refiled single or final EIR. The Secretary shall publish notice of the availability of the refiled single or final EIR in the next *Environmental Monitor* in accordance with 301 CMR 11.15(2). A refiled single or final EIR restarts the EIR review period in accordance with 301 CMR 11.08(1) and the public comment period in accordance with 301 CMR 11.08(4) and the legal challenge periods in accordance with 301 CMR 11.14.

(6) Comments Outside Scope. The Secretary may accept a comment not within the Scope provided that the Secretary finds that it is material and that it was not reasonably possible with due diligence to have made it during review of the previous review document or that the comment raises critically important issues regarding the potential environmental impacts of the Project.

(7) Agency Review. An Agency shall review an EIR circulated to it by the Proponent. If it appears that the Project requires Agency Action by the Agency or may significantly affect any interest of the Agency or any statutes or regulations administered by the Agency, the Agency shall:

- (a) file comments with the Secretary in accordance with 301 CMR 11.08(4); and
- (b) specify in its comments: any Agency Action required to be taken by the Agency for the Project; any aspect of the Project or issue requiring additional description or analysis; and any opportunity to maximize consistency and facilitate coordination between the Agency Action and MEPA review or any other Agency Actions.

A Participating Agency's failure to specify an aspect of the Project or issue requiring additional description or analysis shall have the effect of a determination that the information presented in the EIR and any previous review document, together with information already provided in any application for a Permit, Financial Assistance or a Land Transfer, sufficiently defines the nature and general elements (but not necessarily the technical details) of the Agency Action on the Project, such that the Participating Agency can fulfill its obligations in accordance with M.G.L. c. 30, § 61 and 301 CMR 11.12(5).

NON-TEXT PAGE

11.08: continued

(8) Secretary's Determination on EIR.

(a) General. Within seven Days after the close of the public comment period in accordance with 301 CMR 11.08(4), the Secretary shall issue a written certificate stating whether or not the EIR adequately and properly complies with MEPA and 301 CMR 11.00. The Secretary shall attach to the certificate a copy of each comment timely received. The Secretary's failure to issue a timely certificate shall have the effect of a determination that the EIR is adequate and does so comply. The Secretary's decision on the EIR shall be subject to the legal challenge periods in accordance with 301 CMR 11.14.

(b) Draft EIR. Upon review of a draft EIR, the Secretary shall:

1. determine that the draft EIR is adequate, even if certain aspects of the Project or issues require additional description or analysis in a final EIR, provided that the Secretary finds that the draft EIR is generally responsive to the requirements of 301 CMR 11.07 and the Scope;
2. determine that no substantive issues remain to be addressed and:
 - a. publish notice in the next *Environmental Monitor* that the draft EIR shall be reviewed as a final EIR; or
 - b. require the Proponent to file responses to comments on the draft EIR and Proposed Section 61 Findings and publish notice in the next *Environmental Monitor* that the responses and findings shall be filed, circulated, and reviewed as a final EIR; or
3. determine that the draft EIR is inadequate and require the Proponent to file a supplemental draft EIR in accordance with 301 CMR 11.07.

(c) Final EIR. Upon review of a final EIR, the Secretary shall:

1. determine that a final EIR is adequate, even if certain aspects of the Project or issues require additional analysis of technical details, provided that the Secretary finds that the aspects and issues have been clearly described and their nature and general elements analyzed in the EIR or during MEPA review, that the aspects and issues can be fully analyzed prior to any Agency issuing its Section 61 Findings, and that there will be meaningful opportunities for public review of the additional analysis prior to any Agency taking Agency Action on the Project; or
2. determine that the final EIR is inadequate and require the Proponent to file a supplemental final EIR in accordance with 301 CMR 11.07.

(d) Single EIR. Upon review of a single EIR allowed by the Secretary in accordance with 301 CMR 11.06(8), the Secretary shall:

1. determine that the single EIR is adequate, even if certain aspects of the Project or issues require additional analysis of technical details, provided that the Secretary finds that the aspects and issues have been clearly described and their nature and general elements analyzed in the EIR or during MEPA review, that the impacts and issues can be fully analyzed prior to any Agency issuing its Section 61 Findings, and that there will be meaningful opportunities for public review of the additional analysis prior to any Agency taking Agency Action on the Project;
2. determine that substantive issues remain to be addressed and require the Proponent to file a final EIR in accordance with 301 CMR 11.07; or
3. determine that the single EIR is inadequate and require the Proponent to file a supplemental single EIR in accordance with 301 CMR 11.07.

(9) Notification to Department of Environmental Protection for Projects Located in Landlocked Tidelands. If the Project is located in landlocked tidelands as defined in 310 CMR 9.02, then within 30 days after a certificate is issued determining that a final EIR or a single EIR is adequate the Proponent shall file with the Department of Environmental Protection a completed form notifying the Department of Environmental Protection that work will be conducted within landlocked tidelands. The Proponent shall attach the certificate to the form. The Proponent shall comply with all obligations set forth in the certificate and the Department of Environmental Protection shall enforce such conditions consistent with M.G.L. c. 30 §62I.

11.08: continued

(10) Notification of Commencement of Construction. The Proponent shall notify the Secretary upon Commencement of Construction for any Project for which the Secretary required an EIR.

11.09: Special Review Procedures

(1) General. With the consent of the Proponent, and after consulting with any Participating Agency, the Secretary may establish a Special Review Procedure for a Project, notwithstanding the other provisions of 301 CMR 11.00. Among other things, a Special Review Procedure may provide for: review documents other than ENFs and EIRs and other periodic reports to be filed and reviewed; shortened or extended review periods; review of a Project in phases; lapses of time between review documents not requiring a Notice of Project Change; coordination or consolidation of MEPA review with other environmental or development review and permitting processes; and establishment of a CAC. The final review document called for in a Special Review Procedure shall be considered a final EIR. A Special Review Procedure may be appropriate, for example, for reviewing a proposed program, regulations, policy, or other Project in which there is more than one Proponent or more than one Participating Agency with a significant role, or a Project that is undefined or is expected to evolve during MEPA review, or a Project that may benefit the environment if there is early Commencement of a portion of the Project. The Secretary may establish a Special Review Procedure for a Project regardless of its size or complexity.

(2) Establishment. The Proponent shall ordinarily request a Special Review Procedure prior to or when filing the ENF. In the certificate establishing the Special Review Procedure, the Secretary shall find that a Special Review Procedure shall serve the purposes of MEPA, including providing meaningful opportunities for public review, analysis of alternatives, and consideration of cumulative environmental impacts. The Proponent may file a Notice of Project Change after the Secretary's decision on the ENF to request a Special Review Procedure or to modify a previously established Special Review Procedure. The Secretary shall publish notice in the *Environmental Monitor* of: the establishment of a Special Review Procedure; any modification of a Special Review Procedure; the establishment of a CAC; significant events in a Special Review Procedure including meetings of the CAC; and the availability of review documents called for in a Special Review Procedure.

(3) Citizens Advisory Committee. When establishing or modifying a Special Review Procedure, the Secretary shall ordinarily (in the case of a Project undertaken by an Agency) or may (in the case of a Project undertaken by a Person) establish a CAC to assist in reviewing the Project.

(a) Membership of CAC. The CAC shall ordinarily consist of at least ten Persons appointed by the Secretary. The Secretary shall solicit nominations for the CAC when announcing its establishment or modification in the *Environmental Monitor* from those individuals and entities whose interests are affected by the Project, including any neighbor, neighborhood association, ad-hoc committee, business or non-profit organization, Agency, Federal, municipal, or regional governmental entity, or other organization. The Proponent shall be entitled to one representative on the CAC. The membership of the CAC shall be diverse in affiliation and experience and fairly represent a range of viewpoints.

(b) Role of CAC During Special Review Procedure. The CAC shall ordinarily participate in the Special Review Procedure by advising in the Secretary's establishment of the Special Review Procedure and review of review documents called for in the Special Review Procedure, and in the Proponent's review of detailed scopes of service for the consultant and preliminary review of the consultant work product.

(c) Meetings of CAC. The CAC shall establish its own schedule of meetings. The CAC may establish working groups on particular aspects of the Project or issues within the Scope. The CAC shall be entitled to meet monthly with the Proponent and its consultants and shall be kept informed of progress on any review document called for in the Special Review Procedure. The CAC may direct questions concerning the Special Review Procedure to the Proponent or the Secretary.

(d) Staff for CAC. The Secretary may require the Proponent to provide staff support to the CAC such as secretarial services, keeping of minutes, mailings, and arrangement of meetings. In the case of a Project undertaken by an Agency, the Secretary may require the Proponent to transfer funds to assist the Secretary in maintaining the CAC.

11.09: continued

(e) Document Review by CAC. The Proponent shall ordinarily submit a draft of any review document called for in the Special Review Procedure to the CAC at least one month prior to filing the review document with the Secretary. The CAC may suggest changes or additions to the review document prior to the Proponent filing the review document with the Secretary. The CAC may file its comments with the Secretary prior to or when the Proponent files the review document with the Secretary. The CAC shall present a consensus in its comments to the extent to which its members have reached a consensus, although it may present the diverse views of its members when consensus has not or cannot be attained. The Proponent shall distribute any comments of the CAC or its members with the filed review document, provided that the CAC or its members file the comments with the Secretary prior to the Secretary publishing notice of the availability of the filed review document in the *Environmental Monitor*.

(f) Role of CAC After Special Review Procedure. After the Proponent files the final review document called for in the Special Review Procedure, the CAC may consult with the Secretary and the Proponent to determine whether it shall have any role in any future actions on the Project.

(4) Eligible Projects.

(a) Programmatic Review. The Secretary may establish a Special Review Procedure on the implementation of a program, the promulgation of new or revised regulations, or the development of a policy. Programmatic Review may be appropriate, for example, if the cumulative environmental impacts of Projects requiring individual Agency Actions taken in accordance with the program, regulations or policy may not otherwise be subject to adequate MEPA review or may have similar environmental impacts such that a common assessment may be necessary or appropriate. Programmatic Review shall be designed to assist an Agency in fulfilling its obligations in accordance with M.G.L. c. 30, § 61 and 301 CMR 11.12(1) to review periodically, to evaluate, and to determine the potential significant environmental impacts of its implementation of its programs, regulations, and policies.

(b) Area-Wide Review. The Secretary may establish a Special Review Procedure if a Project may affect a large area or several sites. Area-Wide Review may be appropriate, for example, for master plan areas, watersheds and other ecosystems, roadway and utility corridors, redevelopment areas, major public facilities, or large developments to be constructed in phases. Area-Wide Review shall be designed to assist a Proponent in establishing a future baseline in relation to which a Project and its alternatives can be described and analyzed and its potential environmental impacts and mitigation measures can be assessed.

(c) Coordinated Review. The Secretary may establish a Special Review Procedure for a Project to coordinate or consolidate MEPA review with other environmental or development review and permitting processes conducted by any Agency or Federal, municipal, or regional governmental entity. Coordinated Review may be appropriate, for example, if there is a comprehensive review or permitting process by a Federal, municipal, or regional governmental entity that provides meaningful opportunities for public review, analyzes alternatives, and considers cumulative impacts. Coordinated Review shall be designed to assist the Secretary in adopting scoping decisions by the Agency or entity, deferring to its scoping decisions, issuing joint scoping decisions or accepting a review document prepared in accordance with the statutes and regulations of the Agency or entity as the full or partial equivalent of an ENF, EIR, or other review document.

(d) Prototype Projects. The Secretary may establish a Special Review Procedure for a Project or portions of a Project that will be replicated in substantially similar form at one or more future times or locations. Prototype project review shall be designed to streamline review, in whole or in part, of future Projects that will be sufficiently like the original Project such that the predicted environmental impacts for the proposed mitigation measures shall be deemed to be substantially similar. In considering issuance of a Special Review Procedure for prototype projects, the Secretary shall adopt specific guidelines for eligible projects to ensure that the environmental impacts of future projects are substantially similar to a previously reviewed project. The Secretary shall state in the certificate establishing the Special Review Procedure the time period that is appropriate for the special review procedure and the conditions under which the Proponent shall file a Notice of Project Change.

(e) Other Special Review. The Secretary may establish a Special Review Procedure for any other Project.

11.09: continued

(5) Presumptive Filings. Unless the Secretary has indicated otherwise in the certificate establishing the Special Review Procedure, the Proponent shall file a final Special Review Procedure review document within 18 months following that certificate, and shall file a new Special Review Procedure review document within two years following the certificate on the final Special Review Procedure review document. The Secretary may deem the Special Review Procedure closed if the Proponent fails to file a timely review document. The Secretary shall state in the certificate establishing the Special Review Procedure when the Proponent shall file any interim review documents and shall establish the conditions under which the Proponent shall file a Notice of Project Change.

(6) Individual Agency Actions. The Secretary shall state in the certificate on the final Special Review Procedure review document whether and to what extent an individual Agency Action taken in accordance with or as part of the Project subject to the Special Review Procedure shall require further MEPA review. The Secretary may find that an individual Agency Action does not require an ENF if it is subject to specified conditions or restrictions, that an ENF is required but may deal with some issues by reference to the Special Review Procedure, or that an ENF is required but that an EIR is presumed not to be required except under circumstances identified during review of the ENF.

11.10: Project Changes and Lapses of Time

(1) Notice of Project Change for Project Change. Unless the Secretary has indicated otherwise in the certificate on a review document or as part of a Special Review Procedure, the Proponent shall, and any other Agency or Person may, file a Notice of Project Change with the Secretary if there is any material change in a Project prior to the taking of all Agency Actions for the Project. The selection by the Proponent or the imposition as a condition or restriction in a Permit or other relevant review document allowing or approving an Agency Action of any alternative that similarly avoids, minimizes, or mitigates potential environmental impacts shall not constitute a change in the Project, provided that the alternative was previously reviewed in an EIR. The continuation of the Project by a new Proponent shall not by itself constitute a change in the Project, provided that the new Proponent adopts all mitigation measures to which the previous Proponent committed. The Notice of Project Change shall specify in detail any change in the information provided in any previous review document.

(2) Notice of Project Change for Lapse of Time. Unless the Secretary has indicated otherwise in the Scope or as part of a Special Review Procedure, the Proponent shall, and any other Agency or Person may, file a Notice of Project Change with the Secretary if more than three years have elapsed between the publication of the ENF and the publication of the notice of the availability of the single or final EIR or between:

- (a) the publication of the notice of the availability of the single or final EIR; and
- (b) the earlier of:
 - 1. notification of Commencement of Construction in accordance with 301 CMR 11.08(9), provided that the Proponent has not thereafter suspended or abandoned construction for more than three years; and
 - 2. commencement of non-construction related work or activity, including expenditure of funds for final design, property acquisition, or marketing, provided that the Proponent has continued to take major steps in a continuous sequence to advance the Project.

(3) New ENF for Lapse of Time. Unless the Secretary has indicated otherwise in the Scope or as part of a Special Review Procedure, the Secretary shall deem MEPA review of a Project closed if more than five years have elapsed between:

- (a) the publication of the notice of the availability of the single or final EIR; and
- (b) the earlier of:
 - 1. notification of Commencement of Construction in accordance with 301 CMR 11.08(9), provided that the Proponent has not thereafter suspended or abandoned construction for more than three years; and

11.10: continued

2. commencement of non-construction related work or activity, including expenditure of funds for final design, property acquisition, or marketing, provided that the Proponent has continued to take major steps in a continuous sequence to advance the Project.

The Proponent shall file a new ENF to open a new MEPA review, provided that the new Project meets or exceeds one or more review thresholds. In the certificate on the new ENF, the Secretary shall ordinarily make specific findings regarding segmentation.

(4) Lapses of Time and Appeals. The period required to prosecute or defend any judicial or administrative appeal relating to MEPA review, any Agency Action or any Federal, municipal or regional governmental permit, license or approval for the Project shall not be counted in determining the three and five year time periods in accordance with 301 CMR 11.10(2) and (3).

(5) Notice of Project Change Upon Secretary's Determination. If the Secretary determines that a Proponent has, either knowingly or inadvertently, concealed a material fact or submitted false information during MEPA review, or has segmented the Project, the Secretary may consider the determination to be a Notice of Project Change.

(6) Secretary's Consideration of Environmental Consequences. In determining whether a change in a Project or the lapse of time might significantly increase environmental consequences, the Secretary shall consider the following factors:

- (a) Expansion of the Project. A change in a Project is ordinarily insignificant if it results solely in an increase in square footage, linear footage, height, depth or other relevant measures of the physical dimensions of the Project of less than 10% over estimates previously reviewed, provided the increase does not meet or exceed any review thresholds.
- (b) Generation of further impacts, including an increase in release or emission of pollutants or contaminants during or after completion of the Project. A change in a Project is ordinarily insignificant if it results solely in an increase in impacts of less than 25% of the level specified in any review threshold, provided that cumulative impacts of the Project do not meet or exceed any review thresholds that were not previously met or exceeded.
- (c) Change in expected date for Commencement of the Project, Commencement of Construction, completion date for the Project, or schedule of work on the Project.
- (d) Change of the Project site.
- (e) New application for a Permit or New request for Financial Assistance or a Land Transfer.
- (f) For a Project with net benefits to environmental quality and resources or public health, any change that prevents or materially delays realization of such benefits.
- (g) For a Project involving a lapse of time, changes in the ambient environment or information concerning the ambient environment.

The Proponent may include in a Notice of Project Change an explanation of why the Secretary should deem the change in the Project or the lapse of time to be insignificant in terms of its environmental consequences, with specific reference to these factors and other relevant information. Within ten Days of receiving a Notice of Project Change that includes such an explanation, the Secretary shall respond either with a request for further information or with a determination whether the change in the Project or the lapse of time may have significant environmental consequences. The Secretary's failure so to respond shall have the effect of a determination that the change in the Project or lapse of time does not have significant environmental consequences and shall not require publication and a comment period in accordance with 301 CMR 11.10(8), provided that the Notice of Project Change has been circulated in accordance with 301 CMR 11.10(7).

(7) Circulation of Notice of Project Change. In the case of a Notice of Project Change filed by the Proponent, the Proponent shall circulate copies of the Notice of Project Change to any Agency or Person who received the ENF or commented on the ENF, any EIR, or any prior Notice of Project Change prior to or when filing the Notice of Project Change with the Secretary. In the case of a Notice of Project Change filed by an Agency or Person other than the Proponent, the Agency or Person filing the Notice of Project Change shall send a copy to the Proponent prior to or when filing the Notice of Project Change with the Secretary.

11.10: continued

(8) Public Comment and Decision on Notice of Project Change. If the Secretary determines that a change in a Project or a lapse of time may have significant environmental consequences, the Secretary shall: consult as appropriate with the Proponent and any Agency or Person who received the ENF or commented on the ENF, any EIR or any other prior review document; publish notice of the Notice of Project Change in the next issue of the *Environmental Monitor*; receive into the record written comments from any Agency or Person concerning the need for and the nature of any further MEPA review, within 20 Days following the publication of the notice of the Notice of Project Change; and determine within ten Days after the close of the public comment period whether the change or the lapse of time significantly increases the environmental consequences of the Project such that it warrants further MEPA review by submission of a new ENF or a supplemental EIR, or changes, additions, or deletions to the Scope.

(9) Notice of Decision on Notice of Project Change. The Secretary shall publish notice of any decision on whether to require further MEPA review as a result of a Notice of Project Change in the next *Environmental Monitor* in accordance with 301 CMR 11.15(2).

(10) Effects of Further Review. Any further MEPA review as a result of a Notice of Project Change shall be subject to the legal challenge periods in accordance with 301 CMR 11.14. The Secretary's decision to require further MEPA review as a result of a Notice of Project Change shall not in itself invalidate any Agency Action previously taken by an Agency or any conditions thereof.

11.11: Waivers

(1) Standards for all Waivers. The Secretary may waive any provision or requirement in 301 CMR 11.00 not specifically required by MEPA and may impose appropriate and relevant conditions or restrictions, provided that the Secretary finds that strict compliance with the provision or requirement would:

- (a) result in an undue hardship for the Proponent, unless based on delay in compliance by the Proponent; and
- (b) not serve to avoid or minimize Damage to the Environment.

(2) Presumptions to be Rebutted for EIR Waiver. The mandatory EIR review thresholds identify Projects or aspects thereof that are presumed to have particularly significant environmental impacts, and for which an EIR is presumed to benefit the Project and the environment. Consequently, a waiver of an EIR review threshold shall follow the review of an ENF and shall be based on a rebuttal of these presumptions.

(3) Determinations for EIR Waiver. In the case of a waiver of a mandatory EIR review threshold, the Secretary shall at a minimum base the finding required in accordance with 301 CMR 11.11(1)(b) on a determination that:

- (a) the Project is likely to cause no Damage to the Environment; and
- (b) ample and unconstrained infrastructure facilities and services exist to support the Project (in the case of a Project undertaken by an Agency or involving Financial Assistance) or those aspects of the Project within subject matter jurisdiction (in the case of a Project undertaken by a Person and requiring one or more Permits or involving a Land Transfer but not involving Financial Assistance).

The Proponent may provide evidence satisfactory to the Secretary that the Agency Action on the Project will contain terms such as a condition or restriction that will cause benefits to environmental resources or quality or infrastructure facilities or services in excess of those that would result in the absence of the waiver.

(4) Determinations for Phase One Waiver. In the case of a partial waiver of a mandatory EIR review threshold that will allow the Proponent to proceed with phase one of the Project prior to preparing an EIR, the Secretary shall base the finding required in accordance with 301 CMR 11.11(1)(b) on a determination that:

- (a) the potential environmental impacts of phase one, taken alone, are insignificant;
- (b) ample and unconstrained infrastructure facilities and services exist to support phase one;

11.11: continued

(c) the Project is severable, such that phase one does not require the implementation of any other future phase of the Project or restrict the means by which potential environmental impacts from any other phase of the Project may be avoided, minimized or mitigated; and
(d) the Agency Action on phase one will contain terms such as a condition or restriction in a Permit, contract or other relevant document approving or allowing the Agency Action, or other evidence satisfactory to the Secretary, so as to ensure due compliance with MEPA and 301 CMR 11.00 prior to Commencement of any other phase of the Project.

(5) Request for Waiver. A Proponent shall request a waiver in writing and shall address with particularity any findings that the Secretary is required to make in accordance with 301 CMR 11.11(1) through (4). The Proponent who requests a waiver shall be deemed to consent to an extension of the review period in accordance with 301 CMR 11.05(7). The Secretary shall publish notice of this request in the next *Environmental Monitor* in accordance with 301 CMR 11.15(2).

(6) Secretary's Decision on Waiver. If the Secretary decides that a waiver request has merit, the Secretary shall prepare a record of decision that describes the Project, the nature and extent of MEPA jurisdiction, and the potential environmental impacts from the Project and mitigation measures, and sets forth the reasons for the waiver, including any findings required in accordance with 301 CMR 11.11(1) through (4). The Secretary shall issue a draft record of decision for each waiver or partial waiver of an EIR review threshold and publish the draft record of decision in the next *Environmental Monitor* in accordance with 301 CMR 11.15(2), which begins the public comment period. The public comment period lasts for 14 Days, unless extended by the Secretary with the consent of the Proponent. An extension shall not ordinarily exceed 14 Days. During the public comment period, the Secretary shall receive written comments into the record from any Agency or Person concerning the draft record of decision. The Secretary shall issue a final record of decision or a Scope within seven Days after the close of the public comment period. The Secretary shall publish notice of each decision on a waiver request in the next *Environmental Monitor* in accordance with 301 CMR 11.15(2).

11.12: Agency Responsibilities and Section 61 Findings

(1) Review of Agency Programs. An Agency shall: periodically review and evaluate its own programs, regulations, and policies and determine the potential environmental impacts of its implementation of its programs, regulations, and policies, and ensure that it and each applicant for a Permit, Financial Assistance, or a Land Transfer undertake due compliance with MEPA and 301 CMR 11.00.

(2) Determination by an Agency.

(a) Prior to Agency Action. An Agency shall determine whether MEPA and 301 CMR 11.00 require MEPA review whenever it expects to take Agency Action on a Project. MEPA review is required only if the Project is subject to MEPA jurisdiction and either it meets or exceeds one or more review thresholds or the Secretary requires fail-safe review.

(b) Proponent's Demonstration. A Participating Agency may require the Proponent to demonstrate that a Project does not meet or exceed any review thresholds or that there has been due compliance with MEPA and 301 CMR 11.00, prior to granting a Permit, providing Financial Assistance, or closing a Land Transfer.

(c) Agency's Finding. If an Agency determines that MEPA review is not required, the Agency shall, if requested by the Secretary or an applicant for a Permit, Financial Assistance, or a Land Transfer, or the Agency may, on its own initiative, make a finding regarding the determination that specifies any provisions or requirements of MEPA or 301 CMR 11.00 on which the determination is based, and shall furnish a copy of the finding to the Secretary or applicant upon request. An Agency's making a finding and furnishing a copy to the Secretary shall not mean that the Secretary has issued an advisory opinion in accordance with 301 CMR 11.01(6). The Agency's finding shall not limit the Secretary's discretion in issuing an advisory opinion.

11.12: continued

- (3) Prerequisites to Agency Action. If an Agency may take Agency Action on a Project, it shall:
- (a) determine in a timely manner whether the Project requires MEPA review in accordance with 301 CMR 11.01(2);
 - (b) review any review documents for the Project and participate in MEPA review in accordance with 301 CMR 11.06(4) and 11.08(7);
 - (c) take Agency Action only in accordance with 301 CMR 11.12(4); and
 - (d) in the case of a Project for which the Secretary required an EIR, prepare Section 61 Findings prior to or when taking Agency Action in accordance with 301 CMR 11.12(5).
- (4) Timing of Agency Action.
- (a) Earliest Time for Agency Action. Unless otherwise required by other applicable statutes or regulations, an Agency may not take Agency Action on a Project that is subject to MEPA jurisdiction and meets or exceeds any review thresholds unless and until the Secretary has determined that an EIR is not required or the Secretary has determined that the single or final EIR is adequate and 60 Days have elapsed following the publication of the notice of the availability of the single or final EIR in the *Environmental Monitor*.
 - (b) Latest Time for Agency Action. Unless otherwise required by other applicable statutes or regulations, a Participating Agency shall take Agency Action by 90 Days from the latest of:
 1. the publication of the notice in the *Environmental Monitor* of the Secretary's determination that an EIR is not required;
 2. the publication of the notice of the availability of the single or final EIR in the *Environmental Monitor*; or
 3. the filing of a complete application for a Permit or Financial Assistance.
- (5) Section 61 Findings. In accordance with M.G.L. c. 30, § 61, any Agency that takes Agency Action on a Project for which the Secretary required an EIR shall determine whether the Project is likely, directly or indirectly, to cause any Damage to the Environment and make a finding describing the Damage to the Environment and confirming that all feasible measures have been taken to avoid or minimize the Damage to the Environment.
- (a) Contents of Section 61 Findings. In all cases, the Agency shall base its Section 61 Findings on the EIR and shall specify in detail: all feasible measures to be taken by the Proponent or any other Agency or Person to avoid Damage to the Environment or, to the extent Damage to the Environment cannot be avoided, to minimize and mitigate Damage to the Environment to the maximum extent practicable; an Agency or Person responsible for funding and implementing mitigation measures, if not the Proponent; and the anticipated implementation schedule that will ensure that mitigation measures shall be implemented prior to or when appropriate in relation to environmental impacts. In accordance with M.G.L. c. 30, § 61, the reasonably foreseeable climate change impacts of a project, including its additional GHG emissions, and effects, such as predicted sea level rise, are within the subject matter of any required Permit, Land Transfer or Financial Assistance.
 - (b) Section 61 Findings and Agency Action. Provided that mitigation measures are specified as conditions to or restrictions on the Agency Action, the Agency shall:
 1. make its Section 61 Findings part of the Permit, contract or other document allowing or approving the Agency Action, which may include additional conditions to or restrictions on the Project in accordance with other applicable statutes and regulations; or
 2. refer in its Section 61 Findings to applicable sections of the relevant Permit, contract or other document approving or allowing the Agency Action.
 - (c) Subject Matter Jurisdiction Limitations on Section 61 Findings. In the case of a Project undertaken by a Person that requires one or more Permits or a Land Transfer but does not involve Financial Assistance, any Participating Agency shall limit its Section 61 Findings, or any mitigation measures specified as conditions to or restrictions on the Agency Action, to those aspects of the Project that are within the subject matter of any required Permit or within the area subject to a Land Transfer.
 - (d) Proposed Section 61 Findings. Proposed Section 61 Findings prepared by a Proponent in accordance with 301 CMR 11.07(6)(k) are intended to assist a Participating Agency in fulfilling its obligations in accordance with M.G.L. c. 30, § 61. The Proponent's preparation of Proposed Section 61 Findings shall not mean that a Participating Agency has made its own Section 61 Findings. Except in accordance with 301 CMR 11.06(4) and 11.08(7), the Proponent's Proposed Section 61 Findings shall not limit an Agency's discretion in making its own Section 61 Findings.

11.12: continued

(e) Filing and Distribution of Section 61 Findings. The Proponent and a Participating Agency shall each file a copy of the Section 61 Findings with the Secretary, who shall publish notice of the availability of the Section 61 Findings in the next *Environmental Monitor* in accordance with 301 CMR 11.15(2), and shall each circulate copies of the Section 61 Findings to any Agency or Person upon request.

(6) Agency Action Taken Without MEPA Compliance. If an Agency takes Agency Action without due compliance with MEPA and 301 CMR 11.00, the Secretary may thereafter require MEPA review, and may require the Agency to reconsider the Agency Action and any conditions thereof following completion of MEPA review.

11.13: Emergency Action

(1) Commencement of Project for Emergency Action and Initial ENF. In the rare case when Commencement of a Project is essential to avoid or eliminate an imminent threat to environmental resources or quality or public health or safety, the Proponent may undertake Commencement of the Project without prior due compliance with MEPA and 301 CMR 11.00 provided that the Proponent shall make all reasonable efforts to obtain the prior written approval of the Secretary. The Proponent shall limit any emergency action taken without prior due compliance with MEPA and 301 CMR 11.00 to the minimum action necessary to avoid or eliminate the imminent threat. The Proponent shall file an initial ENF describing the Project in as much detail as is then known within ten Days of Commencement of the Project. The initial ENF shall describe all measures taken to avoid or minimize potential environmental impacts from the emergency action, describe any additional measures to be taken to mitigate potential environmental impacts from the emergency action, and list any Agency to which the Proponent provided prior notification of, or from which the Proponent received prior approval for, the emergency action. Within the earlier of 60 Days of Commencement of the Project or when the threat is no longer imminent, the Proponent shall undertake full due compliance with MEPA and 301 CMR 11.00 by filing an amended or substitute ENF or any other review document that the Secretary may require after reviewing the initial ENF.

(2) EIR After Emergency Action. An EIR for a Project on which the Proponent undertook emergency action shall describe specific alternatives to the emergency action, the necessary duration of the emergency action, and the appropriateness or necessity of undertaking similar action in similar future circumstances.

(3) Programs or Projects Not Considered Emergency Action. Any program, regulations, policy, or other Project implemented or undertaken to deal with future emergencies, or periodic recurrence of an emergency condition, shall not be considered an emergency action.

11.14: Legal Challenges

(1) Notice of Intent to Commence Action. An Agency or Person alleging that the Secretary improperly decided that a Project requires an EIR shall provide notice of intent to commence an action or proceeding within 60 Days of the publication of notice of the Secretary's decision in the *Environmental Monitor* in accordance with 301 CMR 11.15(2). An Agency or Person alleging that the Secretary improperly decided that a single or final EIR complies with MEPA and 301 CMR 11.00 shall provide notice of intent to commence an action or proceeding within 60 Days of the publication of the notice of the availability of the single or final EIR in the *Environmental Monitor* in accordance with 301 CMR 11.15(2). This notice shall be provided on the form available from the MEPA Office to the Secretary, the Proponent, and the Attorney General. This notice shall include the EEA file number and shall identify with particularity the reasons why the decision is believed to be improper, and the point during MEPA review at which the matter complained of was raised. These notice procedures shall substitute for the notice and waiting period required in accordance with M.G.L. c. 214, § 7A.

11.14: continued

(2) Notice of Agency Action.

(a) For any Project where a timely Notice of Intent is submitted to the Secretary in accordance with 301 CMR 11.14(1), the Secretary shall promptly forward such Notice of Intent to the Agencies that will take Agency Action on the Project.

(b) Any Agency or Person submitting a Notice of Intent for a Project pursuant to 301 CMR 11.14(1) may also submit a Request for Notice of Agency Actions to be taken on the Project. In that case, such Agency or Person must also send a copy of the Notice of Intent to those Agencies that will take Agency Action on the Project (as identified in the ENF, listed in any EIR, specified in any NPC, specified in any Agency comments, or included in any Secretary's certificate) and notify such Agency that it is requesting notice in accordance with 310 CMR 11.14(2)(c).

(c) Any Agency that has received a Notice of Intent and a Request for Notice in accordance with 301 CMR 11.14(2)(b) shall provide a true, accurate and complete copy of any Agency Action (and any Section 61 Findings) it takes on the Project to the Agency or Person who has submitted the Request for Notice no later than ten days following the Agency Action.

(3) Commencement of Action.

(a) For Project by a Person. An action or proceeding alleging that the Secretary improperly decided that a Project undertaken by a Person requires an EIR shall commence no later than the later of: 30 Days following the first issuance of a Permit, grant of Financial Assistance, or closing of a Land Transfer by an Agency; or 60 Days after the publication of the notice of the Secretary's decision in the *Environmental Monitor* in accordance with 301 CMR 11.15(2). An action or proceeding alleging that a single or final EIR for a Project undertaken by a Person fails to comply with MEPA and 301 CMR 11.00 shall commence no later than 30 Days following the first issuance of a Permit, grant of Financial Assistance, or closing of a Land Transfer by an Agency.

(b) For Project by an Agency An action or proceeding alleging that the Secretary improperly decided that a Project undertaken by an Agency requires an EIR shall commence no later than 120 Days after the publication of the notice of the Secretary's decision in the *Environmental Monitor* in accordance with 301 CMR 11.15(2). An action or proceeding alleging that a single or final EIR for a Project undertaken by an Agency fails to comply with the requirements of MEPA and 301 CMR 11.00 shall commence no later than 120 Days after the publication of the notice of the availability of the single or final EIR in the *Environmental Monitor* in accordance with 301 CMR 11.15(2).

(4) Issue Preclusion. No allegation shall be made in any action or proceeding challenging a decision by the Secretary unless the matter complained of was raised previously at the appropriate point during MEPA review, provided that a matter may be raised upon a showing that it is material and that it was not reasonably possible with due diligence to raise it during MEPA review or that the matter sought raises critically important issues regarding the potential environmental impacts of the Project.

(5) Effect of Court's Determination. If a court determines that a Proponent knowingly concealed a material fact or knowingly submitted false information during MEPA review, there shall be no limit on the manner or time in which an action or proceeding may be commenced and the Secretary may require the Proponent to repeat any or all of the MEPA review for the Project.

11.15: Public Notice and the *Environmental Monitor*

(1) Public Notice of Environmental Review. The Proponent shall, no sooner than 30 Days prior to and no later than the date of the publication of an ENF in the *Environmental Monitor* in accordance with 301 CMR 11.15(2), publish notice of the filing of the ENF in a newspaper of local circulation in each municipality affected by the Project, or in a newspaper of statewide circulation if an affected municipality is not served by a local publication. This notice shall be provided using the form available from the MEPA Office. The Proponent shall certify compliance with this section in the ENF. In the case of a Project potentially affecting more than one municipality, the Proponent shall ordinarily consult with the Secretary for specific advice as to publication requirements.

11.15: continued

(2) Environmental Monitor.

(a) Contents. The Secretary shall publish the appropriate pages of the ENF in the next *Environmental Monitor* after the filing of an ENF. The Secretary shall publish in the *Environmental Monitor* a draft record of decision on a waiver request in accordance with 301 CMR 11.11(6). The Secretary shall publish notice of the following filings and decisions in the next *Environmental Monitor*: a request for an advisory opinion in accordance with 301 CMR 11.01(6)(b); a fail-safe decision; a decision whether an EIR is required; the availability of an EIR; a decision on an EIR; matters regarding a Special Review Procedure in accordance with 301 CMR 11.09(2); the filing of a Notice of Project Change in accordance with 301 CMR 11.10(8); a decision regarding a Notice of Project Change; a decision on a waiver request; and the filing of Section 61 Findings. The Secretary may publish in the *Environmental Monitor* notice of: extensions of review periods and deadlines; hearings, workshops, and meetings; and such other matters as the Secretary deems appropriate.

(b) Publication Dates. The Secretary shall publish the *Environmental Monitor* twice each month. The Secretary shall publish notice of filings received by the MEPA Office by 5:00 P.M. on the 15th Day of each month in the *Environmental Monitor* issued seven to ten Days thereafter and notice of filings received by the MEPA Office by 5:00 P.M. on the last Day of each month in the *Environmental Monitor* issued seven to ten Days thereafter. The review periods for ENFs, EIRs, Notices of Project Change, Special Review Procedure review documents, and draft records of decision shall begin on the date of publication of the next *Environmental Monitor*.

(c) Subscriptions and Distribution. The Secretary shall send the *Environmental Monitor* to any Agency or Person who requests a subscription in writing and renews the subscription in writing each January. The Secretary shall also send the *Environmental Monitor* for public posting to all City and Town Halls and public libraries in the Commonwealth.

11.16: Filing and Circulation

(1) Filing with the Secretary. All written communications and review documents required or permitted to be filed with the Secretary in accordance with MEPA and 301 CMR 11.00 shall be addressed as follows:

Secretary of Energy and Environmental Affairs
 Attention: MEPA Office
 [Analyst Name], EEA No. _____
 100 Cambridge Street - 9th floor
 Boston, Massachusetts 02202

(2) Circulation of ENF. The Proponent shall circulate the ENF as follows:

(a) To the MEPA Office. Two copies to the Secretary, Attention: MEPA Office.

(b) To Agency and Other Reviewers. One copy to each of the following (or their successors or assigns):

1. Department of Environmental Protection (DEP) - Boston office (attention: MEPA Coordinator); the appropriate regional office (attention: MEPA Coordinator); each program from which a Permit will be sought;
2. Massachusetts Department of Transportation (MassDOT) - Public/Private Development Unit; and the appropriate district office;
3. Massachusetts Historical Commission;
4. The appropriate regional planning agency (RPA);
5. In each municipality affected by the Project - the city council/board of selectmen; the planning board/department; the conservation commission; the department/board of health; and the public library;
6. Massachusetts Coastal Zone Management (MCZM) office and the Division of Marine Fisheries, if the Project is in a Coastal Zone community;
7. Department of Agricultural Resources, if the Project site has been in agricultural use within the last 15 years;
8. Natural Heritage and Endangered Species Program, if the Project site is within or contains designated significant or estimated habitat, or priority sites of endangered or threatened species or species of special concern in accordance with M.G.L. c. 131A the Massachusetts Endangered Species Act;

11.16: continued

9. Department of Conservation and Recreation (DCR) if the Project affects DCR roadways, watersheds or other properties, or if the Project is within or will affect an ACEC;
 10. Department of Public Health (DPH), if the Project implicates public health impacts;
 11. Division of Energy Resources if the Project is subject to the Greenhouse Gas Emissions Policy and Protocol, and the Energy Facilities Siting Board (EFSB), if the Project is subject to review by EFSB;
 12. Massachusetts Water Resources Authority (MWRA), if the Project is in a municipality served by the MWRA;
 13. Massachusetts Bay Transportation Authority (MBTA), if the Project affects MBTA facilities or properties and
 14. Any other Agency from which an Agency Action may be required for the Project.
- (c) Requested Copies. The Proponent shall promptly send a copy of the ENF, free of charge, to any Agency or Person requesting it during the review period for the ENF. The Proponent may send an electronic copy (*e.g.*, CD-Rom or website address) provided that the electronic copy is accompanied by information on how to obtain a paper copy. The Proponent shall maintain a list of each Person or Agency requesting a copy, the date of each request, and the date each copy was sent out. The Secretary may extend the review period for the ENF as a result of undue delay by the Proponent in providing copies.
- (3) Circulation of EIR. The Proponent shall circulate the EIR as follows:
- (a) To the MEPA Office. Two copies to the Secretary, Attention: MEPA Office;
 - (b) To Previous Commenters and Others. One copy, free of charge, to each Person or Agency who previously commented on the ENF and to any other Agency or Person identified by the Secretary in the Scope or thereafter.
 - (c) Requested Copies. The Proponent shall promptly send a copy of the EIR to any Agency or Person requesting it during the public comment period, free of charge, except that the Proponent may, with the consent of the Secretary, charge the cost of reproduction for these additional copies. The Proponent may send an electronic copy (CD-Rom or website address) provided that the electronic copy is accompanied by information on how to obtain a paper copy. The Proponent shall maintain a list of each Agency or Person requesting a copy, the date of each request, and the date each copy was sent out. The Secretary may extend the public comment period for the EIR as a result of undue delay by the Proponent in providing copies.
- (4) List of Addresses. The MEPA Office shall maintain a list of current addresses for each Agency, as well as lists of municipalities by coastal zone, watershed, and DEP, MassDOT, RPA, MWRA, and MBTA region or district, and shall make the information available to a Proponent upon request.
- (5) Electronic Circulation. The Proponent may circulate electronic copies (CD-Rom or website address) of an ENF or an EIR to any Person or Agency in accordance with 301 CMR 11.16(2) and (3), other than the Secretary or any Agency that may take Agency Action on the Project. Circulation of an electronic copy must be accompanied by information on how to obtain a paper copy in accordance with 301 CMR 11.16(2)(c) and 11.16(3)(c). The Proponent may circulate electronic copies (CD-Rom or website address) of technical appendices to any Person or Agency in accordance with 301 CMR 11.16(2) and (3).

11.17: Transition Rules

- (1) Project Without Previous ENF. 301 CMR 11.00 shall apply to any Project for which no ENF was filed prior to May 10, 2013, unless all Agency Actions for the Project were taken by each Participating Agency:
 - (a) prior to May 10, 2013; or
 - (b) within 60 Days after May 10, 2013, provided that the Proponent and each Participating Agency certify in writing to the Secretary that the Proponent filed a complete application and that the Participating Agency completed its review of the application for each required Permit or Financial Assistance prior to May 10, 2013.

301 CMR: EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS

11.17: continued

(2) Project With Previous ENF. 301 CMR 11.00 shall apply to any Project for which an ENF was filed prior to May 10, 2013.

REGULATORY AUTHORITY

301 CMR 11.00: M.G.L. c. 30, §§ 61 through 62I.

(PAGES 109 THROUGH 122 ARE RESERVED FOR FUTURE USE.)

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SJC-12243

VIRGINIA B. SMITH & others¹ vs. CITY OF WESTFIELD & others.²

Hampden. April 6, 2017. - October 2, 2017.

Present: Gants, C.J., Lenk, Hines, Gaziano, Lowy, & Budd, JJ.³

Municipal Corporations, Parks, Use of municipal property. Parks and Parkways. Constitutional Law, Taking of property. Due Process of Law, Taking of property.

Civil action commenced in the Superior Court Department on April 27, 2012.

The case was heard by Daniel A. Ford, J.

After review by the Appeals Court, the Supreme Judicial Court granted leave to obtain further appellate review.

Thomas A. Kenefick, III (Mary Patryn also present) for the plaintiffs.

Seth Schofield, Assistant Attorney General, for the Commonwealth, amicus curiae.

Anthony I. Wilson (John T. Liebel also present) for city of Westfield.

¹ Twenty four individuals residing in Westfield and Holyoke.

² The city council of Westfield and the mayor of Westfield.

³ Justice Hines participated in the deliberation on this case prior to her retirement.

The following submitted briefs for amici curiae:
Luke H. Legere & Gregor I. McGregor for Massachusetts
Association of Conservation Commissions, Inc.
Edward J. DeWitt for Association to Preserve Cape Cod, Inc.
Sanjoy Mahajan, pro se.
Phelps T. Turner for Conservation Law Foundation.
Jeffrey R. Porter & Colin G. Van Dyke for Trustees of
Reservations & others.

GANTS, C.J. Article 97 of the Amendments to the
Massachusetts Constitution, approved by the Legislature and
ratified by the voters in 1972, provides that "[l]ands and
easements taken or acquired" for conservation purposes "shall
not be used for other purposes or otherwise disposed of" without
the approval of a two-thirds roll call vote of each branch of
the Legislature. The issue on appeal is whether a proposed
change in use of municipal parkland may be governed by art. 97
where the land was not taken by eminent domain and where there
is no restriction recorded in the registry of deeds that limits
its use to conservation or recreational purposes. We conclude
that there are circumstances where municipal parkland may be
protected by art. 97 without any such recorded restriction,
provided the land has been dedicated as a public park. A city
or town dedicates land as a public park where there is a clear
and unequivocal intent to dedicate the land permanently as a
public park and where the public accepts such use by actually
using the land as a public park. Because the municipal land at

issue in this case has been dedicated as a public park, we conclude that it is protected by art. 97.⁴

Background. The subject of this appeal is a parcel of property owned by the city of Westfield (city), known as the John A. Sullivan Memorial Playground or Cross Street Playground (the parcel or Cross Street Playground), on which the city seeks to build an elementary school. The parcel contains 5.3 acres of land and includes two little league baseball fields and a playground. Because the parcel's history is at the center of the parties' dispute in this case, we recount it in some detail.

The parcel has served as a public playground for more than sixty years. The city obtained title to the parcel in 1939 through an action to foreclose a tax lien for nonpayment of taxes. In 1946, the city planning board recommended that the land be used for a "new playground," and referred the matter to the mayor. The city council voted in 1948 to turn over "full charge and control" of the property to the playground commission, and in 1949 to transfer funds to the commission to cover costs of "work to be done on Cross [Street] Playground." In November, 1957, the city council passed an ordinance formally

⁴ We acknowledge the amicus briefs submitted by the Attorney General on behalf of the Commonwealth; the Association to Preserve Cape Cod, Inc.; the Massachusetts Association of Conservation Commissions, Inc.; Sanjoy Mahajan; the Conservation Law Foundation; and the Trustees of the Reservation, Massachusetts Audubon Society and Massachusetts Land Trust Coalition.

naming the playground the "John A. Sullivan Memorial Playground."⁵ The mayor approved the ordinance early in 1958. Despite the name formally given, the parcel eventually came to be commonly known as the "Cross Street Playground."

In 1979, working in cooperation with the State government, the city applied for and received a grant from the Federal government (as well as matching funds from the State) to rehabilitate several of its playgrounds, including the Cross Street Playground. The Federal conservation funds that the city received were made available by the Land and Water Conservation Fund Act of 1965 (act). See P.L. 88-578, 78 Stat. 900 (1964), codified as 16 U.S.C. § 4601-8 (1976).⁶ The purpose of the act is to assure "outdoor recreation resources" for "all American people of present and future generations" by enabling "all levels of government and private interests to take prompt and coordinated action to the extent practicable without diminishing or affecting their respective powers and functions to conserve, develop, and utilize such resources for the benefit and

⁵ The ordinance declared that the "parcel of land heretofore designated as a public playground, beginning at a point in the Westerly line of Cross Street," would be "hereafter known as the JOHN A. SULLIVAN MEMORIAL PLAYGROUND."

⁶ The relevant provision of the Land and Water Conservation Fund Act of 1965 is presently codified at 54 U.S.C. § 200305 (2012 & Supp. II). However, in this opinion we refer to the provision in effect at the time of the grant application in question, 16 U.S.C. § 4601-8 (1976).

enjoyment of the American people." 16 U.S.C. § 4601 (1976). Grant money distributed pursuant to the act is known as LWCF funding.

The act imposed several key requirements on States seeking LWCF funding in support of local park projects. First, it required States to develop a "comprehensive statewide outdoor recreation plan" (SCORP) setting forth, among other information, the State's evaluation of its need for outdoor recreation resources and designating the State agency that would represent the State in the LWCF funding process. Id. at § 4601-8(d).⁷ The act also mandated that "[n]o property acquired or developed with assistance under this section shall . . . be converted to other than public outdoor recreation uses" without the approval of the United States Secretary of the Interior (Secretary). Id. at § 4601-8(f)(3). Further, the act stated that "the Secretary shall approve such conversion only if he finds it to be in accord with the then existing comprehensive statewide outdoor recreation plan and only upon such conditions as he deems necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonably

⁷ In Massachusetts, the Land and Water Conservation Fund program is administered through the Executive Office of Energy and Environmental Affairs. See Massachusetts Statewide Comprehensive Outdoor Recreation Plan, Executive Office of Energy and Environmental Affairs 1 (2012), <http://www.mass.gov/eea/docs/eea/dcs/scorp-2012-final.pdf> [<https://perma.cc/F4D6-W4MS>]

equivalent usefulness and location." Id. The grant agreement for rehabilitation of the Cross Street Playground indicates that the grant was expressly conditioned on compliance with the act. Therefore, by accepting the Federal monies under the act, the city forfeited the ability to convert any part of the Cross Street Playground to a use other than public outdoor recreation unilaterally; such a conversion could only proceed with the approval of the Secretary. The 2006 Massachusetts SCORP states explicitly that "[l]and acquired or developed with [LWCF] funds become[s] protected under the Massachusetts Constitution (Article 97) and [F]ederal regulations -- and cannot be converted from intended use without permission" from the National Park Service and Executive Office of Energy and Environmental Affairs. See Massachusetts Outdoors 2006: Statewide Comprehensive Outdoor Recreation Plan, Executive Office of Energy and Environmental Affairs 4, <http://www.mass.gov/eea/docs/eea/dcs/massoutdoor2006.pdf> [<https://perma.cc/T3D7-4EKN>]. See also Massachusetts Statewide Comprehensive Outdoor Recreation Plan, Executive Office of Energy and Environmental Affairs 2 (2012), <http://www.mass.gov/eea/docs/eea/dcs/scorp-2012-final.pdf> [<https://perma.cc/F4D6-W4MS>] (describing land funded by LWCF as protected under art. 97).⁸ The restrictions imposed by the act

⁸ The record does not reflect how the Massachusetts

on the management of land acquired or developed with LWCF funding remain in full effect over the Cross Street Playground. See 54 U.S.C. § 200305(f)(3) (2012 & Supp. II).

In 2009, a report on a survey of the city's parks and open space conducted by the Department of Conservation and Recreation, the Pioneer Valley planning commission, and the Franklin Regional council of governments included a map that identifies the Cross Street Playground as "permanently protected open space." A year later, the city's mayor endorsed an open space plan which noted that, although not all public land is "permanently committed for conservation purposes," Cross Street Playground was public land with a "full" degree of protection and "active" recreation potential.

On August 18, 2011, the city council voted to transfer the entire Cross Street Playground from the city's parks and recreation department to its school department for the purpose of constructing a new elementary school on the land. In 2012, the city began a demolition process that included taking down century-old trees and removing a portion of the playground.

The plaintiffs, a group of city residents, commenced this action in April, 2012, naming the city and city council as defendants, as well as the mayor and city councillors in their

comprehensive Statewide outdoor recreation plan (SCORP) in effect at the time of the 1979 grant application characterized the status of the Cross Street Playground.

official capacities. The plaintiffs sought a restraining order to halt the construction project under G. L. c. 214, § 7A, and G. L. c. 40, § 53.⁹ In addition, the plaintiffs sought relief in the nature of mandamus under G. L. c. 249, § 5, requesting that the court order the defendants to comply with art. 97 of the Massachusetts Constitution prior to any construction or operation of a new school on any part of the Cross Street Playground.

A Superior Court judge issued a temporary restraining order to halt construction of the school on the Cross Street Playground in September, 2012, and later granted the plaintiffs' motion for a preliminary injunction. In issuing the injunction, the judge agreed with the defendants that "the failure to build a new public school would have an adverse impact on the residents of the city, specifically the children, who are currently learning in outdated and decaying schools." But the judge made clear that she was "not prohibiting the construction of a new school"; she was "merely ordering the [c]ity to comply with the law before it proceeds."

⁹ Under G. L. c. 214, § 7A, the Superior Court may determine whether damage to the environment is about to occur and restrain the person who is about to cause it, provided that the damage about to be caused constitutes a violation of a statute, ordinance, by-law or regulation the major purpose of which is to prevent or minimize damage to the environment. "General Laws c. 40, § 53, provides a mechanism for taxpayers to enforce laws relating to the expenditure of tax money by a local government." See LeClair v. Norwell, 430 Mass. 328, 332 (1999).

The parties later submitted cross motions for the entry of judgment based on an agreed statement of facts, essentially asking the court to decide whether the preliminary injunction should be made permanent or vacated. By this stage of the litigation, the parties had stipulated that the only question for decision was whether the Cross Street Playground was protected by art. 97. Another Superior Court judge concluded that the Supreme Judicial Court in Mahajan v. Department of Env'tl. Protection, 464 Mass. 604, 615 (2013), "decided that a parcel of land acquires Article 97 protection only when the land is specifically designated for Article 97 purposes by a recorded instrument." Because there was no recorded instrument designating that the Cross Street Playground was to be used as a playground or for any other recreational purpose, the judge concluded that the parcel was not protected by art. 97. Consequently, he vacated the preliminary injunction and ordered judgment to enter for the defendants.

The plaintiffs appealed, and the Appeals Court affirmed the judgment. Smith v. Westfield, 90 Mass. App. Ct. 80, 81 (2016). The Appeals Court agreed with the motion judge that land is protected by art. 97 only where it was taken or acquired for conservation or another purpose set forth in art. 97, or where "the land is specifically designated for art. 97 purposes by deed or other recorded restriction." Id. at 82. Justice

Milkey, in a concurrence, agreed that the Supreme Judicial Court opinions in Selectmen of Hanson v. Lindsay, 444 Mass. 502, 506-509 (2005), and Mahajan, 464 Mass. at 615-616, "appear to say" that, where land was taken or acquired for non-art. 97 purposes, it will only be subject to art. 97 "where the restricted use has been recorded on the deed, e.g., through a conservation restriction." Smith, 90 Mass. App. Ct. at 86. But Justice Milkey invited this court to "revisit such precedent," id. at 84, declaring, "Nothing in the language or purpose of art. 97 suggests that its application should turn on whether the underlying deed provides record notice that the land has been committed to an art. 97 use." Id. at 87. He concluded, "The overriding point of art. 97 is to insulate dedicated parkland from short-term political pressures. I fear that the effect of Hanson and Mahajan is to rob art. 97 of its intended force with regard to a great deal of dedicated parkland across the Commonwealth." Id. at 88. We allowed the plaintiff's application for further appellate review.

Discussion. Article 97 provides, among other things, that "[t]he people shall have the right to clean air and water . . . and the natural, scenic, historic, and esthetic qualities of their environment." It declares a "public purpose" in "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." Id. It grants the Legislature the power "to provide for the taking, upon payment of just compensation therefor, or for the acquisition by purchase or otherwise, of lands and easements or such other interests therein as may be deemed necessary to accomplish these purposes." Id. And, most importantly for purposes of this appeal, it provides: "Lands 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." Id.¹⁰

¹⁰ The full text of art. 97 of the Amendments to the Massachusetts Constitution annuls art. 49 of the Amendments to the Massachusetts Constitution and then provides:

"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.

"The general court shall have the power to enact legislation necessary or expedient to protect such rights.

"In the furtherance of the foregoing powers, the general court shall have the power to provide for the taking, upon payment of just compensation therefor, or for the acquisition by purchase or otherwise, of lands and easements or such other interests therein as may be deemed necessary to accomplish these purposes.

"Lands 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,

The issue on appeal requires us to interpret the meaning of art. 97 to determine whether the Cross Street Playground is protected land under art. 97 that may be used for another purpose -- here, the purpose of building a public school -- only by obtaining the approval by a two-thirds vote of each branch of the Legislature. We do not interpret art. 97 on a clean slate. We have recognized that the language of art. 97 is "relatively imprecise" and that its provisions must be interpreted "in light of the practical consequences that would result from . . . an expansive application, as well as the ability of a narrower interpretation to serve adequately the stated goals of art. 97." Mahajan, 464 Mass. at 614-615. We also have recognized that land may be protected by art. 97 where it was neither taken by eminent domain nor acquired for any of the purposes set forth in art. 97 provided that, after the taking or acquisition, it "was designated for those purposes in a manner sufficient to invoke the protection of art. 97." See id. at 615. Therefore, to resolve the issue in this case, we must first determine what it means to "designate" land for an art. 97 purpose in a manner

taken by yeas and nays, of each branch of the general court."

sufficient to invoke art. 97 protection, and then determine whether the Cross Street Playground was so designated.¹¹

We do not agree with the motion judge and the Appeals Court that we have already concluded in our opinions in Selectmen of Hanson and Mahajan that the only way to designate land for art. 97 purposes is through a deed or recorded conservation restriction, although we acknowledge that there is language in those opinions that invites this inference.¹²

In Mahajan, 464 Mass. at 608, 612, 615 n.15, the issue on appeal was whether a plaza area surrounding an open-air pavilion at the eastern end of Long Wharf in Boston that was identified as a park "was 'taken' for art. 97 purposes." The parcel was a small part of the land taken by eminent domain in 1970 by the Boston Redevelopment Authority (BRA) as part of the 1964 Downtown Waterfront-Faneuil Hall urban renewal plan. Id. at

¹¹ The city did not challenge the plaintiffs' assertion below that the use of Cross Street Playground fell within the range of environmental purposes contemplated by art. 97.

¹² We note that these prior decisions refer to two different procedures by which a city might designate a property as parkland. First, we said a city might record a conservation restriction pursuant to G. L. c. 184, § 31. See Selectmen of Hanson v. Lindsay, 444 Mass. 502, 506-507 (2005). Second, we suggested that a city might "deed the land to itself for conservation purposes." See Mahajan v. Department of Env'tl. Protection, 464 Mass. 604, 616 (2013). This distinction is not relevant to this case, where it is undisputed that there is no recorded restriction on the use of the Cross Street Playground. For the sake of simplicity, we shall characterize both procedures as "recorded deed restrictions" on the use of property when referring to these decisions.

606-607. We recognized that one of the fifteen "planning objectives" under that plan was "[t]o provide public ways, parks and plazas which encourage the pedestrian to enjoy the harbor and its activities," id. at 608 n.7, but we determined that the "overarching purpose" for which the land was taken was to eliminate "decadent, substandard or blighted open conditions." Id. at 612, quoting G. L. c. 121B, § 45. We declared that land is not taken for art. 97 purposes simply because it "incidentally" promotes conservation, or because it "simply displays some attributes of art. 97 land generally," or because "a comprehensive urban renewal plan may identify, among other objectives, some objectives that are consistent with art. 97 purposes." Id. at 613-614, 618. We concluded that, "[g]iven the overarching purpose of the 1964 urban renewal plan to eliminate urban blight through the comprehensive redevelopment of the waterfront area, including its revitalization through the development of mixed uses and amenities, it cannot be said that the retention of certain open spaces, like the project site, is sufficiently indicative of an art. 97 purpose as to trigger a two-thirds vote of the Legislature should the BRA wish to slightly revise the use of certain spaces in a manner consistent with the objectives of the original urban renewal plan." Id. at 618.

Nevertheless, we recognized that land taken by eminent domain specifically for art. 97 purposes could fall under the provision's protections "where an urban renewal plan accompanying a taking clearly demonstrates a specific intent to reserve particular, well-defined areas of that taking for art. 97 purposes." Id. at 619. And we recognized that, "[u]nder certain circumstances not present here, the ultimate use to which the land is put may provide the best evidence of the purposes of the taking, notwithstanding the language of the original order of taking or accompanying urban renewal plan." Id. at 620.

In Selectmen of Hanson, 444 Mass. at 504-505, the issue was not whether a parcel of land had been taken for art. 97 purposes (it was not), but whether a town meeting vote was sufficient by itself to transform a town's general corporate property into conservation land protected by art. 97. The town had acquired the property through a tax taking in 1957 and held it as general corporate property that could be disposed of in any manner authorized by law. Id. at 504. In 1971, the town at its annual meeting voted "to accept for conservation purposes, a deed, or deeds to" the parcel, but the property was never actually placed under the custody and control of the conservation commission. Id. at 504, 506. Rather, the property remained under the control of the board of selectmen, which was authorized to

execute a deed imposing a conservation restriction on the property but never did.¹³ Id. at 506, 508. In 1998, the town sold the property at a public auction to the defendant, but in 2002 commenced an action seeking a declaration that the sale was invalid and void because the land was subject to art. 97 and the sale had not been approved by a two-thirds vote of each branch of the Legislature. Id. at 503. We rejected the town's claim, reasoning that the 1971 vote "merely expressed the town's interest in dedicating the locus to conservation purposes," and that subsequently the town took "no further action" to achieve that goal. Id. at 508. In these circumstances we declared that "an instrument creating such a property restriction had to be filed with the registry of deeds in order for the town's interest to prevail over that of any subsequent bona fide purchaser for value." Id. at 505.

In the circumstances presented in Selectmen of Hanson, where the town intended to designate land for conservation purposes by executing a deed with a conservation restriction but

¹³ "'A conservation restriction means a right, either in perpetuity or for a specified number of years, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land or in any order of taking, appropriate to retaining land or water areas predominantly in their natural, scenic or open condition or in agricultural, farming or forest use . . . ' (emphasis added)." Selectmen of Hanson v. Lindsay, 444 Mass. 502, 507 (2005), quoting G. L. c. 184, § 31.

never did, it is true, as we said in Mahajan, 464 Mass. at 616, that "the town had to deed the land to itself for conservation purposes -- or record an equivalent restriction on the deed -- in order for art. 97 to apply to subsequent dispositions or use for other purposes." But this should not be understood to mean that, in all circumstances, the only way that land not taken or acquired for an art. 97 purpose may become protected by art. 97 is through a recorded deed restriction. To understand the other ways that land may be "designated" for conservation purposes "in a manner sufficient to invoke the protection of art. 97," see Mahajan, 464 Mass. at 615, we need to examine two related common law doctrines: the dedication of land for public use and prior public use. See id. at 616 ("the spirit of art. 97 is derived from the related doctrine of 'prior public use'").

Under our common law, where developers on private land built roads that were dedicated to the use of the public, the land on which those roads were built became "subject to the easement of a public way" where "the intent to dedicate [is] made manifest by the unequivocal declarations or acts of the owner" and where the dedication is accepted by the public. Hayden v. Stone, 112 Mass. 346, 349 (1873). "No specific length of time is necessary; the acts of the parties to the dedication when once established complete it." Id. See Longley v. Worcester, 304 Mass. 580, 588 (1939) ("The owner's acts and

declarations should be deliberate, unequivocal and decisive, manifesting a clear intention permanently to abandon his property to the specific public use"). Similarly, where a developer in Wareham bought a large tract of land to sell building lots for residences, and private businesses, and reserved open space for "parks, squares, groves and shore fronts," the open space was subject to an easement for public use upon proof that the owner "had dedicated the use of these lands to the public" and that the public had accepted the dedication through use of the open space. Attorney Gen. v. Onset Bay Grove Ass'n, 221 Mass. 342, 347-348 (1915) (Onset Bay Grove Ass'n). See Attorney Gen. v. Abbott, 154 Mass. 323, 326-329 (1891). The dedication "may spring from oral declarations or statements by the dedicator, or by those authorized to act in his behalf, made to persons with whom he deals and who rely upon them; or it may consist of declarations addressed directly to the public." Onset Bay Grove Ass'n, 221 Mass. at 348. "It also may be manifested by the owner's acts from which such an intention can be inferred." Id.

A city or town that owns land in its proprietary capacity and uses the land for a park may also dedicate the parkland to the use of the public. "A municipality may dedicate land owned by it to a particular public purpose provided there is nothing in the terms and conditions by which it was acquired or the

purposes for which it is held preventing it from doing so, . . . and upon completion of the dedication it becomes irrevocable" (citation omitted). Lowell v. Boston, 322 Mass. 709, 730 (1948). "The general public for whose benefit a use in the land was established by an owner obtains an interest in the land in the nature of an easement." Id. This court applied the public dedication doctrine in holding that, even though title to the Boston Common and the Public Garden "vested in fee simple in the town free from any trust," the city did not possess title to this parkland "free from any restriction, for it is plain that the town has dedicated the Common and the Public Garden to the use of the public as a public park." Id. at 729-730. "The title to the Common and the Public Garden is in the city; the beneficial use is in the public." Id. at 735.

The "general public" that has obtained an "interest in the land in the nature of an easement," id. at 730, is not simply the residents of the particular city or town that owns the parkland. See Higginson v. Treasurer and Sch. House Comm'rs of Boston, 212 Mass. 583, 589 (1912). This court in Higginson declared:

"[T]he dominant aim in the establishment of public parks appears to be the common good of mankind rather than the special gain or private benefit of a particular city or town. The healthful and civilizing influence of parks in and near congested areas of population is of more than local interest and becomes a concern of the State under modern conditions. It relates not only to public health in

its narrow sense, but to broader considerations of exercise, refreshment and enjoyment."

Id. at 590.

Because the general public has an interest in parkland owned by a city or town, ultimate authority over a public park rests with the Legislature, not with the municipality. See Lowell, 322 Mass. at 730. "The rights of the public in such an easement are subject to the paramount authority of the General Court which may limit, suspend or terminate the easement." Id. As stated in Lowell, 322 Mass. at 730, quoting Wright v. Walcott, 238 Mass. 432, 435 (1921):

"Land acquired by a city or town by eminent domain or through expenditure of public funds, held strictly for public uses as a park and not subject to the terms of any gift, devise, grant, bequest or other trust or condition, is under the control of the General Court . . . The power of the General Court in this regard is supreme over that of the city or town."

Because the Legislature has "paramount authority" over public parks, dedicated parkland cannot be sold or devoted to another public use without the approval of the Legislature. "The rule that public lands devoted to one public use cannot be diverted to another inconsistent public use without plain and explicit legislation authorizing the diversion is now firmly established in our law." Robbins v. Department of Pub. Works, 355 Mass. 328, 330 (1969). See Higginson, 212 Mass. at 591 ("Land appropriated to one public use cannot be diverted to another inconsistent public use without plain and explicit

legislation to that end"). This "rule," known as the doctrine of "prior public use," Mahajan, 464 Mass. at 616, is not limited to parkland. See, e.g., Boston & Albany R.R. v. City Council of Cambridge, 166 Mass. 224, 225 (1896); Old Colony R.R. v. Framingham Water Co., 153 Mass. 561, 563 (1891); Boston Water Power Co. v. Boston & W.R. Corp., 23 Pick. 360, 398 (1839). But it is applied more "stringently" where a public agency or municipality seeks to encroach upon a park. Robbins, supra at 330 ("In furtherance of the policy of the Commonwealth to keep parklands inviolate the rule has been stringently applied to legislation which would result in encroachment on them"); Gould v. Greylock Reservation Comm'n, 350 Mass. 410, 419 (1966), quoting Higginson, 212 Mass. at 591-592 ("The policy of the Commonwealth has been to add to the common law inviolability of parks express prohibition against encroachment"). Three years before the ratification of art. 97, this court declared in Robbins, supra at 331:

"We think it is essential to the expression of plain and explicit authority to divert parklands, Great Ponds, reservations and kindred areas to a new and inconsistent public use that the Legislature identify the land and that there appear in the legislation not only a statement of the new use but a statement or recital showing in some way legislative awareness of the existing public use. In short, the legislation should express not merely the public will for the new use but its willingness to surrender or forgo the existing use."

The meaning of the provision in art. 97 at issue in this case -- "Lands 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" -- must be understood in this common-law context. Cf. Industrial Fin. Corp. v. State Tax Comm'n, 367 Mass. 360, 364 (1975), quoting Hanlon v. Rollins, 286 Mass. 444, 447 (1934) (where meaning of statute is not plain from its language, we look to intent of Legislature "ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated"). The consequence of art. 97's ratification was that "plain and explicit legislation authorizing the diversion" of public parkland under the prior public use doctrine, which previously could be enacted by a bare majority of the Legislature, now required a two-thirds vote of each branch. See Robbins, supra at 330. See also Legislative Research Council, Report Relative to the Preservation of the Natural Environment, 1971 House Doc. No. 5301. In Opinion of the Justices, 383 Mass. 895, 918 (1981), we made clear that art. 97 applied to all property that was taken or acquired for art. 97 purposes, including property

taken or acquired before its ratification in 1972. "To claim that new Article 97 does not give the same care and protection for all these existing public lands as for lands acquired by the foresight of future legislators or the generosity of future citizens would ignore public purposes deemed important in our laws since the beginning of our Commonwealth." Id., quoting Rep. A.G., Pub. Doc. No. 12, at 139, 141 (1973).

There is no reason to believe that art. 97 was intended by the Legislature or the voters to diminish the scope of parkland that had been protected under the common law by the prior public use doctrine or the doctrine of public dedication. Such an interpretation would suggest that voters were hoodwinked into thinking they were expanding the protection of such lands by replacing art. 49 of the Amendments to the Massachusetts Constitution with art. 97 when, in fact, they were actually reducing the protection already afforded these lands under the common law.¹⁴ See Bates v. Director of Office of Campaign &

¹⁴ Article 49, which was annulled by art. 97, see note 10, supra, provided:

"The conservation, development and utilization of the agricultural, mineral, forest, water and other natural resources of the commonwealth are public uses, and the general court shall have power to provide for the taking, upon payment of just compensation therefor, of lands and easements or interests therein, including water and mineral rights, for the purpose of securing and promoting the proper conservation, development, utilization and control

Fin., 436 Mass. 144, 173-174 (2002), quoting Boston Elevated Ry. v. Commonwealth, 310 Mass. 528, 548 (1942) ("We will not impute to the voters who enacted the clean elections law an 'intention to pass an ineffective statute'"). Therefore, we conclude that parkland protected by art. 97 includes land dedicated by municipalities as public parks that, under the prior public use doctrine, cannot be sold or devoted to another public use without plain and explicit legislative authority. See Mahajan, 464 Mass. at 615 (art. 97 protects land "designated" for art. 97 purposes "in a manner sufficient to invoke the protection of art. 97").

Given this conclusion, we turn to the question whether the Cross Street Playground was dedicated by the city as a public park such that the transfer of its use from a park to a school would require legislative approval under the prior public use doctrine and, thus, under art. 97. Under our common law, land is dedicated to the public as a public park when the landowner's intent to do so is clear and unequivocal, and when the public accepts such use by actually using the land as a public park. See Longley, 304 Mass. at 587-588; Onset Bay Grove Ass'n, 221 Mass. at 347-348; Hayden, 112 Mass. at 349. There are various ways to manifest a clear and unequivocal intent. See e.g.,

thereof and to enact legislation necessary or expedient therefor."

Onset Bay Grove Ass'n, 221 Mass. at 348-349 (dedication found based on Association's plan, sales statements, and repeated declarations that its open spaces "should never be encroached upon"). The recording of a deed or a conservation restriction is one way of manifesting such intent but it is not the only way. For instance, it was "plain" to this court that the Boston Common and Public Garden had been dedicated as a public park without there being any deed or conservation restriction declaring the land to be a public park. See Lowell, 322 Mass. at 729-730.

The clear and unequivocal intent to dedicate public land as a public park must be more than simply an intent to use public land as a park temporarily or until a better use has emerged or ripened. See Longley, 304 Mass. at 588 (requiring "a clear intention permanently to abandon his property to the specific public use"). Rather, the intent must be to use the land permanently as a public park, because the consequence of a dedication is that "[t]he general public for whose benefit a use in the land was established . . . obtains an interest in the land in the nature of an easement," Lowell, 322 Mass. at 730, and "upon completion of the dedication it becomes irrevocable." Id.

The plaza area on Long Wharf in Mahajan, although identified as a park, failed to meet this standard because there

was not proof of a clear and unequivocal intent by the BRA to make the plaza permanently a public park. The urban renewal plan accompanying the taking did not reflect a specific intent to reserve that land forever as a public park but instead left open the possibility of revising the use of such open space if doing so would better accomplish the objectives of the urban renewal plan. Mahajan, 464 Mass. at 618-619. The parcel in Selectmen of Hanson, although accepted for conservation purposes by town meeting, failed to meet this standard both because there was no clear and unequivocal intent to dedicate the land permanently as conservation land where the town never actually transferred control of the land to the conservation commission and never acted to impose any restriction on the land, and where the land was never actually used by the public as conservation land. Selectmen of Hanson, 444 Mass. at 506-508.

The Cross Street Playground, however, was dedicated as a public park by the city under this standard, and therefore is protected under the prior public use doctrine and art. 97. We need not determine whether it would have been enough to meet the clear and unequivocal intent standard that the land had been used as a public park for more than sixty years, or that control of the land had been turned over to the playground commission, or that an ordinance was passed naming the parcel. Although we consider the totality of the circumstances, the determinative

factor here was the acceptance by the city of Federal conservation funds under the act to rehabilitate the playground with the statutory proviso that, by doing so, the city surrendered all ability to convert the playground to a use other than public outdoor recreation without the approval of the Secretary. See 16 U.S.C. § 4601-8(f)(3). Regardless of whether the parcel had been dedicated earlier as a public park, it became so dedicated once the city accepted Federal funds pursuant to this condition. It is significant that this understanding was shared by the Executive Office of Energy and Environmental Affairs, whose 2006 SCORP stated that land developed with LWCF funds became protected under art. 97.

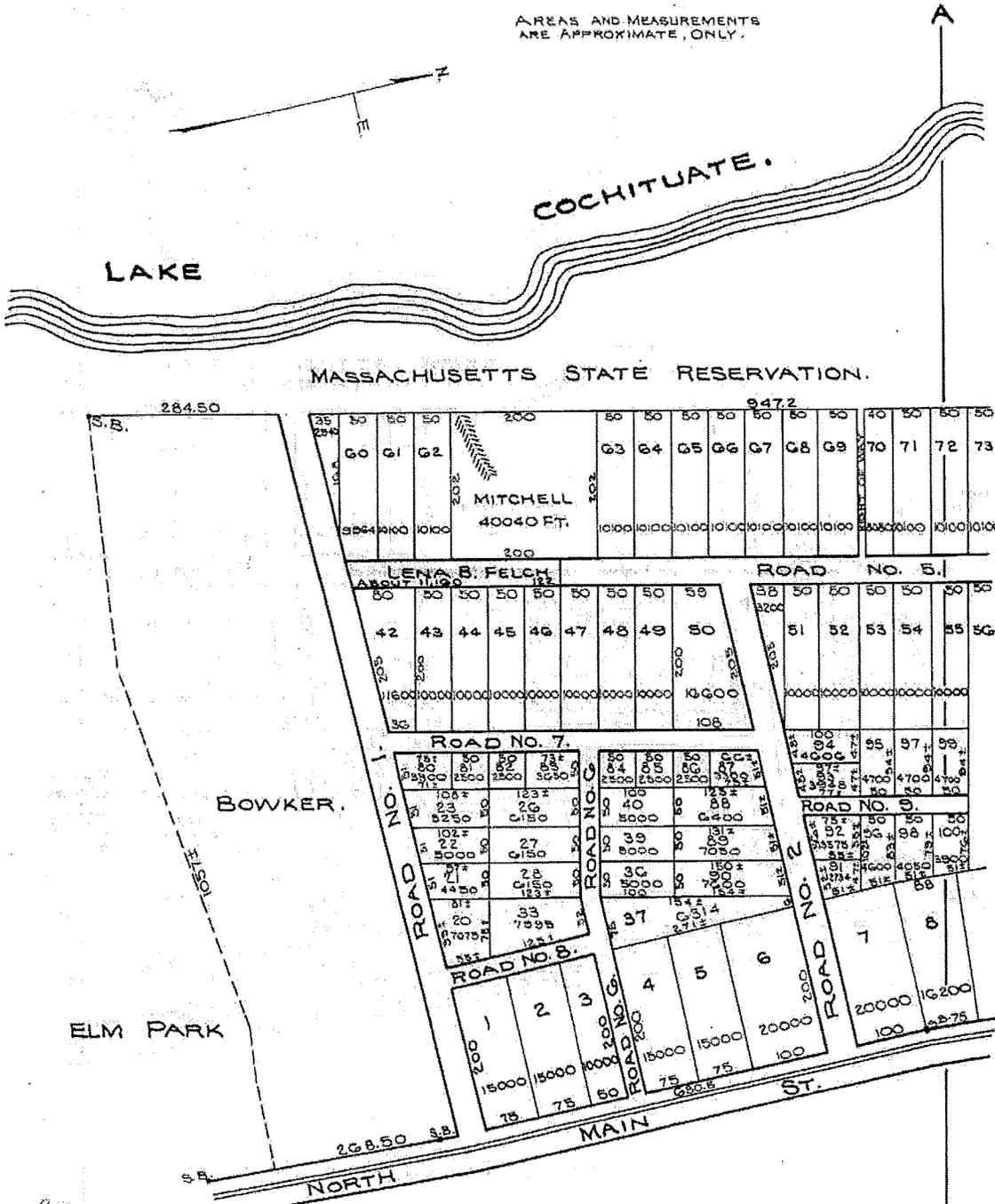
Conclusion. Because we conclude that the Cross Street Playground is protected by art. 97 of the Amendments to the Massachusetts Constitution, the judgment in favor of the defendants is vacated. Where the parties have agreed that, if the land is so protected, judgment should enter for the plaintiffs converting the preliminary injunction into a permanent injunction, we remand the case to the Superior Court for the issuance of such a judgment consistent with this opinion.

So ordered.

No. 3
PLAN OF
CAMP PLEASANT.
NATICK, MASS.
OCTOBER 24 TH. 1907.
OUTLINE SURVEYED BY W. W. WIGHT C. E.

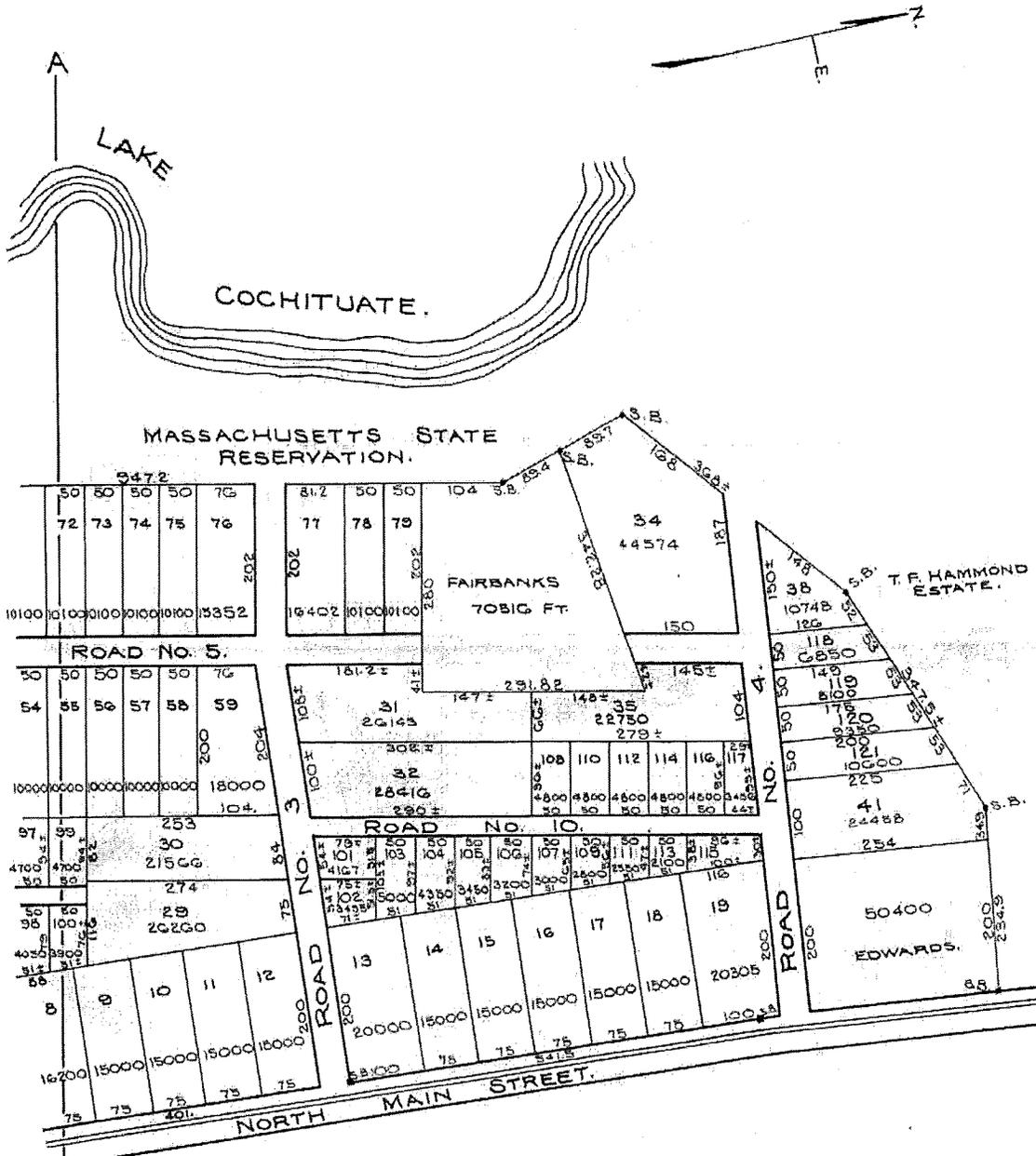
(ORIGINAL ON FILE.)
 (GRAPHIC SCALE : 1 IN. = 100 FT. ±)

AREAS AND MEASUREMENTS
 ARE APPROXIMATE, ONLY.



MIDDLESEX REGISTRY OF DEEDS
 CAMBRIDGE, MASS.
 COPY OF PLAN
 Recorded **OCT 24, 1907 1:55 P.M.**
 in Plan Book **169** Plan **4(A of 2)**
 Attest *John F. Seymour* Registrar

CAMP PLEASANT - NATICK No.3



(SCALE: 1 INCH = 100 ± FEET.)

07/27/84 04:14 TR * 732 RE 1302

113

AGREEMENT AMONG PATRIOTS' TRAIL GIRL SCOUT COUNCIL, INC., ADULT WELLESLEY GIRL SCOUTS AND THE TOWN OF NATICK FOR CAMP MARY BUNKER PROPERTY

AGREEMENT, made and entered into this 24th day of January, 1984, between Patriots' Trail Girl Scout Council, Inc. (a charitable corporation duly organized under the laws of Massachusetts and hereinafter referred to as "Patriots' Trail"), the Adult Wellesley Girl Scouts (an unincorporated association) and the Town of Natick (a municipal corporation hereinafter referred to as "the Town").

WHEREAS, Patriots' Trail is the owner of record of certain land and the buildings thereon in Natick, Massachusetts, known as Camp Mary Bunker (hereinafter referred to as "the Property"); and

WHEREAS, by agreement dated January 24, 1984, the Town has agreed to buy and Patriots' Trail has agreed to sell the Property; and

WHEREAS, Patriots' Trail (as successor in interest to Blue Hill Girl Scout Council, Inc.) holds title to the Property in trust pursuant to a Deed of Trust executed on April 29, 1968, Article A, Section 2 of which requires that before any sale of the Property can take place the proposed sale must be approved by at least a two-thirds vote of the Adult Wellesley Girl Scouts present at a meeting called for that purpose; and

WHEREAS, on January 18, 1983, at a meeting duly called for the purpose of considering the proposal by Patriots' Trail to sell the Property, a greater than two-thirds majority of those

Adult Wellesley Girl Scouts present voted to approve sale of the Property pursuant to certain conditions; and

WHEREAS, one of said conditions is that the Property be sold to the Town with certain restrictions on its future use and with the reservation of certain rights for the benefit of Wellesley Girl Scouts, all as more fully set forth in the remaining provisions of this Agreement; and

WHEREAS, at the above-described January 18, 1983, meeting of the Adult Wellesley Girl Scouts Constance Whittemore was duly authorized to execute and deliver all documents on their behalf,

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions contained herein and in the above-mentioned Purchase and Sale Agreement, it is hereby agreed as follows:

I. NAME

The Property shall include the words "Mary Bunker" in its name.

II. PURPOSES

A. The Property shall remain in a permanent natural, open, and park-like state suitable for use for outdoor programs and activities such as nature study, passive recreational activities, outdoor cooking, camping and picnicking. The Town shall make good faith efforts to acquire permits necessary to allow swimming and boating.

B. The natural beauty of the Property, plant life and wildlife shall be preserved as much as possible.

III. DEVELOPMENT

A. There shall be reasonably maintained outdoor campfire facilities, which shall include places to build outdoor fires for campfire activities and outdoor cooking available for such use as is consistent with safety requirements. A simple sanitary facility shall be provided. Running water shall also be provided on the Property when weather permits.

B. Building or other development is permitted on the Property only so long as it is consistent with the purposes as set forth in Paragraph A of Section II and so long as it does not interfere with the use of the Property as provided in Paragraph A hereof. The following are examples of such building or development: a simple sanitary facility; a simple storage facility for outdoor program equipment or firewood storage; a small indoor activity center suitable for camp programs; simple tent platforms for outdoor camping; simple facilities for indoor overnight camping; a simple rustic open-roofed "pavilion", suitable for general use including picnicking; a caretaker's facility or home; and development of the waterfront area for boating and/or swimming, excluding, however, a public landing dock or ramp. Any such building or development shall be available for use by the Wellesley Girl Scouts.

C. Written notification of such building or development shall be given ninety (90) days before the approval of the expenditure of funds for such building or development to the then Executive Director of the Patriots' Trail Girl Scout

Council, Inc. and to the then service unit Chairman of the Wellesley Girl Scouts.

IV. ACCESS

Access to the Property and use thereof shall be controlled by the Town of Natick.

V. USE OF THE PROPERTY

A. Persons, groups, or organizations shall use the Property only with the permission of the Town of Natick acting through its designated agent.

B. The use of the Property by the Wellesley Girl Scouts shall have priority over the rights of others in accordance with the following schedule, provided that such priority use will require a thirty (30) day prior notice of reservation. The schedule will be administered with flexibility on the part of both the Town of Natick and the Wellesley Girl Scouts in the best interest of both. Use need not be exclusive during the time periods provided, but where appropriate can be simultaneous with other reservations of the Property. If the Town of Natick wishes to reserve space at any time during Wellesley's priority usage period, it may make such a request in advance of the thirty (30) day reservation deadline specified above; and in such case, the Wellesley Girl Scout service unit Chairman shall have the sole discretion to waive Wellesley's right to priority usage during that time.

Subject to the foregoing, the Wellesley Girl Scouts shall have priority usage during the following times:
September to June

1. Weekday afternoons and evenings and weekends all day during the second and fourth weeks of each month.
2. Wellesley Public School Vacation weeks, all day, in February and April.

Subject to the provisions of Section V D, the Town of Natick shall have priority usage at all other times.

C. No fee or other charge shall be imposed upon the use of the Property by the Wellesley Girl Scouts except for the extraordinary costs that may be incurred to clean-up the site after Wellesley usage or to hire safety personnel that may be required by the Town for a specific event or program.

Provided, however, that no fee of any kind arising out of use during the Wellesley priority use period will be required until such time as the Town of Natick makes its final payment to Patriots' Trail Girl Scout Council, Inc. for the Property.

D. Wellesley Girl Scouts shall be considered on an equal footing with any Natick group or organization which requests the use of the Property during those periods when the Town of Natick has priority use of the Property.

E. "Week" shall be defined as beginning with a Monday and ending with a Sunday, and the first week of every month shall start with the first Monday of the month.

VI. OTHER TERMS

A. If the Town of Natick proposes to sell the land, the Girl Scout Council to which the Wellesley Girl Scouts then belong shall be offered a ninety (90) day right of first refusal upon the same terms and conditions of the offer to purchase which the Town of Natick proposes to accept.

B. The terms contained in Sections I through IV in this Agreement shall be incorporated in the deed conveying the

Property to the Town of Natick and may be changed only with the written approval of the Town of Natick and Patriots' Trail Girl Scout Council, Inc., acting on an affirmative vote of two-thirds of the Adult Wellesley Girl Scouts at a meeting called for that purpose (a quorum for which shall consist of fifty Wellesley Adult Girl Scouts or one-half of the Adult Wellesley Girl Scouts, whichever is lesser).

C. The terms contained in Section V hereof may be changed with the written approval of the Town of Natick and Patriots' Trail Girl Scout Council, Inc., acting on an affirmative vote of one-half of the Adult Wellesley Girl Scouts at a meeting called for that purpose (a quorum for which shall consist of twenty-five Adult Wellesley Girl Scouts or one-third of the Adult Wellesley Girl Scouts, whichever is lesser).

D. For purposes of Paragraph B and C of this section, a Wellesley Adult Girl Scout may be represented (in which case the person shall be deemed present) and may vote at any meeting by proxy, provided that the proxy is held by another Wellesley Adult Girl Scout, that it is in writing and executed not more than sixty (60) days prior to the meeting and that the meeting for which it is given has not been finally adjourned.

E. This Agreement is conditioned upon purchase of the Property by the Town of Natick.

F. This Agreement shall not be assigned by the Patriots' Trail Girl Scout Council, Inc. or the Adult Wellesley Girl Scouts without the prior written assent of the Board of Selectmen of the Town of Natick, which assent shall not be unreasonably withheld.

G. This Agreement shall be binding upon and inure to the benefit of the assigns or successors in interest of the parties.

Signed as a sealed instrument this 24th day of January , 1984.

PATRIOTS' TRAIL GIRL SCOUT
COUNCIL, INC.

By:

Nancy D. Pratt, President

ADULT WELLESLEY GIRL
SCOUTS,
By:

Christina A. Whittemore

THE TOWN OF NATICK,
By its Board of Selectmen,

Lance S. Bell

Paul Ladd

Susan H. Salamoff

1135

07/27/84 04:14 TR 787 RE 2530

QUITCLAIM DEED

PATRIOTS' TRAIL GIRL SCOUT COUNCIL, INC., a Massachusetts corporation with its principal office at 6 St. James Avenue, Boston, Suffolk County, Massachusetts, formerly Massachusetts Girl Scouts, Inc. and successor to the Blue Hill Girl Scout Council, Inc. by merger, for consideration of FORTY-FIVE THOUSAND DOLLARS (\$45,000.00) paid, hereby grants unto the TOWN OF NATICK with quitclaim covenants a certain parcel of land, with all buildings and improvements thereof, situated in Natick, Middlesex County, Massachusetts, and more particularly bounded and described as follows:

BOOK 20796 P 550

- EASTERLY by North Main Street, two hundred fifty and 00/100 (250.00) feet;
- SOUTHERLY by Road 6 as shown on plans dated November, 1947 and October 24, 1907, hereinafter referred to, by two lines measuring, respectively, two hundred seventy-five and 00/100 (275.00) feet and two hundred twenty-five and 00/100 (225.00) feet, and by land now or formerly of Anderson as shown on said plan and on the plan dated December 2, 1955, hereinafter referred to, two hundred five and 00/100 (205.00) feet;
- SOUTHEASTERLY by the same by two lines measuring, respectively, sixty-four and 03/100 (64.03) feet and twenty-seven and 9/10 (27.9) feet;
- SOUTHERLY by land now or formerly of William W. Whitcomb as shown on said plan dated December 2, 1955, one hundred seventy-eight and 10/100 (178.10) feet;

WESTERLY by land of the Commonwealth of Massachusetts by two lines, measuring, respectively, one hundred thirty-two and $15/100$ (132.15) feet and one hundred fifty and $00/100$ (150.00) feet; and

NORTHERLY by land now or formerly of Clarence C. Eldridge as shown on said plan dated November, 1947, and by Road No. 2 as shown on the plan dated October 24, 1907, hereinafter referred to, by five lines together measuring eight hundred ninety-seven and $20/100$ (897.20) feet;

Containing in all 194,752 square feet of land, more or less.

Said premises are shown in part on a plan entitled "Plan of Land in Natick, Mass." dated November 1947, by H. W. Whittier, C.E., recorded with Middlesex South District Registry of Deeds, as Plan No. 581 of 1948, in Book 7287, Page 570, and in part on an unrecorded plan entitled "Compiled Plot Plan of Land in Natick, Mass. Owned by Edgar H. Goyette". dated December 2, 1955, by R. S. Wharton and C. M. Thrasher, Land Surveyors; and said premises comprise lots 4, 5, 6, 36, 37, 39, 40, 48, 49, 50, 63, 64, 65, 84 through 90 inclusive, and parts of lot 47, the parcel marked Mitchell and Roads No. 5 and 7 as shown on a plan entitled "No. 3 Plan of Camp Pleasant, Natick, Mass.". dated October 24, 1907, recorded with said Deeds at Plan Book 169, Plan No. 4.

Said premises are hereby conveyed subject to the provisions and restrictions of Sections I through IV of the agreement dated January 24, 1984 between Patriots' Trail Girl Scout Council, Inc., Adult Wellesley Girl Scouts and the Town of Natick, a copy of which is recorded herewith. The provisions of said Sections I through IV are incorporated herein by reference.

Said premises are hereby conveyed subject to and with the benefit of all existing rights, easements and reservations of record, including but not limited to all rights and interests of others in Road Nos. 2, 5, 6 and 7, Lot No. 6, and Lot 122 (also

entitled "Lena B. Felch"), all as shown on said plan dated October 24, 1907.

The premises hereby conveyed are the same conveyed to Grantor's predecessor, Blue Hill Girl Scout Council, Inc., by the Wellesley Council of Girl Scouts, Inc. pursuant to a deed of trust recorded in said Deeds at Book 11510, Page 329.

IN WITNESS WHEREOF, the said Patriots' Trail Girl Scout Council, Inc. has caused its corporate seal to be hereto affixed and these presents to be signed, acknowledged and delivered in its name and behalf by Nancy Pratt, its President, and Clora Bucci, its Treasurer, this 26 day of July, 1984, Massachusetts Deed Excise Tax Stamps being affixed hereto and cancelled.

PATRIOTS' TRAIL GIRL SCOUT COUNCIL, INC.

By: Nancy D. Pratt
Nancy Pratt, President

By: Clora Bucci
Clora Bucci, Treasurer



Commonwealth of Massachusetts
Suffolk County July 26, 1984

Then personally appeared the above-named Nancy Pratt, President as aforesaid, and acknowledged the foregoing instrument to be the free act and deed of the Patriots' Trail Girl Scout Council, Inc.

Before me,

Mary Rentry
Notary Public

My commission expires:

11-3-86



Suffolk County Commonwealth of Massachusetts
July 26, 1984

Then personally appeared the above-named Clora Bucci, Treasurer as aforesaid, and acknowledged the foregoing instrument to be the free act and deed of the Patriots' Trail Girl Scout Council, Inc.

Before me,

Mary P. Santry
Notary Public
My commission expires:
10-3-86



Skip Navigational Links [Mass.Gov Home](#) [EOEEA Home](#) [MEPA Home](#)

[Back](#)

MEPA Project Details:

This section provides brief project information. To get detailed information, please view project documents.

EEA No.: 15989

Arc.:

Project Name: ROUTE 27 (NORTH MAIN STREET) ROADWAY

Est. Cost:

Address/Location: ROUTE 27 (NORTH MAIN STREET) WAYLAND T/L TO NORTH AVENUE

Latitude: 42.3158

Longitude: 71.3482

GIS System:

GIS Coord X1:

GIS Coord Y1:

GIS Coord X2:

GIS Coord Y2:

City/Town	Threshold	Watershed	Project Type
NATICK	TRANSPORTATION	CONCORD-SUBBURY	ROADS

Proponent Information			
Name	Address	City/Town	State
NATICK COMM. & ECO. DEVELOPMENT	13 EAST CENTRAL STREET	NATICK	MA
			Zip Code 01760

Agent/Analyst Information					
Agent Name	Firm/Agency	Address	Town	State	Zip Code
MERRICK TURNER	BETA GROUP, INC.	315 NORWOOD PARK SOUTH	NORWOOD	MA	02062
					Phone 781-255-1982
					Ext
					Analyst Name ERIN FLAHERTY
					Analyst Phone 617-626-1128

Action Information				
Submission	Monitor Vol No.	Monitor Date	Comments Due Date	Action
ENF	9-14	02/20/2019	03/12/2019	NO EIR
				Action Date 04/05/2019
				Comments

No Data Found. **Scope Information**

No Data Found. **Consultant Information Meeting**

Middlesex Registry of Deeds,
Southern District
Cambridge, Massachusetts
Plan No. 251211201 of 2019
Rec'd 7-17-19 10:11 AM
at 37 N. ST. N. 23 N.

Attest:
[Signature]
Register

REGISTRY USE ONLY

I CERTIFY THAT THIS SURVEY AND PLAN WERE PREPARED IN ACCORDANCE WITH THE
PROVISIONS AND REQUIREMENTS OF THE REGISTERED PROFESSIONAL LAND SURVEYORS IN THE
COMMONWEALTH OF MASSACHUSETTS UNTIL 200 AND 2000.
I HEREBY STATE THAT THE PLAN WAS PREPARED IN ACCORDANCE WITH THE RULES AND
REGULATIONS OF THE REGISTER OF DEEDS.



Richard W. Gail Jr.
PROFESSIONAL LAND SURVEYOR
DATE: APRIL 2, 2019

APPROVED BY THE
TOWN OF NATICK
7/10/19 DATE
[Signatures]

Graphic Scale
1 inch = 20 feet
0 20 40

NO.	DATE	REVISION

PREPARED BY:

LIGHTHOUSE LAND SURVEYING, LLC
75 KIMBERLY ROAD, NANTUCKET, MASSACHUSETTS
TEL: 508-287-0888
website: www.lighthouselandsurveying.com

PROJECT:

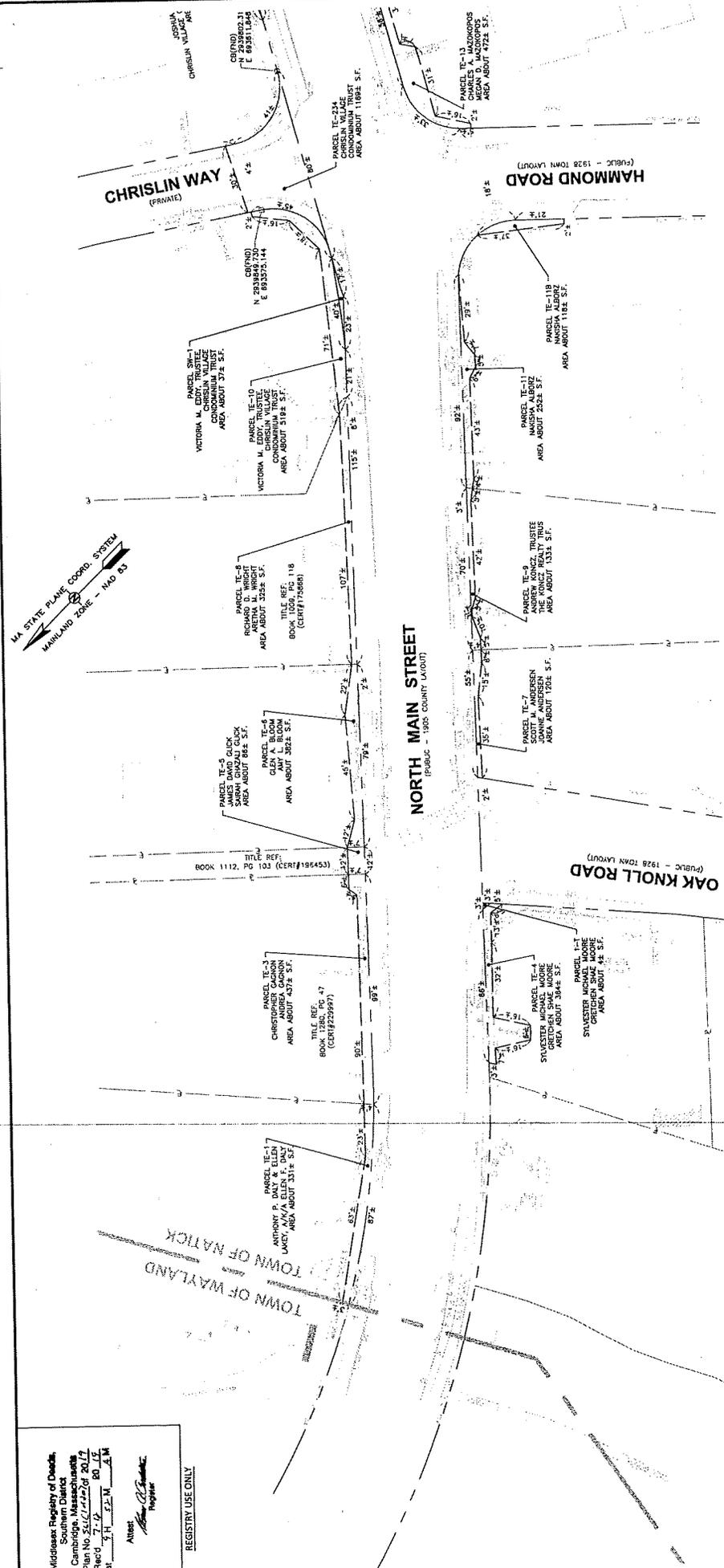
ROUTE 27 ROADWAY IMPROVEMENTS
NORTH MAIN STREET
(MIDDLESEX COUNTY - SOUTH DISTRICT)
NATICK, MASSACHUSETTS

TITLE:

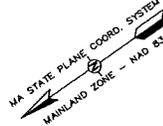
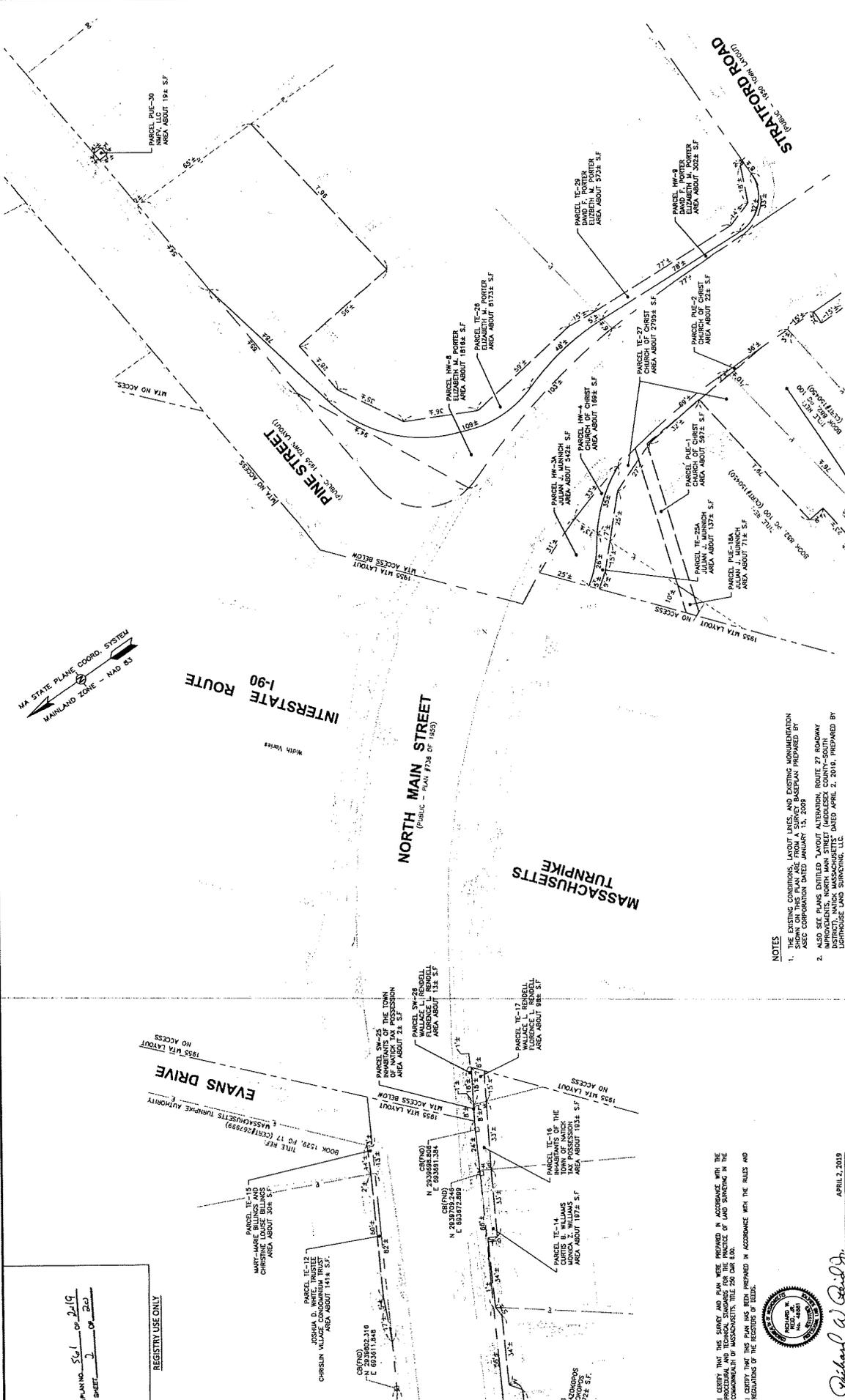
EASEMENT PLAN
PREPARED FOR:
BETA Group, Inc
315 Norwood Park South - 2nd Floor
Norwood, MA 02062

DATE: APRIL 2, 2019
1 of 20
SHEET NO. 1

561 of 2019 (1 of 20)



NOTES
1. THE EXISTING CONDITIONS, LAYOUT LINES, AND EXISTING MONUMENTATION
SHOWN ON THIS PLAN WERE FIELD VERIFIED BY THE SURVEYOR PREPARED BY
THIS FIRM ON JANUARY 13, 2019.
2. THE PLAN IS PREPARED FOR THE PURPOSE OF ROUTE 27 ROADWAY
IMPROVEMENTS, NORTH MAIN STREET (MIDDLESEX COUNTY - SOUTH
DISTRICT), NANTUCKET, MASSACHUSETTS DATED APRIL 2, 2019, PREPARED BY
LIGHTHOUSE LAND SURVEYING, LLC.



PLANNING SHEET 2 OF 20
 REGISTRY USE ONLY

I CERTIFY THAT THIS SURVEY AND PLAN WERE PREPARED IN ACCORDANCE WITH THE PROCEDURAL AND TECHNICAL STANDARDS FOR THE PRACTICE OF LAND SURVEYING IN THE COMMONWEALTH OF MASSACHUSETTS, TITLE 266, CHAPTER 270B.
 RECORDS OF THE REGISTER OF DEEDS

APRIL 2, 2019 DATE

Professional Land Surveyor Seal for Richard A. Gault, Jr.

NOTES

- THE EXISTING CONDITIONS, LAYOUT LINES, AND EXISTING MONUMENTATION SHOWN ON THIS PLAN ARE FROM A SURVEY BASE PLAN PREPARED BY ASCE CORPORATION DATED JANUARY 13, 2009.
- ALSO SEE PLANS ENTITLED "LAYOUT ALTERATION, ROUTE 27 HIGHWAY DISTRICT, NANTUCKET COUNTY, MASSACHUSETTS" DATED APRIL 2, 2019, PREPARED BY LIGHTHOUSE LAND SURVEYING, LLC.

DATE: APRIL 2, 2019
 SHEET NO. 2 OF 20

EASEMENT PLAN
 PREPARED FOR: BETA Group, Inc.
 315 Norwood Park South - 2nd Floor
 Norwood, MA 02062

PROJECT:
 ROUTE 27 ROADWAY IMPROVEMENTS
 NORTH MAIN STREET
 (MIDDLESEX COUNTY - SOUTH DISTRICT)
 NANTUCKET COUNTY, MASSACHUSETTS

PREPARED BY:
 LIGHTHOUSE LAND SURVEYING, LLC
 75 KIMBERLY ROAD - FAUNTON, MASSACHUSETTS
 TEL: 508-289-1896
 WEBSITE: www.lightsurveyls.com



REVISIONS:	DATE:	DESCRIPTION:

502 of 2019 (02062)

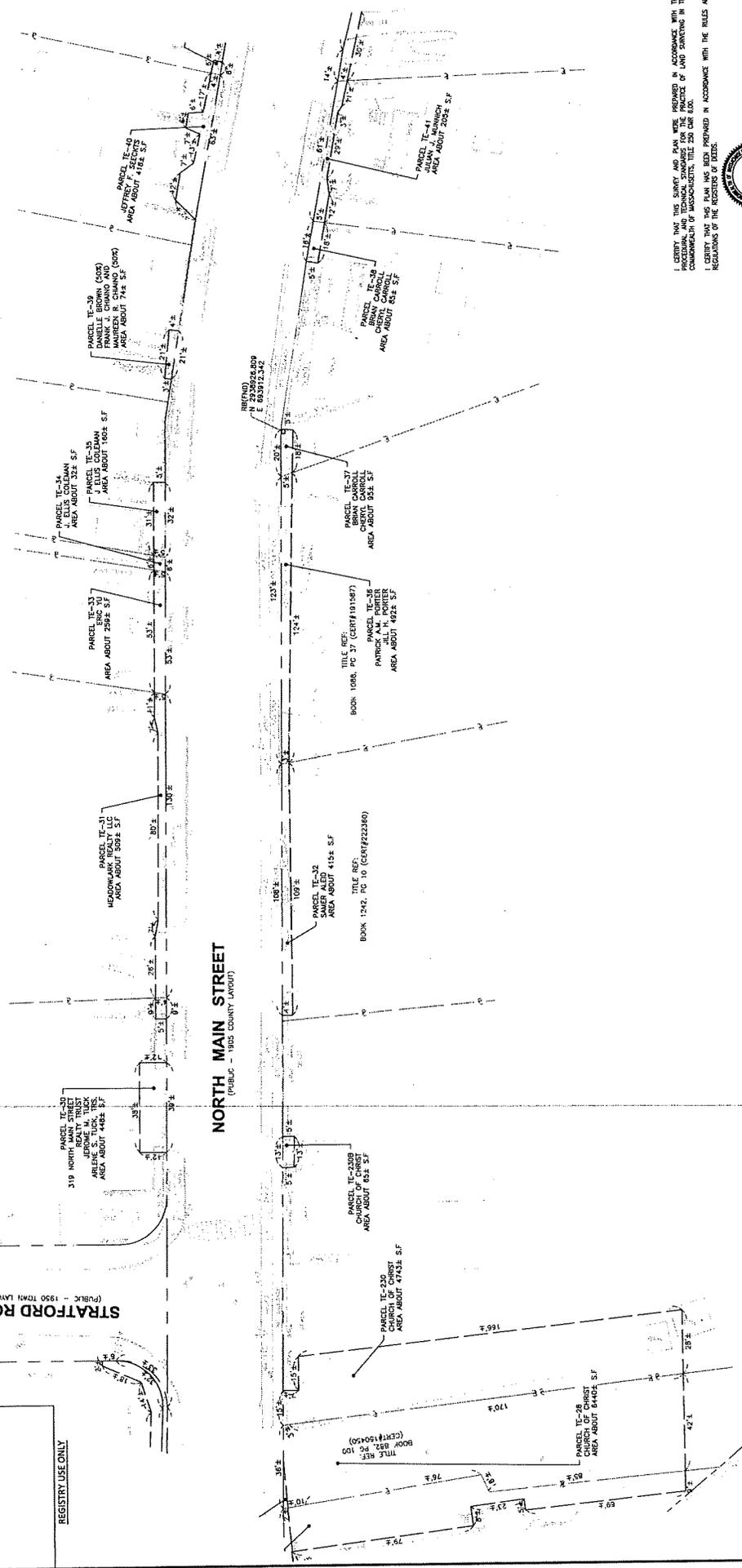
MA STATE PLANE COORD. SYSTEM
MAINLAND ZONE - NAD 83

PLAN NO. 561 OF 2019
SHEET 3 OF 20

REGISTRY USE ONLY

STAFFORD ROAD
(PUBLIC - 1950 TOWN LAYOUT)

NORTH MAIN STREET
(PUBLIC - 1985 COUNTY LAYOUT)



Richard W. Park Jr.
PROFESSIONAL LAND SURVEYOR

APRIL 2, 2019
DATE

I CERTIFY THAT THIS SURVEY AND PLAN WERE PREPARED IN ACCORDANCE WITH THE PROCEDURAL AND TECHNICAL REQUIREMENTS FOR THE PRACTICE OF LAND SURVEYING IN THE COMMONWEALTH OF MASSACHUSETTS, TITLE 206C, CHAPTER 206C.01.

- NOTES
1. THE EXISTING CONCRETE, LAND, UTILS, AND EXISTING MONUMENTATION SHOWN ON THIS PLAN ARE FROM A SURVEY BASE PLAN PREPARED BY ASFC CORPORATION DATED JANUARY 15, 2009
 2. ALSO SEE PLANS ENTITLED "LAYOUT ALTERATION, ROUTE 27 ROADWAY IMPROVEMENTS, NORTH MAIN STREET, MIDDLESEX COUNTY DISTRICT, NANTUCKET, MASSACHUSETTS" DATED APRIL 2, 2019, PREPARED BY LIGHTHOUSE LAND SURVEYING, LLC.

DATE: APRIL 2, 2019
SHEET NO. 3 OF 20

EASEMENT PLAN
PREPARED FOR: BETA Group, Inc
315 Norwood Park South - 2nd Floor
Norwood, MA 02062

PROJECT: ROUTE 27 ROADWAY IMPROVEMENTS
NORTH MAIN STREET
(MIDDLESEX COUNTY - SOUTH DISTRICT)
NANTUCKET, MASSACHUSETTS

PREPARED BY: LIGHTHOUSE LAND SURVEYING, LLC
75 KIMBERLY ROAD - TAUNTON, MASSACHUSETTS
Tel: 508 - 287 - 0896
website: www.lighthouselandsurveying.com



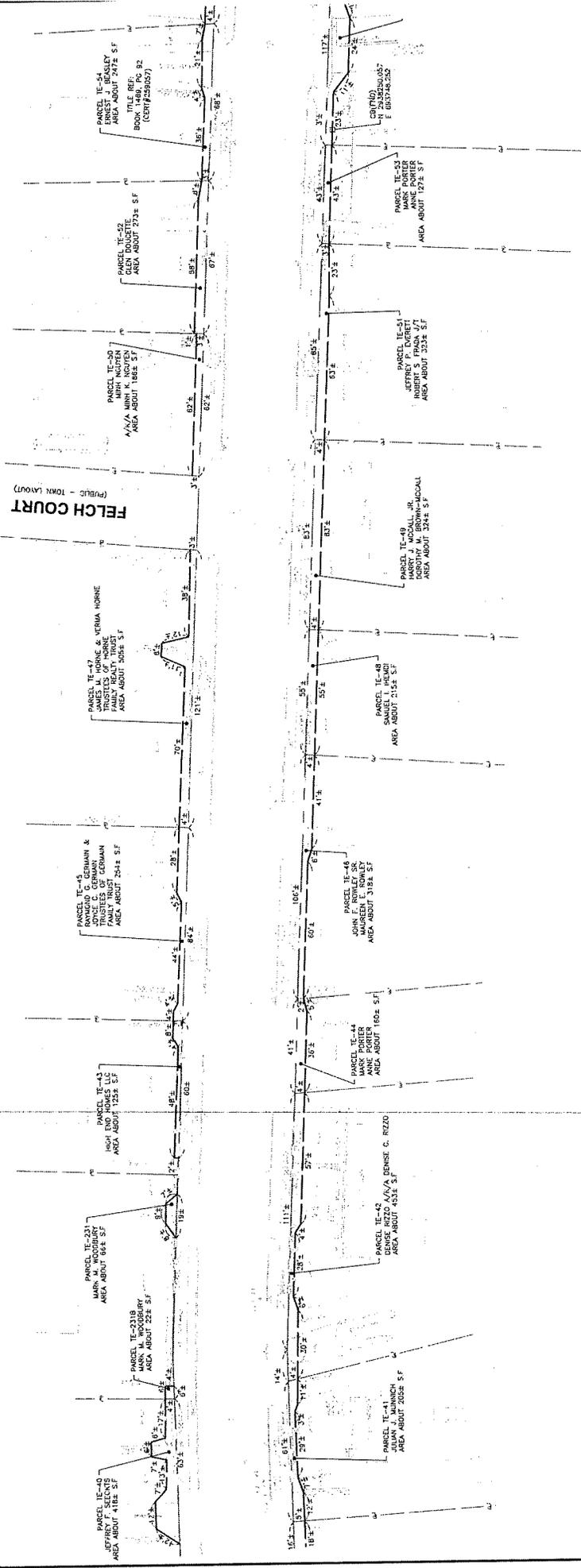
NO.	REVISIONS	DATE	BY	DESCRIPTION

561 of 2019 (3 of 20)

MA STATE PLANE COORD. SYSTEM
NANLAND ZONE - NAD 83

REGISTRY USE ONLY

PLAN NO. 561 of 2019
SHEET 4 of 20



I CERTIFY THAT THIS SURVEY AND PLAN WERE PREPARED IN ACCORDANCE WITH THE REQUIREMENTS OF CHAPTER 266B OF THE STATUTES OF MASSACHUSETTS, TITLE 260A, CHAPTER 60A.
I CERTIFY THAT THIS PLAN HAS BEEN PREPARED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE REGISTER OF DEEDS.



Richard W. Peck
PROFESSIONAL LAND SURVEYOR
APRIL 2, 2019 DATE

NOTES
1. THE EXISTING CONDITIONS, LAYOUT LINES AND DISTANCES UNLESS OTHERWISE NOTED ON THIS PLAN ARE AS SHOWN ON THE SURVEY BASE PLAN PREPARED BY ASFC CORPORATION DATED JANUARY 15, 2009.
2. ALSO SEE PLANS ENTITLED "LAYOUT ALTERATION, ROUTE 27 ROADWAY IMPROVEMENTS, NORTH MAIN STREET (MIDDLESEX COUNTY-SOUTH DISTRICT) AND ROADWAY IMPROVEMENTS, NANTUCKET, MASSACHUSETTS" DATED APRIL 2, 2018, PREPARED BY LIGHTHOUSE LAND SURVEYING, LLC.



REVISIONS:	DATE	ISSUED FOR REVIEW	DATE	DESCRIPTION

PROJECT:
ROUTE 27 ROADWAY IMPROVEMENTS
NORTH MAIN STREET
(MIDDLESEX COUNTY - SOUTH DISTRICT)
NANTUCKET, MASSACHUSETTS

PREPARED BY:
LIGHHOUSE LAND SURVEYING, LLC
75 KIMBERLY ROAD - TAUNTON, MASSACHUSETTS
Tel: 508 - 287 - 0896
website: www.lighthouselandsurveying.com

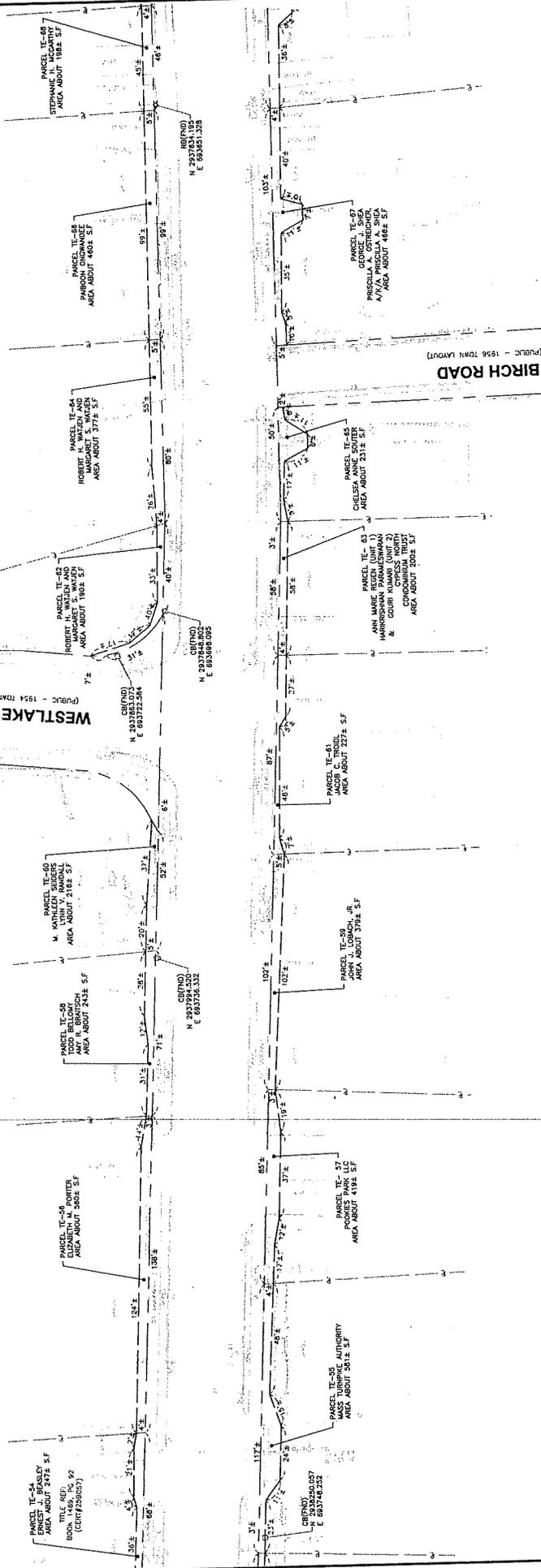
DATE: APRIL 2, 2019
4 of 20
SHEET NO. 4

561 of 2019 (4 of 20)

PLAN NO. 581 OF 2019
 SHEET 5 OF 20

REGISTRY USE ONLY

MA STATE PLANE COORD. SYSTEM
 MARLAND ZONE - NAD 83



I CERTIFY THAT THIS SURVEY AND PLAN WERE PREPARED IN ACCORDANCE WITH THE PROCEDURAL AND TECHNICAL STANDARDS FOR THE PRACTICE OF LAND SURVEYING IN THE COMMONWEALTH OF MASSACHUSETTS, TITLE 260 CMR 6.00.

I CERTIFY THAT THIS PLAN WAS BEEN PREPARED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE PROFESSION.



Richard W. Good Jr.
 PROFESSIONAL LAND SURVEYOR

APRIL 2, 2019
 DATE

NOTES
 1. THE EXISTING CONDITIONS, LAYOUT LINES AND DISTANCES INDICATED HEREON WERE OBTAINED FROM A SURVEY BY JACOB C. TROUD, ASSET CORPORATION DATED JANUARY 15, 2009.
 2. ALSO SEE PLANS ENTITLED "LAYOUT ALTERNATION, ROUTE 27 ROADWAY IMPROVEMENTS, NORTH MAIN STREET (MIDDLESEX COUNTY - SOUTH DISTRICT) - TAUNTON, MASSACHUSETTS" DATED APRIL 2, 2014, PREPARED BY LIGHTHOUSE LAND SURVEYING, LLC.



NO.	DATE	DESCRIPTION

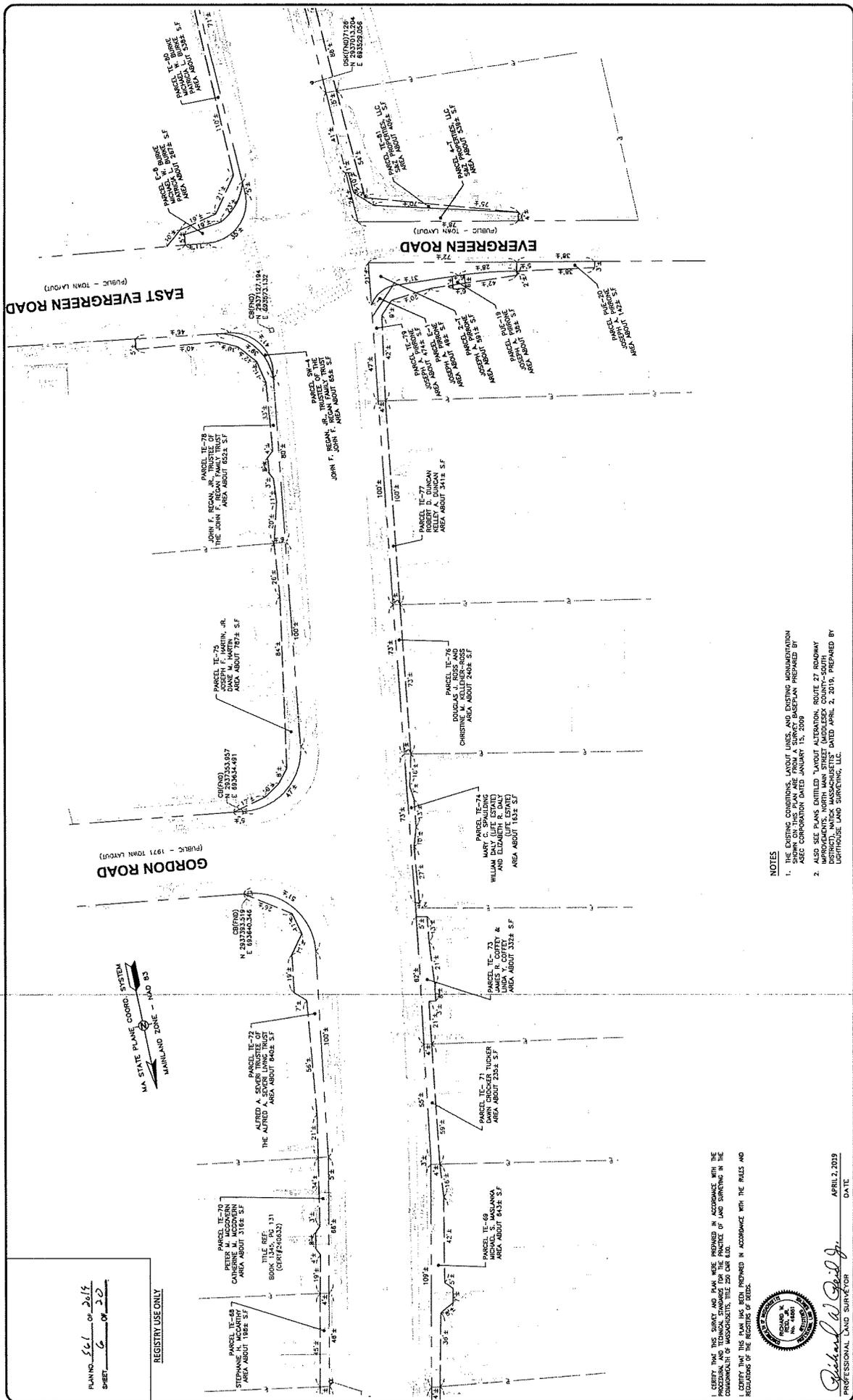
DATE: APRIL 2, 2019
 5 OF 20
 SHEET NO. 5

PROJECT: ROUTE 27 ROADWAY IMPROVEMENTS
 NORTH MAIN STREET
 (MIDDLESEX COUNTY - SOUTH DISTRICT)
 NANTUCKET, MASSACHUSETTS

PREPARED BY: LIGHTHOUSE LAND SURVEYING, LLC
 75 SUMMERS ROAD - TAUNTON, MASSACHUSETTS
 Tel: 508-287-0896
 website: www.lighthouselandsurveying.com

TITLE: EASEMENT PLAN
 PREPARED FOR: BETA Group, Inc
 315 Norwood Park - 2nd Floor
 Norwood, MA 02062

581 of 2019 (S of 20)



DATE: APRIL 2, 2019
6 OF 20
SHEET NO. 6

EASEMENT PLAN
BETA Group, Inc
315 Norwood Park South - 2nd Floor
Norwood, MA 02062

PROJECT:
ROUTE 27 ROADWAY IMPROVEMENTS
NORTH MAIN STREET
(MIDDLESEX COUNTY - SOUTH DISTRICT)
NATICK, MASSACHUSETTS

PREPARED BY:
LIGHTHOUSE LAND SURVEYING, LLC
75 HAMBRELY ROAD - TAUNTON, MASSACHUSETTS
Tel: 508-287-0886
website: www.lighthouselandsurveying.com



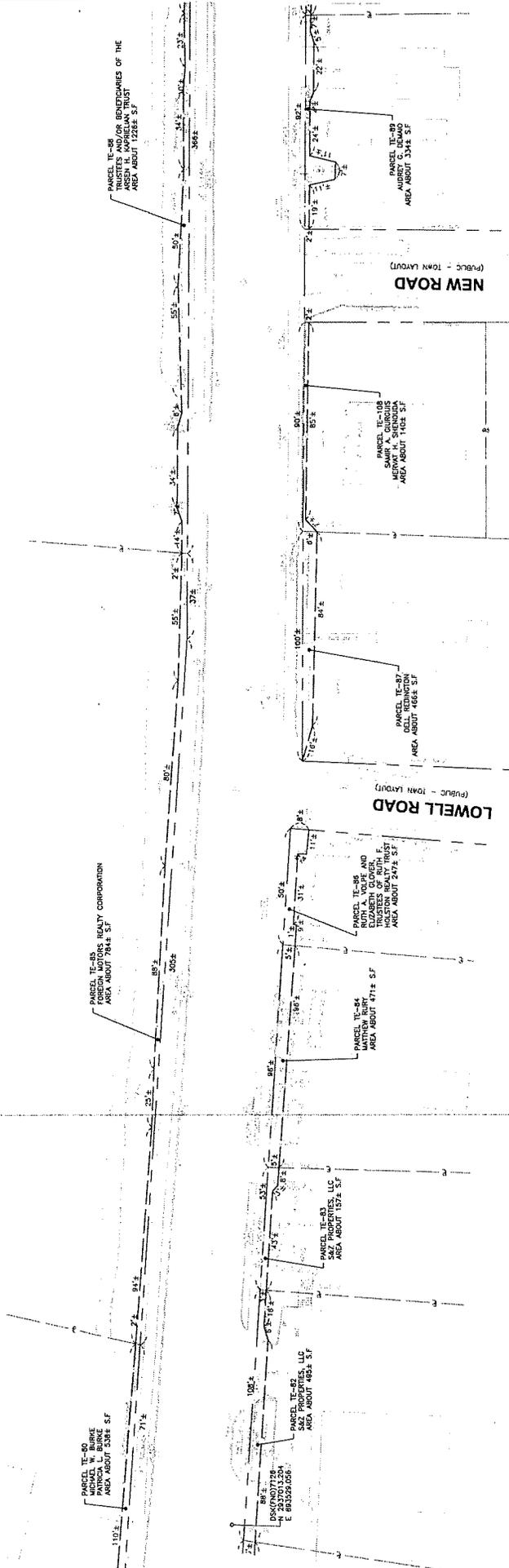
NO.	DATE	ISSUED FOR	REVISION

561 of 2019 (6 of 20)

PLAN NO. 361 OF 2019
SHEET 1 OF 20

REGISTRY USE ONLY

MA STATE PLANE COORD. SYSTEM
MAINLAND ZONE - MAD 83



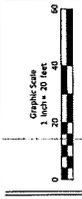
I CERTIFY THAT THIS SURVEY AND PLAN WERE PREPARED IN ACCORDANCE WITH THE
PROCEDURAL AND TECHNICAL STANDARDS FOR THE PRACTICE OF LAND SURVEYING IN THE
COMMONWEALTH OF MASSACHUSETTS, TITLE 260 CMR 6.00.

I CERTIFY THAT THIS PLAN HAS BEEN PREPARED IN ACCORDANCE WITH THE RULES AND
REGULATIONS OF THE REGISTER OF DEEDS.



APRIL 2, 2019 DATE
PROFESSIONAL LAND SURVEYOR

NOTES
1. THIS PLAN IS A PLAN FOR THE PURPOSE OF A SURVEY PREPARED BY
ASAC CORPORATION DATED JANUARY 15, 2009
2. ALSO SEE PLANS ENTITLED "LAYOUT ALTERNATION, ROUTE 27 ROADWAY
IMPROVEMENTS, NORTH MAIN STREET (MIDDLESEX COUNTY-SOUTH
DISTRICT), NANTUCKET, MASSACHUSETTS" DATED APRIL 1, 2019, PREPARED BY
LIGHTHOUSE LAND SURVEYING, LLC.



NO.	DATE	REVISION
0		ISSUED FOR REVIEW
1		REVISED
2		REVISED

PREPARED BY:
LIGHTHOUSE LAND SURVEYING, LLC
75 KIMBERLY ROAD - TAUNTON, MASSACHUSETTS
Tel. 508-287-0896
website: www.lighthouselandsurveying.com

PROJECT:
ROUTE 27 ROADWAY IMPROVEMENTS
NORTH MAIN STREET
(MIDDLESEX COUNTY - SOUTH DISTRICT)
NANTUCKET, MASSACHUSETTS

TITLE:
EASEMENT PLAN

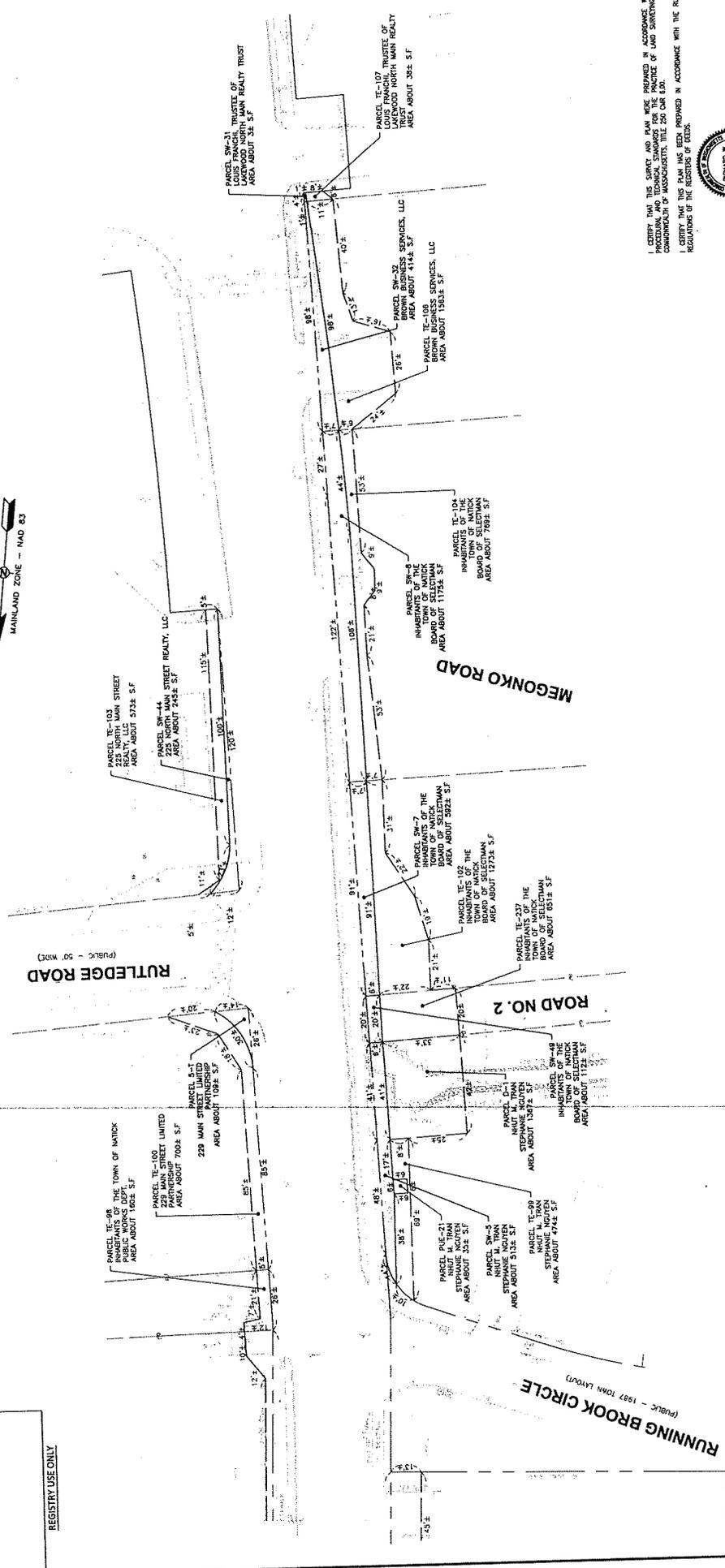
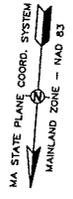
PREPARED FOR:
BETA Group, Inc.
315 Norwood Park, South - 2nd Floor
Norwood, MA 02062

DATE: APRIL 2, 2019
7 OF 20
SHEET NO. 7

361 of 2019 (7 of 20)

PLANNING NO. 561 OF 2019
 SHEET 0 OF 20

REGISTRY USE ONLY



NOTES
 1. THE EXISTING CONDITIONS, LAYOUT LINES, AND EXISTING MONUMENTATION SHOWN ON THIS PLAN ARE FROM A SURVEY BASE PLAN PREPARED BY A SEC CORPORATION DATED JANUARY 15, 2005.
 2. ALSO SEE PLANS ENTITLED "LAYOUT ALTERATION, ROUTE 27 ROADWAY IMPROVEMENTS, MIDDLESEX COUNTY - SOUTH DISTRICT, NANTICK, MASSACHUSETTS" DATED APRIL 2, 2018, PREPARED BY LIGHTHOUSE LAND SURVEYING, LLC.

I CERTIFY THAT THIS SURVEY AND PLAN WERE PREPARED IN ACCORDANCE WITH THE PROFESSIONAL LAND SURVEYING ACT AND REGULATIONS OF MASSACHUSETTS, TITLE 200 OF OUR CODE. I CERTIFY THAT THIS PLAN HAS BEEN PREPARED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS.



Richard A. Gault
 PROFESSIONAL LAND SURVEYOR
 DATE: APRIL 2, 2019

DATE: APRIL 2, 2019
 SHEET NO. 9 OF 20

EASEMENT PLAN

PREPARED FOR:
 BETA Group, Inc
 3115 Norwood Park South - 2nd Floor
 Norwood, MA 02062

PROJECT:
 ROUTE 27 ROADWAY IMPROVEMENTS
 NORTH MAIN STREET
 (MIDDLESEX COUNTY - SOUTH DISTRICT)
 NANTICK, MASSACHUSETTS

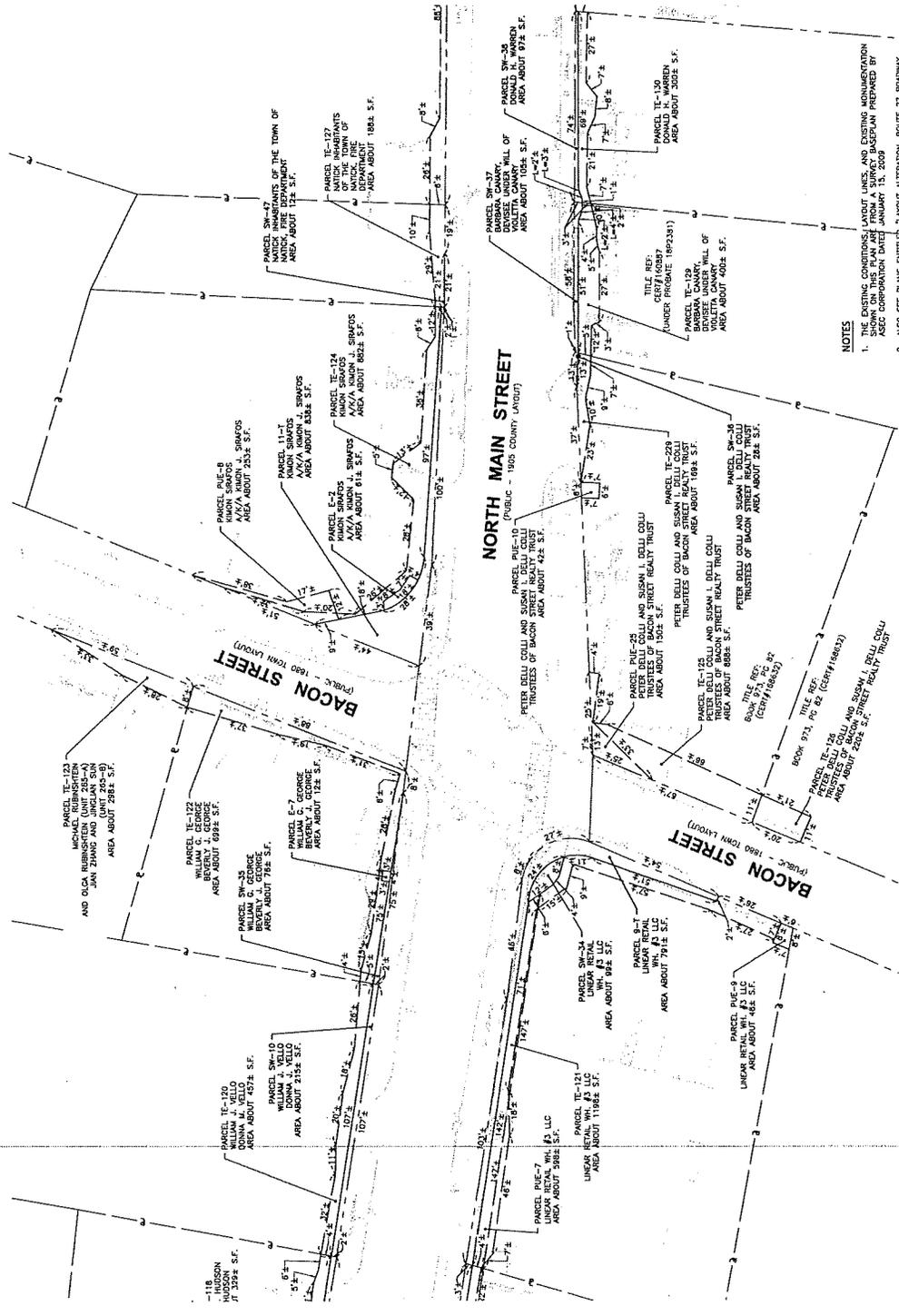
PREPARED BY:
LIGHTHOUSE LAND SURVEYING, LLC
 75 KIMBERLY ROAD - TAUNTON, MASSACHUSETTS
 Tel. 508 - 287 - 0886
 website: www.lighthouselandsurveying.com



NO.	DATE	ISSUED FOR REVIEW	DESCRIPTION

561 of 2019 (9 of 20)

MA STATE PLANE COORD. SYSTEM
MAINLAND ZONE - NAD 83



NOTES

1. THE BEING CONTAINED LAYOUT, LINES AND SURVEY MONUMENTATION SHOWN ON THIS PLAN ARE FROM A SURVEY BASE PLAN PREPARED BY ASFC CORPORATION DATED JANUARY 15, 2009
2. ALSO SEE PLANS ENTITLED "LAYOUT ALTERATION, ROUTE 27 ROADWAY IMPROVEMENTS, NORTH MAIN STREET, MIDDLESEX COUNTY, MASSACHUSETTS" DATED APRIL 4, 2010, PREPARED BY LIGHTHOUSE LAND SURVEYING, L.L.C.

PLAN NO. 56 OF 20
SHEET 11 OF 11

REGISTRY USE ONLY

I CERTIFY THAT THIS SURVEY AND PLAN WERE PREPARED IN ACCORDANCE WITH THE PROFESSIONAL AND TECHNICAL STANDARDS FOR THE PRACTICE OF LAND SURVEYING IN THE COMMONWEALTH OF MASSACHUSETTS, TITLE 260 CMR 6.00.

PREPARED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE BOARD OF SURVEYORS.



Richard W. Field Jr.
PROFESSIONAL LAND SURVEYOR

APRIL 2, 2019
DATE



PREPARED BY:

LIGHTHOUSE LAND SURVEYING, LLC
75 KIMBERLY ROAD - TAUNTON, MASSACHUSETTS
Tel: 508 - 237 - 0896
website: www.lighthouselandsurveying.com

PROJECT:

ROUTE 27 ROADWAY IMPROVEMENTS
NORTH MAIN STREET
(MIDDLESEX COUNTY, SOUTH DISTRICT)
NATICK, MASSACHUSETTS

TITLE:

EASEMENT PLAN
PREPARED FOR:
BETA Group, Inc
315 Newbury Street, 4th - 2nd Floor
Boston, MA 02116

DATE: APRIL 2, 2019

11 OF 20

SHEET NO. 11

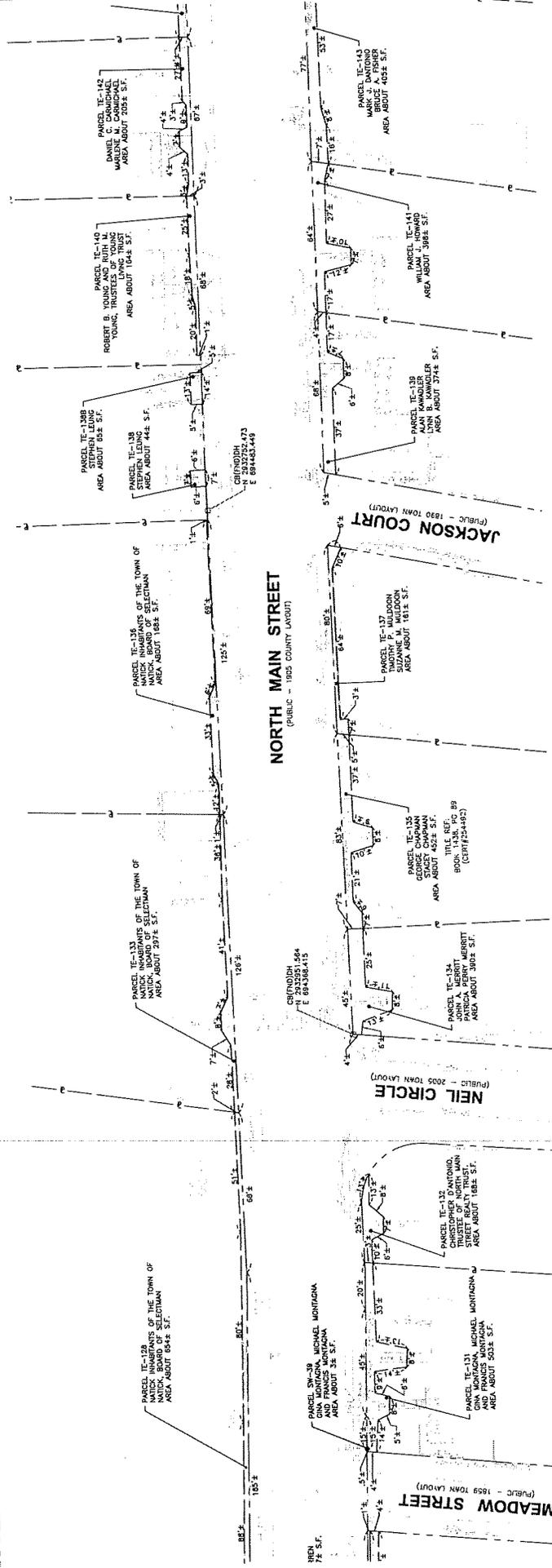
REVISIONS	DATE	DESCRIPTION

Set of 20 (4 of 20)

MA STATE PLANE COORD. SYSTEM
 MAINLAND ZONE - MAD 83

PLANNING No. 561 of 2019
 SHEET 12 of 20

REGISTRY USE ONLY



I CERTIFY THAT THIS SURVEY AND PLAN WERE PREPARED IN ACCORDANCE WITH THE PROVISIONS OF CHAPTER 266B, SECTION 27B OF THE STATUTES OF THE COMMONWEALTH OF MASSACHUSETTS, TITLE 266B, CHAPTER 266B, SECTION 27B. I CERTIFY THAT THIS PLAN HAS BEEN PREPARED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE REGISTER OF DEEDS.



Richard W. Reid, Jr.
 PROFESSIONAL LAND SURVEYOR
 APRIL 2, 2019 DATE

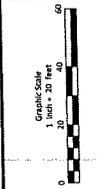
- NOTES**
1. THE EXISTING CURBS, LAYOUT LINES, AND EXISTING MONUMENTATION ARE SHOWN FOR INFORMATION ONLY. THE EXISTING MONUMENTATION HAS BEEN RECORDED BY THE REGISTER OF DEEDS. THE SURVEY WAS PREPARED BY LASC CORPORATION DATED JANUARY 15, 2009.
 2. ALSO SEE PLANS ENTITLED "LAYOUT ALTERATION, ROUTE 27 ROADWAY IMPROVEMENTS, NORTH MAIN STREET (MIDDLESEX COUNTY - SOUTH DISTRICT) IN NATICK, MASSACHUSETTS" DATED APRIL 2, 2019, PREPARED BY LIGHTHOUSE LAND SURVEYING, LLC.

PANEL
 APRIL 2, 2019
 12 of 20
 SHEET NO. 12

EASEMENT PLAN
 PREPARED FOR:
 BETA Group, Inc
 315 Norwood Park, South - 2nd Floor
 Norwood, MA 02062

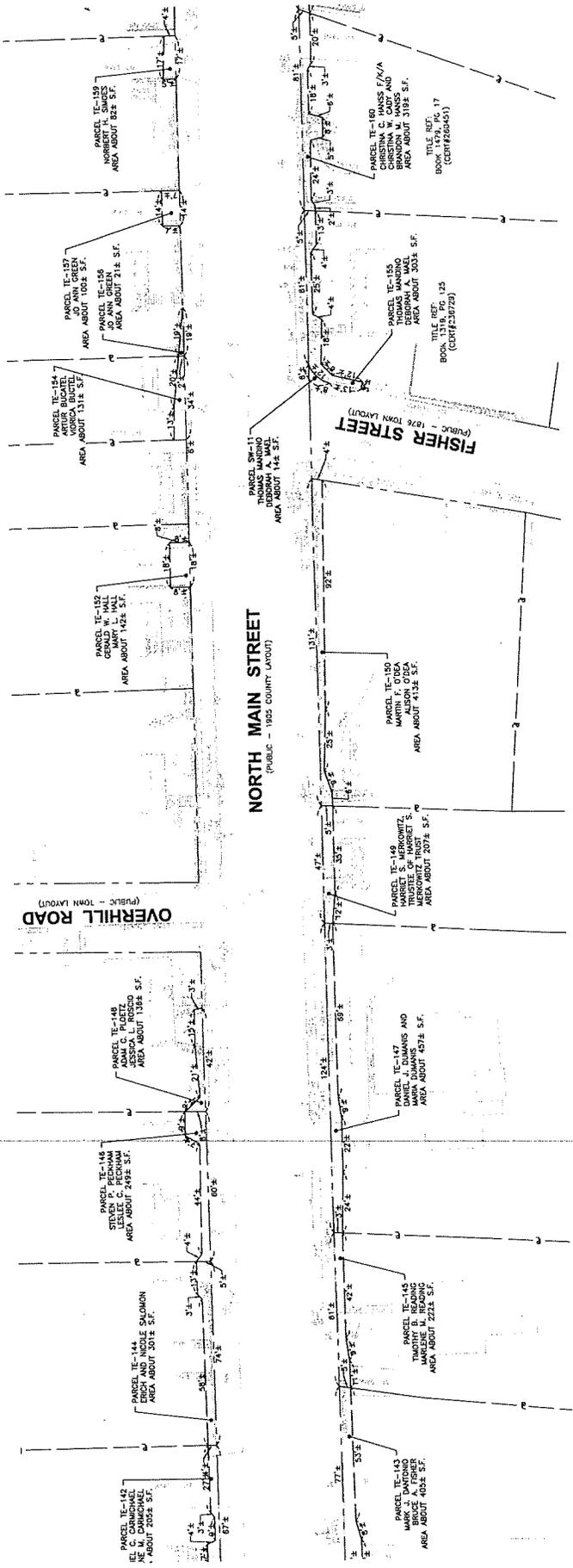
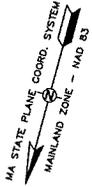
PROJECT:
 ROUTE 27 ROADWAY IMPROVEMENTS
 NORTH MAIN STREET
 (MIDDLESEX COUNTY, SOUTH DISTRICT)
 NATICK, MASSACHUSETTS

PREPARED BY:
 LIGHTHOUSE LAND SURVEYING, LLC
 75 KIMBERLY ROAD - TAUNTON, MASSACHUSETTS
 Tel. 508 - 287 - 0896
 website: www.lighthouselandsurveying.com



REVISIONS	DATE	ISSUED FOR REVIEW

561 of 2019 C 12 of 20



NOTES

1. THE EXISTING CONDITIONS, LAYOUT LINES, AND EXISTING DOCUMENTATION HAVE BEEN RECORDED IN THE PUBLIC RECORDS OF THE COMMONWEALTH OF MASSACHUSETTS, TITLE 206, CHAPTER 27B, AS OF JANUARY 13, 2009.
2. ALSO SEE PLANS ENTITLED "LAYOUT ALTERATION, ROUTE 27 ROADWAY IMPROVEMENTS, NORTH MAIN STREET (MIDDLESEX COUNTY-SOUTH DISTRICT), MIDDLESEX COUNTY, MASSACHUSETTS, DATED APRIL 2, 2019, PREPARED BY LIGHTHOUSE LAND SURVEYING, LLC.



PREPARED BY:
LIGHTHOUSE LAND SURVEYING, LLC
75 KILBURN ROAD, TANTON, MASSACHUSETTS
TEL: 508-287-0896
WWW.LIGHTHOUSELANDSURVEYING.COM

REVISION:	DATE:	DESCRIPTION:

DATE: APRIL 2, 2019

PROFESSIONAL LAND SURVEYOR

Richard W. Peck Jr.

REGISTRY USE ONLY

PLANNING BOARD: 561 OF 211

DATE: 04-20-20

RECORD NO.: 13

DATE: APRIL 2, 2019

SHEET NO.: 13

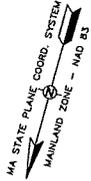
EASEMENT PLAN

PREPARED FOR:
BETA Group, Inc
315 Norwood Park South - 2nd Floor
Norwood, MA 02062

PROJECT:
ROUTE 27 ROADWAY IMPROVEMENTS
NORTH MAIN STREET
(MIDDLESEX COUNTY - SOUTH DISTRICT)
NATICK, MASSACHUSETTS

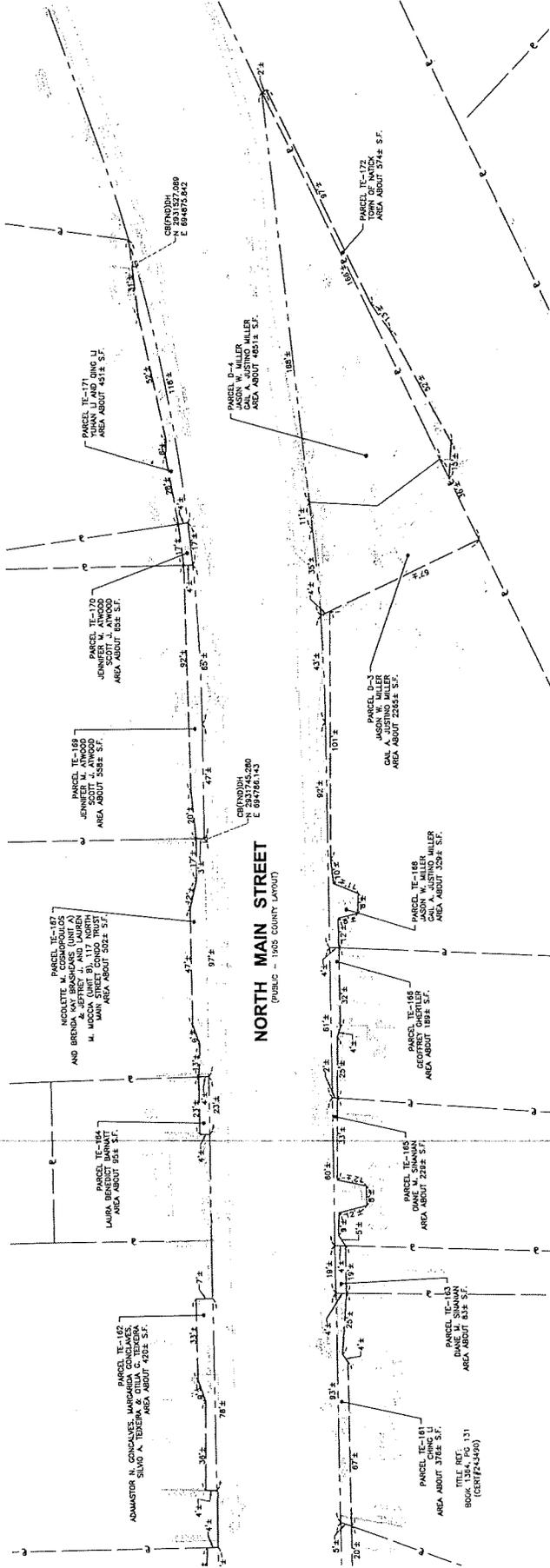
TITLE:
EASEMENT PLAN

192 P 511 110 P 195



PLAN NO. 561 OF 2/19
SHEET 14 OF 20

REGISTRY USE ONLY

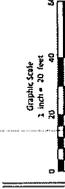


Richard W. Paul
PROFESSIONAL LAND SURVEYOR
DATE: APRIL 2, 2019

I CERTIFY THAT THIS SURVEY AND PLAN WERE PREPARED IN ACCORDANCE WITH THE PROCEDURAL AND TECHNICAL STANDARDS FOR THE PRACTICE OF LAND SURVEYING IN THE COMMONWEALTH OF MASSACHUSETTS, TITLE 266 CMR 6.00.
THIS SURVEY AND PLAN WERE PREPARED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE BOARD OF REGISTRY.

NOTES

1. ALL EXISTING CORNERS, LAYOUT LINES AND EXISTING MONUMENTATION SHOWN ON THIS PLAN ARE FROM A SURVEY BASE PLAN PREPARED BY ASEC CORPORATION DATED JANUARY 15, 2009.
2. ALSO SEE PLANS ENTITLED "LAYOUT ALTERATION, ROUTE 27 ROADWAY IMPROVEMENTS, NORTH MAIN STREET, MIDDLESEX COUNTY, MASSACHUSETTS" PREPARED BY LIGHTHOUSE LAND SURVEYING, LLC, DATED APRIL 2, 2014.



PREPARED BY:



LIGHTHOUSE LAND SURVEYING, LLC
75 KIMBERLY ROAD - TAUNTON, MASSACHUSETTS
Tel. 508-247-0896
website: www.lighthouselandsurveying.com

PROJECT:

**ROUTE 27 ROADWAY IMPROVEMENTS
NORTH MAIN STREET
(MIDDLESEX COUNTY - SOUTH DISTRICT)
NATTICK, MASSACHUSETTS**

TITLE:

EASEMENT PLAN
BETA Group, Inc
315 Norwood Park South - 2nd Floor
Norwood, MA 02062

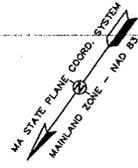
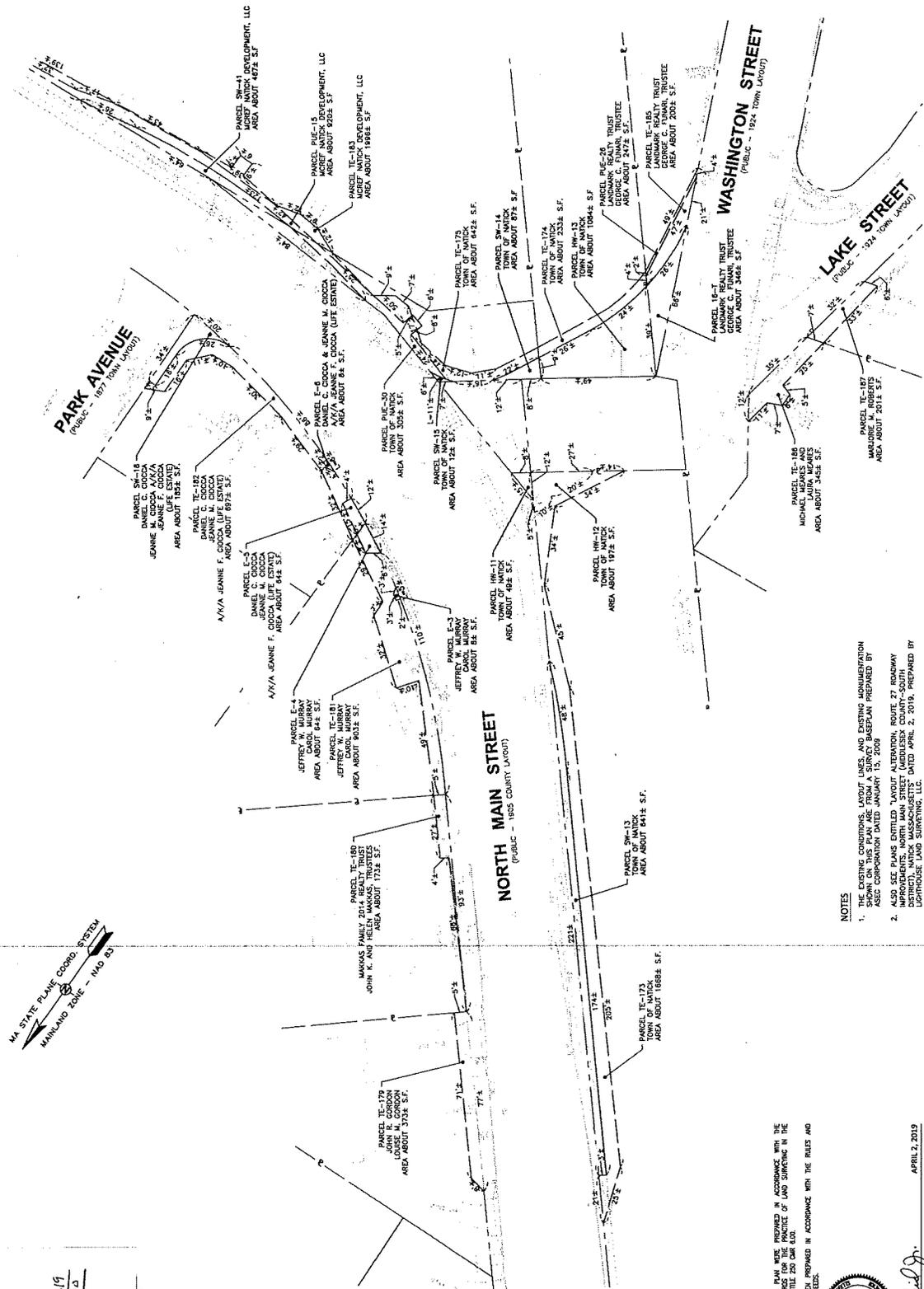
DATE:

APRIL 2, 2019
14 OF 20
SHEET NO. 14

REVISIONS:

NO.	DATE	ISSUED FOR REVIEW	DESCRIPTION
0			

361 of 2019 C 14 of 20



NOTES

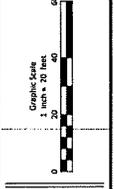
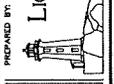
1. THE EXISTING CONDITIONS, LAYOUT LINES AND EXISTING DOCUMENTATION FOR THE PROPOSED IMPROVEMENTS TO ROUTE 27 (NORTH MAIN STREET) IN THE COMMUNITY OF MIDDLESEX COUNTY, MASSACHUSETTS, WERE OBTAINED FROM THE ASFC CORPORATION DATED JANUARY 15, 2009.
2. ALSO SEE PLANS ENTITLED "LAYOUT ALTERATION, ROUTE 27 ROADWAY IMPROVEMENTS, NORTH MAIN STREET (MIDDLESEX COUNTY-SOUTH DISTRICT), NATTICK, MASSACHUSETTS" DATED APRIL 2, 2019, PREPARED BY LIGHTHOUSE LAND SURVEYING, LLC.

EASEMENT PLAN

PREPARED FOR:
 BETA Group, Inc.
 315 New Bedford St., 2nd Floor
 Norwood, MA 02062

PROJECT:
 ROUTE 27 ROADWAY IMPROVEMENTS
 NORTH MAIN STREET
 (MIDDLESEX COUNTY - SOUTH DISTRICT)
 NATTICK, MASSACHUSETTS

LIGHTHOUSE LAND SURVEYING, LLC
 75 KIMBERLY ROAD - TAUNTON, MASSACHUSETTS
 Tel. 508-287-0896
 website: www.lighthouselandsurveying.com



PLANNING SHEET 15 OF 20
 SHEET 15 OF 20

REGISTRY USE ONLY

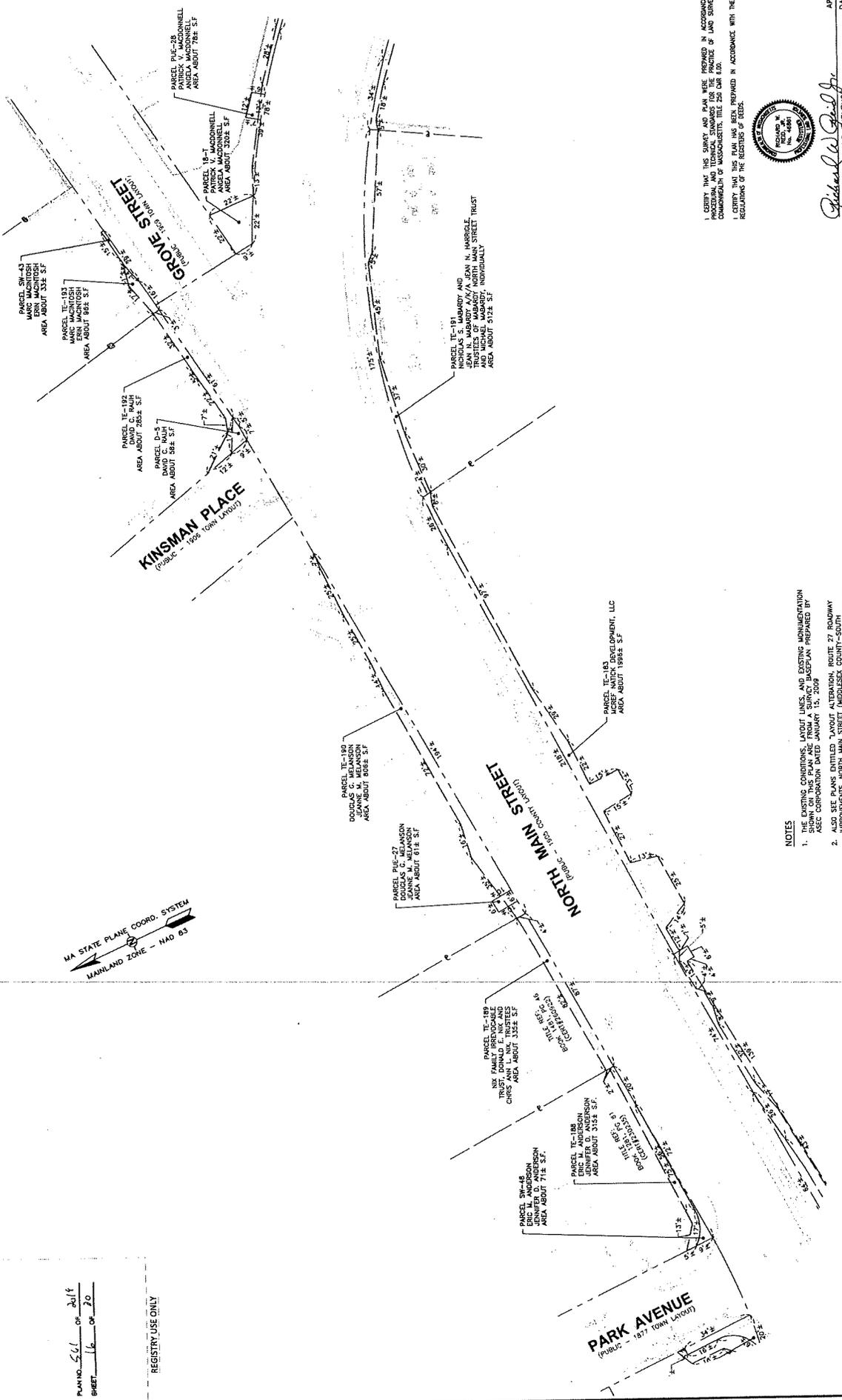
I CERTIFY THAT THIS SURVEY AND PLAN WERE PREPARED IN ACCORDANCE WITH THE PROCEDURAL AND TECHNICAL STANDARDS FOR THE PRACTICE OF LAND SURVEYING IN THE COMMONWEALTH OF MASSACHUSETTS, TITLE 260 CODE REG.



APRIL 2, 2019
 DATE

DATE	TIME	DATE	TIME

Set of 2019 CLF of 20



PLANS: 561 OF 2016
 SHEET: 16 OF 20

REGISTRY USE ONLY

NOTES
 1. THE EXISTING CONDITIONS, LOT/LINE AND EASEMENT INFORMATION
 ASSESS CORPORATION DATED JANUARY 15, 2009
 2. ALSO SEE PLANS ENTITLED "LAYOUT ALTERATION, ROUTE 27 ROADWAY
 IMPROVEMENTS, NORTH MAIN STREET (MIDDLESEX COUNTY-SOUTH
 DISTRICT), NANTICK, MASSACHUSETTS" DATED APRIL 2, 2018, PREPARED BY
 LIGHTHOUSE LAND SURVEYING, LLC.



REVISIONS:	DATE	DESCRIPTION

DATE ISSUED FOR REVIEW	
DATE	

I CERTIFY THAT THIS SURVEY AND PLAN WERE PREPARED IN ACCORDANCE WITH THE
 PROCEDURAL AND TECHNICAL STANDARDS FOR THE PRACTICE OF LAND SURVEYING IN THE
 COMMONWEALTH OF MASSACHUSETTS, TITLE 260 CMR 6.00.
 I CERTIFY THAT THIS PLAN HAS BEEN PREPARED IN ACCORDANCE WITH THE RULES AND
 REGULATIONS OF THE RECORDS OF DEEDS.



Richard W. Gault
 PROFESSIONAL LAND SURVEYOR

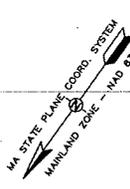
DATE: APRIL 2, 2019
 SHEET NO. 16 OF 20

EASEMENT PLAN
 PREPARED FOR:
 BETA Group, Inc
 3115 Norwood Park South - 2nd Floor
 Norwood, MA 02062

PROJECT:
 ROUTE 27 ROADWAY IMPROVEMENTS
 NORTH MAIN STREET
 (MIDDLESEX COUNTY - SOUTH DISTRICT)
 NANTICK, MASSACHUSETTS

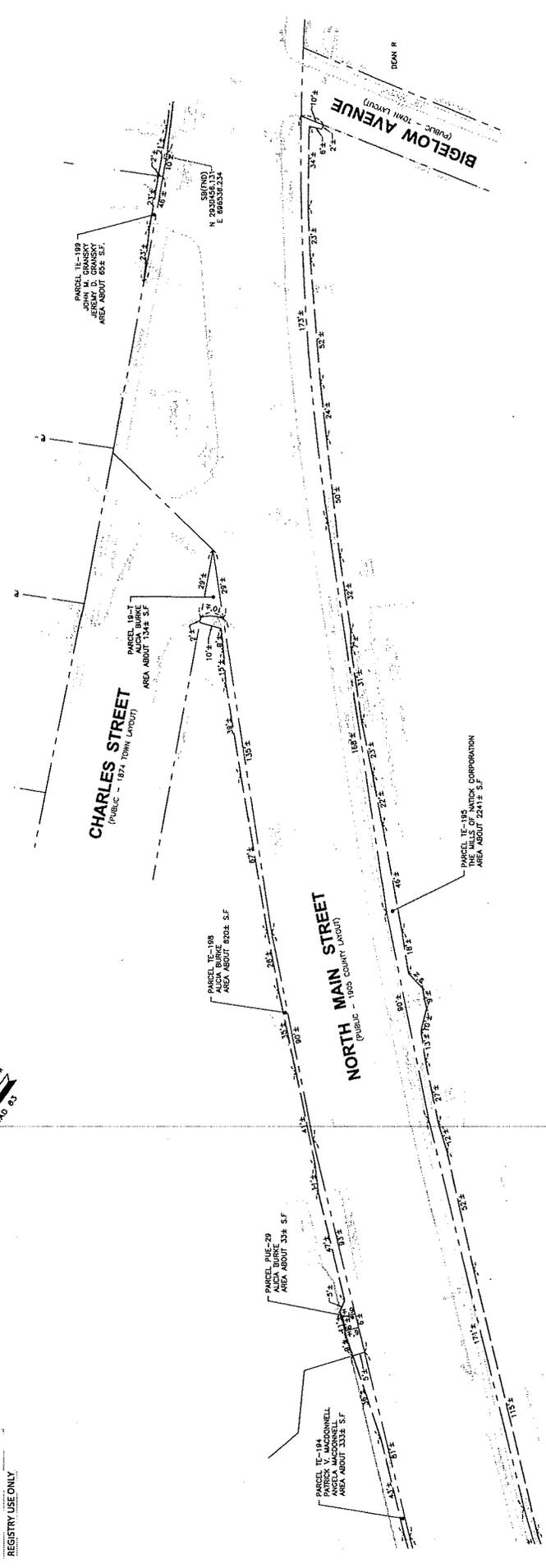
PREPARED BY:
 LIGHTHOUSE LAND SURVEYING, LLC
 75 HAMBURY ROAD - TAUNTON, MASSACHUSETTS
 Tel: 508 - 287 - 0896
 website: www.lighthouselandsurveying.com

Set of 2019 (16 of 20)



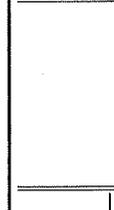
PLANNING SHEET 561 OF 2019
 SHEET 17 OF 30

REGISTRY USE ONLY



NOTES

1. THE EXISTING CONDITIONS, LAYOUT LINES, AND EXISTING MONUMENTATION ARE SHOWN FOR INFORMATION ONLY. THIS PLAN WAS PREPARED BY LIGHTHOUSE LAND SURVEYING, LLC, A SEC. CORPORATION DATED JANUARY 15, 2019.
2. ALSO SEE PLANS ENTITLED, "LAYOUT ALTERATION, ROUTE 27 ROADWAY IMPROVEMENTS, NORTH MAIN STREET (MIDDLESEX COUNTY-SOUTH DISTRICT), MIDDLESEX COUNTY, MASSACHUSETTS," DATED APRIL 2, 2019, PREPARED BY LIGHTHOUSE LAND SURVEYING, LLC.



DATE: APRIL 2, 2019



Richard W. Goff
 PROFESSIONAL LAND SURVEYOR

DATE	BY	REVISION
APR 2 2019	RWG	ISSUED FOR REVIEW
APR 2 2019	RWG	ISSUED FOR REVIEW

DATE: APRIL 2, 2019
 SHEET: 17 OF 30

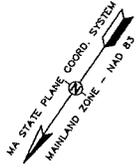
PROJECT: ROUTE 27 ROADWAY IMPROVEMENTS
 NORTH MAIN STREET
 (MIDDLESEX COUNTY-SOUTH DISTRICT)
 NANTUCKET, MASSACHUSETTS

TITLE: EASEMENT PLAN

PREPARED FOR: BETA Group, Inc.
 315 Norwood Park South - 2nd Floor
 Norwood, MA 02062

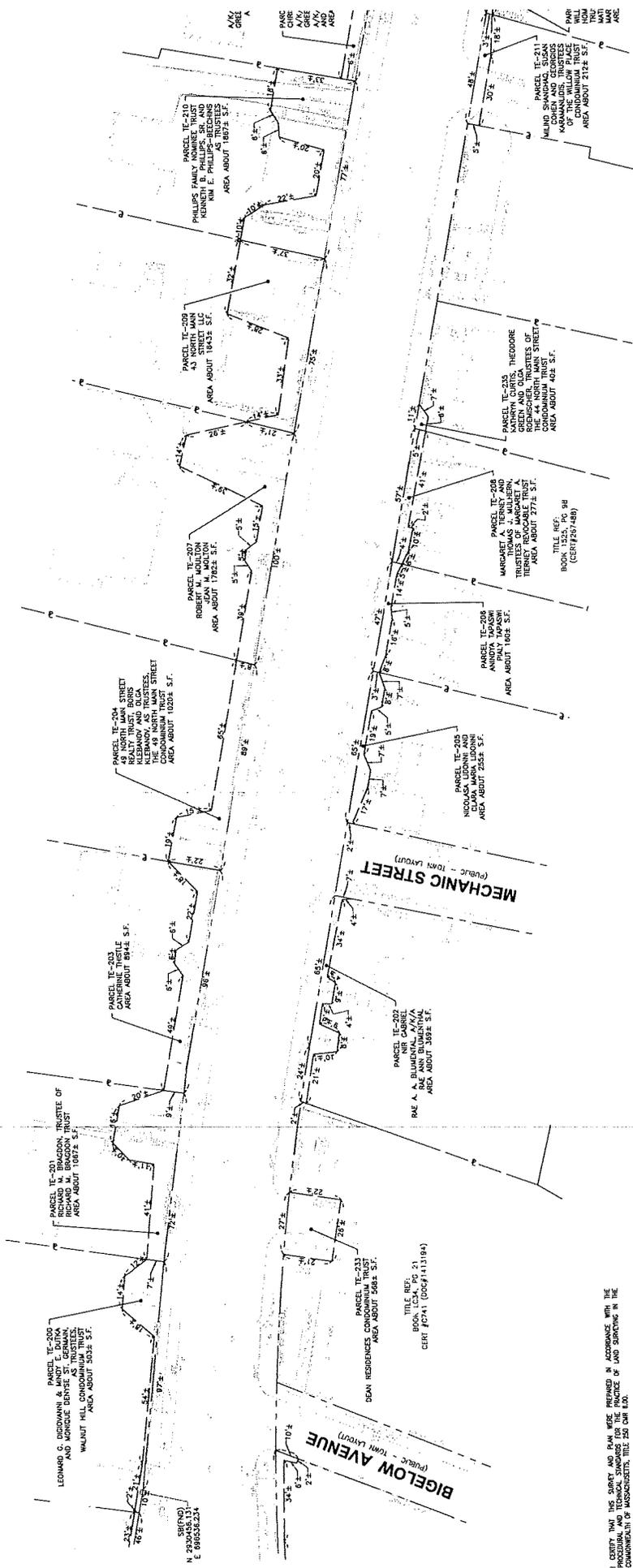
DATE: APRIL 2, 2019
 SHEET: 17 OF 30
 PROJECT NO.: 17

561 of 2019 (17 of 30)



PLANNING SHEET 18 OF 20
 SHEET 18 OF 20

REGISTRY USE ONLY



NOTES
 1. EXISTING CONDITIONS, LAYOUT LINES, AND EXISTING MONUMENTATION
 SHOWN ON THIS PLAN ARE FROM A SURVEY BASE PLAN PREPARED BY
 ASFC CORPORATION DATED JANUARY 15, 2009.
 2. ALSO SEE PLANS ENTITLED "LAYOUT ALTERATION, ROUTE 27 ROADWAY
 IMPROVEMENTS, NORTH MAIN STREET (MIDDLESEX COUNTY, SOUTH DISTRICT)
 IN NATICK, MASSACHUSETTS" DATED APRIL 2, 2018, PREPARED BY
 LIGHTHOUSE LAND SURVEYING, LLC.

PLANNING SHEET 18 OF 20
 SHEET 18 OF 20

REGISTRY USE ONLY

PROFESSIONAL LAND SURVEYOR
 APRIL 2, 2019 DATE

REGISTERED PROFESSIONAL LAND SURVEYOR
 STATE OF MASSACHUSETTS
 REG. NO. 11119

DATE: APRIL 2, 2019

PROJECT: ROUTE 27 ROADWAY IMPROVEMENTS
 NORTH MAIN STREET
 (MIDDLESEX COUNTY, SOUTH DISTRICT)
 NATICK, MASSACHUSETTS

TITLE: EASEMENT PLAN

PREPARED FOR: BETA Group, Inc
 315 Norwood Park, South - 2nd Floor
 Norwood, MA 02062

DATE: APRIL 2, 2019

18 OF 20

SHEET NO. 18

GRAPHIC SCALE
 1 inch = 30 feet

0 10 20 30 40 50 60 70 80 90 100

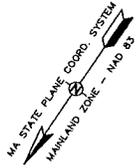
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REVISIONS:

NO.	DATE	REVISION

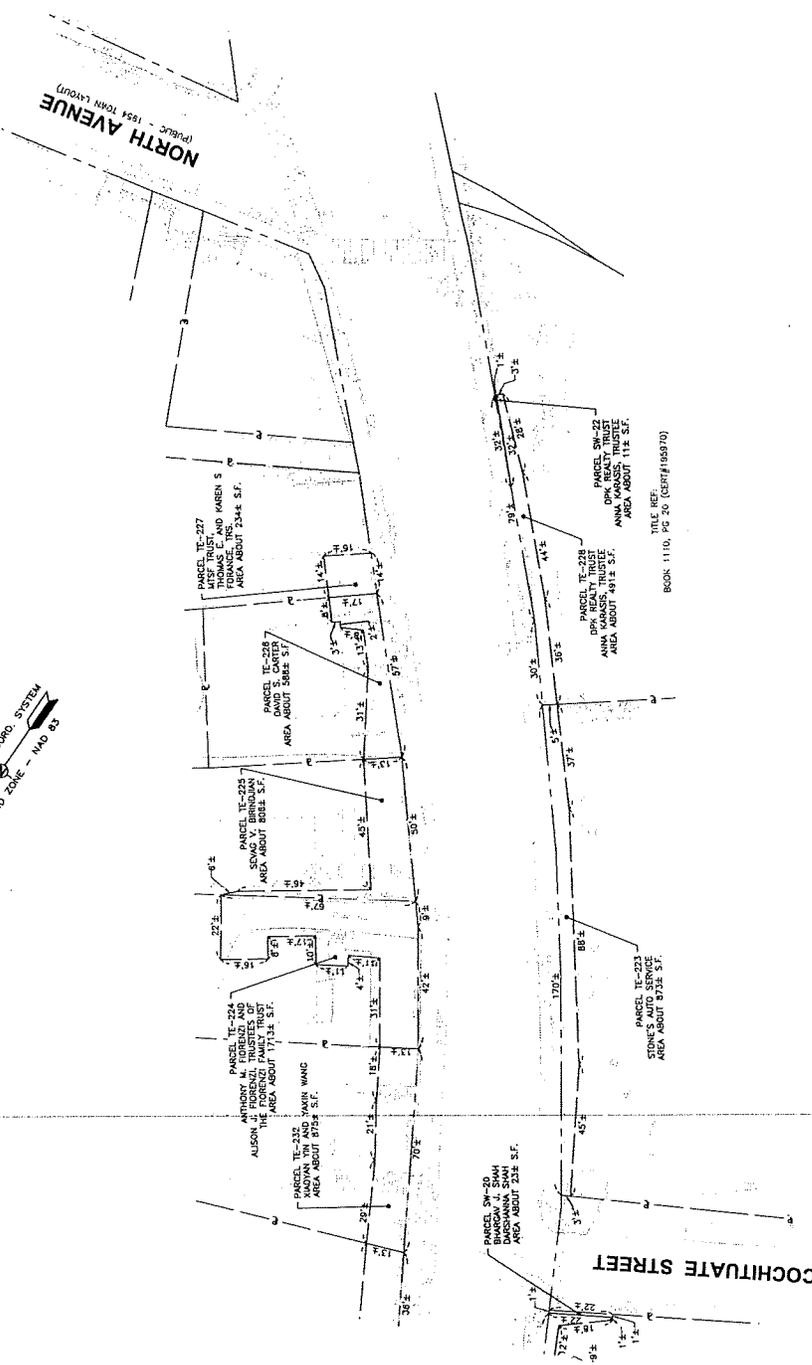
DATE ISSUED FOR REVIEW: _____
 DATE: _____
 BY: _____

561 of 2019 (18 of 20)



PLAN NO. SL OF 219
SHEET 2 OF 2

REGISTRY USE ONLY



I CERTIFY THAT THIS SURVEY AND PLAN WERE PREPARED IN ACCORDANCE WITH THE
PROVISIONS OF MASSACHUSETTS TITLE 260 CHAPTER 6B.
I CERTIFY THAT THIS PLAN HAS BEEN PREPARED IN ACCORDANCE WITH THE RULES AND
REGULATIONS OF THE REGISTER OF DEEDS.



Richard W. Gaud
PROFESSIONAL LAND SURVEYOR
APRIL 2, 2019 DATE

NOTES

1. THE EXISTING CONCRETE, LANDLIFT LINES, AND EXISTING MONUMENTATION
AND THE EXISTING PLAN ARE FROM A SURVEY BASE PLAN PREPARED BY
ASCO CORPORATION DATED JANUARY 15, 2009
2. ALSO SEE PLANS ENTITLED "LAYOUT ALTERATION, ROUTE 27 ROADWAY
IMPROVEMENTS, NORTH MAIN STREET (MIDDLESEX COUNTY, SOUTH DISTRICT)
NATICK, MASSACHUSETTS" DATED APRIL 2, 2018, PREPARED BY
LIGHHOUSE LAND SURVEYING, LLC.



PREPARED BY:
LIGHHOUSE LAND SURVEYING, LLC
75 KIMBERLY ROAD - TAUNTON, MASSACHUSETTS
Tel. 508 - 287 - 0896
website: www.lighthouselandsurveying.com

PROJECT:
ROUTE 27 ROADWAY IMPROVEMENTS
NORTH MAIN STREET
(MIDDLESEX COUNTY, SOUTH DISTRICT)
NATICK, MASSACHUSETTS

TITLE:
EASEMENT PLAN

PREPARED FOR:
BETA GROUP, INC.
315 Norwood Park South - 2nd Floor
Norwood, MA 02062

DATE:
APRIL 2, 2019

20 of 2
SHEET NO. 20

Set of 2018 (20 of 20)

Commonwealth of Massachusetts
 Executive Office of Energy and Environmental Affairs
 Massachusetts Environmental Policy Act (MEPA) Office

Environmental Notification Form

For Office Use Only

EEA#: 15989

MEPA Analyst: Eric Flaherty

The information requested on this form must be completed in order to submit a document electronically for review under the Massachusetts Environmental Policy Act, 301 CMR 11.00.

Project Name: Route 27 (North Main Street) Roadway Improvement Project		
Street Address: Route 27 (North Main Street) – Wayland T/L to North Avenue		
Municipality: Natick	Watershed: Concord (SuAsCo)	
Universal Transverse Mercator Coordinates: Start: E 305262.36, N 4687547.86 End: E 306388.94, N 4684175.25	Latitude: Start: 42.315831 End: 42.285763	Longitude: Start: -71.363061 End: -71.348273
Estimated commencement date: Fall 2019	Estimated completion date: Spring 2022	
Project Type: Transportation	Status of project design: 75 %complete	
Proponent: James Errickson, Natick Community & Economic Development		
Street Address: 13 East Central Street		
Municipality: Natick	State: MA	Zip Code: 01760
Name of Contact Person: Merrick Turner, PE		
Firm/Agency: BETA Group, Inc	Street Address: 315 Norwood Park South	
Municipality: Norwood	State: MA	Zip Code: 02062
Phone: (781) 2555-1982	Fax: (781) 255-1984	E-mail: MTurner@BETA-Inc.com
<p>Does this project meet or exceed a mandatory EIR threshold (see 301 CMR 11.03)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If this is an Expanded Environmental Notification Form (ENF) (see 301 CMR 11.05(7)) or a Notice of Project Change (NPC), are you requesting:</p> <p>a Single EIR? (see 301 CMR 11.06(8)) <input type="checkbox"/> Yes <input type="checkbox"/> No a Special Review Procedure? (see 301CMR 11.09) <input type="checkbox"/> Yes <input type="checkbox"/> No a Waiver of mandatory EIR? (see 301 CMR 11.11) <input type="checkbox"/> Yes <input type="checkbox"/> No a Phase I Waiver? (see 301 CMR 11.11) <input type="checkbox"/> Yes <input type="checkbox"/> No (Note: Greenhouse Gas Emissions analysis must be included in the Expanded ENF.) Which MEPA review threshold(s) does the project meet or exceed (see 301 CMR 11.03)?</p> <p>301 CMR 11.03(6)(b)2.b: Construction, widening or maintenance ...that will cut five or more living public shade trees of 14-inches in diameter...</p> <p>Which State Agency Permits will the project require?</p> <p>DCR Access Permit</p>		

Identify any financial assistance or land transfer from an Agency of the Commonwealth, including the Agency name and the amount of funding or land area in acres:

The project will be partially funded with \$2.5 million in state funds through the Transportation Alternatives, Congestion Mitigation/Air Quality and Surface Transportation Programs.

Summary of Project Size & Environmental Impacts	Existing	Change	Total
LAND			
Total site acreage	14		
New acres of land altered		0.2	
Acres of impervious area	13.3	0.46	13.76
Square feet of new bordering vegetated wetlands alteration		0	
Square feet of new other wetland alteration		3,380 - BLSF 13,110 - RFA	
Acres of new non-water dependent use of tidelands or waterways		0	
STRUCTURES			
Gross square footage	N/A	N/A	N/A
Number of housing units	N/A	N/A	N/A
Maximum height (feet)	N/A	N/A	N/A
TRANSPORTATION			
Vehicle trips per day	16,100 (N) 21,300 (S)	0 0	16,100 (N) 21,300 (S)
Parking spaces	N/A	N/A	N/A
WASTEWATER			
Water Use (Gallons per day)	N/A	N/A	N/A
Water withdrawal (GPD)	N/A	N/A	N/A
Wastewater generation/treatment (GPD)	N/A	N/A	N/A
Length of water mains (miles)	N/A	N/A	N/A
Length of sewer mains (miles)	N/A	N/A	N/A
Has this project been filed with MEPA before? <input type="checkbox"/> Yes (EEA # _____) <input checked="" type="checkbox"/> No			
Has any project on this site been filed with MEPA before? <input type="checkbox"/> Yes (EEA # _____) <input checked="" type="checkbox"/> No			

* (N) – north of Route 9; (S) – south of Route 9

GENERAL PROJECT INFORMATION – all proponents must fill out this section

PROJECT DESCRIPTION:

Describe the existing conditions and land uses on the project site:

The project includes two sections of Route 27, north and south of Route 9. The section north of Route 9 extends approximately 1.0 miles from the Wayland town line to the Route 9/27 Shopping Plaza driveway, just north of Route 9. The section south of Route 9 extends 1.2 miles from Pleasant Street to North Avenue in Natick Center. Route 27 within the project limits is a two lane roadway with four existing signalized intersections, a 2015 Average Daily Traffic (ADT) volume of 16,100 vehicles per day on the northerly portion and a 2015 ADT of 21,300 vehicles per day on the southerly portion.

Sidewalks, grass strips, and curbing vary throughout the project area. North of Route 9, there is generally a 4 to 5 foot wide paved sidewalk with 3 to 5 foot wide grass strips and granite curb on both sides of Route 27.

South of Route 9, there are generally 4 to 5 wide paved sidewalks and 3-5 foot wide grass strips on the west side. From Charles Street to south of General Greene Avenue, there is no sidewalk on the east side. From north of General Greene Avenue to Bacon Street the sidewalk is intermittent on the east side. Sidewalks on both sides of Route 27 vary in width and in many instances do not provide accessible paths around obstructions. There are some wheelchair ramps (WCRs) on the corners of intersections and side streets however these WCRs do not meet the latest ADA standards.

There are four existing traffic signals at the following intersections:

- Route 27 at East Evergreen Road
- Route 27 at 9/27 Plaza Driveway
- Route 27 at Bacon Street
- Route 27 at General Greene/Franconia Ave

All other intersections are under stop control on the side street.

Route 27 in the project area has a varying existing roadway width, with a typical cross section of two 13-foot lanes in each direction with a 1 to 3 feet width shoulder. Route 27 is a Town-owned roadway with a layout of approximately 50 feet in width. At intersections, the right of way is not sufficient to accommodate the proposed capacity improvements and bicycle accommodations.

Describe the proposed project and its programmatic and physical elements:

NOTE: The project description should summarize both the project's direct and indirect impacts (including construction period impacts) in terms of their magnitude, geographic extent, duration and frequency, and reversibility, as applicable. It should also discuss the infrastructure requirements of the project and the capacity of the municipal and/or regional infrastructure to sustain these requirements into the future.

The Route 27 corridor and intersections have safety and operational deficiencies which require improvements for safe and efficient operation for all users, including motor vehicles, bicycles and

pedestrians.

The project is intended to be a resurfacing, restoration and rehabilitation ("3R") project to extend the existing life of the facility. The project will provide important operational improvements such as, bicycle accommodation and accessibility throughout, pavement milling and overlay, sidewalk reconstruction, drainage system upgrades, traffic signal upgrades and new signs and pavement markings.

The proposed improvements will address the physical and operational deficiencies within the project limits. Based on examination of existing conditions, deficiencies, future traffic volumes, discussions with Town officials and MassDOT District 3, the following proposed improvements were developed to address the existing deficiencies.

- Provide a uniform 32-foot roadway width for Route 27. This will be striped for two 11-foot travel lanes and two five foot shoulders for bicycle accommodation. A significant improvement at intersections will be widening to accommodate five foot shoulders for continuity of bicycle accommodations.
- Provide additional turning lanes on Route 27 at major intersections including left turn lanes at Rutledge Road and Lake Street. An additional through/left lane will be provided at Bacon Street.
- Provide five foot minimum cement concrete sidewalk with three foot grass strips for the majority of project. At signalized intersections and between Kansas Street and Park Avenue there is no grass strip.
- Install granite curb on both sides of the roadway throughout project.
- Provide new handicapped access ramps throughout the project.
- Upgrade signal equipment at existing signalized intersections on Route 27 at East Evergreen Street and Bacon Street.
- Install new traffic signals on Route 27 at Lake Street.
- Provide signal coordination between Kansas Street/Franconia Avenue and Lake Street.
- Install a new roundabout at the intersection of Route 27 and Pine Street.
- Provide crosswalks at all signalized intersections plus at unsignalized locations on Route 27 at Oak Knoll Road, Stratford Road, Felch Court, Rutledge Road, Neil Circle (Playing Fields), Bigelow Ave/Charles Street and North Avenue. At the unsignalized crosswalk at Rutledge Road (school crossing) install enhanced treatment with flashing beacons.
- Upgrade existing drainage systems including deep sump catch basins and water quality installations to the extent practicable.
- Provide new pavement markings and signs throughout project.

Describe the on-site project alternatives (and alternative off-site locations, if applicable), considered by the proponent, including at least one feasible alternative that is allowed under current zoning, and the reasons(s) that they were not selected as the preferred alternative:

The purpose of the project is to make operational and safety improvements to pedestrian, bicycle and vehicular traffic within the project corridor in compliance with the MassDOT Healthy Transportation Policy and current MassDOT design directives. As noted, the need for the project stems from the existing operational and safety deficiencies along the corridor.

As a 3R project the scope of the project is limited per MassDOT Engineering Directive E-14-006 (Design Criteria for Highway Division Projects) to resurfacing, restoration or rehabilitation activities that extend the service life of the roadway and/or restore safe, efficient travel on an existing facility. 3R projects also include roadway projects where box widening is proposed to widen shoulders for improved bicycle accommodation and safety. 3R projects generally have no significant geometric changes to horizontal or

vertical alignment and generally have no significant widening such as widening for additional capacity.

Projects that include minor lane and/or shoulder widening may be considered to be 3R projects.

Consequently, project alternatives are limited to intersection locations since expansion of capacity or geometric improvements along the corridor is generally not feasible without property takings. The proposed project upgrades existing signals at two locations: the intersection of Route 27 at East Evergreen, and the intersection of Route 27 and Bacon Street. At the Route 27 and East Evergreen Road location, the only alternative to consider would be the "do nothing" alternative which is not acceptable considering the age and condition of the existing equipment.

At the intersection of Route 27 and Bacon Street, an additional southbound approach lane has been added. An alternative which did not include this additional approach lane was evaluated but found to be unacceptable as a result of excessive queueing on the southbound approach.

At the intersection of Route 27 and Lake Street, traffic analysis indicates that signalization is warranted. The "no build" alternative was also evaluated and found to be unacceptable as a result of failing operation on Lake Street which is the side street. A roundabout alternative was also evaluated at this location but determined infeasible due to right of way impacts on abutting properties.

At the intersection of Route 27 and Pine Street a signalized design was also analyzed and determined to be a workable alternative. The "no build" alternative was also evaluated and found to be unacceptable as a result of failing operation on Pine Street which is the side street. The roundabout option at this location was preferred as result of better overall traffic flow, better queueing characteristics and better traffic calming benefits.

NOTE: The purpose of the alternatives analysis is to consider what effect changing the parameters and/or siting of a project, or components thereof, will have on the environment, keeping in mind that the objective of the MEPA review process is to avoid or minimize damage to the environment to the greatest extent feasible. Examples of alternative projects include alternative site locations, alternative site uses, and alternative site configurations.

Summarize the mitigation measures proposed to offset the impacts of the preferred alternative:

The project does not result in adverse impacts in the project corridor however several stormwater management infrastructure improvements are being implemented to provide improved water quality for stormwater discharges from the roadway. These measures include providing deep sump catchbasins throughout the corridor, additional stormwater piping and construction of treatment BMPs at two locations.

Water Quality Location 1 – Adjacent to Snake River

Proposed features in this location include the installation of a diversion manhole to divert the "first flush" or low flows via a 12" RCP pipe with riprap pad to a proposed sediment forebay. The sediment forebay has been sized to accommodate the first 0.1 inch of rainfall from approximately 105,600 square feet or 2.4± acres of impervious area. Overflow from the forebay will be through stone check dam.

Higher flows from larger storm events are anticipated to flow over the diversion weir and discharge to a riprap lined stilling basin to reduce energy and velocity of the flow prior to final overflow into the adjacent Snake River, tributary to Lake Cochituate. The stilling basin has been design to accommodate the anticipated 10-year storm flow.

The Evolving Interpretation of Article 97 *Smith v. Westfield, 478 Mass 49 (2017)*

In Smith v. Westfield, 478 Mass. 49 (2017), the Supreme Judicial Court considered whether Article 97 of the Amendments to the Massachusetts Constitution applied to a parcel of land originally acquired by the city through a tax taking. The Court held that the property was subject to Article 97 because the city, through its actions, clearly expressed its intent to protect the property permanently. This decision expands the Court's previous decision in Mahajan v. Department of Environmental Protection, 464 Mass 604, 615 (2013), and allows municipalities more opportunity to permanently protect land for Article 97 purposes.

By way of background, Article 97, by its express terms, applies to land "taken or acquired" for "conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources". Once land is acquired for an Article 97 purpose, it is permanently protected for that particular purpose unless the General Court votes by a 2/3 vote of each house to remove such protection. In addition to the seminal opinion of the Attorney General on this topic, the Supreme Judicial Court has rendered two important opinions interpreting Article 97. In the first, Hanson v. Lindsay, 444 Mass. 502 (2005), the seminal fact was that town meeting had voted to authorize the conservation commission "to accept for conservation purposes a deed" to property that the town originally acquired through a tax foreclosure (emphasis added). The Court held that such land was not protected by Article 97 where the property was not acquired for an Article 97 purpose and no deed restriction had been recorded in connection with the referenced town meeting vote. In Mahajan, the Court interpreted Article 97 more broadly, holding that Article 97 applies to land not originally acquired or taken for an Article 97 purpose provided that such land was later specifically "designated" for an Article 97 purpose.

The question left undecided in Mahajan, whether Article 97 applies to land that was not acquired for an Article 97 purpose and that was not subject to a recorded restriction, was answered in Westfield. In Westfield, the property at issue, originally acquired by tax taking in 1939, became known as the Cross Street Playground, with two baseball fields and a playground located thereon, and was used by the public for over 60 years in that capacity. The city council placed the property in the custody of the playground commission, passed an ordinance formally recognizing it as a playground, and included the property in its open space plan recognizing it as public land with a "full" degree of protection and "active" recreation potential. Importantly, in 1979, the city received a grant under the federal Land and Water Conservation Fund Act of 1965 (the "Act") to rehabilitate the playground, and signed a contract agreeing to comply with the Act. The purpose of the Act was to assure "outdoor recreation resources" for all persons, and, importantly, mandated that "[n]o property acquired or developed with assistance [under the Act] shall . . . be converted to other than public outdoor recreation uses" without the approval of the United States Secretary of the Interior.

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In 2011, the city council transferred the property to the school department for the construction of an elementary school. A group of residents sought to enjoin the construction, claiming the property was protected by Article 97, and therefore that the city was required to obtain approval of the General Court to change the use of the property. The Superior and Appellate Courts held that Article 97 did not apply because the property was not acquired for an Article 97 purpose and was never subject to a recorded restriction. However, the Appeals Court, in its concurrence, urged the Supreme Judicial Court to reconsider the Hanson decision because the plain language of Article 97 does not require a recorded restriction.

Based upon the facts outlined above, the Westfield court concluded that Article 97 applies to the Cross Street Playground because the city's actions exhibited a clear intent to dedicate the land for park and playground purposes in perpetuity. The Court held that the "totality of the circumstances" must be analyzed to determine if the city intended to dedicate the land permanently as a public park and where the public accepts such use by actually using the land as a public park. To the Court, "the determinative factor", or the clearest expression of the city's intent, was the city's acceptance of the provisions of the Act, by which it forfeited its ability to use the property for any use other than outdoor public recreation permanently without the consent of the federal government. The Court held that Article 97 applies to land not originally acquired for an Article purpose where the municipality demonstrates a "clear and unequivocal intent to dedicate the land permanently as a public park and where the public accepts such use by actually using the land as a public park". (Emphasis added).

Post-Westfield Q & A:

- ***Is it necessary to have a recorded restriction to protect land under Article 97?*** No. The Court expressly stated in Westfield that it is not necessary to record a deed or a conservation restriction for land to be protected under Article 97. Nevertheless, a recorded restriction is one of the means by which land may become subject to Article 97.
- ***What factors should be examined to determine clear and unequivocal intent to permanently dedicate land under Article 97?*** While the Court in Westfield stated that the city's acceptance of a federal grant was the most significant evidence of its intent to permanently dedicate land, other actions could also demonstrate such intent, including votes of the local legislative body, use of such land by the public, appropriation of funds for the particular Article 97 purpose, and conditions associated with any state or federal grant funding, if applicable.
- ***Is recreational land subject to Article 97?*** There are no appellate-level cases directly addressing whether land acquired for or dedicated to recreational purposes is subject to the provisions of Article 97. The Court could have opined on this issue in Westfield, since the property at issue is described as including two little league baseball fields and a playground. However, since the city "did not challenge the plaintiff's assertion that the use of the Cross Street Playground fell within the range of environmental purposes contemplated by art. 97", the Court did not address this question directly. It remains possible that an appellate level court will find that recreation land is protected under Article 97.

- **How can a municipality ensure that land is subject to Article 97?** The answer to this question depends on how the land was acquired.

Original Acquisition: A municipality can dedicate property to one or more Article 97 purposes when it originally acquires the land. First, the legislative body must authorize the acquisition for an expressly-stated Article 97 purpose, and in conjunction therewith dedicate the land to be used permanently for that purpose. Second, we recommend that the vote of the legislative body be recorded with the appropriate registry of deeds. In addition, or alternatively, a formal "Acceptance of Deed" may be recorded with the deed or other recordable instrument, signed by the appropriate municipal entity and specifically reciting that the property is being accepted for that particular Article 97 purpose.

Later Dedication: In circumstances where a municipality wishes to dedicate property it already owns to one or more Article 97 purposes, it may take the following actions, among others, to exhibit its intent to permanently protect the property. First, the local legislative body should vote to dedicate the property to the particular Article 97 purpose in perpetuity. If the property is held for a different specific purpose, the legislative body must also transfer custody of the land to an appropriate board or officer for such purpose. If the land is already being used for the particular Article 97 purpose to which it is dedicated, no further action need be taken. If not, a municipality may wish to take additional action to demonstrate its intent with respect to the property, as appropriate, including but not limited to, erecting or affixing signs stating that the property is dedicated to a particular Article 97 purpose, including the property in its open space plan, including the property in the list of properties held under the jurisdiction of a particular board or commission, and/or allowing public use of the property for the stated Article 97 purpose.

If you have any further questions concerning the Westfield case, or Article 97 generally, please contact Attorneys Shirin Everett (severett@k-plaw.com) or Katharine L. Klein (kklein@k-plaw.com,) at 617-556-0007.

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