

## **Appendix D8**

Section 6(f) and Section 4(f) Correspondence with  
the City of Buffalo

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**From:** Rabb, Andrew R <arabb@ch.ci.buffalo.ny.us>

**Sent:** Monday, March 13, 2023 3:49 PM

**To:** James, Renjit P. (DOT) <Renjit.James@dot.ny.gov>; Marton, Nathan R <NMarton@ch.ci.buffalo.ny.us>

**Cc:** Vaidya, Sanjyot S. (DOT) <Sanjyot.Vaidya@dot.ny.gov>; Leslie, Catherine S. (DOT) <Catherine.Leslie@dot.ny.gov>; Prockup, Jessica (DOT) <Jessica.Prockup@dot.ny.gov>; Simon, Timothy (DOT) <Timothy.Simon@dot.ny.gov>; Sheridan, Katie (DOT) <Katie.Sheridan@dot.ny.gov>

**Subject:** Re: PIN 5512.52, NYS Route 33, Kensington Expressway Project - Request for information re: parks

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Afternoon Renjit,

I've asked DPW survey room if city has any boundary maps or descriptions on the parks in your attachment. Will let you know once they respond back to me, but it may be possible that we do not have complete survey info on any of them.

The only one I have a record of with LWCF grant funding is:

LWCF #36-00103 & #36-00148	Florida-Northland (Horace Johnson) Park
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Best,  
-Andy

Andy Rabb  
Dep. Commissioner  
DPW/Parks

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**From:** James, Renjit P. (DOT) <[Renjit.James@dot.ny.gov](mailto:Renjit.James@dot.ny.gov)>

**Sent:** Friday, March 10, 2023 2:38 PM

**To:** Rabb, Andrew R <arabb@ch.ci.buffalo.ny.us>; Marton, Nathan R <NMarton@ch.ci.buffalo.ny.us>

**Cc:** Vaidya, Sanjyot S. (DOT) <[Sanjyot.Vaidya@dot.ny.gov](mailto:Sanjyot.Vaidya@dot.ny.gov)>; Leslie, Catherine S. (DOT) <[Catherine.Leslie@dot.ny.gov](mailto:Catherine.Leslie@dot.ny.gov)>; Prockup, Jessica (DOT) <[Jessica.Prockup@dot.ny.gov](mailto:Jessica.Prockup@dot.ny.gov)>; Simon, Timothy (DOT) <[Timothy.Simon@dot.ny.gov](mailto:Timothy.Simon@dot.ny.gov)>; Sheridan, Katie (DOT) <[Katie.Sheridan@dot.ny.gov](mailto:Katie.Sheridan@dot.ny.gov)>

**Subject:** PIN 5512.52, NYS Route 33, Kensington Expressway Project - Request for information re: parks

You don't often get email from [renjit.james@dot.ny.gov](mailto:renjit.james@dot.ny.gov). [Learn why this is important](#)

**ATTENTION: This email came from an external source. Do not open attachments. NEVER click on links YOU DON'T KNOW where its taking you. Copy, Paste, Inspect, Decide.**

Good afternoon,

I am writing to request some parks-related information for use in studying the NYS Route 33 Kensington Expressway Project ("the Project"). This information will assist NYSDOT with assessing potential effects and developing avoidance measures, as appropriate.

A total of 7 parks and recreational resources have been identified in the vicinity of the Project and are shown on the attached map. Please let us know if any of these 7 parkland areas have received Land and Water Conservation Fund (LWCF - 54 USC 2003 et seq.) and/or Urban Park and Recreation Recovery Act (16 U.S.C. § 2501–2514) funds.

In addition, we request any available survey or official boundary mapping that the Parks and Recreation Division has for the following resources closest to the project corridor: Martin Luther King Jr. Park, Norway Park Medians, Linden Park Median, and the Scajaquada Trail in the vicinity of the NYS Route 33 crossing.

As you know, the Project is progressing quickly. As such, we would appreciate a response to this inquiry within the next 2 weeks, if possible.

Thank you,

Renjit

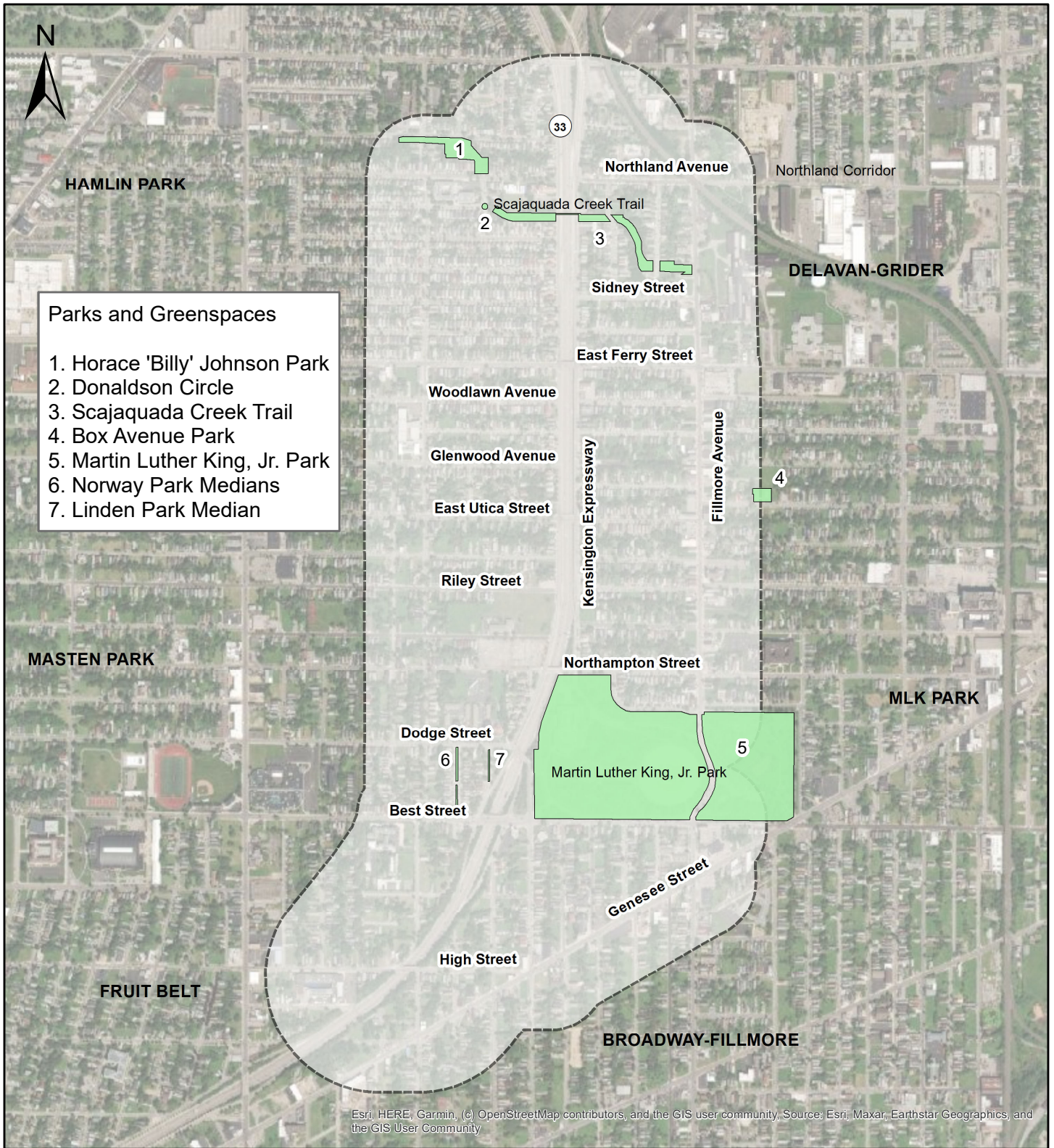
**Renjit P. James**

Assistant Regional Design Engineer

**New York State Department of Transportation, Region 5**

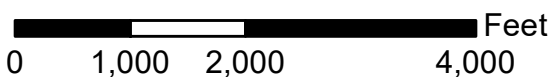
100 Seneca Street, Buffalo, NY 14203

[\(716\) 847-3229](tel:7168473229) | [renjit.james@dot.ny.gov](mailto:renjit.james@dot.ny.gov)



## Legend

- General Study Area
- Parks and Greenspaces



## Parks and Recreation Areas in the General Study Area

PIN 5512.52

NYS Route 33, Kensington Expressway Project  
Erie County, NY





**BYRON W. BROWN**  
Mayor of Buffalo

**NATHAN R. MARTON**  
Commissioner

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**DEPARTMENT OF PUBLIC WORKS, PARKS & STREETS**

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September 1, 2023

Frank Cirillo  
Regional Director, NYSDOT Region 5  
100 Seneca St.  
Buffalo, NY 14203

RE: Section 4(f) Use of Parkland  
Pin 5512.52  
NYS Route 33, Kensington Expressway Project  
City of Buffalo, Erie County, New York

Dear Frank Cirillo,

Pursuant to facts and interpretations set forth in that certain August 23, 2023, letter (copy attached for ease of reference) and pertinent drawings MLK-1 and MLK-2 emailed on August 31, 2023 (copies attached for ease of reference) from NYSDOT to the undersigned regarding "Section 4(f) Use of Parkland PIN 5512.52  
NYS Route 33, Kensington Expressway Project City of Buffalo, Erie County, New York", I am determining that the temporary occupancy of Martin Luther King, Jr. Park for construction of the Project meets the conditions under 23 CFR Part 774.13(d) so that the temporary occupancy does not constitute a use within the meaning of Section 4(f).

The extent to which formal temporary easements are going to be required, please forward to me for review the proposed easement documents and metes and bounds legal descriptions and surveys/maps as may be pertinent so that steps towards municipal approvals of formal temporary easements can be taken.

If you have any questions regarding the information provided, please call me at (716) 851-5636.

Sincerely,

  
Nathan R. Marton  
Commissioner





**Department of  
Transportation**

**KATHY HOCHUL**  
Governor

**MARIE THERESE DOMINGUEZ**  
Commissioner

**NICOLAS A. CHOUBAH, P.E.**  
Chief Engineer

August 23, 2023

Commissioner Nathan R. Marton  
City of Buffalo Department of Public Works  
65 Niagara Square  
Room 502  
Buffalo, New York 14202

RE: Section 4(f) Use of Parkland  
PIN 5512.52  
NYS Route 33, Kensington Expressway Project  
City of Buffalo, Erie County, New York

Dear Nathan Marton,

The Federal Highway Administration (FHWA) and the New York State Department of Transportation (NYSDOT) are progressing the New York State (NYS) Route 33, Kensington Expressway Project (the "Project") in the City of Buffalo. As a project receiving Federal Highway Administration (FHWA) funding, the Project is subject to the requirements of Section 4(f) of the U.S. Department of Transportation (USDOT) Act of 1966 (now codified in 23 USC §138 and 49 USC §303), and the FHWA implementing regulation, 23 CFR Part 774.

Section 4(f) prohibits the Secretary of Transportation from approving any program or project that requires the use of a Section 4(f) resource, including public parks/recreation areas and historic sites, unless there is no feasible and prudent avoidance alternative to the use of such land and all possible planning has been undertaken to minimize harm to the Section 4(f) resource. In accordance with the applicable regulations and FHWA guidance, several parks and recreational resources in the vicinity of the Project are considered Section 4(f) resources, including Martin Luther King (MLK), Jr. Park. MLK, Jr. Park is also considered a Section 4(f) property as a historic site.

No permanent incorporation of land from MLK Jr. Park would be required for the Project. However, temporary easements would be required to construct the Project. Temporary easements, totaling 0.58-acre, would be required for the installation of temporary support of excavation tiebacks (metal cables underground in rock having no surface impact on park function) in two discrete locations. The duration of the construction work is anticipated to last for up to one month and the support of excavation tiebacks would remain in place permanently (underground). Access to this



location would be restricted for approximately half of the anticipated construction window (approximately 3 to 4 years) for the Project.

A temporary easement would also be required for landscaping improvements in the northwest corner of the park, in the vicinity of Northampton Street and West Parade Avenue (0.18-acre). This isolated area is separated from the majority of the park by the Kensington Expressway and has no recreational facilities. The landscaping improvements would temporarily limit access to this portion of the park for approximately one month; however, the remainder of the park would remain open, accessible and available for use throughout the construction period.

A temporary easement would also be required at the entrance to the park near Best Street, Herman Street and West Parade Avenue, where the existing roadway and sidewalk would be reconstructed to conform to the new roundabout proposed at this intersection. The reconstruction of the entrance roadway and sidewalk work would occur within the existing pavement area. This entrance may be temporarily closed during construction for up to two weeks. Nearby entrances would be available to access the park so that this temporary closure would not adversely affect park users.

Finally, temporary easements would be required for the reconstruction of curb ramps at other park entrances along Best Street and Fillmore Avenue. Specifically, this work would occur at the intersections of Best Street and Sweeney Street (0.01-acre), Best Street and Fillmore Avenue (0.03-acre), and Fillmore Avenue and North Parade Avenue (0.01-acre). Work at each of these locations would last for up to two weeks and would be staggered so as not to occur concurrently or at the same time as the work at the southwest park entrance. As a result, park access would not be adversely affected.

The temporary easements within MLK, Jr. Park would accommodate short-term construction activities associated with the Project. Consistent with the criteria set forth in 23 CFR Part 774.13(d), the temporary occupancy of the MLK, Jr. Park would not constitute a use of this Section 4(f) property for the following reasons:

- In each location, the total amount of time that the park is temporarily occupied would be less than the overall construction period for the Project, and there would be no change in the ownership of the land.
- The Project would involve only minor construction activities within the park, including reconstruction of the MLK, Jr. Park entrance, sidewalk/curb ramp improvements, and landscaping. The construction activities would not impede access to recreational facilities. The underground tiebacks would have no effect on the surface use of the park. The temporary effects of landscaping installation and entrance roadway improvements at Best Street would have very limited effect in terms of both duration and area of the park affected.
- The Project would not result in permanent adverse physical impacts or interfere with the protected activities, features, or attributes of MLK, Jr. Park. The locations of the temporary occupancy at MLK, Jr. Park would be away from the main



recreational features of the park, totaling approximately 1.5% of the overall acreage.

- The land being temporarily occupied would be returned to its current uses, in the same or improved condition, upon the completion of construction.

On behalf of the FHWA, NYSDOT respectfully requests that the City of Buffalo, as an official with jurisdiction over MLK, Jr. Park, provide concurrence in writing with FHWA's determination that the temporary occupancy of MLK, Jr. Park for construction of the Project meets the conditions under 23 CFR Part 774.13(d) so that the temporary occupancy does not constitute a use within the meaning of Section 4(f). Please provide your concurrence in a letter that includes the following (or similar) statement:

*"The temporary occupancy of Martin Luther King, Jr. Park for construction of the Project meets the conditions under 23 CFR Part 774.13(d) so that the temporary occupancy does not constitute a use within the meaning of Section 4(f)."*

We would appreciate your response, which will be made part of the administrative record for the Project, no later than September 1, 2023. If you have any questions or need additional information, please feel free to contact Jessica Prockup at (518) 417-6642 or at [jessica.prockup@dot.ny.gov](mailto:jessica.prockup@dot.ny.gov).

Sincerely,

*Catherine Leslie*

Catherine Leslie  
Director, EIS & Special Projects Bureau

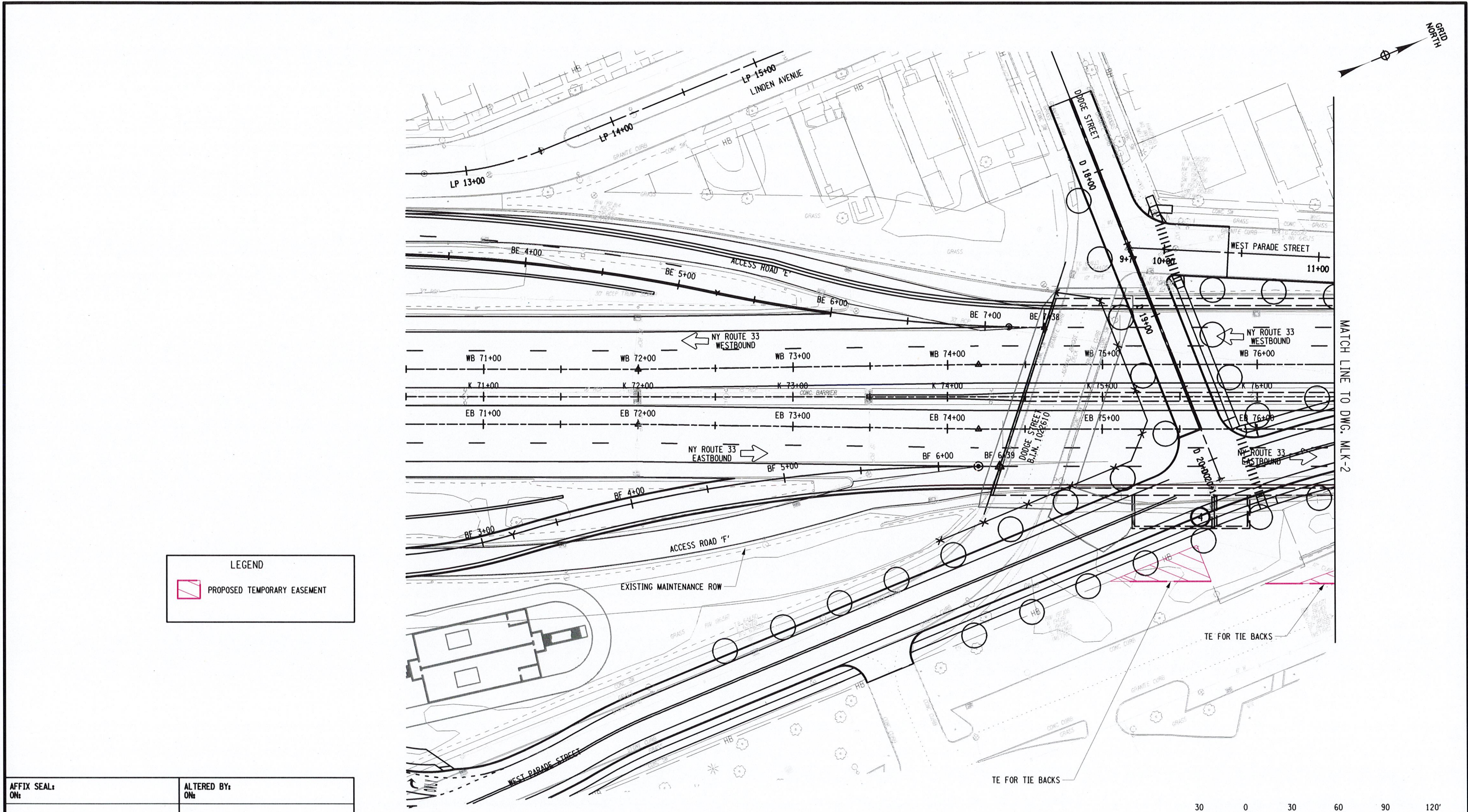
CL/JP

cc. M. Seymour, FHWA  
R. Davies, FHWA  
S. Winkelhake, NYSDOT MO  
R. Wilder, NYSDOT MO  
J. Prockup, NYSDOT MO  
S. Vaidya, NYSDOT R-5  
A. Gott, NYSDOT R-5  
D. Laistner, NYSDOT R-5




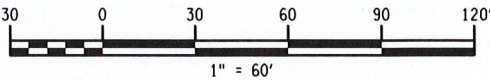
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**LEGEND**

 PROPOSED TEMPORARY EASEMENT



NOTES:  
 1. EXACT LOCATIONS OF TEMPORARY EASEMENTS TO REPLACE LEAD WATER SERVICES ARE NOT KNOWN (THEY WILL BE IN THE AREA OF THE EXISTING WATER SERVICE TO THE HOUSE).

AS-BUILT REVISIONS DESCRIPTION OF ALTERATIONS:	NEW YORK STATE ROUTE 33	PIN 5512.52	BRIDGES	CULVERTS	ALL DIMENSIONS IN FT UNLESS OTHERWISE NOTED	CONTRACT NUMBER
	KENSINGTON EXPRESSWAY PROJECT & LOCAL STREETS					MLK PARK TEMPORARY EASEMENTS KENSINGTON EXPRESSWAY
	CITY OF BUFFALO					
	COUNTY: ERIE	REGION: 05				

IT IS A VIOLATION OF LAW FOR ANY PERSON, UNLESS THEY ARE ACTING UNDER THE DIRECTION OF A LICENSED PROFESSIONAL ENGINEER, ARCHITECT, LANDSCAPE ARCHITECT, OR LAND SURVEYOR, TO ALTER AN ITEM IN ANY WAY. IF AN ITEM BEARING THE STAMP OF A LICENSED PROFESSIONAL IS ALTERED, THE ALTERING ENGINEER, ARCHITECT, LANDSCAPE ARCHITECT, OR LAND SURVEYOR SHALL STAMP THE DOCUMENT AND INCLUDE THE NOTATION "ALTERED BY" FOLLOWED BY THEIR SIGNATURE, THE DATE OF SUCH ALTERATION, AND A SPECIFIC DESCRIPTION OF THE ALTERATION.






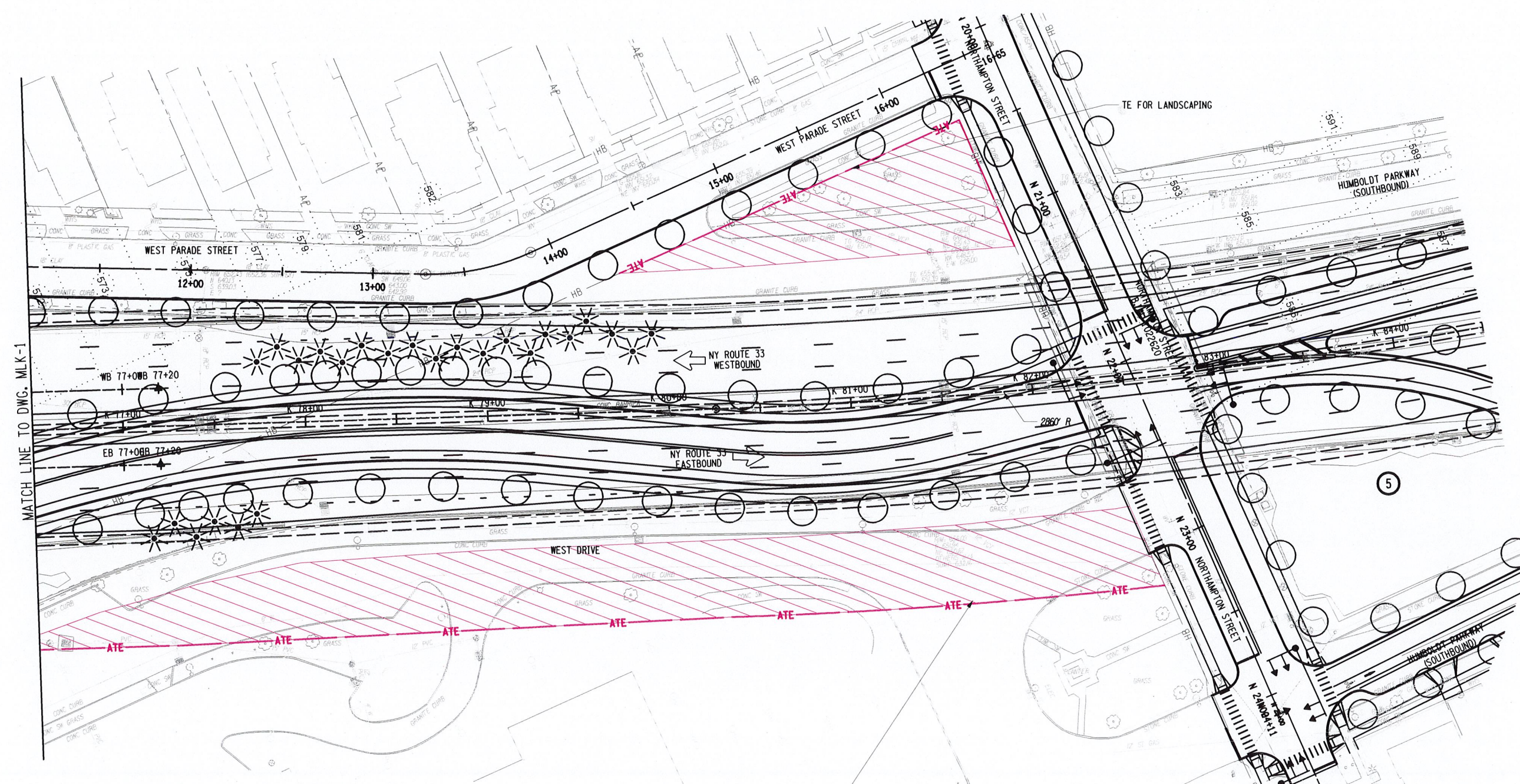


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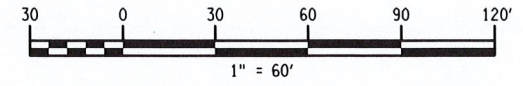
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 PROPOSED TEMPORARY EASEMENT



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TE FOR SOE WALL TIE BACKS DURING CONSTRUCTION OF TUNNEL  
 ACCESS TO DRIVEWAY AND PARKING SHALL BE MAINTAINED AT ALL TIMES



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 **Watts Architects & Engineers**

 **LaBella**  
Powered by partnership.

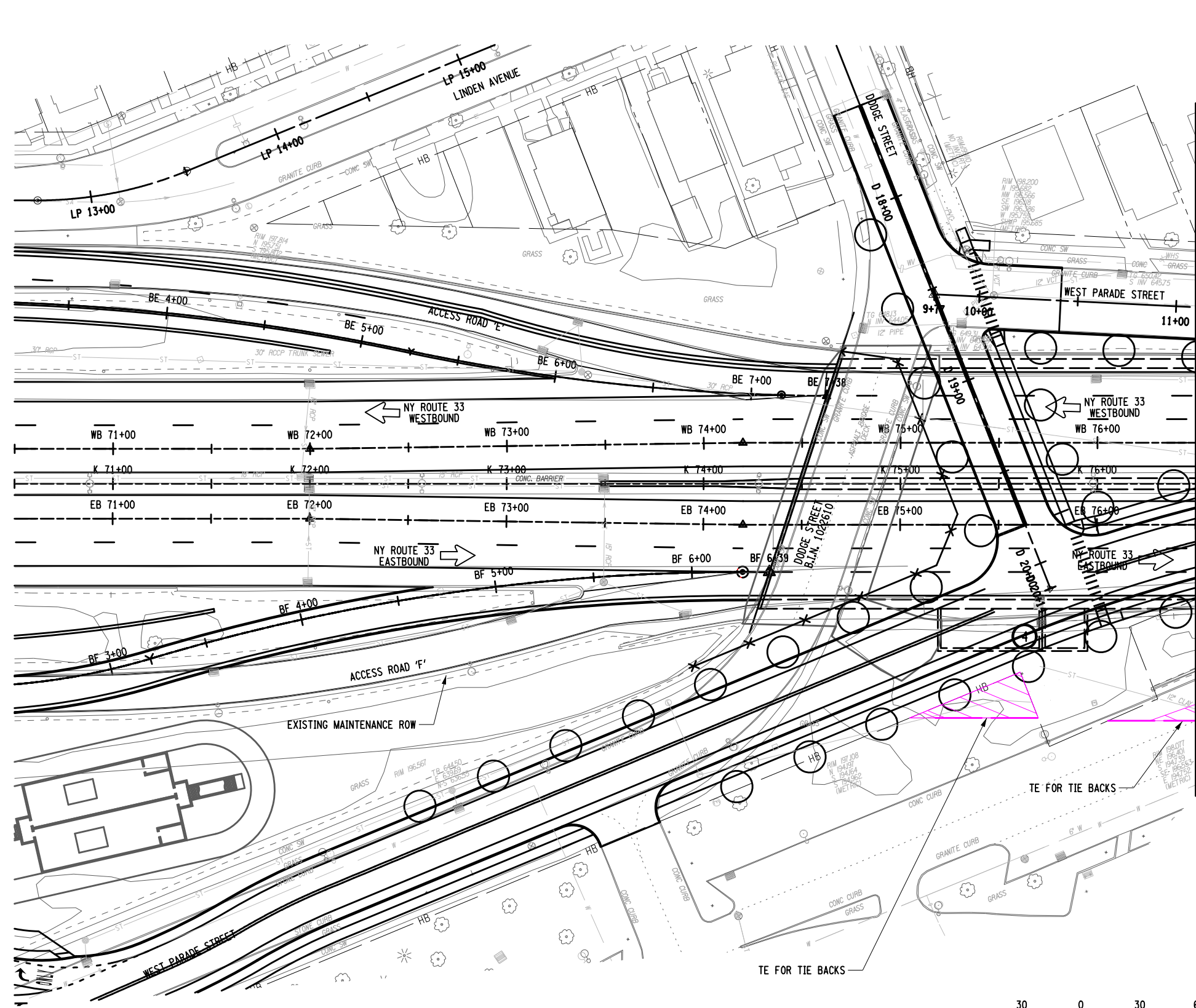
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 **Department of Transportation**



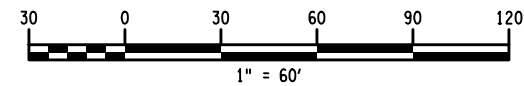
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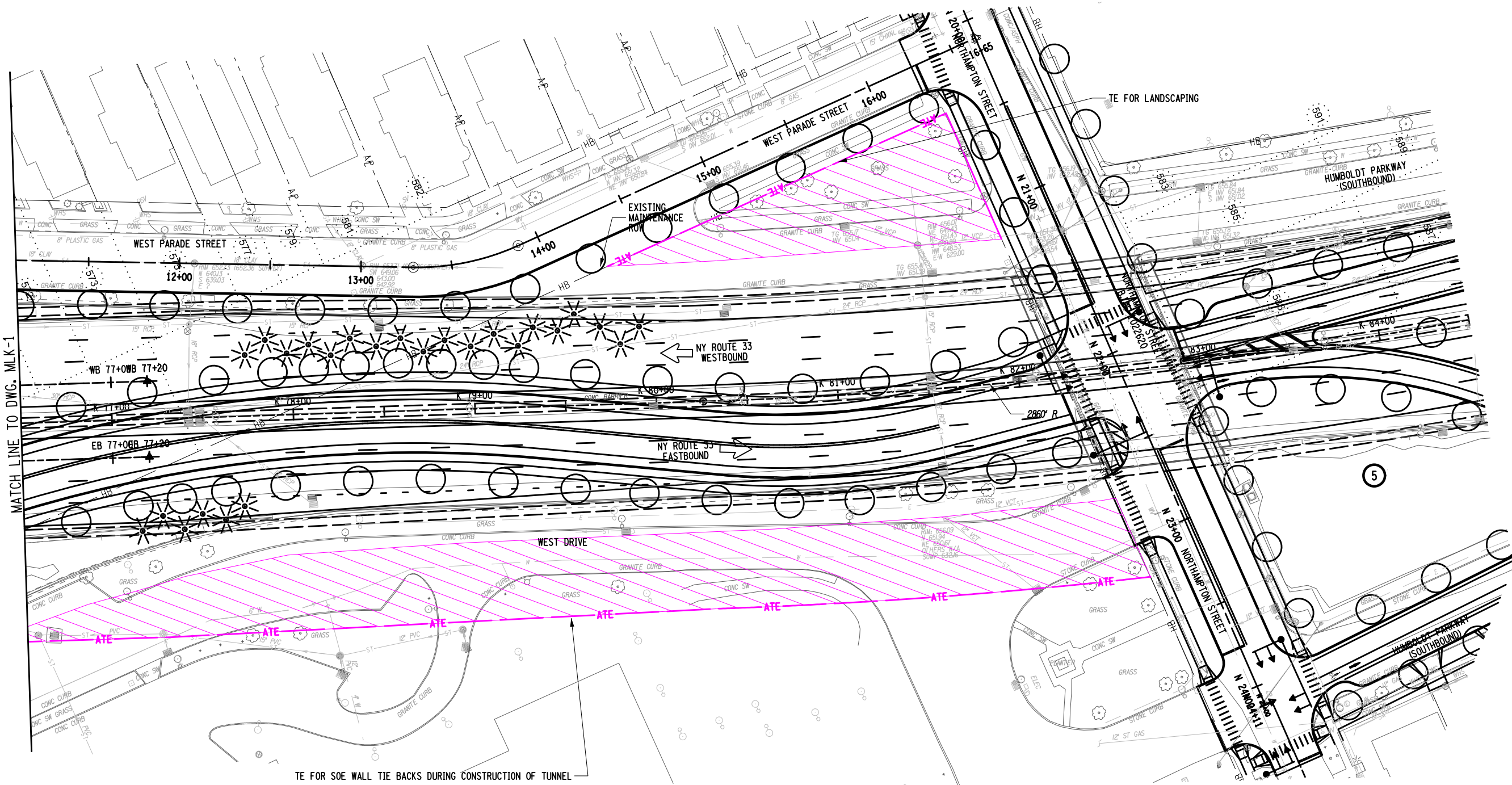
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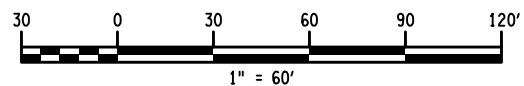
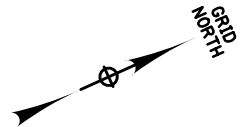
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GRID NORTH



**LEGEND**

  PROPOSED TEMPORARY EASEMENT



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MLK PARK TEMPORARY EASEMENTS KENSINGTON EXPRESSWAY						DRAWING NO. MLK-2 SHEET NO.
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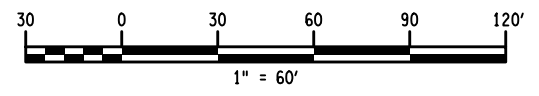
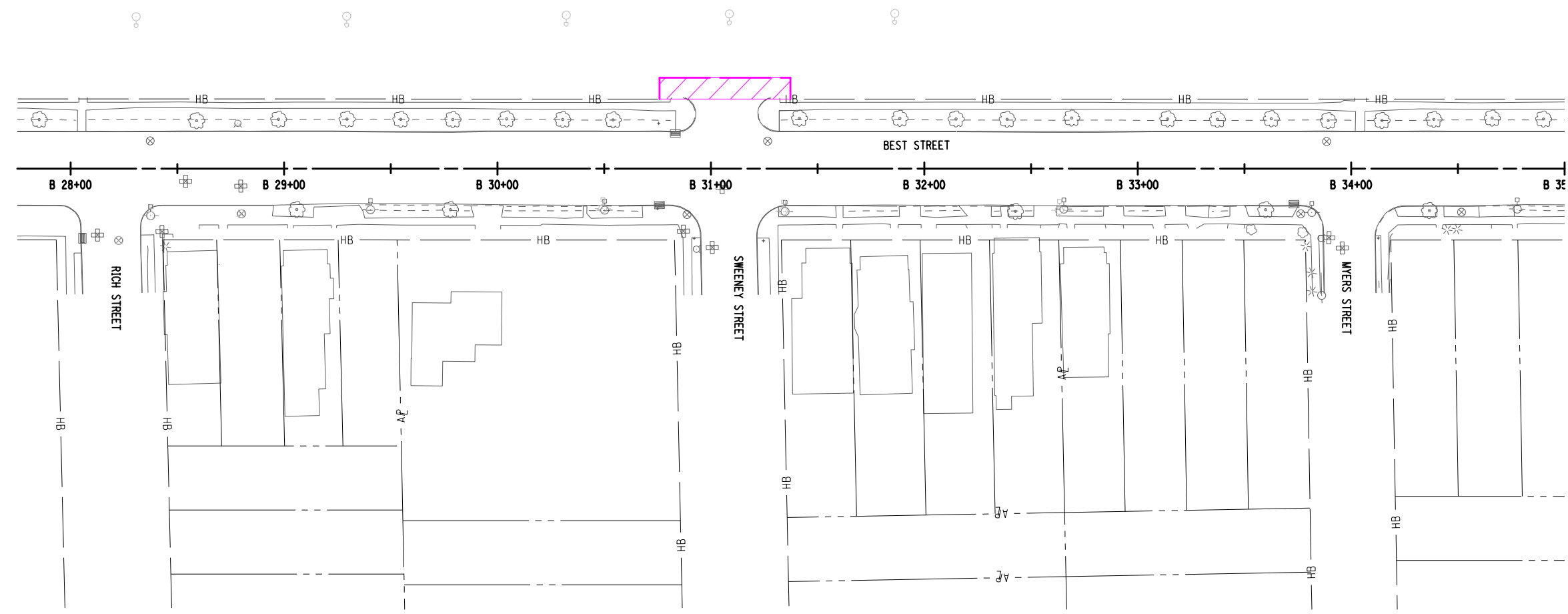


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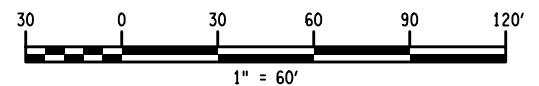
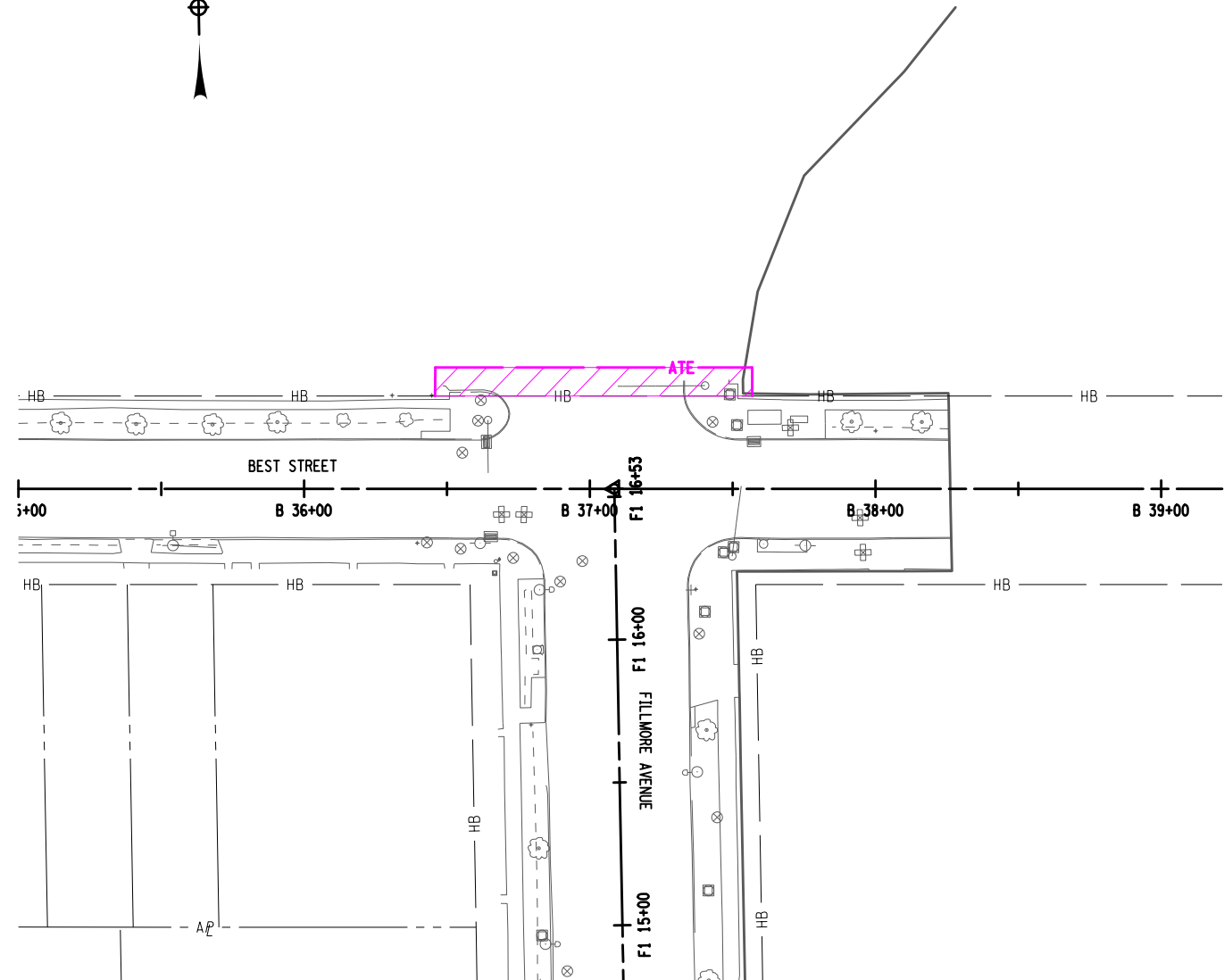
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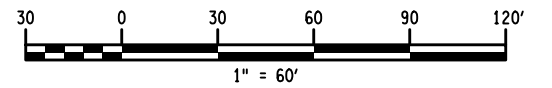
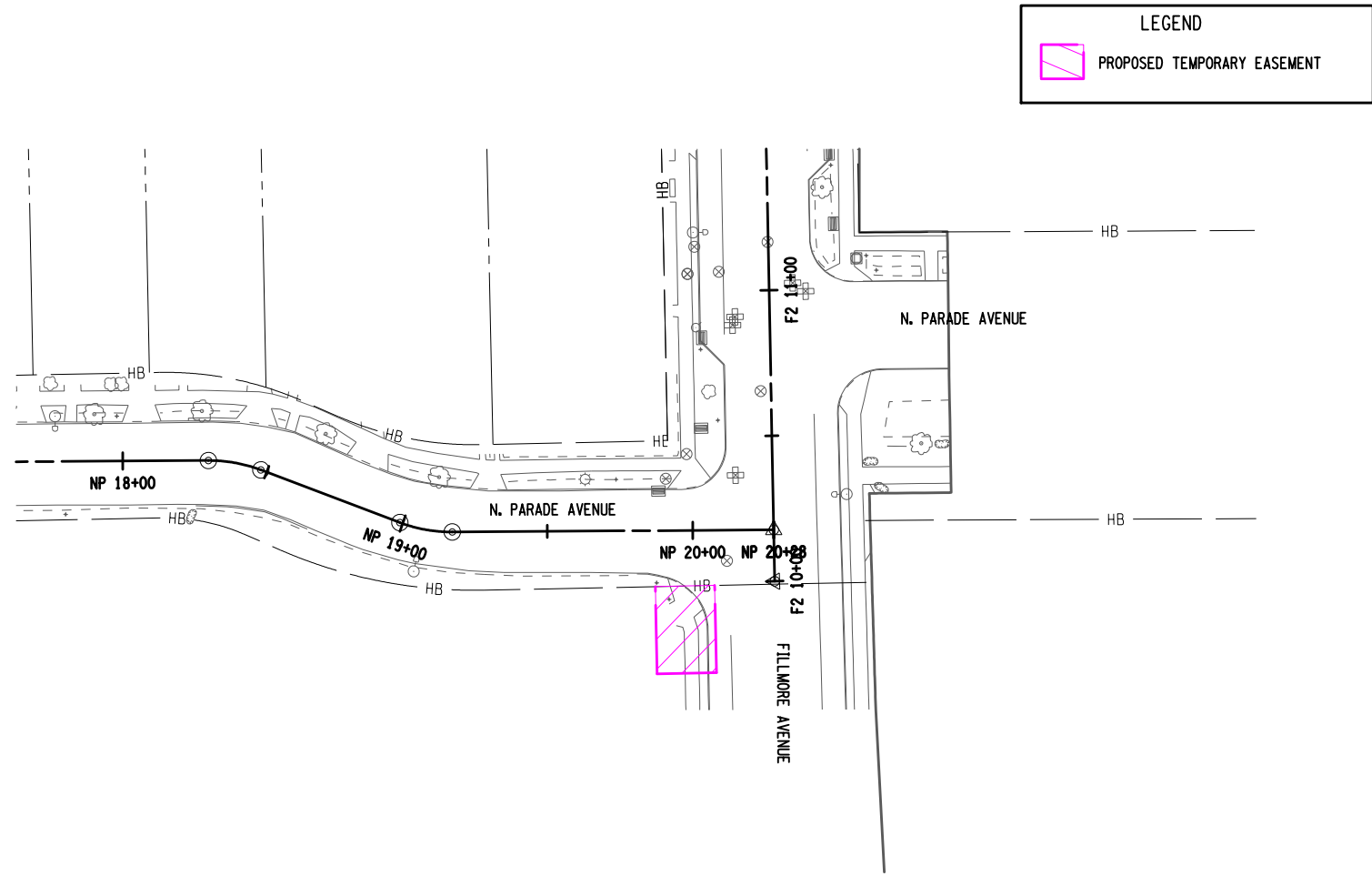


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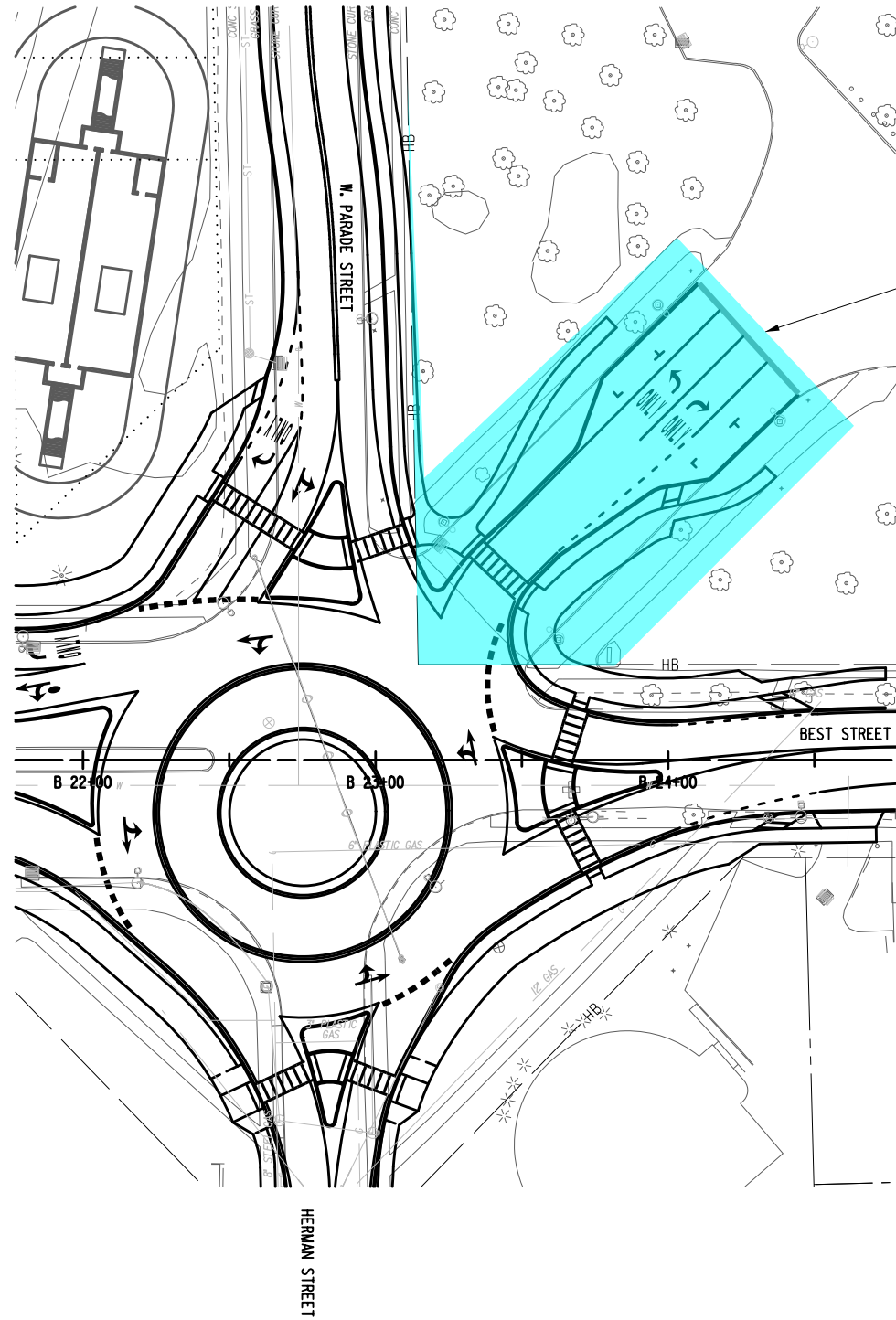
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	CITY OF BUFFALO					SHEET NO.
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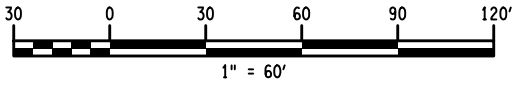
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PROPOSED TEMPORARY EASEMENT

PROPOSED TEMPORARY OCCUPANCY



TEMPORARY OCCUPANCY



<b>AFFIX SEAL:</b> ON:	<b>ALTERED BY:</b> ON:

AS-BUILT REVISIONS  
 DESCRIPTION OF ALTERATIONS:

NEW YORK STATE ROUTE 33  
 KENSINGTON EXPRESSWAY PROJECT & LOCAL STREETS  
 CITY OF BUFFALO  
 COUNTY: ERIE REGION: 05

PIN 5512.52

BRIDGES

CULVERTS

ALL DIMENSIONS IN FT UNLESS OTHERWISE NOTED

CONTRACT NUMBER

MLK PARK  
 TEMPORARY EASEMENTS  
 KENSINGTON EXPRESSWAY

DRAWING NO. MLK-6  
 SHEET NO.

IT IS A VIOLATION OF LAW FOR ANY PERSON, UNLESS THEY ARE ACTING UNDER THE DIRECTION OF A LICENSED PROFESSIONAL ENGINEER, ARCHITECT, LANDSCAPE ARCHITECT, OR LAND SURVEYOR, TO ALTER AN ITEM IN ANY WAY. IF AN ITEM BEARING THE STAMP OF A LICENSED PROFESSIONAL IS ALTERED, THE ALTERING ENGINEER, ARCHITECT, LANDSCAPE ARCHITECT, OR LAND SURVEYOR SHALL STAMP THE DOCUMENT AND INCLUDE THE NOTATION "ALTERED BY" FOLLOWED BY THEIR SIGNATURE, THE DATE OF SUCH ALTERATION, AND A SPECIFIC DESCRIPTION OF THE ALTERATION.

