

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

June 12, 2023

**AN ORDER TO ACCEPT STATE GRANTS, AND TO APPROVE OR REALLOCATE GAP FUNDING,
FOR CONSTRUCTION OF THE MARKET LANDING PARK EXPANSION PROJECT**

ORDERED:

THAT, The CITY COUNCIL of the City of Newburyport hereby approves the following related actions, for the purpose of timely advancing construction of the Market Landing Park Expansion Project:

1. Acceptance of State Grant Funding:

The Council accepts, and authorizes use of, the following state grants in accordance with M.G.L. Chapter 44, Section 53A:

- a. State Grant (*approved*): PARC Grant
 - i. State Agency: Executive Office of Energy and Environmental Affairs (EOEEA), Division of Conservation Services (DCS)
 - ii. Amount (*awarded*): \$400,000
 - iii. Purpose: Construction of Market Landing Park Expansion

- b. State Grant (*pending approval*): MassTrails Grant
 - i. State Agency: Executive Office of Energy and Environmental Affairs (EOEEA), Department of Conservation and Recreation (DCR)
 - ii. Amount (*requested*): \$399,936
 - iii. Purpose: Construction of Market Landing Park Expansion (*use of this grant limited to shared use path, shoulder plazas and related work only through this "corridor" of the larger project*)

2. Acceptance of Private/Non-Profit Grant:

The Council accepts, and authorizes use of, the following grant in accordance with M.G.L. Chapter 44, Section 53A:

- a. Grant/Donation (*approved*): Coastal Trails Coalition (CTC)
 - i. Amount (*awarded*): \$10,000
 - ii. Purpose: Construction of Market Landing Park Expansion (*shared use path*)
3. **Reallocation of Culvert Funding to both Culvert and Park Construction:**

The Council hereby approves and authorizes a *reallocation* of funding previously approved pursuant to TRAN00139_11_01_2022 (*i.e. a General Fund – Free Cash transfer to the Waterfront Culvert Replacement Project*) such that said funds may be used both for the installation of said culvert, or a portion thereof (*as described in the original transfer*), and for construction of improvements associated with the Market Landing Park Expansion Project.
4. **Appropriation of 5% Construction Contingency:**

The Council hereby appropriates \$294,614 from Waterfront Parking Revenues towards construction of the Market Landing Park Expansion Project (*representing a 5% construction contingency*), with any unused funds remaining at the completion of construction to be returned to said account for Waterfront Parking Revenues accordingly.

Councillor Heather L. Shand

In City Council June 12, 2023:

Motion to waive the rules and accept the late files by Councillor Zeid, seconded by Councillor Cameron. Roll call vote. 11 yes. Motion passes.

Motion to refer to Ad Hoc on Market Landing Park and COTW by Councillor Shand, seconded by Councillor Preston. Roll call vote 11 yes. Motion passes.



CITY OF NEWBURYPORT
OFFICE OF PLANNING AND DEVELOPMENT
60 PLEASANT STREET • P.O. BOX 550
NEWBURYPORT, MA 01950
(978) 465-4400

MEMORANDUM

TO: Honorable Members of the Newburyport City Council

FROM: Andrew R. Port, Director of Planning & Development

CC: Sean R. Reardon, Mayor
Heather L. Shand, City Council President/Chair, Ad Hoc Committee on Market Landing Park Expansion
Ethan Manning, Director of Finance
Andrew Levine, Chief of Staff

RE: Market Landing Park Expansion Project
Status Update & Request for Gap Funding to Advance Construction

DATE: June 10, 2023

As you know, this Department has been overseeing design, funding and other aspects of the long-awaited Market Landing Park Expansion project working with our design team at Sasaki. The purpose of this memorandum is to provide background, context and status updates regarding the Market Landing Park Expansion Project in relation to the associated gap funding Order this report accompanies. This Order, and the attached supplementary/supporting materials will be submitted as a "Late File" for the June 12, 2023 Council Meeting, for timely referral to Committee. Due to crucial timelines associated with the project I respectfully request that this Order be reviewed by the Committee/Council at your earliest convenience, at which time members of the design and project management team can answer related questions you may have.

Historical Background & Context

It should go without saying that completion of this project (*in particular the park expansion areas along the water's edge*) represents the culmination of decades of debate about the central waterfront, and important closure and resolution of those debates and uncertainties. Even after establishment of a central boardwalk, lawn and perpendicular walkways to the water's edge, and creation of the Newburyport Waterfront Trust (WFT) to protect these, a substantial investment of time, effort and public funds have been spent to dissolve the former Newburyport Redevelopment Authority (NRA), to transfer land and revenues to the City, to construct a new parking garage to allow for relocation of an expansive central waterfront parking "footprint," and to create a park expansion plan which has broad community consensus for this flagship community space. It is important to remember the longer historical context involved, and the time and resources so many have invested until now to reach a point where decades-old "temporary" gravel parking lots behind the boardwalk can become an expansive arc of waterside park space, with maritime views, for public enjoyment in perpetuity. As such there is an intangible cost to the community should this project be delayed or its outcome remain unclear for years to come.

Status Update – From Final Design Through Permitting & Two Rounds of Contractor Bidding

As you know, the Council approved a final design for the expansion of Market Landing Park on November 1, 2022. Reaching this point, and advancing bid plans for construction earlier this year, involved a lengthy review and approval process by the Council itself (*facilitated through the designated Ad Hoc Committee*) and multiple levels of local and state permitting by the Planning Board, Conservation Commission, Department of Environmental Protection (DEP), Massachusetts Environmental Policy Act (MEPA) and others. Multiple stakeholders and professionals have been engaged in this plan review process throughout, including but not limited to the Waterfront Trust, Harbormaster/Harbor Commission, Parking Clerk, Department of Public Services, Parks Department/Division, Licensed Site Professionals (LSPs), and our design team at Sasaki, which has helped to integrate so many points of input into the detailed plans for permit approvals and construction. Only after these approvals from multiple authorities with overlapping jurisdictions, could Sasaki provide a set of plans suitable for bidding and construction of the project.

Our first round of bidding earlier this year resulted in a higher than anticipated contractor pricing based on Sasaki's pre-bid design estimates. As you may recall, we decided to combine the Market Landing Park Expansion Project with the Market Square Drainage Culvert Replacement Project for the purposes of bidding and contractor mobilization, with the presumption that this would reduce our overall costs, and avoid the construction management problems typically associated with overlapping contractors and construction work areas. Through this first round of bidding, review of the low bid received, and even discussions with all other contractors who reviewed the bid package but did not submit a bid, it became apparent that the drainage culvert scope was driving most of the cost increases we were seeing, particularly the quantities for contaminated soil management involved with such a large pipe traversing through an AUL (Activities and Use Limitation) area, and the concerns and risks associated with installing such a large subsurface pipe tight between two historic buildings approaching Market Square. The attached sketch plan has been updated since you last saw it - with the Culvert funding transfer request last year – to include a few additional notations that are key to understanding our new approach to the integration of these two projects (*one as the primary park project, and the other as a distinct DPS infrastructure project that was recommended for install/burial prior to grade-level park and walkway improvements*).

It is possible that the culvert project itself will cost more than our municipal and consulting engineers originally estimated. Additionally, it is possible that the design approach here will be revised to align the "60%" segment (*see sketch plan*) easterly through the main driveway entrance to the NRA East Lot (*so as to avoid work of significant depth tight between historic building foundations*). As depicted and labeled on the sketch plan, a new drain manhole has been located, and slightly adjusted in its location during our second bid for the park project, so as to allow installation of the culvert segment beneath new park space now, while providing a convenient point of connection for the phased abandonment of an older undersized granite box culvert, with future extension of the new culvert (*abandoning the rest of the granite box culvert at such time*) to Market Square. In the attached sketch plan the old granite box culvert can be seen as a faint grey dashed line type to the left of the new culvert alignment. It is apparent that further adjustments in design and/or alignment for that section, and potentially additional funding, will be necessary to advance the remainder of the culvert installation. However, given that this infrastructure can be installed in two phases, it is not necessary to delay the long-awaited park project while these details of the DPS project are resolved. However, it would make sense to delay constructing the final brick work and surface improvements of Ferry Wharf Way approaching Market Square until the subsurface work in this area is complete. As noted in the sketch, the existing concrete walkway installed by DPS several years ago could remain in place until then.

In response to the high bid received during our first round of bidding, we revised our project plans to reduce the primary/mandatory culvert work, and break the Phase I area into smaller areas (*as "base bid" park expansion along the water's edge and "alternates" for the new perpendicular walkways*) to provide us with options should

contractor bids remain high. Our second round of bidding also resulted in a higher than anticipated contractor prices (*with our reference point being Sasaki's design estimates*). This remained the case for park work, despite our efforts to eliminate the more debatable scope and costs associated with culvert work through the AUL to Market Square. It should be noted here that three higher bids were also received, beyond that of the lowest bid. All four suggest consistency as to increased market prices for the associated construction work. As such, we have been reviewing our pre-bid estimates from Sasaki with the low bid, in order to determine what the primary cost drivers are, and the extent to which our plans could undergo any further "value engineering" to reduce costs. We are still engaged in discussions with the design team, and the low bidder, to flush out these details, but thus far it does not seem likely that any of these minor adjustments (*even in combination*) would result in a substantial reduction to the scope of work or contractor costs. As you know, we already broke the larger project into three phases (*i.e. park areas, parking lot upgrades, and visitor center/restrooms, respectively*), and during round two of bidding we isolated the two new perpendicular walkaways as secondary bid "alternates" that could be postponed should bid prices come in high again.

Budget Overview, Available Options, Related Considerations & Next Steps

Based on the above information, it is unlikely that we would see a substantial reduction in construction costs if the current bids were to be rejected in favor of further design changes and relatively minor "value engineering" adjustments prior to another bid round. And although there continues to be speculation as to whether, and when, changes in the economy may result in better prices, it is a risky proposition to anticipate that favorable trajectory for market prices, recognizing the typical pattern of inflation and cost increases over time. These inflationary costs are typically represented as an "escalation contingency" in design estimates during early design, in advance of bidding. It should be noted here that further design changes would require scope increases and contract extensions (*i.e. costs to the City*) associated with work by the design team beyond what has already been funded, and for which services have already been rendered. These cost drivers must be considered as part of the larger financial picture. The main point here being that unless substantial changes are involved, further value engineering to attempt another bid may not in fact produce better contractor bids in the end. Notwithstanding the foregoing, we have identified a few areas where smaller adjustments could be made via change orders at the outset of bid award and construction startup, to reduce our project costs as much as is reasonably feasible. This includes, but is not limited to, those listed here, which have thus far been identified by the design and project management team:

1. Minor adjustments to irrigation system – stubs/reductions at certain landscape planting beds
2. Minor adjustments to screening fences to be installed around raised electrical transformers
3. Potential National Grid assistance with pull boxes and concrete transformer pads
4. Reduction in initial planting sizes (e.g. 1 gal shrub vs. 2 gal. shrub)
5. Reduction in planting warranty periods (trees and/or shrubs, with ongoing watering/maintenance by the City/WFT immediately following construction)
6. Asphaltic Subbase in lieu of Concrete Base (beneath new brick walkways/plaza/shoulder pavers)
7. Direct drilling of new water line vs. trench/excavation work

Other potential changes (*cost reductions to be taken in total*) are still being considered. These could be achieved through one or more Change Orders with the contractor once a base contract is executed. The final cumulative number (*total cost reductions/savings*) would be confirmed at that time. As such, I would not recommend reducing the 5% construction contingency to be addressed through the associated Order at this time, but rather that any unused funds be returned to Waterfront Parking Revenues upon completion of the project as noted.

Pending Council approval of the associated Order, and thus our ability to proceed with a contract for the low bid, we intend to pursue the above, and any other similar adjustments for cost savings to the extent feasible, in coordination with the contractor. And while it may be possible to reduce the overall project cost by say \$100-200K

(*maximum ballpark at this time*), it is still important to have a reasonable (*i.e. 5% minimum*) construction contingency available at the time of contract execution, in order to avoid additional costs that would otherwise be created by the delays to our contractor associated with awaiting Council action later (*i.e. committee referrals, etc.*) during the middle of construction.

In light of this context regarding the potential for cost reductions by further “value engineering,” we must now consider whether impacts to the timeline of this project (*necessary to delay or rebid the project, or to make substantial design changes*) would adversely impact the project budget. This is where two state grants we have applied for come into key consideration, as combined they represent an order of magnitude notably higher than any cumulative “value engineering” design adjustments we believe would be feasible without jeopardizing the scope and quality of this project.

The below table provides a summary of the current construction phase costs, and funding that has been appropriated for the project. Also noted here are the specific actions requested of the Council now, as outlined in the accompanying omnibus Order, to address gap funding to advance construction at this time, and in light of the crucial timeline associated with access to and use of significant state funding.

Project Costs for Construction	
<i>(as outlined herein, not including design, permitting, bidding costs to date)</i>	
Base Bid (Onyx)	\$5,590,000
Construction Contingency (5%)	\$279,500
Construction Administration (Sasaki)	\$220,575
TOTAL	\$6,090,075

Funding Sources Available for Construction	
<i>(as outlined herein, with pending grant award and Council actions from the accompanying Order as noted)</i>	
CPA Bond	\$3,000,000
CPA FY22	\$250,000
Herman Roy Trust Fund	\$1,000,000
Grant - Coastal Trails Coalition (CTC) (<i>awarded</i>)*	\$10,000
Grant – MA EOEEA DCS PARC (<i>awarded</i>)*	\$400,000
Grant – MA EOEEA DCR MassTrails (<i>pending</i>)*	\$399,936
Council/WFT Appropriations - Temporary Power	\$80,000
Council Appropriation – Market Sq. Culvert**	\$655,525
Waterfront Parking Revenues***	\$294,614
TOTAL	\$6,090,075

Footnotes to Tables Above:

- * The associated Order includes acceptance of these three outside grants/donations. Both state grants must be used within FY’24. Technically a prior Council Order approved acceptance of the PARC grant, but it is included again here for consistency and comprehensiveness, particularly in the context of the current request for timely gap funding. While not yet officially announced, we anticipate state approval shortly for the MassTrails grant request.
- ** The associated Order would reallocate approximately 60% of the previously approved culvert funding/scope to the park project, as outlined here and in the attached sketch.
- *** The associated Order would allocate funding necessary to ensure a 5% construction contingency until the work is complete, with all remaining funds to be returned to said account. Pursuant to the Special Act for NRA dissolution, these parking revenues from the NRA East and West lots can only be used for construction and/or maintenance of the expanded park. The current account balance is approximately \$505,489, with approximately \$215,251 in revenues from the prior fiscal year. As such the appropriation for construction here is not likely to have any adverse impact on the remaining account balance or revenues required to maintain the expanded park after construction.

The accompanying Order will provide the gap funding necessary to complete construction of primary park space along the water’s edge, and the connecting shared use path “spine,” from our Phase I plan approved by the Council. And while I don’t think anyone would indicate pleasure with higher than anticipated contractor bids, this is not entirely unusual, both pre- and post-pandemic in particular (*consider for instance supplemental funding*

recently appropriated for the Cutter/West End Fire Station project). Incidentally, when discussing our grant, project status and timeline with the PARC grant Administrator this week, she indicated that this pattern of higher bids was being seen by other municipalities across the spectrum of projects they have provided FY'24 funding for. And while we might debate the ability and responsibility of Sasaki's cost estimators to anticipate substantial cost increases (whether pre- or post-pandemic) the market forces "are what they are," and I remain skeptical about relying on potential future bid rounds or mobilizations of a contractor, to provide an overall reduction in project costs to the City significant enough to justify walking away from \$800K in state funding available only for use within FY'24. I have asked whether any extension of the grant timelines would be possible, and for both PARC and MassTrails this is not an option. Additionally, I should note that cancelling our use of these state grants in FY'24 may have adverse implications for future grant applications associated with this, or similar, projects from Newburyport.

Recognizing the need for late summer/fall 2023 construction work to ensure that a spring (*i.e.* FY') 2024 completion remains feasible for the project, DCS expected contract execution by June 30, 2023, just a few weeks away. I have confirmed that we can delay execution of a construction contract for a few more weeks, but extending that timeframe further is problematic and may put our access to PARC grant funds for this project in jeopardy. Please note that in either event, both state grants applicable to this project must be used and reimbursed prior to June 30, 2024 (*including a site visit to inspect the completed work and new public facilities created*). Waiting to engage and mobilize a contractor makes that timeline progressively more difficult to achieve, even from a practical perspective.

Conclusion

The design and project management team will be available for Committee/Council review of this request, and any related questions you may have. It is my intention with this memorandum to provide you as comprehensive an update on status, project details and context necessary to make a timely decision in any event, and regardless of the outcome of such vote. As noted herein, overlapping consideration of multiple factors and variables, including but not limited to timely contractor bids and the constraints associated with state grants awarded specifically for this project to be constructed in FY'24, suggest that the attached Order (*and the path forward it represents*) should be presented to the Council forthwith, and that a decision on how to proceed should be made as soon as possible.

Thank you in advance for your consideration. As noted in my introductory comments above, while no one would express enthusiasm for higher than anticipated construction costs, I do believe (*in the context of, and with full consideration for, the various factors involved*) that approval of the attached Order and construction of primary park space in FY'24 would be the best course of action for the City at this time.

Existing Conditions



AREAS OF INTEGRATION

Waterfront Trust

Waterfront Trust

AREAS OF INTEGRATION

NRA Parcel - West

Waterfront Trust

AREAS OF INTEGRATION

NRA Parcel - East

Waterfront Trust

Proposed Plan



Somersby
Sculpture
Plaza

Drop Off
Area

Seating
Area

Embayment

West
Embayment
Plaza

Shared Use Path

Harbormaster
Entry Drive

Harbormaster

Somersby Way

West
Lot

Central Wharf Way

Stage
Newburyport
Waterfront Trust
Property
Existing to remain

Ferry Wharf Plaza

East Lot

Custom House Way

Visitors Center +
Restrooms

Upper Railroad Way

Lower Railroad Way

Deliveries +
Dumpster
Enclosure

Ferry Wharf Way

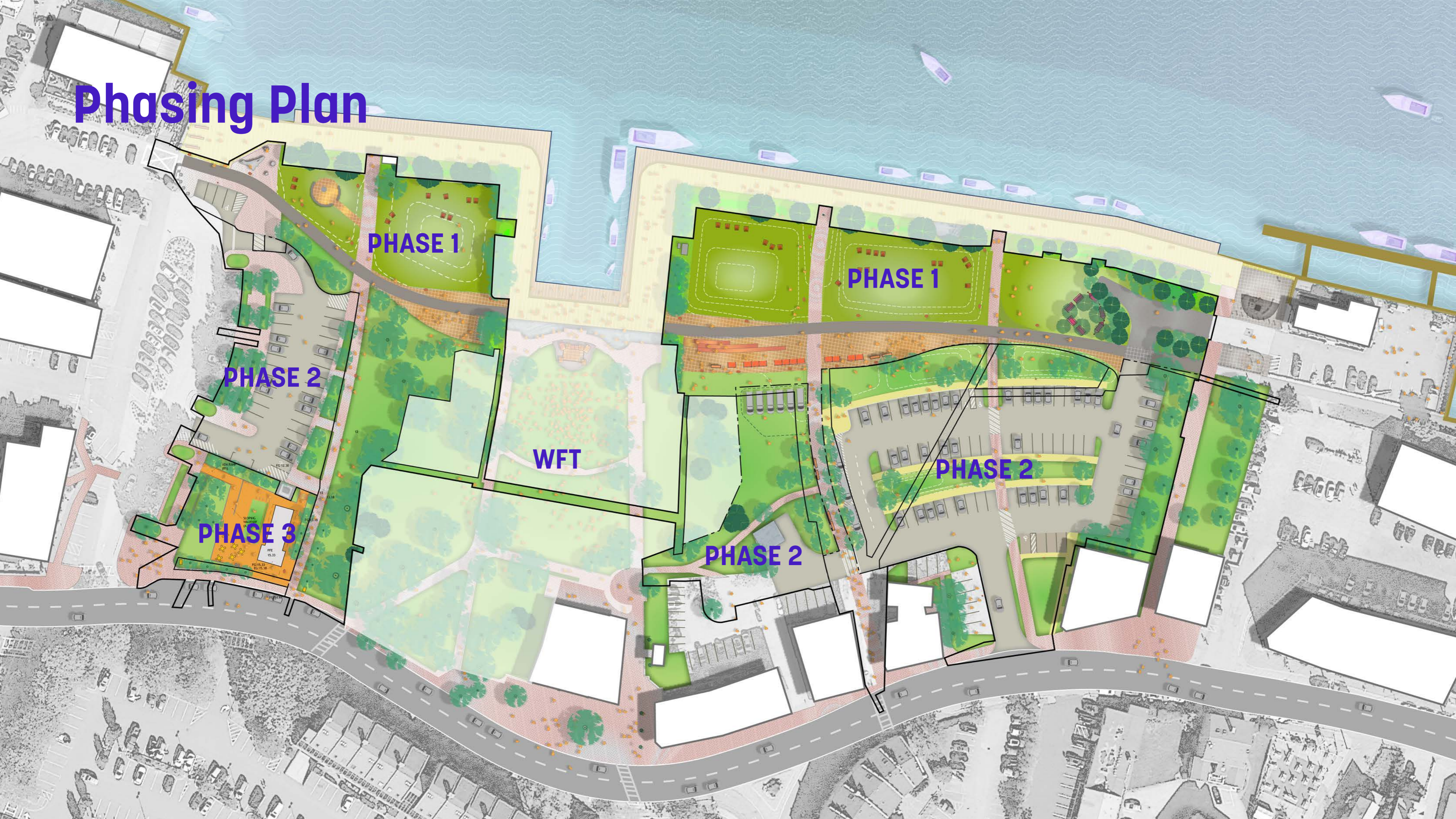
Custom
House

Fire
House

0 25 50 100 ft



Phasing Plan



PHASE 1

PHASE 1

PHASE 2

WFT

PHASE 2

PHASE 3

PHASE 2

Phase 1 with Interim Parking Layout

Interim conditions until Phase 2 parking areas are complete



	NRA East	NRA West	WFT	Total
2021 Parking Count (after 2019 interim lawn installation)	126 (4 HP Spaces)	65 (3 HP Spaces)	54 (3 HP Spaces)	245
Parking Count Phase 1 (after Market Landing Park Expansion Phase 1)	80 (1 HP Spaces)	33 (1 HP Spaces)	54 (3 HP Spaces)	167
Total Proposed Parking Count	75 (3 ADA)	35 (2 ADA, 2 EV)	54 (3 HP Spaces)	164

Revised Alternates

MERRIMACK RIVER

**BASE BID
WATERFRONT PARK EAST+CULVERT
CONNECTION TO EXISTING**

**BASE BID
WATERFRONT
PARK WEST**

MERRIMACK RIVER

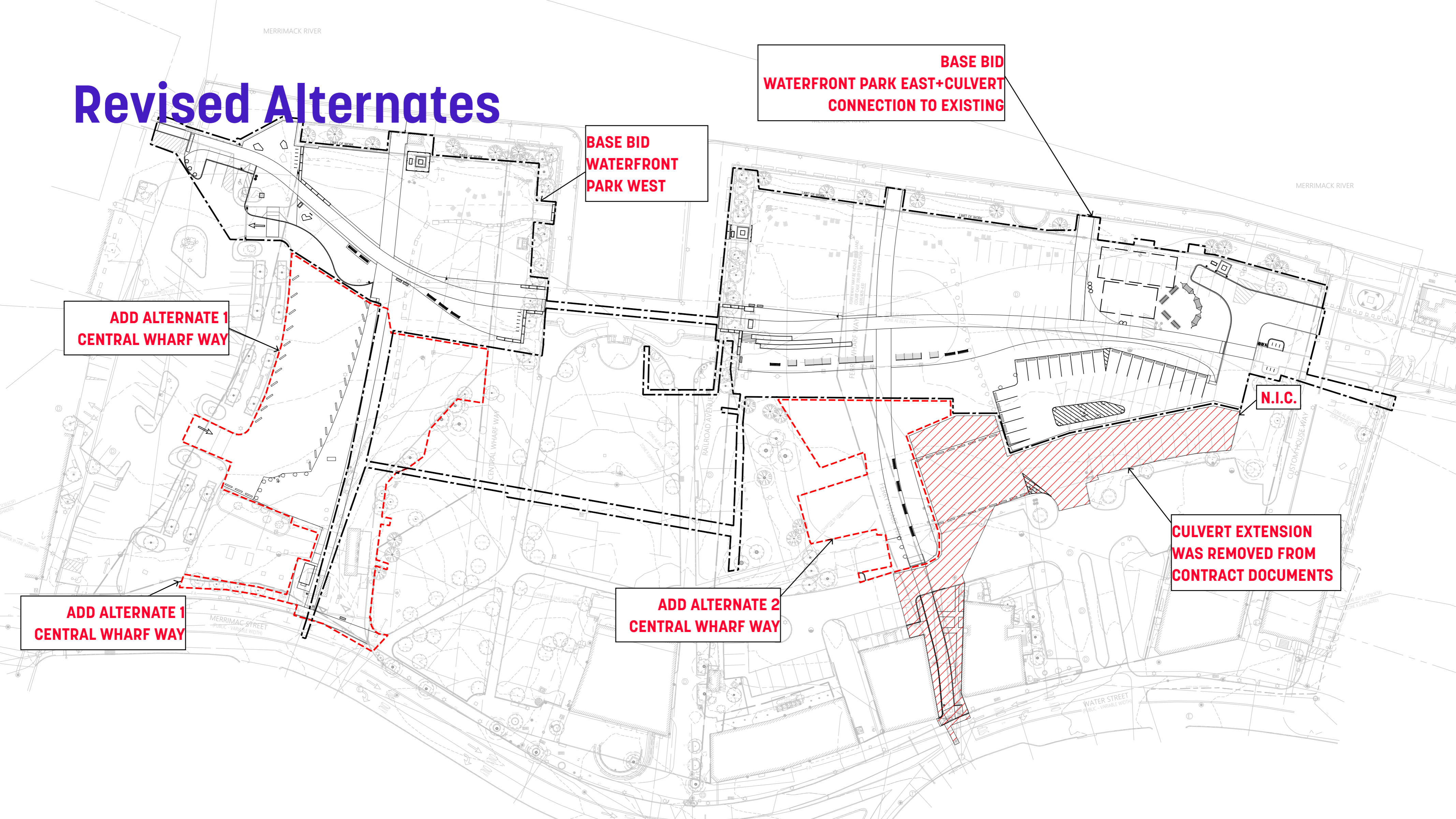
**ADD ALTERNATE 1
CENTRAL WHARF WAY**

N.I.C.

**CULVERT EXTENSION
WAS REMOVED FROM
CONTRACT DOCUMENTS**

**ADD ALTERNATE 1
CENTRAL WHARF WAY**

**ADD ALTERNATE 2
CENTRAL WHARF WAY**



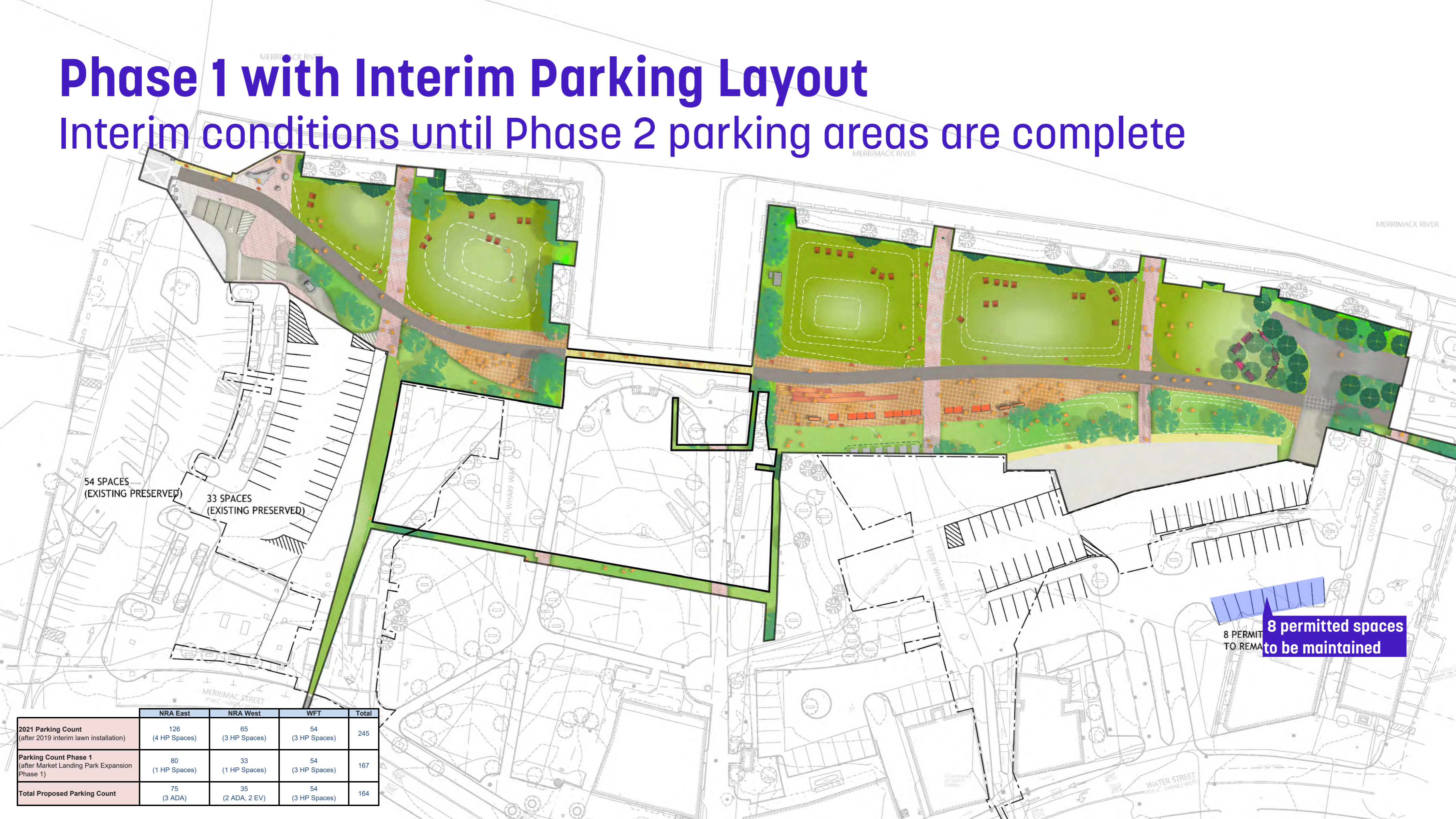
Revised Phasing Plan



Prior to Phase 2 construction, geotechnical investigations should be completed in this area to inform the culvert extension work.

Phase 1 with Interim Parking Layout

Interim conditions until Phase 2 parking areas are complete



54 SPACES
(EXISTING PRESERVED)

33 SPACES
(EXISTING PRESERVED)

8 PERMITTED
TO REMAIN
**8 permitted spaces
to be maintained**

	NRA East	NRA West	WFT	Total
2021 Parking Count (after 2019 interim lawn installation)	126 (4 HP Spaces)	65 (3 HP Spaces)	54 (3 HP Spaces)	245
Parking Count Phase 1 (after Market Landing Park Expansion Phase 1)	80 (1 HP Spaces)	33 (1 HP Spaces)	54 (3 HP Spaces)	167
Total Proposed Parking Count	75 (3 ADA)	35 (2 ADA, 2 EV)	54 (3 HP Spaces)	164

Market Landing Park
Expansion Project

&

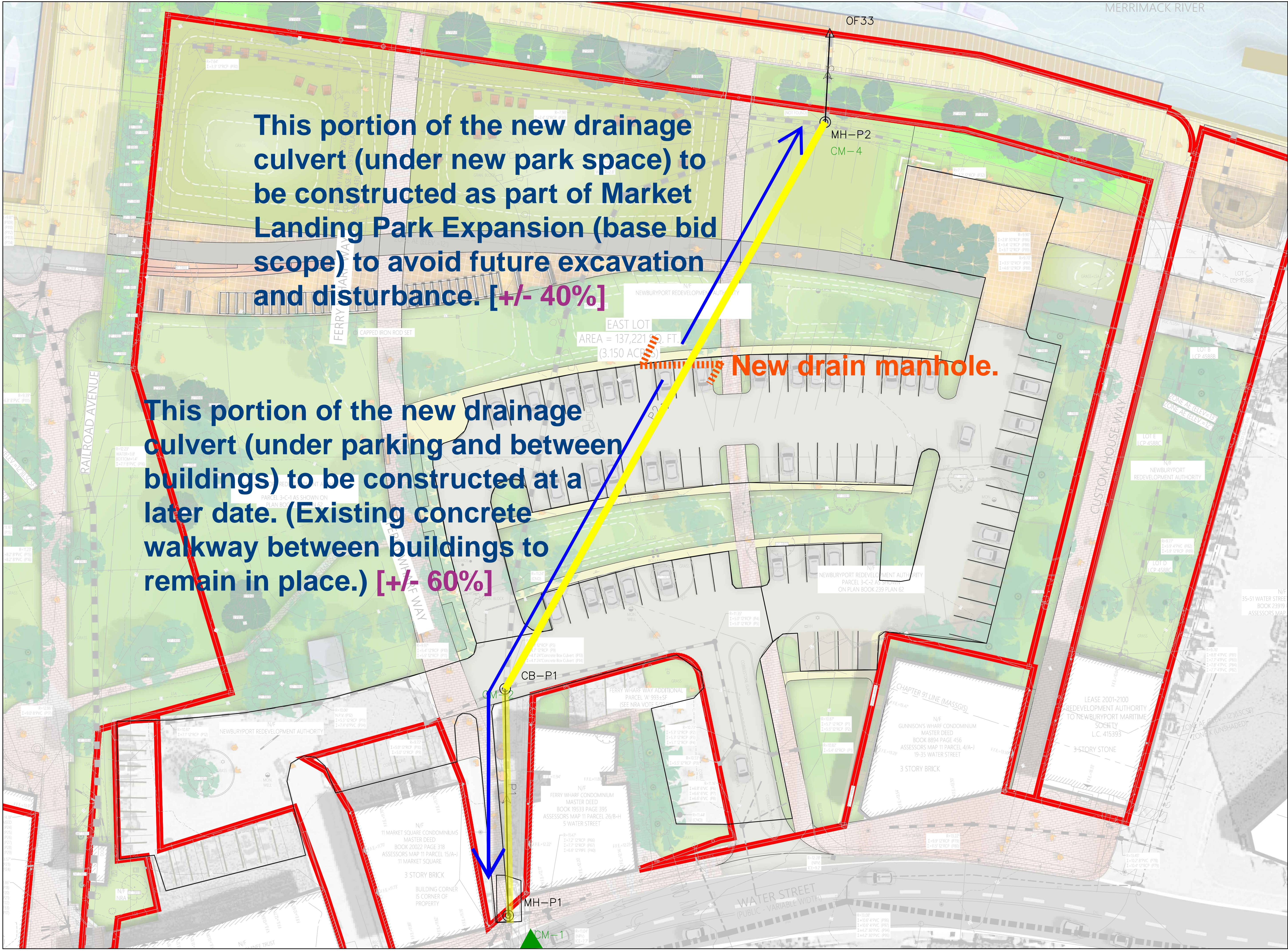
Market Square
Drainage Culvert
Replacement Project

Sketch to Accompany
Update to City Council,
Memorandum Date 6/10/2023

This portion of the new drainage culvert (under new park space) to be constructed as part of Market Landing Park Expansion (base bid scope) to avoid future excavation and disturbance. [+/- 40%]

This portion of the new drainage culvert (under parking and between buildings) to be constructed at a later date. (Existing concrete walkway between buildings to remain in place.) [+/- 60%]

New drain manhole.



Market Landing Park
Drainage Sketch
Sasaki
3/17/22
1" = 20'

